POLITICAL DICTIONARY

VOL. 2

FAC - YEO

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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ADVERTISEMENT TO THE SECOND VOLUME

OF THE

POLITICAL DICTIONARY.

THE plan and object of this Dictionary have been explained in the Advertisement prefixed to the First Volume. This Second Volume completes the work.

The Index contains the heads or titles of all the articles in the Two Volumes: and it also contains many heads or titles to which there are no separate articles corresponding, but as to which heads or titles something is said in the several articles which are referred to.

Some references occur in the body of the work which have not been made good, but they are few in number and comparatively unimportant; and some few references have been inaccurately made. It is difficult in a Dictionary to avoid errors of this kind, though due pains were taken to prevent them being made here. The Index in this Second Volume shows what the work contains.

A few subjects have been omitted which some persons might expect to find in a Political Dictionary; but it was thought prudent to limit the work to two volumes, and this limitation made it necessary to exclude articles of less importance.

It may however be stated that this is the only work of the kind in the English Language; that it contains a large amount of information

on most political subjects which cannot be found in any other book adapted for general use; and that, though it does not profess to be a Law Dictionary nor to be free from the errors which are unavoidable in any work of the kind, it contains both more and more exact legal information than is given in some works which are entitled Law Dictionaries.

The rapid movement of modern legislation can only be followed by a periodical work. The act 9 & 10 Victoria, c. 59, 'An Act to relieve her majesty's subjects from certain penalties and disabilities in regard to Religious Opinions,' was passed too late to be noticed in its proper place. This is mentioned as an instance of the kind of omissions and the causes of them which have occurred in the progress of this work. The passing of this act brings the condition of Religion in this country still nearer to that condition which is considered in the article EDUCATION [vol. i. p. 816].

London, September, 1846.

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Usus. [Usufructus.]

VAGRANT.
Value. [Political Economy; Price.]
Vassal. [Feudal System.]
Vendor and Purchaser.
Venire Facias.
Ventre Inspiciendo, Writ de.
Venue.
Verderer. [Forest Laws; Woods and Forests.]
Verdict. [Jury.]
Vestry.
Vicar, Vicarage. [Benefice, pp. 341, 342.]
Vicar Apostolic. [Catholic Church.]
View of Frankpledge. [Leet.]
Vill. [Town.]
Villein, or Villain.
Villeinage.
Viscount.
Visitor. [College; Schools, Endowed; Uses, Charitable and Superstitious.]
Visitation. [Archdeacon; Bishop.]
Voting.
Voyage. [Bottomry; Ships.]

WAGER. [Gaming.]
Wager-Policy.
Wager of Battle. [Appeal.]
Wages.
Waif.
Wales, Prince of.
Wapentake. [Shire.]
War. [Blockade; International Law.]
Ward. [Guardian; Tenure.]
Wards. [Municipal Corporations, p. 386.]
Wards, Court of.
Wardship. [Knight's Service.]
Warehousing System.
Warrant.
Warrant of Attorney and Cognovit. [Cognovit.]
Warren.
Waste.
Water and Watercourses.
Way.
Wealth. [Political Economy.]
Wealth of Nations. [Political Economy.]
Weights and Measures.
Weir.
Westminster Assembly.
Whig.
Wife; Husband and Wife.
Wife, Roman. [Marriage.]
Wife (Scotland).
Will and Testament.
Will, Roman.
Will (Scotland).
Wines and Spirits.
Witness. [Evidence.]
Woman.
Woods and Forests.
Wool. [Tariff.]
Workhouse. [Poor Laws.]
Wounding. [Maim.]
Wreck. [Franchise; Ships, p. 704.]
Writ.
Writ of Error.
Writ of Inquiry.
Writ of Summons. [Trial.]
Writ of Trial.
Writer.
Writer to the Signet.

YEAR-BOOKS. [Reports.]
Yeoman.
Yeomanry Cavalry.

POLITICAL DICTIONARY.

FACTOR is a mercantile agent, who buys and sells the goods of others, and transacts their ordinary business on commission. He is intrusted with the possession, management, and disposal of the goods, and buys and sells in his own name, in which particulars consists the main difference between factors and brokers. [BROKER.]

The chief part of the foreign trade of every country is carried on through factors, who generally reside in a foreign country, or in a mercantile town at a distance from the merchants or manufacturers who employ them; and they differ from mere agents in being intrusted with a general authority to transact the affairs of their employers. The common duty of a factor is to receive consignments of goods, and make sales and remittances, either in money, bills, or purchased goods in return; and he is paid by means of a per-centage or commission upon the money passing through his hands. It is usual for a factor to make advances upon the goods consigned to him, for which, and also for his commission, he has a general lien upon all the property of his employer which may at any time be in his hands.

Previously to the stat. 6 George IV. c. 94, a factor had only authority to sell the goods of his principal, and if he pledged them, the principal might recover them from the pledgee. But by this statute the pledgee of a factor, when he lends his money without notice that the factor is not the actual owner of the goods, is enabled to retain them for his security; and even when he has such notice, the lender has a lien upon the goods to the same amount as the factor was entitled to.

The rights and liabilities of merchants and factors are governed by the laws of the place in which they are domiciled; and any contract which may be made by either of them must be governed by the law of the place where it is made; and these rules are acted upon by the courts of justice of every civilized nation. Thus, since the passing of the above-mentioned statute, a foreign merchant cannot recover his goods from the pledgee of the factor in England, though he may be totally ignorant of the change which has taken place in the law. Again, if a bill be accepted in Leghorn by an Englishman, and the drawer fails, and the acceptor has not sufficient effects of the drawer in his hands at the time of acceptance, the acceptance becomes void by the law of Leghorn, and the acceptor is discharged from all liability, though by the law of England he would be bound. (See 2 Strange's *Reports*, 733; Beawe's *Lex Merc.*; Bell's *Commentaries*; Paley, *Principal and Agent*.)

FACTORY. The name of factory was formerly given only to establishments of merchants and factors resident in foreign countries, who were governed by certain regulations adopted for their mutual support and assistance against the undue encroachments or interference of the governments of the countries in which they resided. In modern times these factories have, in a great measure, ceased to exist, because of the greater degree of security which merchants feel as regards both the justice of those governments and the protection, when needed, of their country.

The Venetians, Genoese, Portuguese, Dutch, French, and English, have all had establishments of the nature of factories. In China the Portuguese established a

factory at Macao, and the English at Canton. In most instances, factories have at first obtained the privilege of trading, and afterwards procured for the precinct assigned to them some exemption from the jurisdiction of the native courts. In this state of things the supreme government of the country whose subjects have established the factory prepare laws for its control and administration, and treat it in fact as if it were its dependency, though the sovereignty of the native government is undisputed, and to it belongs the right of legislation for the precinct of the factory, though it may not always have the power of resuming it. (*Government of Dependencies.* By George Cornewall Lewis, pp. 93 and 169.)

In its usual acceptation, the word factory is now employed to denote an establishment in which a considerable number of workmen or artisans are employed together for the production of some article of manufacture, most commonly with the assistance of machinery.

FACTORY. The word 'Factory,' according to the Factory Act (7 Vict. c. 15), means all buildings and premises wherein or within the close or curtilage of which steam, water, or any other mechanical power shall be used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, or tow, either separately or mixed together, or mixed with any other material or any fabric made thereof; and any room situated within the outward gate or boundary of any factory wherein children or young persons are employed in any process incident to the manufacture carried on in the factory, shall be taken to be a part of the factory, although it may not contain any machinery; and any part of such factory may be taken to be a factory within the meaning of the Act, 7 Vict. c. 15; but this enactment shall not extend to any part of such factory used solely for the purposes of a dwelling-house, nor to any part used solely for the manufacture of goods, made entirely of any other material than those herein enumerated, nor to any factory or part of a factory used solely for the manufacture of lace, of hats, or of paper, or solely for bleaching, dyeing, printing, or calendering.

What is called the 'factory system' owes its origin to the invention and skill of Arkwright; and it is probable that but for the invention of spinning machinery, and the consequent necessary aggregation of large numbers of workmen in cotton-mills, the name would never have been thus applied. It is in the cotton-mills that the factory system has been brought to its highest state of perfection.

The first cotton-factory was established in 1771 by Arkwright in connection with Messrs. Need and Strutt, of Derby, and was situated at Cromford, on the river Derwent; and the first of these establishments erected in Manchester was built in 1780, and had its machinery impelled by an hydraulic wheel, the water for which was furnished by a single-stroke atmospheric pumping steam-engine. The progress of cotton-factories was so rapid that in 1787 there were 145 in England and Wales, containing nearly two millions of spindles, and estimated to produce as much yarn as could have been spun by a million of persons using the old domestic wheel. The number of cotton, wool, silk, and flax-spinning factories worked by steam or water-power in the United Kingdom, with the number of persons employed therein in the year 1835, was as follows:—

	Factories.	Persons.
Cotton . . .	1262	220,134
Wool . . .	1313	71,274
Silk . . .	238	30,682
Flax . . .	347	33,283
	3160	355,373

The number of persons employed in textile manufactures in Great Britain, in 1841, was 800,246, the greater part of whom are employed in factories. The numbers employed on each description of fabric was as follows:—

Cotton	377,622
Hose	50,955
Lace	35,347
Wool and Worsted .	167,296
Silk	83,773
Flax and Linen . .	85,213
	800,246

The age and sex of the above-mentioned number of persons were as under:—

	Aged 20 Years and upwards.	Under 20.	Total.
Males	344,121	109,260	453,381
Females	211,070	135,795	346,865
Total	555,191	245,055	800,246

The sex and age of persons employed in the cotton manufacture are given at COTTON MANUFACTURE AND TRADE, p. 696. "In the woollen manufacture the number of adult males employed is three times as great as that of the adult females, while the number of either sex under twenty years of age is comparatively small: the same may be said of the hose, but in the flax and linen manufactures the preponderance is not quite so great. In silk the number of both sexes employed are nearly equal, the excess among adults being with the males, and under twenty with the females. The manufacture of lace is the only one in which the number of females is very much greater than that of males." (Census Commissioners' Report.) In the Yorkshire district, which is under the superintendence of Mr. Saunders, the number of persons employed in factories in 1838 was 95,000, and in 1843 there were 106,500; but there was a positive decrease in the number of children, amounting to 2000. Mr. Howell, inspector of factories for Cheshire and the Midland Counties, states (Jan. 1844), that the few factories in which children under thirteen years of age are employed in his circuit are chiefly in isolated rural districts or in non-manufacturing towns.

The legislature has interfered to prevent children in factories being tasked beyond their strength, to the permanent injury of their constitutions. This abuse was the more to be apprehended, because a large proportion of the children engaged in cotton-spinning are not directly employed by the masters, but are under the control of the spinners, a highly-paid class of workmen, whose earnings depend greatly upon the length of time during which they can keep their young assistants at work. A parliamentary committee sat for the investigation of this subject in 1832, and subsequently a commission was issued by the crown for ascertaining, by examinations at the factories themselves, the kind and degree of abuses that prevailed, and for suggesting the proper remedies. In consequence of these inquiries, an act was passed in 1833 (3 & 4 Wm. IV., c. 103) for regulating factories. This act has been amended by 7 Vict. c. 15; but in order to show the course of recent legislation on this subject, we shall first give some of the main enactments of the first act.

The act 3 & 4 Wm. IV. provided, that after the 1st of January, 1834, no person under the age of eighteen years should work in any cotton, woollen, flax, or silk factory worked by the aid of steam or water-power, between the hours of half-past eight in the evening and half-past five in the morning; that no person under eighteen years of age should work more than twelve hours in any one day nor more than sixty-nine hours in the week. Except in silk-mills, no children under nine years of age were to be employed. Children under eleven years old were not to be worked more than nine hours in any one day, nor more than forty-eight hours in one week. This clause came into operation six months after the passing of the act. At the expiration of another twelve months its restriction was applied to children under twelve years old; and when thirty months from the passing of the act had elapsed, the restriction was applied to all children under thirteen years old. This clause came into operation on the 1st of March, 1836. In silk-mills, children under thirteen years of age were allowed to work ten hours per day. It was made illegal for any other mill-owner to have in his employ any child who had not completed eleven years of age without a certificate by a surgeon or physician "that such child is of the ordinary strength and appearance of children of or exceeding the age of nine years." In eighteen months from the passing of the act this provision was made to apply to all children under twelve years of age; and upon the 1st of March, 1836, the provision was made to include all children under the age of thirteen. Four persons were appointed

under the act to be Inspectors of Factories, in order to carry into effect the various provisions which it contained.

After the expiration of six months from the passing of the act, it was declared unlawful to employ in any factory any child under the ages restricted to forty-eight hours' labour in the week, unless on every Monday the employer should receive a ticket from some schoolmaster, certifying that such child had for two hours at least for six out of seven days of the week next preceding attended his school. The school might be chosen by the parents or guardians of the child; but in case of their omitting to appoint any school, or in case of the child being without parent or guardian, the inspector might appoint some school in which the child might be taught, and the employer was allowed to deduct from its weekly earnings any sum not exceeding one penny in every shilling, to pay for the schooling of such child.

By the Amended Factory Act (7 Vict. c. 15), every person who begins to occupy a factory must give notice thereof, and full details respecting the same, "to the office of the Factory Inspectors, London."

There are various penalties for the offences constituted by the two acts, and the duty of seeing them carried into effect is devolved upon four inspectors, called the Inspectors of Factories, each of whom has sub-inspectors employed under him. The United Kingdom is divided into four districts, and at the head of each is a chief inspector. The four inspectors assemble together at their office in London every half year, and make a joint report to the Secretary of State for the Home Department of such matters as appear necessary. Each inspector makes a report to the same authority every half year; but the reports were formerly made quarterly.

The powers of inspectors and sub-inspectors are very considerable. An inspector or sub-inspector is authorized to enter every part of any factory, at any time, by day or by night, when any person shall be employed therein; and to enter by day any place which he shall have reason to believe to be a factory; and to enter any school in which children employed in factories are educated; and at all times to take with him into any factory the certifying surgeon of the district, and any constable or other peace officer whom he may mean to assist him; and may examine, either alone or in the presence of any other person, as he shall think fit, every person whom he shall find in a factory or in such a school, or whom he shall have reason to believe to be or to have been employed in a factory within two months next preceding the time when he shall require him to be examined touching any matter within the provisions of the Factory Act. And the inspector or sub-inspector may, if he shall see fit, require such person to make and sign a declaration of the truth of the matters respecting which he shall be examined.

By the amended act the word "child" means a child under the age of thirteen; and the term "young person" means a person of the age of thirteen and under the age of eighteen.

No child under the age of eight can be employed in any factory. Under the act 3 & 4 Wm. IV. nine years was the age of admission, but, with a reduction of the hours of working, an earlier age has been substituted. A child who has completed his eighth year must obtain a medical certificate, as required by 3 & 4 Wm. IV., before he can be employed; and a similar certificate is also required from young persons between the ages of thirteen and sixteen. These certificates can only be granted by a certifying surgeon duly appointed by the Inspectors of Factories, and they are only valid at the factory for which they were granted. The certifying surgeons visit factories weekly, and are responsible to the inspector of the district, who, as well as the sub-inspector, has the power of annulling certificates which have been improperly granted. Under the act 3 & 4 Wm. IV. the occupiers of factories appointed the certifying surgeons, who were generally the medical attendants of their own families.

Persons under eighteen are not allowed to work between the hours of half-past eight in the evening and half-past five in

the morning; nor more than twelve hours in one day; nor more than sixty-nine hours in any one week (3 & 4 Wm. IV. c. 103, § § 1, 2). Females above the age of eighteen can only be employed for the same time and in the same manner as "young persons;" an arrangement introduced for the first time by the amending act. No "child" is to be employed more than six hours and a half in any one day, unless when the dinner-time of the "young persons" begins at one o'clock in the afternoon, in which case children who begin to work in the morning may work for seven hours in one day. Children must not be employed after one o'clock in the afternoon, except when they work on alternate days; but in silk-factories, children, if above eleven, may be employed solely in the winding and turning of raw silk for any time not exceeding ten hours on any working day, but not after half-past four P.M. on any Saturday, and such children are not required to produce a certificate of school attendance. Under the former factory act children of any age might be employed in silk-mills. Again, as to silk-mills, children between eight and eleven can only be employed half a day, and are required to attend school.

When the labour of "young persons" is restricted to ten hours a-day, any "child" may be employed ten hours on alternate days; but the occupier of the factory must give notice to the inspector of this arrangement with regard to the children. No child or young person is to be employed for any purpose in any factory after half-past four on Saturdays. The time for meals is regulated both by the act of 3 & 4 Wm. IV. and that of 7 Vict. At least one hour and a half must be allowed for meals to every young person between half-past seven in the morning and half-past seven in the evening. One hour is to be given before three o'clock in the afternoon. No child or young person is to be employed before one o'clock in the afternoon without an interval of thirty minutes for meal time. During meal times no child or young person is to be in any room wherein any manufacturing process is then carried on. All young persons are to have time for meals at the same period of the day, unless for special cause to be allowed in writing by an inspector.

Holidays are fixed by both acts, which in England or Ireland are Christmas-day and Good Friday; and in Scotland the days set apart as fast-days. All children and young persons are besides to have eight half-holidays yearly, and at least four must be allowed between the 15th of March and 1st of October. No cessation from work is deemed a half-holiday unless notice thereof has been fixed up the previous day in the factory.

In making up time lost by accident, provisions are carefully introduced to prevent any unnecessary infringement on the ordinary working hours. Notice must be sent by post to the sub-inspector of factories, stating the intention to recover lost time, and a notice to the same effect must be previously fixed up at the entrance of the factory.

The act contains provisions for painting and whitewashing, or cleaning with soap and hot water the interior of factories; also various regulations for the prevention of accidents and for protecting the workers from discomforts. No child or young person is to be employed where the wet spinning of flax is carried on, unless sufficient means are used for protecting the workers from being wetted, and, when hot water is used, for preventing the escape of steam into the room occupied by them. No child or young person is allowed to clean any shaft or any wheel, drum, or pulley while the same is in motion, nor to work between the fixed and traversing part of any self-acting machine in motion. Such parts of the machinery as are dangerous, and near to which children or young persons are liable to pass, are to be securely fenced. In case of accident to any of the workers, the occupier of the factory must give notice of the same to the certifying surgeon of the district, and he is required to investigate it and to report thereon to the inspector, for which purpose the surgeon has the same powers and authority as an inspector. The Secretary of State, on the report of one of the inspectors of factories, may empower him to direct an action to be brought in the name and on behalf

of the person injured for recovery of damages.

By the first Factory Act every child employed in a factory was required to attend school two hours daily; but by the amending act the time is extended to three hours, between eight in the morning and six in the evening, on every working day except Saturday. When the children work on alternate days, they are required to attend school on the other days for five hours each day. The occupier of a factory must obtain every Monday a certificate from the schoolmaster that each child has attended school as required by the act, and such certificates must be kept for six months after the date thereof, and be produced during this period when required by either an inspector or sub-inspector. The inspector may require a sum not exceeding twopence per week to be paid by the occupier of a factory to the schoolmaster towards the expenses of instructing any child employed in the same, and any such sum thus required may be deducted from the child's wages. If an inspector, on his personal examination, or on the report of a sub-inspector, shall be of opinion that any schoolmaster who grants certificates of the school attendance of children employed in a factory is unfit to instruct children, by reason of his incapacity to teach them to read and write, from his gross ignorance, or from his not having the books and materials necessary to teach them reading and writing, or because of his immoral conduct, or of his continued neglect to fill up and sign the certificates of school attendance required by the act, the inspector may annul any certificate granted by such disqualified schoolmaster, by a notice in writing addressed to the occupier of the factory in which the children named in the certificates are employed, setting forth the grounds on which he deems such schoolmaster to be unfit. After the date of such notice no certificate of school attendance granted by such schoolmaster shall be valid for the purposes of this act, unless with the consent in writing of the inspector. When an inspector annuls a schoolmaster's certificate, he is required to name some other school within two miles of the factory from the master of which he will receive certificates. The schoolmaster and the occupier of a factory may appeal to the Secretary of State for the Home Department in the case of annulling certificates; and the inspector is required to report (but the act says annually only, although the inspectors make half-yearly reports) each case of annulment, and the reasons for it to the Secretary of State. By a clause in the first Factory Act it is enacted that whenever it appears necessary to any inspector that a new or additional school is required, such inspector is authorized to establish or procure the establishment of such school.

By the limitations of the working time for children under thirteen to half a day, they are enabled to attend school: those children who work in the morning go to the afternoon schools, and those who work in the afternoon have been to school in the morning. In many factories a change is made at the end of each month, and the children who were employed in the morning attend school and work in the afternoon.

When the Factories Bill (7 Vict. c. 15) was introduced into the House of Commons there was a large party in favour of a greater diminution in the hours of labour than the bill proposed. Lord Ashley moved that the word "night" be construed to mean from six in the evening to six in the morning, and the word "meal-time" to be two hours' cessation from labour. This would have left only ten hours as the time for actual work. This amendment was resisted by ministers, who contended that it would have the effect of reducing wages; or that, if it had not this result, it would affect that portion of our manufactures connected with the export trade (35,000,000*l.* out of 44,000,000*l.*) which had already, in many instances, to endure a severe competition in the markets of the world. The amendment (a ten hours' clause) was however carried by 179 against 170 for the original motion (twelve hours). On the following night Lord Ashley stated the plan by which he proposed to carry out the vote of the House: after October, 1844, he would restrict the daily hours of labour to eleven; and two years after, the restriction to ten hours would come into

operation. The government announced their intention of adhering to the period of twelve hours, as fixed by their bill. On the 22nd of March the House went into committee on the Bill, when two divisions took place: on the motion that twelve hours a day should be the limits of adult labour, an amendment was proposed which substituted ten hours, which was carried by 186 to 183; but at the next stage of the Bill, the motion that the blank in the bill should be accordingly filled up with the word "ten" was lost by 181 to 188. The ministers in the first instance were in a minority of 3, and in the second they had a majority of 7. From this dilemma the House escaped by bringing in a new bill, which was ultimately carried.

Mr. Leonard Horner, who is one of the Inspectors of Factories, in his report dated 16th of May, 1845, gives an instance of the voluntary shortening of the hours of factory labour from twelve to eleven hours per day, which had been effected without any diminution of profit. The plan had been in operation twelve months, and the declaration of the employers was, "that the same quantity of produce and at the same cost has been obtained by the master; and that all the workers, day hands as well as those who are paid by piece-work, earn the same amount of wages in the eleven hours as was done before by the labour of twelve hours." (Report, p. 19.) Mr. Horner remarks that these results, although they may form a good ground for experiments being tried in other mills *of the same description*, "do not form any ground to justify a further legislative restriction of the hours of labour on the plea that has often been put forward that if the hours be shortened the produce will not be lessened." Proofs of the correctness of this view would involve details of too technical a nature to be generally understood by persons who are not acquainted with manufacturing processes.

FACULTIES. [UNIVERSITY.]

FAIR, a meeting of buyers and sellers at a fixed time and place; from the French *foire*, which is from the Latin *feriae*, a holiday. Fairs in ancient times were chiefly held on holidays.

In former times goods and commodities of every kind were chiefly sold at fairs, to which people resorted periodically. The display of merchandise, and the conflux of customers at these principal and almost only emporia of domestic commerce, was prodigious; and they were therefore often held on open and extensive plains. Warton, in his 'History of English Poetry,' has given us a curious account of that of St. Giles's hill or down, near Winchester. It was instituted and given as a kind of revenue to the bishop of Winchester by William the Conqueror, who, by his charter, permitted it to continue for three days. But in consequence of new royal grants, Henry III. prolonged its continuance to sixteen days. Its jurisdiction extended seven miles round, and comprehended even Southampton, then a capital trading-town; and all merchants who sold wares within that circuit, unless at the fair, forfeited them to the bishop. As late as 1512, as we learn from the Northumberland Household-book, fairs still continued to be the principal marts for purchasing necessaries in large quantities, which are now supplied by the numerous trading-towns.

Philip, king of France, complained to Edward II. A.D. 1314, that the merchants of England had desisted from frequenting the fairs in his dominions with their wool and other goods, to the great loss of his subjects; and entreated him to persuade, and, if necessary, to compel them to frequent the fairs of France as formerly, promising them all possible security and encouragement. (Rymer, *Fœd.*, tom. iii. p. 482.)

When a town or village had been consumed, by way of assisting to re-establish it, a fair, among other privileges, was sometimes granted. This was the case at Burley, in Rutlandshire, 49th Edward III. (*Abbrev. Rot. Orig.*, vol. ii. p. 338.)

The different abridgments of Stow and Grafton's Chronicles, published by themselves in Queen Elizabeth's time, contain lists of the fairs of England according to the months. There is also 'An authentic Account published by the king's authority of all the Fairs in Eng-

land and Wales, as they have been settled to be held since the alteration of the style; noting likewise the Commodities which each of the said Fairs is remarkable for furnishing,' by William Owen, 12mo., Lond., 1756.

No fair or market can be held except by a grant from the crown, or by prescription, which is supposed to take its rise from some ancient grant, of which no record can be found. (2 *Inst.* 220.)

(Dugdale's *Hist. Warw.*, pp. 514, 515; Warton's *Hist. Engl. Poet.*, vol. i. p. 279; Henry, *Hist. Brit.*, 8vo. edit., vol. viii. p. 325; Brand's *Popular Antiq.* 4to. edit. vol. ii., p. 215.)

The fairs of Frankfort-on-the-Mayn and Leipzig are the chief fairs in Europe: the former held at Easter and in the months of August and September; the latter at Easter, Michaelmas, and the New Year. The whole book-trade of Germany is centred in the Easter fair at Leipzig. Nishnei Novgorod in Russia, at the confluence of the Oka and Wolga, has a great annual fair in June, which is attended by about three hundred thousand strangers, many of whom come from remote parts of Asia.

FARMERS-GENERAL. Fermiers Généraux was the name given in France under the old monarchy to a company which farmed certain branches of the public revenue, that is to say, contracted with the government to pay into the treasury a fixed yearly sum, taking upon itself the collection of certain taxes as an equivalent. The system of farming the taxes was an old custom of the French monarchy. Under Francis I., the revenue arising from the sale of salt was farmed by private individuals in each town. This was and is still in France and other countries of Europe a monopoly of the government. At the present time the government of France derives about 2,200,000*l.* a year from the salt monopoly. The government reserves to itself the power of providing the people with salt, which it collects in its stores, and sells to the retailers at its own price. This monopoly was first assumed by Philippe de Valois in 1350. Other sources of revenue were likewise farmed by several individuals, most of whom were favourites of the court or of the minister of the day. Sully, the able minister of Henry IV., seeing the dilapidation of the public revenue occasioned by this system, by which, out of 150 millions paid by the people, only 30 millions reached the treasury, opened the contracts for farming the taxes to public auction, giving them to the highest bidder, according to the ancient Roman practice. By this means he greatly increased the revenue of the state. But the practice of private contracts through favour or bribing was renewed under the following reigns: Colbert, the minister of Louis XIV., called the farmers of the revenue to a severe account, and by an act of power deprived them of their enormous gains. In 1728, under the regency, the various individual leases were united into a Ferme Générale, which was let to a company, the members of which were henceforth called Fermiers Généraux. In 1759, Silhouette, minister of Louis XV., quashed the contracts of the farmers-general, and levied the taxes by his own agents. But the system of contracts revived: for the court, the ministers, and favourites were all well disposed to them, as private bargains were made with the farmers-general, by which they paid large sums as douceurs. In the time of Necker, the company consisted of forty-four members, who paid a rent of 186 millions of livres, and Necker calculated their profit at about two millions yearly—no very extraordinary sum, if correct. But independent of this profit there were the expenses of collection, and a host of subalterns to support: the company had its officers and accountants, receivers, collectors, &c., who, having the public force at their disposal, committed numerous acts of injustice towards the people, especially the poorer class, by distraining their goods, selling their chattels, &c. The "gabelle" or sale of salt, among others, was a fruitful source of oppression. Not satisfied with obliging the people to pay for the salt at the price fixed upon it in the name of the king, they actually obliged every individual above eight years of age to buy a certain quantity of salt whether wanted or not. But the rule was not alike all over France; in some provinces, which en-

joyed certain privileges, salt was 9 livres the one hundred weight, whilst in others it cost 16, and in some 62 livres. In some provinces the quantity required to be purchased per head was 25 pounds weight: in others it was 9 pounds. And yet the provinces, nay the individual families of each province, were prohibited under the severest penalties from accommodating each other's wants, and buying the superfluous salt of their neighbours, but whoever wanted more salt than his obligatory allowance was obliged to resort to the government stores. Besides, every article of provisions that was exported from one province to another was subject to duties called Traites. Every apprentice on being bound to a master was bound to pay to the king a certain sum according to the nature of the trade, and afterwards a much larger sum on his admission to practise his trade as a master. These few instances may serve to convey an idea of taxation in France previous to the Revolution. A lively but faithful picture of the whole system is given in Breton's *Histoire Financière de la France*, 2 vols. 8vo., Paris, 1829. The farmers-general, as the agents of that system, coming into immediate contact with the people, drew upon themselves a proportionate share of popular hatred. But the Revolution swept away the farmers-general, and put an end to the system of farming the revenues: it equalized the duties and taxes all over France; but the monopoly of the salt and tobacco has remained, as well as the duties on provisions, cattle, and wine brought into Paris and other large towns, called the octroi, and the right of searching by the octroi officers, if they think fit, all carriages and individuals entering the barriers or gates of the same.

The system of farming the taxes, although generally disapproved of, is still continued in some European states. Not many years ago the custom-house duties at Naples were farmed by private speculators. For the character and effects of the system see Necker, *De l'Administration des Finances.*

In England the only tax that is farmed is that on post-horses. The excise duties were farmed for some years prior to 1683.

The Roman system of levying taxes, at least after the Republic had begun to acquire territory out of Italy, was by farming them out. In the later period of the Republic the farmers were from the body of the Equestrian order. Individuals used to form companies or associations for farming the taxes of a particular district: the taxes were let by the Censors for a period of five years. They were probably let to those who bid highest. These farmers were called Publicani, and by the Greek writers Telonae (τελῶναι), which is rendered by Publicans in the English version of the New Testament, where they are appropriately classed with sinners, for they were accused of being often guilty of great extortion. These tax-collectors in the province were however only the agents. The principals generally resided at Rome, where the affairs of each association (Societas) were managed by a director called a Magister. The individual members held shares (partes) in the undertaking. There was also a chief manager in the province or district of which the company farmed the tax, who was called Promagister.

There are no means of knowing what proportions of the taxes collected reached the Roman Treasury (aerarium). Numerous complaints of the rapacity of the Publicani or their agents occur in the classical writers. These Publicani were the monied men of the late Republic and the early Empire, and their aid was often required by the state for advances of money when the treasury was empty. Part of the mal-administration probably came from the Publicani sub-letting the taxes, which seems to have been done, sometimes at least.

FATHER. [PARENT AND CHILD.]

FEALTY, says Littleton (§ 91), "is the same that *fidelitas* is in Latin. And when a freeholder doth fealty to his lord, he shall hold his right hand upon a book, and shall say thus:—'Know ye this, my lord, that I shall be faithful and true unto you, and faith to you shall bear for the lands which I claim to hold of you, and that I shall lawfully do to you the customs and services which I ought to do, at the terms assigned: so help me God

and his saints;' and he shall kiss the book. But he shall not kneel when he maketh his fealty, nor shall make such humble reverence as is aforesaid in homage."

From this it appears that fealty is the fidelity which a man who holds lands of another owes to him of whom he holds, and it contains an engagement to perform the services for which the land is granted. The law as to fealty continues unchanged, though it is not usual now to exact the oath of fealty. It is due from all tenants of land, except tenants in frankalmoigne and those who hold at will or by sufferance. The reasons for now requiring it are so few that it is nearly gone into disuse, though it serves to keep up the evidence of tenure, when there are no other services due. If it is refused, the lord may enforce it by distress.

FEDERATION. This word is derived from the Roman term Foederatus, which was applied by the Romans to States which were connected with the Roman State by a Foedus or treaty. A federal union of sovereign states may be most easily conceived in the following manner:—

We will suppose that the sovereign power in any number of independent states is vested in some individual in those several states. These sovereign persons may agree respectively with each other and with all not to exercise certain functions of sovereignty in their several states, and to transfer these functions to be jointly exercised by the contracting sovereign persons. The consequence of such a compact will be that the contracting sovereign persons in their joint capacity will become sovereign in each state and in all the states. The several sovereign persons having for the time surrendered to the joint body certain powers incident to their several sovereignties, are no longer severally sovereign in their several states. The powers surrendered to the joint body may be determined by written contract, the interpretation of which belongs to the joint body, yet in such a manner that there can be no valid interpretation unless the sovereign persons are unanimous; for if any number or majority could bind the rest, they might, by interpretation, deprive the several contracting persons of all the powers reserved to them by the contract. It follows also from the terms of the union, that any one party can withdraw from it at pleasure, and, as far as he is concerned, dissolve the union; for the essence of this union is the continuing consent of all.

This is the simplest possible form of a supreme federal government; one in which the contracting sovereign powers are individuals, and in which the sovereign persons in their aggregate capacity exercise the functions of sovereignty. Such a federation may never have existed, but any federation that does exist or can exist, however complicated it may seem, is reducible to these simple elements.

If the sovereign powers, instead of being in individuals, are in all the people of the respective states, the only difference will be that the functions of sovereignty, which in the first case we supposed to be exercised by the individual sovereigns in their joint capacity, must, in this case, be delegated to individual members of the sovereign body. The citizens of the several sovereign states must in the first instance of necessity delegate to some of their own body the proper authority for making the federal contract or constitution; and they must afterwards appoint persons out of their own body, in the mode prescribed by the federal contract, for executing the powers intrusted by the federal contract to persons so appointed. Thus the individuals who form the federal contract act therein severally as the agents of the sovereign states from which they receive their commission; and the individuals appointed to carry into effect the terms of the federal contract are the ministers and agents of that sovereign power which is composed of the several sovereign states, which again are composed of all the citizens. By whatever name, of President, Senate, House of Representatives, or other name, the agents of the sovereign power are denominated, they are only the agents of those in whom the sovereign power resides.

When the sovereign power is so distributed, the question as to the interpretation of the federal contract may in practice be more difficult, but in principle it is the

same. No one state can be bound by the interpretation of the rest, for if this were once allowed there would be no assignable limit to the encroachments of the states exercising sovereign power in their aggregate capacity. It is a clear consequence of the nature of the compact, whether the several sovereign powers are nations or individuals, that each contracting power must exercise its judgment on the interpretation of the instrument to which it is a party, and that no interpretation from which any power dissents can, consistently with the nature of the compact, bind that power against its will.

In the case of complete dissent or disagreement by any one power, the contract is, by the very nature of its terms, at an end; for the contract being among sovereign powers, they cannot severally as such yield *obedience* to another sovereignty, which results from the aggregation of their several sovereign powers: their acts in their joint capacity must be acts of complete consent.

If the sovereign power in such a federal union has delegated the power of interpreting the written instrument of union to certain judiciary authorities, appointed under the federal compact for the purpose of carrying its provisions into effect, the several sovereign powers must still exercise, either by their legislatures or their judiciary authorities, their power to judge of the correctness of the interpretation, just as much as if the several sovereign persons, in the case first supposed, themselves exercised the functions of sovereignty in the supreme federal government.

What is commonly called the general government of the United States of North America is an example of a federation or federal government, or a supreme federal government. The contracting parties were sovereign states (the sovereignty in each state being in the citizens), which in their aggregate capacity formed a supreme federal government. The ministers for carrying into effect the federal government are the president and congress, and the judiciary of the United States. By the preamble to the constitution it is in fact declared that the "people of the United States" are the contracting parties. The several states of the union are often still called sovereign and independent states, because they retain all the sovereignty which they have not given up, expressly or by implication, to the general government; and it is considered that the chief business of the general government is to determine and control the relations of all the confederated states to foreign states, and to make provision for the general defence. In practice, however, great difficulties arise in fixing the limits between the sovereignty of the states, such as it is, and the powers of the general government.

The fifth article of the constitution provides that "The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, &c. that no state, without its consent, shall be deprived of its equal suffrage in the senate." From this article it is clear that the framers of the constitution did not fully comprehend the nature of the supreme federal government; for it is assumed by this article that the several states may be bound without their unanimous consent, which is contrary to conditions essentially implied by the nature of the union. This article involves also the inconsistency that the sovereign in any state may bind his successors: if the case of a federation of individual sovereign persons had been that to be provided for, the impossibility of the provision would have been apparent; but the impossibility equally exists when the contracting sovereign powers are respectively composed of many individuals, for the abiding consent is still the essence of the union that has been formed.

This is not the proper place to discuss the advantages and disadvantages of a supreme federal government, nor to examine into its stability. That it is neces-

sarily deficient in one element of stability, which defect arises from the necessity for all the consenting parties to continue their consent, is evident: in this respect it is like a partnership for an indefinite period, which may at any time be dissolved by any one of the partners. Such a power, which is incident to the nature of the partnership, so far from being an objection to it, is a great advantage. So long as all the parties agree, they have the benefit of the union; when they cannot agree, they take instead of it the benefit of the separation.

It is also foreign from our purpose to consider what is the tendency, in a union like that of the United States, which results from the powers placed in the hands of the President and Congress by the federal compact. If such power were placed in such hands by sovereign persons originally severally sovereign in their respective states, as in the case first supposed, the vigilance of these persons in their aggregate capacity, though somewhat less than the vigilance of a single sovereign person, would probably prevent any undue assumptions of power on the part of those to whom they had delegated certain fixed powers. But the farther the several sovereigns, who in their aggregate capacity form this federation, are removed from those to whom they delegate certain powers, and the more numerous are the individuals in whom this aggregate sovereignty resides, the greater are the facilities and means offered to, and consequently the greater is the tendency in, their ministers and agents practically to increase those powers with which they may have been intrusted. In their capacity of ministers and agents, having patronage at their command and the administration of the revenue, such agents may gradually acquire the power of influencing the election of their successors, when their own term of office is expired, and may thus imperceptibly, while in name servants, become in fact masters. That there is such a tendency to degenerate from its primitive form in all social organization, as there is in all organized bodies to be resolved into their elements, seems no sufficient reason for not forming such union and deriving from it all the advantages which under given conditions it may for an indefinite time bestow on all the members of such federation.

Those who wish to examine into the nature of the North American Union and the party questions which have arisen out of the interpretation of the federal constitution may consult the essays of Jay, Hamilton, and Madison in the *Federalist*, the *Journal of the Philadelphia Convention*, published in 1819, and Tucker's *Life of Jefferson* (London, 1836), where they will find ample reference to other authorities.

Federations of a kind existed in ancient times, such as that of the Ionian States of Asia, which assembled at the Panionium at certain times (Herodotus, i. 142); the Achæan confederation [ACHÆAN CONFEDERATION]; the Ætolian confederation [ÆTOLIAN CONFEDERATION]; and the Lycian confederation which is described by Strabo (p. 664). The Roman system of Foederate States (Civitates Foederatae) is another instance of a kind of confederation; but it was of a peculiar kind, for Rome was neither absolutely sovereign over these states nor yet associated with them in a federation, as now understood. The relationship between Rome and the federate states rather resembled the relation of sovereign and subject, than any other, though it was not precisely that.

A supreme federal government, or a composite state, is distinguished by Austin (*Province of Jurisprudence determined*) from a system of confederated states: in the latter "each of the several societies is an independent political society, and each of their several governments is properly sovereign or supreme." It is easy to conceive a number of sovereign powers, such as the German States, assembling and passing resolutions which concern all the members of the confederacy, and yet leaving these resolutions to be enforced in each state by its own sovereign power. Such a union therefore differs essentially from a supreme federal government, which enforces its commands in each and all the states. As to the existence of a written constitution, as it is called, in the one case, and a mere compact in the other,

that makes no essential difference, for the federal constitution, as we have shown, is merely articles of agreement, which only derive their efficacy from the continued assent of all the members that contribute in their aggregate capacity to form the sovereign power in such federation.

As to a system of confederated states, Austin adds: "I believe that the German Confederation, which has succeeded to the ancient empire, is merely a system of confederated states. I believe that the present diet is merely an assembly of ambassadors from several confederated but severally independent governments; that the resolutions of the diet are merely articles of agreement which each of the confederated governments spontaneously adopts; and that they owe their legal effect, in each of the compacted communities, to laws and commands which are fashioned upon them by its own immediate chief. I also believe that the Swiss Confederation was and is of the same nature. If, in the case of the German or of the Swiss Confederation, the body of confederated governments enforces its own resolutions, those confederated governments are one composite state, rather than a system of confederated states. The body of confederated governments is properly sovereign: and to that aggregate and sovereign body each of its constituent members is properly in a state of subjection."

FEE SIMPLE. [ESTATE.]

FEE TAIL. [ESTATE.]

FEES, certain sums of money claimed as their perquisite by official persons under the authority of various acts of parliament, and by prescription. The right to fees, as well as the amount payable in most cases connected with the administration of justice, has been regulated by several recent statutes.

Officers demanding improper fees are guilty of extortion.

The rewards paid to barristers and physicians, attorneys and surgeons, for their several services, are called fees, which may be recovered by the two last-named by action; but barristers and physicians cannot recover their fees by legal proceeding.

FELLOWSHIP is an establishment in some colleges which entitles the holder to a share in its revenues. Fellowships are either original, that is, part of the foundation of the original founder; or ingrafted, that is, endowed by subsequent benefactors of a college already established. Where the number of fellows is limited by the original foundation, new fellows cannot be made members of the corporate body without a new incorporation. If the number is not limited by the charter, it seems that the corporation may admit new fellows as members, who will be subject to the statutes of the original foundation in all respects. Graduates of each several college are in general only eligible to fill a vacant fellowship in the establishment, and they are elected after having undergone an examination by the master and fellows or by the master and senior fellows. But in some cases special rules which control the election prevail, as where the fellow must be of the blood of the founder, or where he must be a native of a particular county, &c., and in some few cases fellowships are open to the graduates of several colleges, or even the whole university. In Downing College, Cambridge, graduates of both universities are eligible. The rules as to the election of fellows are prescribed by the founder, modified in some cases by the by-laws of the several colleges. Some fellowships may be held by laymen, but in general they can be retained only by persons already in holy orders, or who are ordained within a specified time. Fellowships are of unequal value, varying from 30*l.* and less to 250*l.* a year and upwards, the senior fellowships being in general the most lucrative; but all confer upon their holders the right to apartments in the college, and certain privileges as to commons or meals. They are in general tenable for life, unless the holder marries, or inherits estates which afford a larger revenue, or accepts one of the livings belonging to the college which cannot be held with a fellowship. The condition of celibacy is attached to all fellowships, but it is not peculiar to them; for instance, by the statutes of the founder of Harrow school, the head master ought to vacate his mastership upon marriage, just

as in the case of a fellowship. The college livings are conferred upon the fellows, who in general have the option of taking them in order of seniority.

FELO-DE-SE (a felon of himself) is a person who, being of sound mind and of the age of discretion, deliberately causes his own death; and also in some cases, where one maliciously attempts to kill another, and in pursuance of such attempt unwillingly kills himself, he is adjudged a felo-de-se. (1 Hawkins, *P. C.* c. 27, § 4.) When the deceased is found by the coroner and jury a felo-de-se, all his chattels, real and personal, are forfeited to the crown, though they are, we believe, usually restored upon payment of moderate fees. It follows from this rule as to forfeiture, that a will made by a felo-de-se is void as to his personal estate, though not as to his real estate, nor is his wife barred of her dower. Formerly he was buried in the highway with a stake driven through his body. These laws, so highly repugnant to the feelings of humanity, being a punishment to the surviving relatives of the deceased, caused juries in general to find that the deceased was not of sound mind; and by 4 Geo. IV. c. 52, the legislature so far yielded to the popular and herein the better opinion, as to abolish the former ignominious mode of burial, and to provide that a felo-de-se shall be privately interred at night in the burial-ground in which his remains might by law have been interred if the verdict of felo-de-se had not been found against him.

FELONY, in the general acceptation of the English law, comprises every species of crime which occasioned at common law the forfeiture of lands or goods, or both, and to which a capital or other punishment might be superadded, according to the degree of guilt. Various derivations of the word have been suggested. Sir Henry Spelman supposes that it may have come from the Teutonic or German *fee* (fief or feud) and *lon* (price or value), or from the Saxon *feelen* to fall or offend. Capital punishment by no means enters into the true definition of felony; but the common notion of felony has been so generally connected with that of capital punishment, that law-writers have found it difficult to separate them: indeed, this notion acquired such force, that if a statute made any new offence felony, the legal implication was that it should be punished with death. The number of offences, however, to which this punishment is affixed by the law of England is now very small; and several statutes have been lately passed (1 Vict. c. 84, 85, 86, &c.) founded upon the principle that the punishment of death should only be inflicted for crimes accompanied with violence. Thus c. 84 substitutes the punishment of transportation for that of death in those cases where death might still be inflicted for forgery; c. 85 materially lessens the severity of the punishment of offences against the person; c. 86 enacts that burglary unaccompanied with violence shall no longer be punished capitally, and provides that, so far as the offence of burglary is concerned, the night shall be considered to commence at nine in the evening and to conclude at six in the morning; c. 87 mitigates the punishment attending the crimes of robbery and stealing from the person; c. 88 renders piracy punishable with death only when murder is attempted; c. 89 regulates the punishment for the crime of arson; c. 90 mitigates the punishment of transportation for life in certain cases; and c. 91 abolishes the punishment of death in the cases there specified. Great numbers of offences were formally liable to this severe punishment. The word felony is now used very vaguely, and it has long been employed to signify the degree of crime rather than the penal consequences. It is sufficient here to state generally, that murder, manslaughter, felo-de-se, robbery, arson, burglary, offences against the coin, &c., are considered and classed as felonies. [LAW, CRIMINAL.]

Besides the special punishment affixed to his crime by the law, a felon upon conviction forfeited the rents and profits of his lands of inheritance during his life to the king (which are now usually compounded for), and also all his goods and chattels absolutely; and as attainder of felony caused corruption of blood, his lands, except of gavelkind tenure, escheated to the lord of the fee. This last consequence, however, was taken away

by stat. 54 Geo. III. c. 145, which enacted, that, except for treason or murder, corruption of blood should not follow attainder; and as difficulties might sometimes occur in tracing descent through an ancestor who had been attainted, it was, by the 3 & 4 Will. IV. c. 108, § 10, enacted that descent may be traced through any person who shall have been attainted before such descent shall have taken place. [ATTAINDER; DESCENT; ESCHEAT; FORFEITURE.]

The distinction formerly made between felony with and without benefit of clergy is explained in BENEFIT OF CLERGY.

FEME COVERT. [WIFE.]

FEME SOLE. [WIFE.]

FEOD. [FEUDAL SYSTEM.]

FEOFFEE. FEOFFMENT.]

FEOFFMENT is that mode of conveying the property in lands or corporeal hereditaments in possession where the land passes by livery in deed, *i. e.* actual delivery of a portion of the land, as a twig or a turf; or where, the parties being on the land, the feoffor expressly gives it to the feoffee. Livery in law or within view, is when, the parties being within sight of the land, the feoffor refers to it and gives it to the feoffee. A feoffment was the earliest mode of conveying real hereditaments in possession known to the common law. A grant, which was an instrument in writing, was the mode used when lands subject to an existing estate of freehold, and when rents or other incorporeal hereditaments incapable from their nature of being the subjects of livery, were transferred. The term feoffment is evidently of feudal origin, its Latinised form being feoffamentum, from *feudare* or *infeudare*, to infeoff, to give a feud; he who confers the feud or fief is the feoffor, and he who receives it the feoffee. This mode of conveyance is common to all nations in rude ages. (Gilbert, *Ten.* 386.) It prevailed amongst the Anglo-Saxons, who gave possession by the delivery of a twig or a turf, a mode still common, particularly in the admission of tenants of copyhold lands. The form of an ancient feoffment was very concise. There is a copy of one in the Appendix to the 2nd vol. of Blackstone's *Commentaries*, No. 1.

The essential part of this mode of conveyance is the delivery of possession, or, as it is technically called, livery of seisin. In former times land was frequently conveyed without any deed or writing, by simple delivery. Subsequently it became the custom to have a written instrument called the charter or deed of feoffment, which declared the intention of the parties to the conveyance. But now, since the Statute of Frauds (29 Car. II. § 3), a written instrument is necessary. Still however the land passes by the livery, for if a deed of feoffment is made without livery, an estate at will only passes; though if livery is made, and the deed does not express that the land is conveyed to the feoffee and his heirs, an estate for the life of the feoffee only will pass. No less estate than an estate of freehold can pass by a feoffment with livery, the livery being in fact the investiture with the freehold.

Livery of seisin, of both the kinds previously mentioned, was at first performed in the presence of the freeholders of the neighbourhood, vassals of the feudal lord; because any dispute relating to the freehold was decided before them as pares curiæ, "equals of the court," of the lord of the fee. But afterwards, upon the decay of the feudal system, the livery was made in the presence of any witnesses; and where a deed was used, the livery was attested by those who were present at it.

Livery in deed may be made by the feoffor or his attorney to the feoffee or his attorney. When lands lie in several counties, as many liveries are necessary; and where lands are out on lease, there must be as many liveries as there are tenants, for no livery can be made without the consent of the tenant in possession, and the consent of one will not bind the rest. But livery in law or within view can only be given or taken by the parties themselves, though lands in several counties may pass if they all be within view. Livery of this nature requires to be perfected by subsequent entry in the lifetime of the feoffor. Formerly, if the feoffee durst not enter for fear of his life or bodily harm, his claim, made yearly in the form prescribed by law, and called continual claim, would preserve his right.

The security of property consequent upon the progress of civilization having rendered this exception unnecessary, it was abolished by the recent Statute of Limitations, 3 & 4 Will. IV. c. 27, § 11.

Since the Statute of Uses [USES] has introduced a more convenient mode of conveyance, feoffments have been rarely used. Corporations usually convey their own estates by feoffment, in consequence of the supposition that a corporate body cannot stand seised to a use, though it seems that this doctrine only applies to the case of lands being conveyed to a corporation to the use of others. (Gilbert *On Uses*, Sugd. ed. 7 note.) Where the object to be attained was the destruction of contingent remainders or the discontinuance of an estate tail, or the acquirement of a fee for the purpose of levying a fine or suffering a recovery, a feoffment was usually employed. Such indeed was the efficacy attributed to this mode of conveyance by the early law writers, that where the feoffor was in possession, however unfounded his title might be, yet his feoffment passed a fee; voidable, it is true, by the rightful owner, but which by the lapse of time might become good even as against him. Being thus supposed to operate as a disseisin to the rightful owner, it was thought till recently that a person entitled to a term of years might by making a feoffment to a stranger pass a fee to him, and then by levying a fine acquire a title by non-claim. This doctrine led to very considerable discussion, and though strictly accordant to the principle of the old law, it has been overruled. The whole state of the question may be found in Mr. Knowler's celebrated argument in Taylor dem. Atkins *v.* Horde; 1 Burr. 60, Doe dem. Maddock *v.* Lynes, 3 B. & C. 382; Jerritt *v.* Wrace, 3 Price, 575; 1 Sanders, *Uses*, 40 (4th ed.); 1 Preston, *Conv.* 32 (2nd ed.); and 4 Bythewood, *Conv.* (Jarman's edit.) 117.

The owner of lands of gavelkind tenure may convey them by feoffment at the age of fifteen; and therefore in such cases, which are rare, a feoffment is still resorted to.

FEOFFOR. [FEOFFMENT.]

FERRY, an exclusive privilege by prescription or the king's grant for the carriage of horses and men across a river or arm of the sea for reasonable toll. The owner of a ferry cannot suppress it and put up a bridge in its stead without a licence; but he is bound to keep it always in repair and readiness, with expert men, and reasonable toll, for neglect of which he is liable to be punished by indictment. If a ferry is erected so near to an ancient ferry as to draw away its custom, it is a nuisance to the owner of the old one, for which the law will give him remedy by action. The ferry is in respect of the landing-place, and not of the water, and in every ferry the land on both sides ought originally to have belonged to the same person, otherwise he could not have granted the ferry. (13 Vin. *Abr.* 208.) But as all existing ferries are of great antiquity, and generally connect roads abutting on each side of the water, the original unity of possession is mere matter of curiosity. A ferry is considered as a common highway. (3 Blackstone, *Com.*; 13 Viner, *Abr.* 208.)

FEUD. [FEUDAL SYSTEM.]

FEUDAL SYSTEM. In treating of this subject we shall endeavour to present a concise and clear view of the principles of what is called the feudal system, to indicate the great stages of its history, especially in our own country, and to state briefly the leading considerations to be taken into account in forming an estimate of its influence on the civilization of modern Europe.

The essential constituent and distinguishing characteristic of the species of estate called a feud or fief was from the first, and always continued to be, that it was not an estate of absolute and independent ownership. The property, or *dominium directum*, as it was called, remained in the grantor of the estate. The person to whom it was granted did not become its owner, but only its tenant or holder. There is no direct proof that fiefs were originally resumable at pleasure, and Mr. Hallam, in his 'State of Europe during the Middle Ages,' has expressed his doubts if this were ever the case; but the position, as he admits, is laid down in almost every writer on the

feudal system, and, if not to be made out by any decisive instances, it is at least strongly supported not only by general considerations of probability, but also by some indicative facts. This however is not material. It is not denied that the fief was at one time revocable, at least on the death of the grantee. In receiving it, therefore, he had received not an absolute gift, but only a loan, or at most an estate for his own life.

This being established as the true character of a primitive feud or fief, may perhaps throw some light upon the much disputed etymology and true meaning of the word. *Feudum* has been derived by some from a Latin, by others from a Teutonic root. The principal Latin origins proposed are *fœdus* (a treaty) and *fides* (faith). The supposition of the transformation of either of these into feudum seems unsupported by any proof. These derivations, in fact, are hardly better than another resolution of the puzzle that has been gravely offered, namely, that feudum is a word made up of the initial letters of the words "fidelis ero ubique domino vero meo." The chief Teutonic etymologies proposed have been from the old German *faida*, the Danish *feide*, or the modern German *vehd*, all meaning battle-feud, or dissension; and from *fe* or *fee*, which it is said signifies wages or pay for service, combined with *od* or *odh*, to which the signification of possession or property is assigned. But, as Sir Francis Palgrave has well remarked, "upon all the Teutonic etymologies it is sufficient to observe, that the theories are contradicted by the *practice* of the Teutonic tongues—a *Feud*, or fief, is not called by such a name, or by any name approaching thereto, in any Teutonic or Gothic language whatever." (*Proofs and Illustrations to Rise and Progress of Eng. Com.*, p. ccvii.) *Lehn* or some cognate form is the only corresponding Teutonic term; *Laen* in Anglo-Saxon, *Len* in Danish, *Leen* in Swedish, &c. All these words properly signify the same thing that is expressed by our modern English form of the same element, *Loan*; a *loan* is the only name for a feud or fief in all the Teutonic tongues. What then is *feud* or *fief*? Palgrave doubts if the word *Feudum* ever existed. The true word seems to be *Fevdum* (not distinguishable from *Feudum* in old writing), or *feftum*. *Fiev* or *Fief* (Latinized into *Fevodium*, which some contracted into *Fevdum*, and others, by omitting the *v*, into *Feodum*) he conceives to be *Fitef*, or *Phitef*, and that again to be a colloquial abbreviation of *Emphyteusis*, pronounced *Emphytefsis*, a well known term of the Roman imperial law for an estate granted to be held not absolutely, but with the ownership still in the grantor and the usufruct only in the hands of the grantee. It is certain that emphyteusis was used in the middle ages as synonymous with Precaria (an estate held on a precarious or uncertain tenure); that precariæ, and also præstitæ, or præstariæ (literally loans), were the same with Beneficia; and that Beneficia under the emperors were the same or near the same as fiefs. [BENEFICIUM.] (See these positions also established in Palgrave, *ut supra*, cciv.-ccvi.) It may be added that the word *Feu* is still in familiar use in Scotland for an estate held only for a term of years. The possessor of such an estate is called a *Feuar*. Many of these feus are held for 99 years, some for 999 years. A rent, or feu-duty, as it is called, is always paid, as in the case of a lease in England; but, although never, we believe, merely nominal, it is often extremely trifling in proportion to the value of the property. In Erskine's 'Principles of the Law of Scotland,' in the section "On the several kinds of Holding" (book ii. tit. 4), we find the following passage respecting feu-holding, which may be taken as curiously illustrating the derivation of fief that has just been quoted from another writer:—"It has a strong resemblance to the Roman *Emphyteusis*, in the nature of the right, the yearly duty payable by the vassal, the penalty in the case of not punctual payment, and the restraint frequently laid upon vassals not to alien without the superior's consent." As for the English term *Fee*, which is generally, if not universally assumed to be the same word with fief and feud (and of which it may be the abbreviated form, as we may infer from the words "feoffor," "infeoff," and

"feoffment"), it would be easy enough to show how, supposing that notion to be correct, it may have acquired the meaning which it has in the expressions fee-simple, fee-tail, &c.

The origin of the system of feuds has been a fertile subject of speculation and dispute. If we merely seek for the existence of a kind of landed tenure resembling that of the fief in its essential principle, it is probable that such may be discovered in various ages and parts of the world. But feuds alone are not the feudal system. They are only one of the elements out of which that system grew. In its entireness, it is certain that the feudal system never subsisted anywhere before it arose in the middle ages in those parts of Europe in which the Germanic nations settled themselves after the subversion of the Roman empire.

Supposing feud to be the same word with the Roman emphyteusis, it does not follow that the Germanic nations borrowed the notion of this species of tenure from the Romans. It is perhaps more probable that it was the common form of tenure among them before their settlement in the Roman provinces. It is to be observed that the emphyteusis, the precaria, the beneficium, only subsisted under the Roman scheme of polity in particular instances, but they present themselves as the very genius of the Germanic scheme. What was only occasional under the one became general under the other. In other words, if the Romans had feuds, it was their Germanic conquerors who first established a system of feuds. They probably established such a system upon their first settlement in the conquered provinces. The word feudum indeed is not found in any writing of earlier date than the beginning of the eleventh century, although, as Mr. Hallam has remarked, the words *feum* and *fevum*, which are evidently the same with feudum, occur in several charters of the preceding century. But, as we have shown, feudum or feud, in all probability, was not the Teutonic term. "Can it be doubted," asks Mr. Hallam, "that some word of barbarous original must have answered, in the vernacular languages, to the Latin beneficium?" There is reason to believe, as we have seen, that this vernacular word must have been *Lehn*, or some cognate form, and that feud was merely a corrupted term of the Roman law which was latterly applied to denote the same thing.

We know so little with certainty respecting the original institutions of the Germanic nations, that it is impossible to say how much they may have brought with them from their northern forests, or how much they may have borrowed from the imperial polity, of the other chief element which enters into the system of feudalism, the connection subsisting between the grantor and the grantee of the fief, the person having the property and the person having the usufruct, or, as they were respectively designated, the suzerain or lord, and the tenant or vassal. Tenant may be considered as the name given to the latter in reference to the particular nature of his right over the land; vassal, that denoting the particular nature of his personal connection with his lord. The former has been already explained; the consideration of the latter introduces a new view. By some writers the feudal vassals have been derived from the *comites*, or officers of the Roman imperial household [COUNT]: by others from the *comites*, or companions, mentioned by Tacitus (*German.* 13, &c.) as attending upon each of the German chiefs in war. The latter opinion is ingeniously maintained by Montesquieu (xxx. 3). One fact appears to be certain, and is of some importance, namely, that the original vassali or vassi were merely noblemen who attached themselves to the court and to attendance upon the prince, without necessarily holding any landed estate or beneficium by royal grant. In this sense the words occur in the early part of the ninth century. Vassal has been derived from the Celtic *gwas*, and from the German *gesell*, which are probably the same word, and of both of which the original signification seems to be a helper, or subordinate associate, in labour of any kind.

If the vassal was at first merely the associate of or attendant upon his lord, nothing could be more natural than that, when the lord came to have land to give

away, he should most frequently bestow it upon his vassals, both as a reward for their past and a bond by which he might secure their future services. If the peculiar form of tenure constituting the fief or lehn did not exist before, here was the very case which would suggest it. At all events, nothing could be more perfectly adapted to the circumstances. The vassal was entitled to a recompense; at the same time it was not the interest of the lord to sever their connexion, and to allow him to become independent; probably that was as little the desire of the vassal himself; he was conveniently and appropriately rewarded therefore by a fief, that is, by a loan of land, the profits of which were left to him as entirely as if he had obtained the ownership of the land, but his precarious and revocable tenure of which, at the same time, kept him bound to his lord in the same dependence as before.

Here then we have the union of the feud and vassalage—two things which remained intimately and inseparably combined so long as the feudal system existed. Nevertheless they would appear, as we have seen, to have been originally quite distinct, and merely to have been thrown into combination by circumstances. At first it is probable that, as there were vassals who were not feudatories, so there were feudatories who were not vassals. But very soon, when the advantage of the association of the two characters came to be perceived, it would be established as essential to the completeness of each. Every vassal would receive a fief, and every person to whom a fief was granted would become a vassal. Thus a vassal and the holder of a fief would come to signify, as they eventually did, one and the same thing.

Fiefs, as already intimated, are generally supposed to have been at first entirely precarious, that is to say, resumable at any time at the pleasure of the grantor. But if this state of things ever existed, it probably did not last long. Even from the first it is most probable that many fiefs were granted for a certain term of years or for life. And in those of all kinds a substitute for the original precariousness of the tenure was soon found, which, while it equally secured the rights and interests of the lord, was much more honourable and in every way more advantageous for the vassal. This was the method of attaching him by certain oaths and solemn forms, which, besides their force in a religious point of view, were so contrived as to appeal also to men's moral feelings, and which therefore it was accounted not only impious but infamous to violate. The relation binding the vassal to his lord was made to wear all the appearance of a mutual interchange of benefits,—of bounty and protection on the one hand, of gratitude and service due on the other; and so strongly did this view of the matter take possession of men's minds, that in the feudal ages even the ties of natural relationship were looked upon as of inferior obligation to the artificial bond of vassalage.

As soon as the position of the vassal had thus been made stable and secure, various changes would gradually introduce themselves. The vassal would begin to have his fixed rights as well as his lord, the oath which he had taken measuring and determining both these rights and his duties. The relation between the two parties would cease to be one wholly of power and dominion on the one hand, and of mere obligation and dependence on the other. If the vassal performed that which he had sworn, nothing more would be required of him. Any attempt of his lord to force him to do more would be considered as an injustice. Their connexion would now assume the appearance of a mutual compact, imposing corresponding obligations upon both, and making protection as much a duty in the lord, as gratitude and service in the vassal.

Other important changes would follow this fundamental change, or would take place while it was advancing to completion. After the fief had come to be generally held for life, the next step would be for the eldest son usually to succeed his father. His right so to succeed would next be established by usage. At a later stage fiefs became descendible in the collateral as well as in the direct line. At a still later, they became inheritable by females as well as by males. There is

much difference of opinion, however, as to the dates at which these several changes took place. Some writers conceive that fiefs first became hereditary in France under Charlemagne; others, however, with whom Mr. Hallam agrees, maintain that there were hereditary fiefs under the first race of French kings. It is supposed not to have been till the time of the first Capets in the end of the tenth century that the right of the son to succeed the father was established by law in France. Conrad II., surnamed the Salic, who became emperor in 1024, is generally believed to have first established the hereditary character of fiefs in Germany.

Throughout the whole of this progressive development of the system, however, the original nature of the fief was never forgotten. The ultimate property was still held to be in the lord; and that fact was very distinctly signified, not only by the expressive language of forms and symbols, but by certain liabilities of the tenure that gave still sharper intimation of its true character. Even after fiefs became descendible to heirs in the most comprehensive sense, and by the most fixed rule, every new occupant of the estate had still to make solemn acknowledgment of his vassalage, and thus to obtain, as it were, a renewal of the grant from the lord. He became bound to discharge all services and other dues as fully as the first grantee had been. Above all, in certain circumstances, as, for example, if the tenant committed treason or felony, or if he left no heir, the estate would still return by forfeiture or escheat to the lord, as to its original owner.

Originally fiefs were granted only by sovereign princes; but after estates of this description, by acquiring the hereditary quality, came to be considered as property to all practical intents and purposes, their holders proceeded, on the strength of this completeness of possession, themselves to assume the character and to exercise the rights of lords, by the practice of what was called subinfeudation, that is, the alienation of portions of their fiefs to other parties, who thereupon were placed in the same or a similar relation to them as that in which they stood to the prince. The vassal of the prince became the lord over other vassals; in this latter capacity he was called a mesne (that is, an intermediate) lord; he was a lord and a vassal at the same time. In the same manner the vassal of a mesne lord might become also the lord of other arrere vassals, as those vassals that held of a mesne lord were designated. This process sometimes produced curious results; for a lord might in this way actually become the vassal of his own vassal, and a vassal a lord over his own lord.

From whatever cause it may have happened (which is matter of dispute), in all the continental provinces of the Roman empire which were conquered and occupied by the Germanic nations, many lands were from the first held, not as fiefs, that is, with the ownership in one party and the usufruct in another, but as allodia, that is, in full and entire ownership. [ALLODIUM.] The holder of such an estate, having no lord, was of course free from all the exactions and burthens which were incidental to the vassalage of the holder of a fief. He was also, however, without the powerful protection which the latter enjoyed; and so important was this protection in the turbulent state of society which existed in Europe for some ages after the dissolution of the empire of Charlemagne, that in fact most of the allodialists in course of time exchanged their originally independent condition for the security and subjection of that of the feudatory. "During the tenth and eleventh centuries," says Mr. Hallam, "it appears that allodial lands in France had chiefly become feudal; that is, they had been surrendered by their proprietors, and received back again upon the feudal conditions; or more frequently perhaps the owner had been compelled to acknowledge himself the man or vassal of a suzerain, and thus to confess an original grant which had never existed. Changes of the same nature, though not perhaps so extensive or so distinctly to be traced, took place in Italy and Germany. Yet it would be inaccurate to assert that the prevalence of the feudal system has been unlimited; in a great part of France allodial tenures always subsisted, and many estates in the empire were of the same description."

After the conquest of England by the Normans, the *dominium directum*, or property of all the land in the kingdom, appears to have been considered as vested in the crown. "All the lands and tenements in England in the hands of subjects," says Coke, "are holden mediately or immediately of the king; for in the law of England we have not properly allodium." This universality of its application therefore may be regarded as the first respect in which the system of feudalism established in England differed from that established in France and other continental countries. There were also various other differences. The Conqueror, for instance, introduced here the practice unknown on the continent of compelling the arrere vassals, as well as the immediate tenants of the crown, to take the oath of fealty to himself. In other countries a vassal only swore fealty to his immediate lord; in England, if he held of a mesne lord, he took two oaths, one to his lord and another to his lord's lord. It may be observed, however, that in those times in which the feudal principle was in its greatest vigour the fealty of a vassal to his immediate lord was usually considered as the higher obligation; when that and his fealty to the crown came into collision, the former was the oath to which he adhered. Some feudists indeed held that his allegiance to the crown was always to be understood as reserved in the fealty which a vassal swore to his lord; and the Emperor Frederic Barbarossa decreed that in every oath of fealty taken to an inferior lord there should be an express reservation of the vassal's duty to the emperor. But the double oath exacted by the Norman conqueror did not go so far as this. It only gave him at the most a concurrent power with the mesne lord over the vassals of the latter, who in France were nearly removed altogether from the control of the royal authority. A more important difference between the English and French feudalism consisted in the greater extension given by the former to the rights of lords generally over their vassals by what were called the incidents of wardship and marriage. The wardship or guardianship of the tenant during minority, which implied both the custody of his person and the appropriation of the profits of the estate, appears to have been enjoyed by the lord in some parts of Germany, but no where else except in England and Normandy. "This," observes Mr. Hallam, "was one of the most vexatious parts of our feudal tenures, and was never perhaps more sorely felt than in their last stage under the Tudor and Stuart families." The right of marriage (maritagium) originally implied only the power possessed by the lord of tendering a husband to his female ward while under age: if she rejected the match, she forfeited the value of the marriage; that is, as much as any one would give to the lord for permission to marry her. But the right was afterwards extended so as to include male as well as female heirs; and it also appears that although the practice might not be sanctioned by law, some of the Anglo-Norman kings were accustomed to exact penalties from their female vassals of all ages, and even from widows, for either marrying without their consent or refusing such marriages as they proposed. The seignorial prerogative of marriage, like that of wardship, was peculiar to England and Normandy, and to some parts of Germany.

It has been very usual to represent military service as the essential peculiarity of a feudal tenure. But the constituent and distinguishing element of that form of tenure was its being a tenancy merely, and not an ownership; the enjoyment of land for certain services to be performed. In the state of society however in which the feudal system grew up, it was impossible that military service should not become the chief duty to which the vassal was bound. It was in such a state of society the most important service which he could render to his lord. It was the species of service which the persons to whom fiefs were first granted seem to have been previously accustomed to render, and the continuance of which accordingly the grant of the fief was chiefly intended to secure. Yet military service, or knight-service as it was called in England, though it was the usual, was by no means the necessary or uniform condition

on which fiefs were granted. Any other honourable condition might be imposed which distinctly recognized the *dominium directum* of the lord. [KNIGHT-SERVICE.]

Another common characteristic of fiefs, which in like manner arose incidentally out of the circumstances of the times in which they originated, was that they usually consisted of land. Land was in those times nearly the only species of wealth that existed; certainly the only form of wealth that had any considerable security or permanency. Yet there are not wanting instances of other things, such as pensions and offices, being granted as fiefs. It was a great question nevertheless among the feudists whether a fief could consist of money, or of any thing else than land; and perhaps the most eminent authorities have maintained that it could not. The preference thus shown for land by the spirit of the feudal customs has perhaps left deeper traces both upon the law, the political constitution, and the social habits and feelings of our own and other feudal countries than any other part of the system. We have thence derived not only the marked distinction (nearly altogether unknown to the Roman law) by which our law still discriminates certain amounts of interest in lands and tenements under the name of *real* property from property of every other kind, but also the ascendency retained by the former in nearly every respect in which such ascendency can be upheld either by institutions or by opinion.

The grant of land as a fief, especially when it was a grant from the suzerain, or supreme lord, whether called king or duke, or any other name, was, sometimes at least, accompanied with an express grant of jurisdiction. Thus every great tenant exercised a jurisdiction civil and criminal over his immediate tenants: he held courts and administered the laws within his lordship like a sovereign prince. It appears that the same jurisdiction was often granted by the crown to the abbeys with their lands. The formation of MANORS in this country appears to have been consequent upon the establishment of feudalism. The existence of manor-courts, and so many small jurisdictions within the kingdom, is one of the most permanent features of that polity which the Normans stamped upon this country.

In the infancy of the feudal system it is probable that the vassal was considered bound to attend his lord in war for any length of time during which his services might be required. Afterwards, when the situation of the vassal became more independent, the amount of this kind of service was fixed either by law or by usage. In England the whole country was divided into about 60,000 knights' fees; and the tenant of each of these appears to have been obliged to keep the field at his own expense for forty days on every occasion on which his lord chose to call upon him. For smaller quantities of land proportionately shorter terms of service were due: at least such is the common statement; although it seems improbable that the individuals composing a feudal army could thus have the privilege of returning home some at one time, some at another. Women were obliged to send their substitutes; and so were the clergy, certain persons holding public offices, and men past the age of sixty, all of whom were exempted from personal service. The rule or custom however, both as to the duration of the service, and its extent in other respects, varied greatly in different ages and countries.

The other duties of the vassal were rather expressive of the relation of honourable subordination in which he stood to his lord, than services of any real or calculable value. They are thus summed up by Mr. Hallam:—"It was a breach of faith to divulge the lord's counsel, to conceal from him the machinations of others, to injure his person or fortune, or to violate the sanctity of his roof and the honour of his family. In battle he was bound to lend his horse to his lord when dismounted; to adhere to his side while fighting, and to go into captivity as a hostage for him when taken. His attendance was due to the lord's courts, sometimes to witness and sometimes to bear a part in the administration of justice."

There were however various other substantial advantages derived by the

lord. We have already mentioned the rights of wardship and of marriage, which were nearly peculiar to the dominions of the English crown. Besides these, there were the payment, called a relief, made by every new entrant upon the possession of the fief, the escheat of the land to the lord when the tenant left no heir, and its forfeiture to him when the tenant was found guilty either of a breach of his oath of fealty, or of felony. There was besides a fine payable to the lord upon the alienation by the tenant of any part of the estate, if that was at all permitted. Finally, there were the various Aids, as they were called, payable by the tenant. [AIDS.]

The principal ceremonies used in conferring a fief were homage, fealty, and investiture. The two first of these cannot be more distinctly or more shortly described than in the words of Littleton: "Homage," says the Treatise of Tenures, "is the most honourable service, and most humble service of reverence, that a frank tenant may do to his lord: for when the tenant shall make homage to his lord, he shall be ungirt and his head uncovered, and his lord shall sit and the tenant shall kneel before him on both his knees, and hold his hands jointly together between the hands of his lord, and shall say thus: I become your man, from this day forward, of life and limb, and of earthly worship, and unto you shall be true and faithful, and bear you faith for the tenements that I claim to hold of you, saving the faith that I owe to our sovereign lord the king; and then the lord, so sitting, shall kiss him." Religious persons and women instead of "I become your man," said "I do homage unto you." Here it is to be observed there was no oath taken; the doing of fealty consisted wholly in taking an oath, without any obeisance. "When a freeholder (frank tenant)," says Littleton, "doth fealty to his lord he shall hold his right hand upon a book, and shall say thus: Know ye this, my lord, that I shall be faithful and true unto you, and faith to you shall bear for the lands which I claim to hold of you, and that I shall lawfully do to you the customs and services which I ought to do at the terms assigned, so help me God and his saints; and he shall kiss the book. But he shall not kneel when he maketh the fealty, nor shall make such (that is, any such, *tiel*), humble reverence as is aforesaid in homage." [FEALTY.] The investiture or the conveyance of feudal land is represented by the modern FEOFFMENT.

The feudal system may be regarded as having nearly reached its maturity and full development when the Norman conquest of England took place. It appears accordingly to have been established here immediately or very soon after that event in as pure, strict, and comprehensive a form as it ever attained in any other country. The whole land of the kingdom, as we have already mentioned, was without any exception either in the hands of the crown, or held in fief by the vassals of the crown, or of them by subinfeudation. Those lands which the king kept were called his demesne (the Terræ Regis of the Domesday Survey), and thus the crown had a number of immediate tenants, like any other lord, in the various lands reserved in nearly every part of the kingdom. No where else, also, before the restrictions established by the charters, were the rights of the lord over the vassal stretched in practice nearer to their extreme theoretical limits. On the other hand, the vassal had arrived at what we may call his ultimate position in the natural progress of the system; the hereditary quality of feuds was fully established; his ancient absolute dependence and subjection had passed away; under whatever disadvantages his inferiority of station might place him, he met his lord on the common ground of their mutual rights and obligations; there might be considerable contention about what these rights and obligations on either side were, but it was admitted that on both sides they had the same character of real, legally binding obligations, and legally maintainable rights.

This settlement of the system however was anything rather than an assurance of its stability and permanency. It was now held together by a principle altogether of a different kind from that which had originally created and cemented it. That which had been in the

beginning the very life of the relation between the lord and the vassal had now in great part perished. The feeling of gratitude could no more survive than the feeling of dependence on the part of the latter after feuds became hereditary. A species of superstition, indeed, and a sense of honour, which in some degree supplied the place of what was lost, were preserved by oaths and ceremonies, and the influence of habit and old opinion; but these were at the best only extraneous props; the self-sustaining strength of the edifice was gone. Thus it was the tendency of feudalism to decay and fall to pieces under the necessary development of its own principle.

Other causes called into action by the progress of events conspired to bring about the same result. The very military spirit which was fostered by the feudal institutions, and the wars, defensive and aggressive, which they were intended to supply the means of carrying on, led in course of time to the release of the vassal from the chief and most distinguishing of his original obligations, and thereby, it may be said, to the rupture of the strongest bond that had attached him to his lord. The feudal military army was at length found so inconvenient a force that soon after the accession of Henry II. the personal service of vassals was dispensed with, and a pecuniary payment, under the name of Escuage, accepted in its stead. From this time the vassal was no longer really the defender of his lord; he was no longer what he professed to be in his homage and his oath of fealty; and one effect of the change must have been still farther to wear down what remained of the old impressiveness of these solemnities, and to reduce them nearer to mere dead forms. The acquisition by the crown of an army of subservient mercenaries, in exchange for its former inefficient and withal turbulent and unmanageable army of vassals, was in fact the discovery of a substitute for the main purpose of the feudal polity. Whatever nourished a new power in the commonwealth, also took sustenance and strength from this ancient power. Such must in a special degree have been the effect of the growth of towns, and of the new species of wealth, and, it may be added, the new manners and modes of thinking, created by trade and commerce.

The progress of sub-infeudation has sometimes been represented as having upon the whole tended to weaken and loosen the fabric of feudalism. It "demolished," observes Blackstone (ii. 4), "the ancient simplicity of feuds; and an inroad being once made upon their constitution, it subjected them in a course of time to great varieties and innovations. Feuds began to be bought and sold, and deviations were made from the old fundamental rules of tenure and succession, which were held no longer sacred when the feuds themselves no longer continued to be purely military." But the practice of sub-infeudation would rather seem to have been calculated to carry out the feudal principle, and to place the whole system on a broader and firmer basis. It would be more correct to ascribe the effects here spoken of to the prohibition against sub-infeudation. The effect of this practice, it is true, was to deprive the lord of his forfeitures and escheats and the other advantages of his seigniory, and various attempts therefore were at length made to check or altogether prevent it, in which the crown and the tenants in chief, whose interests were most affected, may be supposed to have joined. One of the clauses of the great charter of Henry III. (the thirty-second) appears to be intended to restrict sub-infeudation (although the meaning is not quite clear), and it is expressly forbidden by the statute of Quia Emptores (the 18 Ed. I. c. 1). Sub-infeudation was originally the only way in which the holder of a fief could alienate any part of his estate without the consent of his lord; and it therefore now became necessary to provide some other mode of effecting that object, for it seems to have been felt that after alienation had been allowed so long to go on under the guise of sub-infeudation, to restrain it altogether would be no longer possible. The consequence was, that, as a compensation for the prohibition of sub-infeudation, the old prohibition against alienation was removed; lands were allowed to be alienated, but the purchaser or grantee did not hold them

of the vendor or grantor, but held them exactly as the grantor did; and such is still the legal effect in England when a man parts with his entire interest in his lands. .This change was effected by the statute of Quia Emptores with regard to all persons except the immediate tenants of the crown, who were permitted to alienate on paying a fine to the king by the statute 1 Edw. III. c. 12. Thus at the same time that a practice strictly accordant to the spirit of feudalism, and eminently favourable to its conservation and extension, was stopped, another practice, altogether adverse to its fundamental principles, was introduced and established, that of allowing *voluntary* alienation by persons during their lifetime.

It was a consequence of feudal principles, that a man's lands could not be subjected to the claims of his creditors. This restraint upon what may be called *involuntary* alienation has been in a great degree removed by the successive enactments which have had for their object to make a man's lands liable for his debts; although, after a lapse of near six hundred years since the statute of Acton Burnell, the lands of a debtor are not yet completely subjected to the just demands of his creditors. This statute of Acton Burnell, passed 11 Ed. I. (1283), made the devisable burgages, or burgh tenements, of a debtor saleable in discharge of his debts. By the Statute of Merchant, passed 13 Ed. I. (1285), called Statute 3, a debtor's lands might be delivered to his merchant creditor till his debt was wholly paid out of the profits. By the 18th chapter of the Statute of Westminster the Second, passed the same year, a moiety of a debtor's land (not copyhold) was subjected to execution for debts or damages recovered by judgment. But the lands are not sold: the moiety of them is delivered by the sheriff to him who has recovered by judgment, to occupy them till his debt or damages are satisfied. Finally, by the several modern statutes of bankruptcy, the whole of a bankrupt debtor's lands have become absolutely saleable for the payment of his debts. Further, by a recent act (3 & 4 Wm. IV. c. 104), all a deceased person's estate in land, of whatever kind, not charged by his will with the payment of his debts, whether he was a trader within the bankrupt laws or not, constitutes assets, to be administered in equity, for the payment of his debts, both those on specially and those on simple contract.

An attempt had early been made to restore in part the old restraints upon *voluntary* alienation by the statute 13 Ed. I. c. 1, entitled 'De Donis Conditionalibus,' which had for its object to enable any owner of an estate, by his own disposition, to secure its descent in perpetuity in a particular line. So far as the statute went, it was an effort to strengthen the declining power of feudalism. The effect was to create what were called estates tail, and to free the tenant in tail from many liabilities of his ancestor to which he would be subject if he were seised of the same lands in fee-simple. [ESTATE.] The power which was thus conferred upon landholders of preventing the alienation of their lands remained in full force for nearly two centuries, till at last, in the reign of Edward IV., by the decision of the courts (A.D. 1472) the practice of barring estates tail by a common recovery was completely established.

The practice of conveying estates by fine, which was of great antiquity in England, and the origin of which is by some referred to the time of Stephen or Henry II., was regulated by various statutes (among others, particularly by the 4 Henry VII.), and contributed materially to facilitate the transfer of lands in general, but more particularly (as regulated by the statute just mentioned) to bar estates tail. By a statute passed in the 32 Henry VIII. c. 28, tenants in tail were enabled to make leases for three lives or twenty-one years, which should bind their issue. The 26 Hen. VIII. c. 13, also had declared all estates of inheritance, in use or possession, to be forfeited to the king upon any conviction of high treason, and thus destroyed one of the strongest inducements to the tying up of estates in tail, which hitherto had only been forfeitable for treason during the life of the tenant in tail.

Another mode by which the feudal restraints upon *voluntary* alienation came

at length to be extensively evaded was the practice introduced, probably about the end of the reign of Edward III., of granting lands to persons to *uses*, as it was termed; that is, the new owner of the land received it not for his own use, but on the understanding and confidence that he would hold the land for such persons and for such purposes as the grantor then named or might at any time afterwards name. Thus an estate in land became divided into two parts, one of which was the legal ownership, and the other the right to the profits or the *use;* and this use could be transferred by a man's last *will* at a time when the land itself, being still bound in the fetters of feudal restraint, could not be transferred by will, except where it was devisable, as in Kent and some other parts of England, by special custom. The person who thus obtained the use or profits of the estate—the *Cestui que use,* as he is called in law—was finally converted into the actual owner of the land to the same amount of interest as he had in the use (A.D. 1535) by the statute of Uses (the 27 Hen. VIII. c. 10), and thus the power of devising land which had been enjoyed by the mode of uses was taken away. But this important element in the feudal system, the restraint on the disposition of lands by will, could no longer be maintained consistently with the habits and opinions then established, and accordingly, by stat. 32 Hen. VIII. (which was afterwards explained by the stat. 34 Hen. VIII.), all persons were allowed to dispose of their freehold lands held in fee-simple by a will in writing, subject to certain restrictions as to lands held by knight-service either of the king or any other, which restrictions were removed by the stat. 12 Chas. II. c. 24, which abolished military tenures.

Notwithstanding these successive assaults upon certain parts of the ancient feudalism, the main body of the edifice still remained almost entire. It is said that the subject of the abolition of military tenures was brought before the parliament in the 18th of James I., on the king's recommendation, but at that time nothing was done in the matter. When the civil war broke out in 1641, the profits of marriage, wardship, and of most of the other old feudal prerogatives of the crown, were for some time still collected by the parliament, as they had formerly been by the king. The fabric of the feudal system in England however was eventually shattered by the storm of the Great Rebellion. The Court of Wards was in effect discontinued from 1645. The restoration of the king could not restore what had thus been in practice swept away. By the above-mentioned statute, 12 Car. II. c. 24, it was accordingly enacted that from the year 1645 the Court of Wards and Liveries, and all wardships, liveries, primer-seisins, values, and forfeitures of marriage, &c., by reason of any tenure of the king's majesty, or of any other by knights' tenures, should be taken away and discharged, together with all fines for alienations, tenure by homage, escuage, aids pur filz marrier and pur fair fitz chevalier, &c.; and all tenures of any honours, manors, lands, tenements or hereditaments, or any estate of inheritance at the common law, held either of the king or of any other person or persons, bodies politic or corporate, were turned into free and common soccage, to all intents and purposes. [SOCCAGE.] By the same statute every father was empowered by deed or will, executed in the presence of two witnesses, to appoint persons to have the guardianship of his infant and unmarried children, and to have the custody and management of their property. It was not till after the lapse of nearly another century that the tenures and other institutions of feudalism were put an end to in Scotland by the statutes, passed after the Rebellion, of the 20 Geo. II. c. 43, entitled 'An Act for abolishing Heritable Jurisdictions;' and the 20 Geo. II. c. 50, entitled 'An Act for taking away the Tenure of Ward-holding in Scotland, for giving to heirs and successors a summary process against superiors, and for ascertaining the services of all tenants, &c.' Nor have estates tail in Scotland yet been relieved from the strictest fetters of a destination in perpetuity, either by the invention of common recoveries, or by levying a fine, or by any legislative enactment.

We have enumerated the principal statutes which may be considered as having broken in upon the integrity of the feudal system, considered in reference to the power which the *tenant* of land can now exercise over it, and the right which others can enforce against him in respect of his property in it. But the system of tenures still exists. The statute of Charles II. only abolished military tenures and such parts of the feudal system as had become generally intolerable; but all lands in the kingdom are still held either by soccage tenure, into which military tenures were changed, or else by the respective tenures of frankalmoigne, grand serjeanty, and copyhold, which were not affected by the statute.

Some of the consequences of tenures, as they at present subsist, cannot be more simply exemplified than by the rules as to the FORFEITURE and ESCHEAT of lands, both of which however have undergone modifications since the statute of Charles II.

To attain a comprehensive and exact view of the present tenures of landed property in England and their incidents and consequences, it would be necessary for the reader to enter upon a course of study more laborious and extensive than is consistent with pursuits not strictly legal. Still a general notion may be acquired of their leading characteristics by referring to several of the articles already quoted, and to such heads as ATTAINDER, BARON, COPYHOLD, COURTS, DISTRESS, ESTATE, LEASE, MANOR, TENURES, and such other articles as may be referred to in those last mentioned.

The notions of loyalty, of honour, of nobility, and of the importance, socially and politically, of landed over other property, are the most striking of the feelings which may be considered to have taken their birth from the feudal system. These notions are opposed to the tendency of the commercial and manufacturing spirit, which has been the great moving power of the world since the decline of strict feudalism; but that power has not yet been able to destroy, or perhaps even very materially to weaken, the opinions above mentioned in the minds of the mass.

We are not however to pass judgment upon feudalism, as the originating and shaping principle of a particular form into which human society has run, simply according to our estimate of the value of these its relics at the present day. The true question is, if this particular organization had not been given to European society after the dissolution of the ancient civilization, what other order of things would in all likelihood have arisen, a better or a worse than that which did result?

As for the state of society during the actual prevalence of the feudal system, it was without doubt in many respects exceedingly defective and barbarous. But the system, with all its imperfections, still combined the two essential qualities of being both a system of stability and a system of progression. It did not fall to pieces, neither did it stand still. Notwithstanding all its rudeness, it was, what every right system of polity is, at once conservative and productive. And perhaps it is to be most fairly appreciated by being considered, not in what it actually was, but in what it preserved from destruction, and in what it has produced.

The earliest published compilation of feudal law was a collection of rules and opinions supposed to have been made by two lawyers of Lombardy, Obertus of Otto and Gerardus Niger, by order of the Emperor Frederic Barbarossa. It appeared at Milan about the year 1170, and immediately became the great text-book of this branch of the law in all the schools and universities, and even a sort of authority in the courts. It is divided in some editions into three, in others into five books, and is commonly entitled the 'Libri Feudorum;' the old writers however are wont to quote it simply as the Textus, or Text. But the great sources of the feudal law are the ancient codes of the several Germanic nations; the capitularies or collections of edicts of Charlemagne and his successors; and the various Coutumiers, or collections of the old customs of the different provinces of France. The laws of the Visigoths, of the Burgundians, the Salic law, the laws of the Alemanni, of the Baiuvarii, of the Ripuarii, of the Saxons, of the Anglii, of the Werini, of the Frisians, of the Lom-

bards, &c., have been published by Lindenbrogius in his *Codex Legum Antiquarum*, fol. Francof., 1613. The best editions of the capitularies are that by Baluze, in 2 vols. fol., Paris, 1677, and that by Chiniac, of which, however, we believe only the two first volumes have appeared, Paris, fol., 1780. Richebourg's *Nouveau Coutumier Général*, 4 vols. fol., Paris, 1724, is a complete collection of the Coutumiers, all of which however have also been published separately. All these old laws and codes, as well as the Milan text-book, have been made the subject of voluminous commentaries.

FIDEI COMMISSUM. [TRUST.]

FIEF. [FEUDAL SYSTEM.]

FIELD-MARSHAL, a military dignity conferred on such commanders of armies as are distinguished by their high personal rank or superior talents.

It has been supposed that the term marshal is derived from *Martis Seneschallus;* but it is more probable that it came from the Saxon words *mar*, or *marach*, a horse, and *scalck*, a servant; and it appears to have designated the person who had the care of a certain number of horses in the royal stables. In the Teutonic laws such a person is called *mariscalcus*, and the fine for his murder is particularly specified.

The earl-marshal of England had originally the chief command of the army; and history records the names of two noblemen, De Montmorency and Fitzosborne, on whom the title was conferred by William the Conqueror.

The office was by Henry VIII. made hereditary in the family of the Duke of Norfolk; but it is probable that it had before that time ceased to be connected with the military service; for from the 'Anecdotes of the Howard Family,' we learn that while another person held the post of earl-marshal, Sir Robert Willoughby, Lord Brooke, was appointed by Henry VII. to be marshal of the army.

The title of Maréchal de France appears to have become a military dignity in that country in the time of Philip Augustus; and, according to Père Daniel, the first person who held it was Henry Clement, the commander of the French army at the conquest of Anjou in 1204. Originally there was only one Maréchal de France, but, in 1270, when the king, Saint Louis, went on his expedition to Africa, a second was appointed. Francis I. added a third, and the number was increased by Napoleon to twelve.

The maréchaux de camp, in the old French service, were charged with the duty of arranging the encampment and providing subsistence for the troops; and in action they had the command of the wings or of the reserve of an army under the general-in-chief. From the title borne by this class of general officers is derived that of feld-marschall in the German armies; and we have adopted the title from the German.

The number of British field-marshals is at present six: the Duke of Wellington, the King of Hanover, the Duke of Cambridge, the King of the Belgians, Prince Albert, and the King of Holland. Field-marshals have no pay as such, but they retain their pay as full generals, and the command of two regiments may be given to them instead of one.

FILIATION. [BASTARDY.]

FIREBOTE. [COMMON, RIGHTS OF, p. 578.]

FIRM. [PARTNERSHIP.]

FIRST-FRUITS (Primitiæ), the profits of every spiritual living for one year, according to the valuation thereof in the king's books. They were claimed by the pope throughout Christendom; in England his claim was first asserted in the reign of King John, and then only so far as related to clerks whom he appointed to benefices. Afterwards Pope Clement V. and John XXII., about the beginning of the fourteenth century, demanded and took them from all clerks, by whomsoever presented. By the statutes 25 Henry VIII. c. 20, and 26 Henry VIII. c. 3, first-fruits and tenths [TENTHS] were taken from the pope and given to the king. In the thirty-second year of the same king's reign a court was erected for the management of them, but it was soon after abolished. Ultimately Queen Anne gave up this branch of the royal revenue to be applied towards the augmentation of small livings. [BENEFICE.]

First-fruits arising in Ireland were by the 2 Geo. I. c. 15, directed to be ap-

plied for the same purpose; but by the 3 & 4 William IV. c. 37, the payment of first-fruits in Ireland is abolished. (1 Blackstone, *Com.*; 2 Burn, *Eccles. Law.*)

FISCUS. [ALLODIUM.]

FISHERIES are localities frequented at certain seasons by great numbers of fish, where they are taken upon a large scale. The right of frequenting these fishing-grounds has frequently been matter of dispute between governments, and sometimes the subject of treaties, while exclusion from them or invasion of presumed exclusive rights to their enjoyment has been the cause of warlike preparations.

Of the British fisheries, some are carried on in rivers or their æstuaries, and others in the bays or along the coasts. Our principal cod-fishery is on the banks of Newfoundland; and for whales our ships frequent the shores of Greenland, Davis's Straits, and the South Seas. Of late, whale fisheries have also been carried on near the shores of New Holland, New Zealand, and the Cape of Good Hope.

During the sixteenth, seventeenth, and a part of the eighteenth centuries very exaggerated notions prevailed as to the wealth which this country might derive from prosecuting the herring fisheries on a large scale. Even the value of the Dutch herring fishery, which was no doubt very great, has generally been magnified. (See Laing's 'Notes of a Traveller.') Before this country had begun to supply the markets of the world with our manufactures, the fisheries were an object of greater importance, comparatively, than they now are; and from the reign of Elizabeth, and during the two following centuries, associations were formed, and generally under the auspices of persons of rank and authority, for the prosecution of fisheries on the coasts. It will be sufficient if we notice one or two of these associations.

Charles II., on his restoration, appointed, in 1667, a "Council of Royal Fishery," to which the Duke of York, the Earl of Clarendon, and other persons were named, with powers to make laws for the management of the trade, and to punish any persons who should offend against them. For further encouragement, a lottery was granted for three years; a collection was made in churches; and an exemption granted for seven years from customs duty on fish exported to the Baltic, Denmark, Norway, France, and some other countries. Besides this, all victuallers and coffeehouse-keepers were compelled each to take a certain number of barrels of herrings yearly at 30*s.* per barrel, "until a foreign market should be established to the satisfaction of the council." Besides these encouragements, a duty of 2*s.* 6*d.* per barrel was imposed upon foreign herrings imported; and a promise was made of "all such other advantages as experience should discover to be necessary." Great as were these encouragements, no progress was made in the fishery for sixteen years, at which time a charter was granted to a new fishing company. This company, which was renewed in 1690, also failed, and was dissolved by act of parliament early in the reign of William III. Further efforts, made in 1720 and 1750, were alike unsuccessful. Various reasons have been assigned for these repeated failures. Andrew Yarington, in the second part of 'England's Improvement by Sea and Land,' sums up all other reasons in this one fact—"We fish intolerably dear, and the Dutch exceedingly cheap."

In 1749 a committee of the House of Commons was appointed to inquire concerning the herring and white fisheries, and as the result of its labours a corporation was formed, with a capital of 500,000*l.*, under the name of "The Society of the Free British Fishery." A bounty of 36*s.* per ton on all decked vessels of from 20 to 80 tons employed in fishing was granted for fourteen years. This bounty was increased in 1657 to 56*s.* per ton, but without producing an adequate return to the adventurers, and in 1759, by the 33rd Geo. II., a bounty of 80*s.* per ton was granted, besides 2*s.* 8*d.* per barrel upon all fish exported, and interest at the rate of 3 per cent. was secured to the subscribers, payable out of the Customs revenue. The whole number of vessels entered on the Custom House books for the fisheries in conse-

quence of this act was only eight. In this year the whole buss fishery of Scotland, according to the statement of Adam Smith ('Wealth of Nations,' b. iv. c. v.), brought in only four barrels of "Sea Sticks" (herrings cured at sea), each of which, in bounties alone, cost the government 113*l.* 15*s.*, and each barrel of merchantable herrings cost 159*l.* 7*s.* 6*d.* The explanation of this fact is, that the bounty being given to the vessels and not to the fish, "ships were equipped to catch the bounty and not the herrings." By the 25th Geo. III. (1785-6) the tonnage bounty was reduced to 20*s.*, and a bounty of 4*s.* per barrel was given on the fish, but the whole payment was limited to 30*s.* per ton, except when more than three barrels per ton were taken, in which case 1*s.* per barrel was given on the excess. On an average of ten years 54,394 barrels were taken annually, at a cost to the government of about 7*s.* 6*d.* per barrel.

In 1786 "The British Society for extending the Fisheries and improving the Sea Coasts of the Kingdom" was incorporated, and a joint-stock was subscribed "for purchasing land, and building thereon free towns, villages, and fishing-stations in the Highlands and Islands of Scotland." This joint-stock was raised by the subscriptions of a few individuals, who did not look for any profitable return. The members of the society were chiefly proprietors of estates, and their object was the improvement of their property.

Another act was passed in 1808 for the regulation of the fisheries. The bounty was again raised to 60*s.* per ton on decked vessels of not less than 60 tons, burthen, with an additional bounty of 20*s.* per ton for the first thirty vessels entered in the first year. Premiums amounting to 3000*l.* were also granted for boats of not less than 15 tons' burthen. This act prescribed regulations for fishing, curing, inspecting, and branding herrings, and a board of seven commissioners was appointed for administering the law. This act, which was at first passed for a limited time, was made perpetual in 1815 (55 Geo. III., c. 94). The tonnage-bounty had in the mean time been extended to fishing-vessels of not less than 45 tons' burthen. During the year 1814 only five vessels had been fitted out for the fishery from Yarmouth, and not one for the deep-sea fishery from any other port of Great Britain. For the inspection and branding of herrings the whole coast of Great Britain was divided into districts. In each of these officers were appointed to oversee the operations of the fishermen, and to prevent frauds in regard to the bounty. The principal regulations affecting the curing of herrings were borrowed from the practice of the Dutch fishermen. In 1817 a further boon was granted to the fishermen by allowing them the use of salt duty free; a peculiar advantage, which ceased in 1823 by the repeal of the duty on that article.

The impolicy of granting these bounties was at length seen and acknowledged. In 1821 the tonnage bounty of 60*s.* above mentioned was repealed; the bounty of 4*s.* per barrel, which was paid up to the 5th of April, 1826, was thereafter reduced 1*s.* per barrel each succeeding year; so that in April, 1830, the bounty ceased altogether. This alteration of the system was not productive of any serious evil to the herring fishery. The average annual number of barrels of herrings cured and exported respectively in the five years that preceded the alteration was 349,488 and 224,370. In the five years from 1826 to 1830, while the bounty was proceeding to its annihilation, the average numbers were 336,896 cured, and 208,944 exported; and in the five years ending the 5th of April, 1837, the average numbers were 396,910 barrels cured, and 222,848 exported. In 1842 the quantities (barrels) of white herrings cured, &c., in Great Britain (so far as the same had been brought under the cognizance of the commissioners of the herring fishery under 1 Wm. IV. c. 54), were as follows:—

	Cured.	Exported.
Gutted. .	489,583	283,583
Ungutted.	178,219	1206
	667,802	248,789

The principal countries to which herrings were exported in 1842 were—

	Barrels.
Prussia	73,915
Other parts of Germany	28,335
Italy	25,105
France	19,659
British West Indies .	3,526
Mauritius	2,258

In 1843 the number of vessels which cleared outwards for the British Herring Fishery was 333, of 7316 tons, and the crews amounted to 1150 men. The netting which they possessed was 481,906 square yards, and they took out 121,724 bushels of salt and 60,904 barrels. The total number of barrels of cured herrings landed during the season was 57,539, of which 55,949 were gutted and packed within twenty-four hours after being caught. The gross total of white herrings cured by fish-curers on shore in the ports of Scotland was 565,880 barrels, out of which number 383,231 contained herrings gutted and packed within twenty-four hours after they were caught. There were besides, it is computed, herrings sold in a fresh and cured state to the value of 114,538*l.* The number of barrels of white herrings which were entitled to be branded with the official brand was 162,713, and 114,614 barrels were assorted and cured according to the Dutch mode, and were branded accordingly.

The number of boats and of fishermen, and other persons employed in taking, gutting, curing, and packing cod and herrings in 1832 and 1842 were as follows:—

	1832.	1842.
Boats	11,059	12,479
Fishermen	49,164	52,998
Coopers, curers, packers, &c. . .	31,402	36,733

The removal of the bounty has been attended with an improvement in the number of the fishermen generally, and in Scotland the fishermen have been able, from the fair profits of their business, to replace the small boats they formerly used by new boats of larger dimensions, and to provide themselves with fishing materials of superior value. In fact, the tonnage bounty system was an encouragement to idleness and perjury.

In 1833 a select committee of the House of Commons was appointed to inquire into the distress which was at that time said to affect the several fisheries in the British Channel. One cause of this distress, it was alleged, was the interference of the fishermen of France; but by a convention with France, concluded in 1839, limits are now established for the fishermen of the two countries. Another cause of the unprosperous state of the fishermen was stated in the report of the committee to be "the great and increasing scarcity of all fish which breed in the Channel, compared with what was the ordinary supply fifteen to twenty years ago."

We do not at present hear of the distress amongst the fishermen on our coasts. The facilities of communication with populous inland districts have greatly extended the market for fish, and in parts of the country in which fish had scarcely been at all an article of food. In London, where the facilities for obtaining a supply of fish are nearly perfect, there is one dealer in fish to four butchers, and fish is hawked about the streets to a great extent; but in Warwickshire the proportion of dealers in fish to butchers is as 1 to 27, and in Staffordshire 1 to 44. In the borough of Wolverhampton there was only 1 fish-dealer in 1831, but there were 46 butchers. It is evident that when the large masses of population in the midland and northern manufacturing districts acquire a habit of consuming fish as an agreeable variety to their ordinary supply of food, a great impetus will be given to the fisheries on all our coasts. The rapid means of transport afforded by railways enable the inhabitants of Birmingham and London to consume cod and other fish caught in the Atlantic by the fishermen of Galway and Donegal. This improvement in the means of communicating with the best markets is a great boon. The fishermen who supply the London market instead of returning to Gravesend or other ports of the Thames and Medway, for instance, put their cargoes already packed in hampers on board the steam-boats which pass along the whole eastern coast as far north as Aberdeen; or they sometimes make for Hull or some other port in the neighbourhood of the

fishing-ground, and there land their cargoes, which are conveyed to London in the course of a few hours or to other great inland markets in a still shorter time. Fast sailing cutters are sometimes employed to take provisions to the boats on the fishing-ground, which bring back the fish taken by each. In consequence of these arrangements the fishermen are sometimes kept at sea for several months together.

It is amusing at this time to read the various projects or "ways to consume more fish," which were entertained at the commencement of the last century. The difficulty on account of the cost of conveyance, and the limited distance to which fresh fish could be sent from the coast, induced some persons to propose that fish sent to inland towns should be "marinated," or pickled according to a peculiar method. In the sixteenth century, and before those improvements in agriculture were made by which fresh meat may be obtained all the year round, there were great fish fairs in different parts of the country, at which persons bought a stock of salted fish sufficient to last during the winter and the subsequent season of Lent. The herring fair at Yarmouth was regulated by a statute in the fourteenth century. In 1533 the fairs of Stourbridge, St. Ives, and Ely were "the most notable fairs within this realm for provision of fish" (24 Hen. VIII. c. 4). In 1537 the town of Lynn, in Norfolk, obtained letters patent for establishing a fish fair; but in 1541 the right of holding the fair was abolished by statute (33 Hen. VIII. c. 34), because the inhabitants attempted to engross the business of other fairs. The supply of the fairs and markets with cheap fish was considered an important matter in those days. In 1541 an act was passed which prohibited the English fishermen from buying fish of foreigners at sea, because if they did not do so "the same Picards and Flemings would bring the same fish over themselves and sell it to the king's subjects much better cheap, and for less money" (33 Hen. VIII. c. 2).

One branch of fishing wholly different in its object from all other branches has been described by the committee of 1833 under the title of the *Stow-Boat Fishery*. This fishery prevails principally upon the Kentish, Norfolk, and Essex coasts; and the object is the catching of sprats as manure for the land, for which there is a constant demand. This branch of fishing is represented by the committee to have much increased, and to give employment on the Kentish coast alone to from 400 to 500 boats, which remain upon the fishing grounds frequently for a week together and until each has obtained a full cargo.

Vessels and boats employed in fishing are licensed by the Commissioners of Customs in pursuance of the acts for the prevention of smuggling; and they are required to be painted or tarred entirely black, except the name and place to which such vessel or boat belongs. A parliamentary return for 1844 gives the number of vessels above and under fifty tons registered at each port in the United Kingdom: the greater proportion of those under fifty tons are principally employed in fishing. At Faversham there were 218 vessels under fifty tons, and their average tonnage was twenty-one tons; at Yarmouth, 321; Southampton, 131; Maldon, 105; Rochester, 256; Colchester, 203; Dover, 91; Rye, 55; Ramsgate, 80; Dartmouth, 256.

The licences thus granted specify the limits beyond which fishing vessels must not be employed: this distance is usually four leagues from the English coast, and it is affirmed that our fishermen are injured by this restriction, because some valuable fishing grounds lie beyond the prescribed limits and are thus abandoned to foreigners.

The *pilchard fishery*, which is carried on upon parts of the Devon and Cornish coasts, is of some importance. The number of boats engaged in it is about 1000, which give employment to about 3500 men at sea and about 5000 men and women on shore. As soon as caught the pilchards are salted or pickled and exported to foreign markets, chiefly to the Mediterranean: the average export amounts to 30,000 hogsheads per year. The quantity was much greater formerly, when a bounty of 8*s.* 6*d.* per hogshead was paid upon all exported; heavy duties are generally imposed in the countries to which the exports are made.

Our chief salmon fisheries are carried on in the rivers and æstuaries of Scotland, but the annual value of this fishery is not exactly known. In 1835 the produce of the salmon fisheries in Sutherlandshire was 258,291 lbs.; in the river Foyle, 321,366 lbs.; in the river Beauly the number of fish taken was 15,891, and the number taken in the south-east and north-east was 54,659, and the average weight of each was estimated at 10 lbs. The produce of the fishings in the rivers Tay, Dee, Don, Spey, Findhorn, Beauly, Borriedale, Langwell and Thurso, and of the coasts adjacent, are conveyed in steam-boats and small sailing-vessels to Aberdeen, where they are packed with ice in boxes and sent to the London market. The shipments thus made from Aberdeen, in 1835, was 11,549 boxes (each containing from ten to twelve fish and weighing 120 lbs.) and 5671 kits.

The rental of the salmon fisheries on the river Tweed averaged about 12,000*l.* a-year for the seven years preceding 1824. The late Duke of Gordon received a rental of about 8000*l.* a-year for a fishery on the Spey: the expenses of the fishery are supposed to have amounted to about one-half this sum.

London is the great market to which Scotch salmon are sent. The quantity which arrives during one season is about 2500 tons, and the average price is from 10*d.* to 1*s.* per lb. The arrivals average about 30 boxes per day in February and March, 50 in April, from 80 to 100 in May, from 200 to 300 at the beginning of June, and 500 towards the close of the month, when the number gradually increases until it amounts, at the end of July and beginning of August, to 1000 boxes and upwards per day, and the price is occasionally as low as 5*d.* and 6*d.* per lb.; and is in fact lowest at the time when the fish is in the primest condition. The plan of packing salmon in ice was adopted about 1785, and the idea was taken from the Chinese; but it was not until the application of steam to navigation that the trade reached anything like its present magnitude. Even when ice was used, contrary winds would protract the voyage and the fish would be spoiled. The London trade, instead of being at its height in July and August, was over by May, or whenever the weather became warm. The great towns of Yorkshire, Lancashire, and the midland manufacturing counties, are also frequently supplied with immense quantities of Scotch and Irish salmon, but they are not constantly well supplied.

The produce of salmon fisheries in Ireland is also considerable.

Salmon fishing commences on the 1st of February, and terminates on the 14th of September. The intervening period is called 'close-time,' and the acts for regulating salmon fisheries impose penalties on those who take fish during this season.

Mackerel visit every part of our coasts in the spring and early part of the summer, and are taken in great abundance. For the encouragement of the mackerel and other similar fisheries, the carriages in which the fresh fish are conveyed to London are exempted from the post-horse duty. As mackerel will not keep, it may be hawked about on Sunday for sale, a privilege which no other fish enjoys.

The *cod* fishery at Newfoundland was carried on as early as 1500 by the Portuguese, Biscayans, and French, but it was not until 1585 that the English ventured to interfere with them. In that year Sir Francis Drake being sent to the island with a squadron, seized the foreign ships which he found engaged in the fishery, and sent them to England, where they were declared lawful prizes. In 1614 and 1615 the English had 200 and 250 vessels engaged in the Newfoundland cod fishery. Towards the end of the seventeenth century it was carried on on a still larger scale by the French; and it is stated by the author of 'Considerations on the Trade to Newfoundland,' inserted in the second volume of Churchill's 'Collection of Voyages,' that the French 'have quite beaten the English out of this trade, as may be instanced in many of the outports of our nation, and particularly Barnstaple and Biddeford, which formerly employed in this trade above fifty ships, and now do not fit out above six or eight small ships.'

By the treaty of Utrecht, which acknowledged the sovereignty of the whole

island of Newfoundland to be in the Crown of England, the privilege of fishing on part of the coast was reserved to France, notwithstanding which the English fishery there increased to a great extent. In 1763 there were taken and cured by the English at the fisheries of Newfoundland 386,274 quintals or hundred-weights of cod-fish, and 694 tierces of salmon, besides 1598 tons of fish-oil. In that year there were 106 vessels employed in carrying on the fishery, 123 ships for conveying the fish when cured to England, and 142 ships for its conveyance to British colonies. The principal fisheries of Newfoundland are prosecuted on the banks which nearly surround that island: the object of these fisheries is solely cod-fish. Salmon, mackerel, herrings, and some other kinds of fish and seal are taken off the coasts of the island.

The cod-fish cured and exported to England and to foreign countries in 1785 amounted to 591,276 quintals; in 1832 to 619,177 quintals: in 1833 to 883,536 quintals; in 1837 to 835,559 quintals, which were valued at 520,240*l.* The products of the Newfoundland fisheries exported in 1832 was 583,687*l.*; in 1833, 699,174*l.*; and in 1837, 843,903*l.*, as under:

		Value. £
Cod, dry—quintals	835,559	520,240
„ wet—barrels	648	1086
Herrings—boxes and barrels	2078	1416
Salmon—boxes and barrels	3834	8552
Other sorts of fish	..	627
Seal-skins—No.	353,648	34,044
Oil, train and spermaceti—gallons	2,084,375	277,938

The value of the exports of fish in 1832 amounted to 458,662*l.*; in 1837 to 531,921*l.*; and in 1842 to 528,540*l.*, and with oils and seal-skins to 839,260*l.*

These fisheries may be said to be the sole pursuit of the settlers in Newfoundland, and of the traders who frequent the island. Nearly every family has a small piece of land under garden cultivation, but agriculture is not pursued as a substantive occupation.

In 1818 a convention was concluded between the United States government and that of Great Britain for regulating the fisheries on the coasts of the British American provinces. By the first and second articles the inhabitants of the United States were to have for ever, in common with the subjects of Great Britain, liberty to take, dry, and cure fish in and on certain portions of the coast therein defined, and by the third article the Americans gave up all claim to take fish within three miles of any coasts, bays, creeks, or harbours, within the British dominions in America not included in the limits defined. Some dispute has arisen between the two governments respecting infractions of the Convention. The Americans conceived that they were allowed to enter bays and fish if they kept three miles from the shore; but by the British interpretation the prescribed limit of three miles is to be measured from the headlands of bays, and that consequently the Americans were excluded from the interior of bays and indentations of the coast. In 1843 the United States government acquiesced in this view of the case.

In the other British North American colonies fisheries are established, and the produce enters more or less into their foreign commerce. The fisheries on Lake Huron have lately been prosecuted, and promise to become of considerable importance. The kinds of fish exported are chiefly cod, herrings, salmon, and mackerel. The actual value of these exports from each colony, in the years 1832 and 1837, was as follows:—

	1832.	1837.
Eastern (Lower) Canada	£6,475	£6,149
New Brunswick	31,885	30,550
Nova Scotia	155,189	181,961
Prince Edward's Island	65	5,341
Cape Breton	10,383	11,738
Total	£203,997	£235,739

The bay Des Chaleurs in the St. Lawrence is considered the best fishing station on the continent of America. It is said that there are from 3000 to 5000 United States schooners fishing every summer in this bay. They cure cod to

the extent of 1,800,000 quintals, while the British colonists up to a recent period did not in this fishery cure more than 300,000 quintals. In 1844 an act was passed in the Imperial Parliament for incorporating a company under the title of the Gaspé Fishing and Mining Company.

The *whale* fishery was carried on successfully during the twelfth, thirteenth, and fourteenth centuries by the Biscayans. The whales taken by them in the bay of Biscay appear to have been of a smaller species than those since found in more northern latitudes. The Biscayan fishery has long ceased, owing probably to the great destruction of the animals. It is to the voyagers who, near the end of the sixteenth century, attempted to find a passage through the northern ocean to India, that we owe the discovery which led to the establishment of the fishery in the seas of Greenland and Spitzbergen. The English and the Dutch were the first to embark in this adventure; but the French, Danes, Hamburgers, and others were not slow to follow their example. At first the whales were so numerous that the fishing was comparatively easy, and was so successfully pursued, that in addition to the ships actually engaged in the fishery, many other vessels were sent in ballast to the shores of Spitzbergen, and the whole returned home with full cargoes of oil and whalebone. It was then the practice to boil the blubber on the spot, and bring home the oil in casks. In the progress of the fishery the whales became less numerous, and, when found, more difficult to take. It therefore became necessary to pursue them farther to the open sea, and at length it was found more economical to bring the blubber home in order to its being boiled, and the settlements before used for that purpose were abandoned. The whale fishery was for a long period sustained by bounties. In 1732 the bounty was 20*s.* a-ton on every ship of more than 200 tons; in 1740 it was increased to 40*s.*; in 1777 it was reduced to 30*s.*, and in five years the number of vessels employed fell from 105 to 39; and in 1781 the former rate of bounty (40*s.*) was restored. In 1787 the bounty was again reduced to 30*s.*; in 1792, to 25*s.*; in 1795, to 20*s.*; and in 1824 it ceased.

That part of the Arctic Sea which lies between Spitzbergen and Greenland, and which was formerly frequented by the whale-ships, is now almost wholly abandoned because of the scarcity of the fish, and the northern whale-fishery is now chiefly pursued in Davis's Straits. The change here noticed has occurred within the last thirty years. In 1816 and 1820, above 100 ships were engaged in the Greenland fishery, and in 1833 and 1834 only 3 and 7; but the number employed in the Straits fishery had increased from 45 in 1816 to 91 in 1830. In the twenty years from 1815 to 1834 inclusive, the average annual results of the Greenland and Davis's Straits fishery were as follows:—

Number of ships returned to Great Britain	115¾
Tonnage of ditto	37,013¾
Number of ships lost	5
Tuns of train oil	11,313
Tons of whalebone	591¾
Number of whales taken	1,024
Tuns of oil yielded by each whale	11½
Tuns of oil procured by each ship	101¼

The average prices during these twenty years were—of oil, 28*l.* 15*s.* per tun, and of whalebone, 163*l.* per ton; it follows therefore that the annual average produce of the fishery amounted to 421,704*l.*

In 1842 the number of British ships engaged in the northern whale-fishery was only 18 (14 to Greenland, and 4 to Davis's Straits); the number of whales taken was 54, which yielded 668 tuns of oil. In 1840 the quantity of oil was only 412 tuns. Hull, which was once the great port for the northern whale-fishery, has in two years recently only sent out two vessels, instead of 60 or 70, and none have gone out from London. One-half of the ships are now sent out from Peterhead.

Previous to the revolt of the North American provinces this fishery, as well as that in the Southern Ocean, was prosecuted with great spirit by the colonists of Massachussetts. Just before the beginning of the war they employed annually 183 ships of 13,820 tons in the northern, and 121 ships of 14,026 tons in the

southern whale-fisheries. The fisheries are still prosecuted by the people of New England with great success.

It was not until after the breaking out of war between England and the American provinces had, for a time at least, interrupted this spirit of enterprise, that England embarked in the southern fishery. In 1791 the number of English vessels so employed was 75; 1819 to 1823 above 100; and from 1830 to 1833 the number varied from 104 to 110. Since this period the number of ships employed has gradually fallen off; but the price of oil has long been rising, and is now double what it was twenty years ago. This, however, will probably not have much effect in increasing the number of vessels fitted out in this country for the southern whale-fishery, but it may give an impetus to the Australian fishery. By the Tariff of 1842 (5 & 6 Vict. c. 47) the duty on train blubber and sperm oil, the produce of foreign fishing, was reduced from a uniform rate of 26*l.* 12*s.* per ton to 6*l.* on train oil, and 15*l.* on sperm oil; but the alteration of duty did not take effect until July of the following year. In the period between 1832 and 1842 the highest value of the products of the southern whale-fishery imported into this country was 721,000*l.* in 1838.

It requires a considerable sum of money to fit out a ship in England for the southern whale fishery. A new vessel of the size usually employed—350 tons—costs, when ready for sea and fully provisioned, from 12,000*l.* to 15,000*l.*; and the adventurer must wait three years for the return of his capital.

In the three years 1830–31–32, and in three years 1841-42-43, the number of British ships and their tonnage, and British seamen of all ranks employed in the South Sea, Greenland, and Davis's Strait Fisheries, were as follows:—

South Sea Fishery.

	Ships.	Tons.	Men.
1830	32	9,682	924
1831	24	8,335	735
1832	35	12,066	1091
1841	13	4,836	404
1842	6	1,835	169
1843	9	3,096	262

Greenland and Davis's Straits.

	Ships.	Tons.	Men.
1830	91	30,484	4120
1831	86	28,137	4093
1832	81	26,147	3706
1841	19	5,742	897
1842	18	5,118	830
1843	25	6,971	1146

In 1840 the value exported from New South Wales of the produce of the whale fishery was 224,144*l.*, but the exports were considerably less in the two following years. In 1840 the quantity of sperm oil exported was 1854 tuns, black whale oil 4297 tuns, whalebone 250 tuns.

The whale fishery of the United States of North America is now greater than that of all other nations. Even on the coasts of our own colonies in Australia and New Zealand, the American whalers outnumber those of the English. What Burke said of the fisheries of the colonists of Massachusetts, in 1774, is applicable at the present day to their descendants employed in the southern whale-fishery: "Neither the perseverance of Holland, nor the activity of France, nor the dexterous and firm sagacity of English enterprise, ever carried this most perilous mode of hardy industry to the extent to which it has been pursued by this recent people." In 1843 the imports from the whole fishery into the United States, was 165,744 barrels of sperm, and 205,861 of whale oil, and 1,908,047 lbs. of bone. These imports gave employment to 193 ships and barques, 28 brigs, and 13 schooners (234 vessels); and their tonnage was 165,744 tons. The voyage of each vessel engaged in the sperm fishery averages three and a half years, and the whale fishery gave employment to 650 ships, barques, brigs, and schooners which are manned by 17,500 seamen and their aggregate tonnage amounts to 200,000 tons. The cost of these 650 vessels at the time of their sailing is estimated at twenty million dollars, and their annual consumption of stores, &c. is 3,845,000 dollars. The value of the annual imports of oil and whalebone in raw state is estimated at seven millions dollars. (*American Alm.*, Boston, 1845.)

The Chinese belonging to Hainan an

the neighbouring islands pursue the whale-fishery with considerable success near their own coasts. There is an account of this fishery in Simmonds' 'Colonial Magazine,' vol. ii. p. 237.

FLAG, the ensign or colours of a ship; from the Anglo-Saxon *fleogon*, to fly or float in the wind. Flags borne on the masts of vessels designate the country to which they respectively belong; and they are likewise made to denote the quality of the officer by whom the ship is commanded.

The supreme flag of Great Britain is the royal standard, which is only to be hoisted when the king or one of the royal family is on board the vessel: the second is that of the anchor on a red field, which characterizes the lord high admiral, or lords commissioners of the Admiralty: and the third is the union flag, in which the crosses of St. George, St. Andrew, and St. Patrick are blended. This flag is appropriated to the admiral of the fleet.

In the British navy a fleet is divided into three squadrons—the centre, the van, and the rear; the centre being distinguished by red colours, the van by white, and the rear by blue, and respectively commanded by an admiral, a vice-admiral, and a rear-admiral. When the fleet is very large, there are three divisions in each squadron: and each squadron has then its admiral, vice-admiral, and rear-admiral, who respectively hold the command of its centre, van, and rear divisions. [ADMIRAL, p. 27.]

The three flags are plain red, white bearing the red cross of St. George, and plain blue; and the ensign worn by the ship that carries a flag, as well as by every ship belonging to the same squadron, is always of the same colour as that of the flag-officer commanding it.

By 4 Will. IV. c. 13, § 11, it is enacted that if any person shall hoist, carry, or wear on board any vessel, whether merchant or otherwise, belonging to any of His Majesty's subjects, without particular warrant for so doing, His Majesty's Jack, commonly called the Union Jack, or any pendant, or any such colours as are usually worn by His Majesty's ships, or any flag, jack, pendant, or colour resembling those of His Majesty, or any ensign or colour whatever other than those prescribed by proclamation, the persons so offending are to forfeit a sum not exceeding 500*l.*; and every such flag, colour, &c. shall be forfeited.

FLOTSAM, or FLOATSAM, is such portion of the wreck of a ship and the cargo as continues floating on the surface of the water. Jetsam is where goods are cast into the sea, and there sink and remain under water; and Ligan is where they are sunk in the sea, but are tied to a cork or buoy, in order that they may be found again.

These barbarous and uncouth appellations are used to distinguish goods in these circumstances from legal wreck, in order to constitute which they must come to land.

Flotsam, jetsam, and ligan belong to the king, or his grantee, if no owner appears to claim within a year after they are taken possession of by the persons otherwise entitled. They are accounted so far distinct from legal wreck, that by the king's grant of wreck, flotsam, jetsam, and ligan will not pass.

Wreck is frequently granted by the king to lords of manors as a royal franchise; but if the king's goods are wrecked, he can claim them at any time, even after a year and a day. The same distinction, it is presumed, would prevail with respect to flotsam, jetsam, and ligan.

FOOTPATH. [WAYS.]

FOREMAN. [JURY.]

FORESTALLING, ENGROSSING, &c. *Engrossing* is the offence of purchasing large quantities of any commodity, in order to sell it again at a higher price. There are numerous statutes against this offence, and it was also an offence at common law. The English were not singular in this absurd species of legislation. They had the authority of the Athenians [CORN TRADE, ANCIENT, p. 667], who were as ignorant of the true principles of public economy as the most ignorant nation of modern times.

Forestalling, also an offence at common law, is described in a statute of Edward VI. to be the buying or contracting for any merchandise or victual coming the way to market; or dissuading persons from bringing their goods or provisions

there, or persuading them to enhance the price when there. There is something like authority for this in the Roman law. The Lex Julia de Annona imposed penalties on those who combined to raise prices.

"*Regrating*," says Blackstone, "was described in the same statute to be the buying of corn or other dead victual in any market and selling it again in the same market or within four miles of the place. For this also enhances the price of provisions, as every successive seller must have a successive profit." As to engrossing, Blackstone remarks: "this must of course be injurious to the public, by putting it in the power of one or two rich men to raise the price of provisions at their own discretion."

An exact definition of *Badgering* is not at hand; but the nature of this offence may be collected from the offences which it keeps company with.

Notwithstanding the reasons given by Blackstone, all these offences have been abolished by 7 & 8 Vict. c. 24, entitled 'An Act for abolishing the offences of forestalling, regrating, and engrossing, and for repealing certain statutes passed in restraint of trade.'

The preamble of the act is as follows:—"Whereas divers statutes have been from time to time made in the parliaments of England, Scotland, Great Britain, and Ireland, respectively prohibiting certain dealings in wares, victuals, merchandise, and various commodities, by the names of badgering, forestalling, regrating, and engrossing, and subjecting to divers punishments, penalties, and forfeitures persons so dealing: and whereas it is expedient that such statutes, as well as certain other statutes made in hinderance and in restraint of trade, be repealed: and whereas an act of the parliament of Great Britain was passed in the twelfth year of the reign of King George III., intituled 'An Act for repealing several Laws therein mentioned against Badgers, Engrossers, Forestallers, and Regraters, and for indemnifying Persons against Prosecutions for Offences committed against the said Acts,' whereby, after reciting that it had been found by experience that the restraint laid by several statutes upon the dealing in corn, meal, flour, cattle, and sundry other sorts of victuals, by preventing a free trade in the said commodities, have a tendency to discourage the growth and to enhance the price of the same, which statutes, if put in execution, would bring great distress upon the inhabitants of many parts of this kingdom, and in particular upon those of the cities of London and Westminster, sundry acts therein mentioned, and all the acts made for the better enforcement of the same, were repealed, as being detrimental to the supply of the labouring and manufacturing poor of this kingdom: and whereas, notwithstanding the making of the first-recited act, persons are still liable to be prosecuted for badgering, engrossing, forestalling, and regrating, as being offences at common law, and also forbidden by divers statutes made before the earliest of the statutes thereby repealed: for remedy thereof, and for the extension of the same remedy to Scotland and to Ireland, be it enacted," &c.

The second section repeals the several acts and parts of acts made in the parliaments of England and Scotland, Great Britain and Ireland, thereafter mentioned, but not so as to save any act repealed by any of the acts hereby repealed.

The English statutes which are repealed extend from the 51 Henry III. to the 5 & 6 Edward VI. c. 15.

The third section enacts, "That the several acts and parts of acts which were repealed, as to Great Britain, by the first-recited act of the twelfth year of the reign of King George III. shall be taken, after the passing of this act, to be repealed as to the United Kingdom of Great Britain and Ireland."

The fourth section provides, "That nothing in this act contained shall be construed to apply to the offence of knowingly and fraudulently spreading or conspiring to spread any false rumour, with intent to enhance or decry the price of any goods or merchandise, or to the offence of preventing or endeavouring to prevent by force or threats any goods, wares, or merchandise being brought to any fair or market, but that every such offence may be inquired of, tried, and punished as if this act had not been made."

Though the law against engrossing, forestalling, and regrating was, we believe, seldom enforced, the repeal of this mass of absurd legislation, and of the common law applicable to these so-called offences, is a proper measure, particularly as the ground of the repeal is that the statutes were "passed in restraint of trade." Trade therefore, it is admitted, should not be restrained by statutes; a principle which, if fully carried out, would add greatly to the prosperity of this country.

FOREST LAWS. On the establishment of the Norman kings in England, it has generally been supposed that the property of all the animals of chase throughout the kingdom was held to be vested in the crown, and no person without the express licence of the crown was allowed to hunt even upon his own estate. But this is rather a conjecture deduced from the supposed principles of feudalism, than a well-established fact. There are no laws respecting the forests among the laws attributed to the Conqueror; and perhaps all that we can affirm is, that after the Norman conquest the royal forests were guarded with much greater strictness than before; that their number was extended and possibly in some cases their bounds enlarged; that trespassers upon them were punished with much greater severity; and, finally, that there was established a new system of laws and of courts for their administration, by and according to which not only all offences touching the royal forests were tried, but also all persons living upon these properties were generally governed. This is the system or code that is properly called the forest laws. Yet even of this in its original integrity we have no complete or authoritative record; all our knowledge of it is derived from some incidental notices of the chroniclers; the vague though energetic language of complaint and condemnation in which it is repeatedly spoken of; the various legislative enactments for its reform which have been preserved; and the remnants of it which survived to a comparatively recent period.

The Conqueror is said to have possessed in different parts of England 68 forests, 13 chases, and 781 parks. Legally, forests and chases differ from parks in not being inclosed by walls or palings, but only encompassed by metes and bounds; and a chase differs from a forest, both in being of much smaller extent (so that there are some chases within forests) and in being capable of being held by a subject, whereas a forest can only be in the hands of the crown. But the material distinction is, or rather was, that forests alone were subject to the forest laws so long as they subsisted. Every forest however was also a chase. A forest is defined by Manwood, the great authority on the forest laws, as being "a certain territory or circuit of woody grounds and pastures, known in its bounds, and privileged, for the peaceable being and abiding of wild beasts, and fowls of forest, chase, and warren, to be under the king's protection for his princely delight; replenished with beasts of venery or chase, and great coverts of vert for succour of the said beasts; for preservation whereof there are particular laws, privileges, and officers belonging thereunto." The beasts of park or chase, according to Coke, are properly the buck, the doe, the fox, the marten, and the roe; but the term in a wider sense comprehends all the beasts of the forest. Beasts of warren are such as hares, conies, and roes; fowls of warren, such as the partridge, quail, rail, pheasant, woodcock, mallard, heron, &c. He afterwards however quotes a decision of the justices and the king's council that roes are not beasts of the forest, because they put to flight other wild beasts (eo quod fugant alias feras), which seems an odd reason; perhaps the word should be "fugiunt" (because they fly from other wild beasts). And he adds, "beasts of forests be properly hart, hind, buck, hare, boar, and wolf; but legally all wild beasts of venery." (Co.-Litt. sec. 387.)

For the antiquity of the royal forests in England, "the best and surest argument," says Coke, elsewhere (4 *Inst.* 319), "is, that the forests in England, being sixty-nine in number, except the New Forest, in Hampshire, erected by William the Conqueror, and Hampton Court Forest, by Henry VIII., and by authority of parliament, are so ancient,

as no record or history doth make any mention of their history or beginning." Yet it appears, both from the great charter of John, and from a previous charter granted by Stephen, that some lands had been afforested (as the term was) after the time of the two first Norman kings. "The forests," says Stephen, "which King William my grandfather, and William II. my uncle, made and held, I reserve to myself; all the others which King Henry superadded I render up and concede in quiet to the churches and the kingdom." And one of the concessions demanded from John and granted in Magna Charta (§ 47) was, that all the lands which had been afforested in his time should be immediately disafforested. No additional forests appear to have been made from the reign of John till that of Hampton Court was constituted by act of parliament in 1539 (31 Hen. VIII. c. 5). The name given to it in the statute is Hampton Court Chase; but it is enacted that all offenders in it shall incur such penalties as the like offenders do in any other forest or chase. It was therefore made a forest as well as a chase.

Many historians tell us that King John granted a charter of forests at the same time with Magna Charta. This is indeed distinctly asserted by Matthew Paris, who even professes to give the charter at full length. But the statement is entirely unfounded; the concessions obtained from John in regard to the royal forests are, as mentioned above, contained in the Great Charter: the Carta de Foresta, which M. Paris quotes, is a charter granted by Henry III. in the 9th year of his reign (A.D. 1224). This was the first separate charter of forests. It is commonly printed in the statutes from the Inspeximus, or confirmation of it, in the 28th of Edward I. (A.D. 1299). The subsequent legislation upon this subject is principally to be found in the following statutes:—The Customs and Assize of the Forest, or the Articles of Attachments of the Forests (of which the date is not known); the Ordinatio Forestæ of the 33 Edw. I. (1305); the Ordinatio Forestæ of the 34 Edw. I. (1306); the 1 Edw. III. c. 8 (1327); and the 7 Ric. II. c. 3 (1383).

One of the chief things insisted upon in the early national demand for the reform of the forest laws, was the mitigation of their severe code of punishments. The Conqueror, who, as the 'Saxon Chronicle' says, loved the red deer as if he had been their father, is affirmed to have visited the slaughter of one of these animals with a heavier penalty than the murder of a human being. And it would appear from the charter of Henry III. that the offence had previously been punishable not only with mutilation, but with death. "No man from henceforth," says the 10th clause or chapter of the charter, "shall lose either life or member for killing of our deer; but if any man be taken and convict for taking of our venison, he shall make a grievous fine, if he have anything whereof; and if he have nothing to lose, he shall be imprisoned a year and a day: and after the year and day expired, if he can find sufficient sureties, he shall be delivered; and if not, he shall abjure the realm of England." According to Matthew Paris (whose authority however, on such a matter, is not worth much), Richard I. had already repealed the penalties of mutilation for offences against the forest laws.

The forest laws, as already mentioned, were administered by their own officers and courts. The officers were the justices in eyre of the forest; the wardens or warders; the verderers, foresters, agisters, regarders, keepers, bailiffs, beadles, &c.

The four principal forests in England were accounted to be, the New Forest, Sherwood, Dean, and Windsor. Among the others were Epping, in Essex; Dartmoor in Devonshire; Wichwood, in Oxfordshire; Salcey, Whittlebury, and Rockingham, in Northamptonshire; Waltham, in Lincolnshire; Richmond, in Yorkshire, &c.

The oppressive powers vested in the crown by the forest laws, after having to a great extent long ceased to be exercised, were revived by Charles I., and endeavoured to be turned to account in replenishing his empty exchequer. At the Court of Justice-seat (which was the supreme forest court, and held every year before the chief justice in eyre of the

forest) held in 1632, before the earl of Holland as chief justice in eyre south of the Trent, large sums of money were extorted from many persons, chiefly as compositions for alleged encroachments on the ancient boundaries of the forests, although after a quiet possession of three or four centuries. This accordingly was one of the grievances to which the Long Parliament directed its earliest attention. One of the Acts which that assembly passed in its first session (the 16 Char. I. c. 16), was entitled 'An Act for the Certainty of Forests, and of the Meets, Meers, Limits, and Bounds of the Forests,' which set forth in the preamble, that not only judgments had of late been given by which the bounds of some of the forests had been variously extended, or pretended to extend, beyond the bounds commonly known, and formerly observed, to the great grievance and vexation of many persons having lands adjoining; but there had also been some endeavours or pretences "to set on foot forests in some parts of this realm and the dominion of Wales, where, in truth, none have been or ought to be, or, at least, have not been used of long time." It is therefore enacted that the bounds of every forest shall be those commonly known, reputed, used, or taken to be its bounds; and that all judgments, &c., to the contrary shall be void; that no place where no Justice-seat or other forest court had been held within sixty years should be accounted forest; and that commissions should be issued for ascertaining the bounds of forests as they stood in the 20th year of the preceding reign, and beyond which they should not thenceforth be extended. Since the passing of this Act, the old forest laws may be considered as having been practically abolished, and the offices connected with their administration and execution turned into little better than sinecures.

The 11th chapter of the Carta Forestæ of Henry III. contains the following curious provision:—"Whatsoever archbishop, bishop, earl, or baron, coming to us at our commandment, passeth by our forest, it shall be lawful for him to take and kill one or two of our deer, by view of our forester, if he be present; or else he shall cause one to blow an horn for him, that he seem not to steal our deer; and likewise they shall do returning from us as it is aforesaid." As this law is still unrepealed, any bishop or nobleman may shoot one or two of the deer if he should pass through any of the royal forests in going to or returning from parliament. Hunting was formerly so common or universal an episcopal amusement, that the crown is still entitled, at the death of every bishop, to have his kennel of hounds, or a composition in lieu thereof. Auckland Park, and certain other demesnes, formerly held of the bishop of Durham by forest services; "particularly," says Camden, "upon his great huntings, the tenants in these parts were bound to set up for him a field-house, or tabernacle, with a chapel, and all manners of rooms and offices; as also to furnish him with dogs and horses, and to carry his provision, and to attend him during his stay for the supply of all conveniences. But now all services of this kind are either let fall by disuse, or changed into pecuniary payments." [GAME LAWS; WOODS AND FORESTS.]

FORFEITURE, the punishment by loss of lands, estates, rights, offices, or personal effects, which is annexed by law to certain crimes, and also to certain illegal acts and neglect of duties in the holder of lands or offices.

Forfeiture is the French Forfaiture, which is from the word Forfait, "a crime." The verb Forfaire (Foris facere), is to do anything contrary to duty. Forfaiture, according to Richelet (*Dictionnaire*), is "a fault committed by an officer of justice, for which he ought to lose his office." The distinction between Escheat and Forfeiture is explained under ATTAINDER and ESCHEAT.

In criminal cases forfeiture is threefold:—1. Of real estates absolutely, as for high treason; if freehold, to the king; if copyhold, to the lord. 2. Of the profits of the real estate, if freehold, to the crown during the life of the offender, and a year and a day afterwards, in the case of petty treason or murder; after which the land escheats to the lord; if it is copyhold, it is at once forfeited to the lord. 3. Of goods and chattels, in all

cases of felony. Some other cases of forfeiture of lands or goods, or both, are established by different statutes, as the statutes of præmunire, &c.

Lands are forfeited upon attainder, and not before [ATTAINDER]: goods and chattels, upon conviction. The forfeiture of lands has relation to the time of the offence committed; the forfeiture of goods and chattels has not, and those only are forfeited which the offender has at the time of his conviction. A *bonâ fide* alienation of his goods and chattels made by a felon or traitor between the commission of the offence and his conviction, is therefore valid.

Forfeiture, in civil cases, takes place where a tenant of a limited, or, as it is called, a particular estate, grants a larger estate than his own, as where a tenant for life or years assumes to convey the fee-simple. So, if a copyholder commits waste, or refuses to do suit of court, or a lessee impugns the title of his lessor; for in all these cases there is a renunciation of the connexion and dependence, which constitute the tenure, and which are an implied condition annexed to every limited estate.

Forfeiture may also be the consequence of the breach of covenants between landlord and tenant, or persons connected in tenure; but in cases of forfeiture where compensation can be made for the breach of the condition, a court of equity will compel the party entitled to the forfeiture to accept compensation. The right to take advantage of a forfeiture may also be waived by any act of the person entitled which recognizes the continuance of the title in the particular tenancy, as, for instance, the receipt of rent by a landlord in respect of a time subsequent to the act by which the forfeiture is incurred.

Lands may also be forfeited by alienation contrary to law, as by alienation in mortmain without licence, or to an alien: in the former instance, if the immediate lord of the fee, or the lord paramount, neglect to enter, the king may; and in the latter, though the conveyance is effectual, yet as an alien cannot hold lands the king may enter, upon office found. [ALIEN; OFFICE FOUND.]

Offices are forfeited by the neglect or misbehaviour of the holders; and the right to the next presentation to ecclesiastical benefices is forfeited by Simony and by Lapse. [BENEFICE, p. 351; ADVOWSON, p. 48.]

The term Confiscation is not now used as a term of English law, but it was once in use, and was applied to those goods which were forfeited to the king's Exchequer. Goods confiscated, it is said, are generally such as were arrested and seized to the king's use, and therefore goods confiscated and goods forfeited are synonymous terms. If this explanation is right, Forfeiture is a more comprehensive term than Confiscation in English law.

Confiscation is from the Latin Confiscatio, which properly means the seizure of the property of an offender for the Imperial Fiscus, or the Imperial treasury: the property of the Roman Emperor, as Emperor, was expressed by the term Fiscus. Fiscus signifies a wicker basket: the word Hanaper (hamper) has the same meaning.

FORGERY, from the French *forger*, 'to heat metal and hammer it,' which is from the Latin *fingere*. From this sense of *forger* came the meaning "to make" generally, to invent. Legal forgery is the false making, counterfeiting, altering, or uttering any instrument or writing with a fraudulent intent, whereby another may be defrauded. The offence is complete by the making the forged instrument with a fraudulent intent, though it be not published or uttered; and the publishing or uttering of the instrument, knowing it to be forged, is punished in the same manner as the making or counterfeiting.

It is by no means necessary to bring the offence within the legal meaning of the term forgery, that the name of any person should be counterfeited, though this is the most common mode in which the crime is committed; thus a man is guilty of forgery who antedates a deed for the purpose of defrauding other parties, though he signs his own name to the instrument; and the offence is equally complete, if a man being instructed to make the will of another, inserts provisions of his own authority. In truth the offence consists in the fraud and deceit.

At common law the crime of forgery was only a misdemeanour, but as the commerce of the country increased and paper credit became proportionally extended, many severe laws were enacted, which in most cases made the offence a capital felony.

The extreme severity of these laws tended to defeat their object, and the parties very frequently chose rather quietly to sustain the loss inflicted upon them by the commission of the offence, than by a prosecution to subject the offender to the loss of life. This feeling, and the diffusion of the truth, that the object of all laws is to prevent crime and not merely to punish, has caused successive mitigations in the laws relating to forgery; and now by the statute 11 Geo. IV. and 1 Wm. IV. c. 66; 2 & 3 Wm. IV. c. 59, and 1 Vict. c. 84, the punishment of death is abolished in cases of forgery, and a punishment varying between transportation for life and imprisonment for two years, is substituted. (1 Hawkins, *P. C.*; Russell *On Crime*; Deacon's *Criminal Law*.)

The statute law on forgery in general applies to Scotland as well as to England.

FOUNDLING HOSPITALS are charitable institutions, which exist in most large towns of Europe, for taking care of infants forsaken by their parents, such being generally the offspring of illegitimate connexions. These institutions date from the Middle Ages, and were established for the purpose of preventing the destruction of children either by actual violence or by being exposed in the streets or highways. Among the Romans and other nations of antiquity, the exposure of children by poor or unfeeling parents was a frequent practice, and was not punished by the laws. After Christianity became the religion of the empire, it was forbidden by the Emperors Valentinian, Valens, and Gratian (*Cod.* viii. tit. 51 (52), 'De Infantibus expositis,' &c.). At the same time, the greater strictness of the laws concerning marriage and against concubinage, the religious and moral denunciations against unwedded intercourse, and afterwards the obligatory celibacy introduced among the clergy, and the severe penalties attending its infraction, all tended to increase the danger to which illegitimate infants were exposed from the sentiments of fear and shame in their parents. Child-murder and the exposure of children became nearly as frequent in Christian countries as they had been in heathen times, only the parents took greater care to conceal themselves; and humane individuals in various countries began to devise means to collect and provide for the forsaken infants found in the streets. In this, as in other acts of charity, ecclesiastics stood foremost. At Rome, Innocent III., in 1198, when rebuilding and enlarging the great hospital of S. Spirito, allotted a part of it to the reception of foundlings, several infants having been found drowned in the Tiber about that time. This asylum for the "esposti," or foundlings, was afterwards enlarged and endowed by subsequent popes, and the institution was adopted by degrees in other cities. It was thought that by providing a place where mothers might deposit their illegitimate children in safety without being subject to any inquiry or exposure, the frequent recurrence of the crime of child-murder would be prevented. For this purpose a turning box was fixed in an opening of the wall in a retired part of the building, in which the child being deposited by the mother in the night, and a bell being rung at the same time, the watch inside turned the box and took the infant, which from that moment was placed under the protection of the institution, was nursed and educated, and afterwards apprenticed to some trade or profession. Those parents who were in hopes of being able to acknowledge their child at some future time, placed a mark or note with it, by which it was afterwards known when they came to claim it, and it was then restored to them on their defraying the expense incurred for its maintenance.

In France the philanthropist Vincent de Paule, the founder of the Society of the Missions, in the first half of the seventeenth century, exerted himself to found an asylum for infants, which were at that time frequently left to perish in the streets of Paris. It was at first supported by private subscriptions, but afterwards was made a national establishment—

'Hôpital des Enfans trouvés.' Similar institutions were founded in other great French cities. In 1841 there were 70,838 illegitimate children born in France—about one thirteenth of the whole number of births; but in Paris the proportion is much greater, being one illegitimate child in every 2·7 births. Of the whole number of illegitimate children, about 58 out of every 100 are abandoned by their mothers and taken to the foundling hospitals, where nearly two-thirds of them die before they are a year old. (Guerry, *Statistique Morale de la France.*) In 1842, out of 10,286 births of illegitimate children, 8231 were abandoned by their parent or parents, and were sent to the foundling hospital. Mortality appears to be very great in most foundling hospitals of the continent, owing to carelessness, mismanagement, or want of sufficient funds for the administration of those institutions. The infants are given out to cheap nurses in the country, where a great number of them die. At the same time, it is remarkable that the number of illegitimate births has greatly increased over all Europe during the last forty years. (Benoiston de Châteauneuf, *Considérations sur les Enfans trouvés dans les principaux Etats de l'Europe*, 1824.)

In 1739 a charter was granted for establishing a foundling hospital in London. On the 26th of October, 1740, a house was opened in Hatton-Garden for the reception of twenty children not exceeding the age of two months. The regulations stated, that "no questions whatever will be asked of any person who brings a child, nor shall any servant of the house presume to endeavour to discover who such person is, on pain of being discharged." The number of applicants for the admission of children was so great that a balloting process was necessary in order to settle the choice of admission. In 1745 the western wing of the present hospital was opened, and the other two portions of the building were soon built. The applications so constantly exceeded the number which the funds would support, that application was made to parliament, and in 1756 the sum of 10,000*l.* was granted, and the governors of the hospital were empowered to form provincial establishments. At this period the institution was evidently popular. The act of application was rendered as little troublesome and disagreeable as possible. A basket was hung at the gate, and the only trouble imposed on parents was the ringing of a bell as they deposited their child. On the 2nd of June, 1756, when the new system began, 117 children were received, and before the close of the year the number of children that had been adopted by the institution was 1783. The governors did not yet see the consequences of their mistaken liberality. In June, 1757, they caused notices to be advertised in the newspapers, and placards to be posted in the streets, informing all who were concerned how liberally the hospital was thrown open to them. The number of children received in 1757 was 3727. In three years and ten months from June, 1756, the number of infants received into the hospital amounted to nearly 15,000. The conveyance of children from distant parts of the country to the foundling hospital had become a regular trade. It was proved that of eight children brought up by waggon from the country seven had died. Various abuses which, strange to say, had not been foreseen developed themselves. Vigilant overseers of the poor occasionally relieved the rate-payers by dropping into the basket at the hospital a child or two that they feared might become chargeable, or they frightened the mothers into the act when they had no desire to part with their offspring. Moreover, the institution had got into full play before anything like a system of regulations could be adopted for preserving the life and health of the foundlings, and there was even a scandalous want of wet-nurses. Out of 14,934 children received in less than four years, only 4400 lived to be apprenticed. The enormous errors which had been committed by the governors and by parliament were now palpably evident. In February, 1760, a resolution was passed by the House of Commons, which declared, "That the indiscriminate admission of all children under a certain age into the hospital had been attended with many evil consequences, and that it be discontinued;" but at this time there were nearly 6000

children in the institution, and parliament was bound to continue the grant until they were apprenticed. Between 1756 and 1771 there was voted a sum of 549,796*l.* towards the expenses of the hospital. The public also now perceived the evils inherent in such institutions, and popularity was succeeded by odium, so that the governors actually passed a resolution, though afterwards rescinded, to denominate the establishment 'The Orphan Hospital.' After this the governors proceeded more cautiously, restricted their exertions to the scope of their own funds, and sold their country hospitals. In 1801 the practice of taking children without inquiry on payment of 100*l.* was abolished.

The present modified character of the hospital as an institution for foundlings will be understood from the following extracts from the regulations now in force:—"No person need apply unless she shall have previously borne a good character for virtue, sobriety, and honesty." Application for admission must, in the first instance, be by petition, and this, properly filled up, must be presented personally at the ordinary periodical meeting of the committee of the institution. Inquiries are made into the poverty and good character of the applicant, the illegitimacy of her infant, the abandonment by the father, and the non-cognizance of the case by the parish authorities. The chairman of the committee questions the applicant as to the probability of her return to the paths of virtue on the event of her child being admitted, and the number of persons to whom her shame is known. The next step is to make inquiries into the truth of the applicant's statement. This delicate task is undertaken by the treasurer's clerk; and in performing it his instructions are not to divulge any of the facts with which he may have become acquainted. If the result of the investigation be satisfactory, the admission of the child is secured either at once, if there be a vacancy, or when a vacancy occurs. The number of children is limited to 360. On leaving her child the mother receives a certificate in return, to which is attached a private mark, by which the authorities of the hospital may, if requisite, subsequently recognise the child, and a corresponding mark is carefully attached to the child's clothing; but, as respects the mother, it is probable that the child is severed from her for ever, and that she will never again be able to recognise it. The child may be restored at a future time if the mother can give the most satisfactory proofs of her ability to maintain it; but this claim is of rare occurrence. Many devices are resorted to by mothers with a view to the future identification of their children; but the rules of the hospital are strict as to the severance being complete. The children are sent out to nurse until they are five years old at establishments which belong to the hospital at East Peckham, Kent, and at Chertsey. On attaining their fifth year they return to the hospital for their education, and at its completion they are apprenticed to some trade.

In 1841 the income of the London Foundling Hospital was rather more than 11,000*l.*; but it is said that in a few years, by the falling in of leases, the income will be not less than 50,000*l.*

In 1833 there were 8130 children maintained in three foundling hospitals in Ireland. By the Irish Poor Law Act (1 & 2 Vict. c. 56) the control of these establishments was given to the Poor Law Commissioners: the number of children was to be gradually reduced; and finally, the hospitals were to be converted into union workhouses, by which provision hospitals for foundlings are virtually abolished. The Dublin Foundling Hospital was erected in 1704, and was scandalously managed. A basket was placed on the outside of the gate for the reception of infants, and a bell was rung when they were deposited. The number of children received from 1785 to 1797 was 27,274; out of which number there died 13,120. In 1797 the admissions were 1922, and the deaths 1457. From 1799 to 1808 the admissions were 19,638, and the deaths amounted to 5043. The Dublin Hospital was supported by Parliamentary grants, and by an assessment on houses which realized 8000*l.* a year.

There are Foundling Hospitals in Eastern (Lower) Canada, and grants have

heretofore been made to them by the local legislature; but in 1845 it was officially stated that such grants would be discontinued. The Commissioners of Foundlings, &c. in the district of Quebec accordingly issued a notice which stated, that "persons have been placed at the different avenues leading to the depôt at the Hôtel-Dieu to prevent people from leaving clandestinely any children there."

FRANCHISE, a species of incorporeal hereditament. Franchise and liberty are used as synonymous terms, and their definition is a royal privilege, or branch of the king's prerogative, which is in the hands of a subject. Being therefore derived from the crown, such privileges must arise from the king's grant, though in some cases they may be held by prescription, which presupposes a grant. The kinds of them are various, and almost infinite, and may subsist in corporations, in one man, or in many, as co-tenants. (2 Blackstone, *Com.* 37.) A few instances may be mentioned: thus a county palatine is a franchise, and so are privileges given to corporate bodies, forests, chases, the right to wreck, deodands, estrays, &c. Franchises may be lost or forfeited by the parties who enjoy them, if they misuse their privilege or neglect to perform the requisite duties in respect of them; and if the owners are disturbed or incommoded in the proper exercise of their franchise, which is an injury known to the law as a disturbance of franchise, they may have remedy in a special action on the case; or where the franchise is to levy a toll, they may distrain for the amount alleged to be due. (3 Blackstone, *Com.* 236.)

FRANKALMOIGNE. This tenure is thus described by Littleton (§ 133): "Tenant in Frankalmoigne is when an abbot or prior, or another man of religion, or of holy church, holdeth of his lord in frankalmoigne; that is to say in Latine, *in liberam eleemosinam*, that is, in free almes. And such tenure beganne first in old time. When a man in old time was seised of certain lands or tenements in his demesne as of fee, and of the same land infeoffed, an abbot and his covent, or prior and his covent, to have and to hold to them and their successors in pure and perpetual almes, or in frankalmoigne; or by such words, to hold of the grantor, or of the lessor and his heires in free almes: in such case the tenements were holden in frankalmoigne." From this it appears that lands which are held by religious bodies or by a man of religion, are held by tenure; but neither fealty nor any other temporal service is due. The spiritual services which were due before the Reformation are thus described by Littleton (§ 135): "And they which hold in frankalmoigne are bound of right before God to make orisons, prayers, masses, and other divine services for the souls of their grantor or feoffor, and for the souls of their heires which are dead, and for the prosperity and good life and health of their heires which are alive. And therefore they shall do no fealty to their lord; because that this divine service is better for them before God than any doing of fealty; and also because these words (frankalmoigne) exclude the lord to have any earthly or temporal service, but to have only divine and spiritual service to be done for him."

On this section (§ 135), Coke has the following remark, which explains how most lands are now held by the clergy of the church of England and by spiritual corporations in England. "Since Littleton wrote, the lyturgye or book of Common Praier of celebrating divine service is altered. This alteration notwithstanding, yet the tenure in frankalmoigne remaineth; and such prayers and divine service shall be said and celebrated, as now is authorized: yea, though the tenure be in particular, as Littleton hereafter (§ 137) saith, viz. to sing a mass, &c., or to sing a *placebo et dirige*, yet if the tenant saith the prayers now authorized, it sufficeth. And as Littleton hath said before (§ 119), in the case of Socage, the changing of one kind of temporall services into other temporall services altereth neither the name nor the effect of the tenure; so the changing of spiritual services into other spiritual services altereth neither the name nor the effect of the tenure. And albeit the tenure in frankalmoigne is now reduced to a certaintie contained in the book of Common Prayer, yet seeing the original tenure was in

frankalmoigne, and the change is by generall consent by authority of parliament (2 Ed. VI. c. 1; 5 & 6 Ed. VI. c. 1; 1 Eliz. c. 2), whereunto every man is party, the tenure remaines as it was before." [ESTABLISHED CHURCH.]

The statute 12 Charles II., which abolished military tenures, expressly excepts tenure in frankalmoigne.

Those who hold lands in frankalmoigne must do the services for which these lands were given. These services are now determined, as Coke says, by the book of Common Prayer. The mode of compelling these tenants to do their duty is thus described by Littleton (§ 136): "And if they which hold their tenements in frankalmoigne will not, or fail to do such divine service (as is said), the lord may not distrain them for not doing this, &c., because it is not put to certainty what services they ought to do. But the lord may complain of this to their ordinary or visitour, praying him that he will lay some punishment and correction for this, and also provide that such negligence be no more done, &c. And the ordinary or visitour of right ought to do this," &c.

Since the statute of 18 Ed. I., called *Quia Emptores*, from the introductory words, there can be no gift in frankalmoigne except by the crown. This tenure, however, as Blackstone observes, "is the tenure by which almost all the ancient monasteries and religious houses held their lands; and by which the parochial clergy and very many ecclesiastical and eleemosynary foundations hold them at this day, the nature of the service being upon the Reformation altered, and made conformable to the purer doctrines of the church of England."

FRANK PLEDGE. [LEET.]

FRAUDS, STATUTE OF. [STATUTE OF FRAUDS.]

FRAUDULENT CONVEYANCE. [CONSIDERATION.]

FREE BENCH. [DOWER.]

FREEHOLD. [ESTATE.]

FREEDMAN. [SLAVE.]

FREEDOM. [LIBERTY.]

FREEMAN. [MUNICIPAL CORPORATIONS.]

FREE SCHOOL. [SCHOOL.]

FREE TRADE. [AGRICULTURE; CAPITAL; CORN TRADE, CORN TRADE ANCIENT; DEMAND AND SUPPLY; MONOPOLY.]

FREIGHT. [SHIPS.]

FRENCH ECONOMISTES. [POLITICAL ECONOMY.]

FRIENDLY SOCIETIES. These institutions, which, if founded upon correct principles and prudently conducted, are beneficial both to their members and to the community at large, are of very ancient origin. Mr. Turner, in his 'History of the Anglo-Saxons,' notices them in these words:—"The guilds or social corporations of the Anglo-Saxons seem on the whole to have been friendly associations made for mutual aid and contribution, to meet the pecuniary exigencies which were perpetually arising from burials, legal exactions, penal mulcts, and other payments or compensations." (See also Herbert's 'History of the Twelve Great Livery Companies,' vol. i. p. 1.)

By the 10 Geo. IV. c. 56 (as amended by the 4 & 5 Wm. IV. c. 40), Friendly Societies may be formed for providing relief to members, their wives, children, relations or nominees, in sickness, infancy, advanced age, widowhood, or other natural state of contingency whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal; the rules therefore may now provide for relief in case of loss by fire, or by shipwreck; substitutes if drawn for the militia; a weekly allowance if reduced to a workhouse, or imprisoned for debt, and for payment towards the expenses of the feast, &c. &c.; but, for all such purposes, the contributions must be kept separate and distinct from the payments which may be required, on account of relief in case of sickness, infancy, advanced age, widowhood, or other natural state of contingency, susceptible of calculation by way of average; or the charges must be defrayed at the time by extra subscription of the members. The money payable on the death of a member may be received by any person nominated by such member, and is not confined to his wife, child, or relation.

In 1773 a bill was brought into the

House of Commons for "the better support of poor persons in certain circumstances, by enabling parishes to grant them annuities for lives upon purchase, and under certain restrictions." The bill passed the Commons but was rejected by the Lords. A bill with a similar object met with the like fate in 1780. A bill introduced in 1793 by the late Mr. George Rose passed into a law (33 Geo. III. c. 54), which is known by his name, and was extensively acted upon. This act recited "that the protection and encouragement of Friendly Societies in this kingdom, for securing, by voluntary subscription of the members thereof, separate funds for the mutual relief and maintenance of the said members in sickness, old age, and infirmity, is likely to be attended with very beneficial effects," and it authorized persons to form themselves into a society of good fellowship, for the purpose of raising funds, by contributions or subscriptions, for the mutual relief and maintenance of the members in old age, sickness, and infirmity, or for the relief of the widows and children of deceased members. A committee of members was authorized to frame regulations for the government of the society, which regulations, after being approved by the majority of the subscribers, were to be exhibited to the justices in quarter-sessions, and if not repugnant to the laws of the realm, and conformable to the true intent and meaning of the act, were to be confirmed and made binding upon the subscribers.

Among other provisions, it was allowed to impose reasonable fines upon such members as should offend against the regulations; such fines to be applied to the general benefit of the society. By this act it was declared unlawful "to dissolve or determine any such society, so long as the intents or purposes declared by the society remain to be carried into effect, without the consent and approbation of five-sixths of the then existing members, and also of all persons then receiving or entitled to receive relief from the society on account of sickness, age, or infirmity." Societies thus constituted were relieved from the payment of certain stamp-duties, and were empowered to proceed for the recovery of monies, or for legal redress in certain cases, by summary process, without being liable to the payment of fees to any officer of the court; and to aid them, the court was required to assign counsel to carry on the suit without fee or reward.

In 1795 an act was passed which extended the privileges of Mr. Rose's act to other "benevolent and charitable institutions and societies formed in this kingdom for the purpose of relieving widows, orphans, and families of the clergy and others in distressed circumstances."

Several other acts were passed between 1795 and 1817 affecting the proceedings of these societies, but not in any matter of importance.

In 1817 the 'Savings-Bank Act' was passed, and under its provisions the officers of friendly societies were allowed to deposit their funds in any savings bank, by which means they got security for their property and a higher rate of interest than they could otherwise obtain. This act has been of essential benefit to these associations.

In 1819 another law was passed, making provisions for the further protection and encouragement of friendly societies, and for preventing frauds and abuses in their management; but as this and all other acts previously passed with the same object were repealed and superseded by the act of 1829 (10 Geo. IV. c. 56) which, with two acts passed in 1832 and 1834 (2 Wm. IV. c. 37, and 4 & 5 Wm. IV. c. 40), contain the law as it now stands for the regulation of friendly societies, it is unnecessary to detail here the alterations effected in 1819.

In the years 1825 and 1827 select committees were appointed by the House of Commons to consider the laws relating to friendly societies. The reports made by these committees prepared the way for the enactment of 1829, already mentioned, which, with the subsequent acts of 1832 and 1834, we now proceed to analyze.

The law of 1829 (10 Geo. IV. c. 56), in the first place, authorizes anew the establishment of societies within the United Kingdom, for raising funds for the mutual relief and maintenance of the

members. The members of such societies are to meet together to make such rules for the government of the same as shall not be contrary to the intent of the act nor repugnant to the laws of the realm, and to impose such reasonable fines upon the members who offend against any of such rules as may be necessary for enforcing them; and these rules, which must be passed by a majority of the members present, may be altered and amended from time to time by the same authority.

But before these original or amended rules shall be confirmed by the justices of the county at the general quarter-sessions, they must have inserted in them a declaration of the purposes for which the society is established, and the uses to which its funds shall be applied, stating in what shares and proportions, and under what circumstances any member of the society or other person shall be entitled to the same; and further, it is required that the rules so passed "shall be submitted, in England and Wales and Berwick-upon-Tweed, to the barrister-at-law for the time being appointed to certify the rules of savings' banks; in Scotland, to the lord-advocate or any of his deputies; and in Ireland, to such barrister as may be appointed by her majesty's attorney-general in Ireland, for the purpose of ascertaining whether such rules are in conformity to law and to the provisions of this act." The officers here mentioned are respectively to settle such rules, and make them conformable to law and to this act of parliament, and to give a certificate of this regulation having been complied with. The rules so certified are then to be deposited with the clerk of the peace for the county wherein the society is formed, and by him to be laid before the justices at quarter-sessions, who are required to confirm the same, after which the rules and certificate are to be filed with the rolls of the sessions of the peace, and a certificate of such enrolment, signed by the clerk of the peace, is to be sent to the society. If the barrister or other officer above mentioned shall refuse to certify the rules offered for his approval, the society is allowed to submit the same to the court of quarter-sessions, together with the reasons assigned for refusal, when the justices may, if they see fit, confirm the rules, notwithstanding the disapproval of the revising officer.

Before these directions are complied with, no society is entitled to enjoy any of the privileges or advantages communicated by the act; but when the rules shall have been enrolled, and until they shall have been altered and the like confirmation shall have attended such alteration, they shall be binding upon the members of the society, and a certified copy of them shall be received in evidence in all cases. The treasurer of each society must give bond to the clerk of the peace for the county, with two sufficient sureties, for the faithful performance of his trust, and must, on the demand of the society, render his accounts and assign over the funds of the society at the demand of a meeting of the members. The property of the society is to be vested in the treasurer or trustees of the society, who may bring and defend actions, "criminal as well as civil, in law or in equity," concerning the property, right, or claim of the society, provided they shall be authorized to do so by the vote of a majority at a meeting of the members.

In case any person shall die intestate whose representatives shall be entitled on his account to receive any sum from the funds of the society not exceeding 20*l.*, the treasurer or trustees may pay the money to the persons entitled to receive the property of the deceased, without its being necessary to take out letters of administration.

It is not lawful to dissolve any friendly society, so long as any of the purposes declared in its rules remain to be carried into effect, "without obtaining the votes of consent of five-sixths *in value* of the then existing members, and also the consent of all persons then receiving or then entitled to receive relief from such society; and for the purpose of ascertaining the votes of such five-sixths in value, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member, provided that no one member shall have more than five votes in the whole."

The rules of the society are to contain

a declaration whether, in the event of any dispute or difference arising between the society and any one or more of its members, the matter shall be referred to the decision of a justice of the peace or of arbitrators; if to the latter, the arbitrators must be chosen or elected in sufficient number at the first meeting of the society which shall be held after the enrolment of its rules; they must not be in any way interested in the funds of the society; and whenever the necessity for their employment shall arise, a certain number, not exceeding three, are to be chosen by ballot from among the arbitrators for the settlement of the dispute, and justices are empowered to enforce compliance with the decision of the arbitrators. If the rules of the society direct the application, in cases of disputes, to justices of the peace, any justice is empowered to summon the person against whom complaint is made, and any two justices may hear and determine the matter, their sentence or order being final and conclusive. Minors, if they act with the consent of parents or guardians, may become members of friendly societies, having authority to act for themselves on the one hand, and being held legally responsible for their acts on the other.

A statement, attested by two auditors of the funds belonging to each society, shall be made annually to its members, every one of whom may receive a copy of the statement on payment of a sum not exceeding sixpence.

Every friendly society enrolled under this act is obliged, within three months after the expiration of every five years, to transmit a return of the rate of sickness and mortality, according to the experience of the society during the preceding five years, such returns to be made in a prescribed form to insure uniformity. These returns are directed by 4 & 5 Wm. IV. c. 40, to be addressed to the barrister appointed to certify the rules of friendly societies, London.

The provisions of the act of 1834 (4 & 5 Wm. IV. c. 40) are for the most part confined to matters of regulation which it is not necessary to notice here.

The following are among the benefits derived from a Friendly Society being enrolled under the 10 Geo. IV. c. 56, as amended by the 4 & 5 Wm. IV. c. 40:—1, The rules are binding, and may be legally enforced; 2, Protection is given to the members, their wives and children, &c., in enforcing their just claims, and against any fraudulent dissolution of the society; 3, The property of the society is declared to be vested in the trustee or treasurer for the time being; 4, The trustee or treasurer may, with respect to property of society, sue and be sued in his own name; 5, Fraud committed with respect to property of society is punishable by justices; 6, Court of Exchequer may compel transfer of stock, &c., if officer of society abscond or refuse to transfer, &c.; 7, Application may be made to Court of Exchequer by petition, free from payment of court or counsel's fees, &c.; 8, Disputes settled by reference to justices or arbitrators—order of justices or award of arbitrators final; 9, Power to invest their funds to any amount in savings' bank; 10, Power to invest their funds with the Commissioners for the Reduction of the National Debt, and to receive interest at the rate of 3*l.* 0*s.* 10*d.* per cent.; 11, Priority of payment of debts, in case officer, &c., of society become bankrupt, insolvent, has an execution, &c., against his property, or dies; 12, In case of death of members, payment may be made of sum not exceeding 20*l.*, without the expense, &c., of obtaining letters of administration; 13, Members are allowed to be witnesses in all proceedings, criminal or civil, respecting property of society; 14, Exemption of all documents, &c., from stamp duty.

Societies thus constituted and privileged must be acknowledged to be a great improvement upon the old benefit clubs. Before these societies were regulated by statute, temptation was held out to obtain members by the smallness of the contributions, which proved in the course of years wholly inadequate to answer the demands that were then sure to arise, although the income of the society had at first, while the members continued young, been sufficient for the purpose. The mischief thus fell upon them when they had become old and infirm, and had no means of relieving

themselves from it: this evil is now prevented by the compulsory adoption of tables prescribing such rates of contributions and allowances as experience has demonstrated to be sufficient and equitable.

It is unnecessary to give the tables of contributions required from members of Friendly Societies, in order to insure to their members the benefits of such institutions, as every information respecting the establishment of Friendly Societies may be obtained, free of expense, on application, through a post-paid letter, to the "Barrister appointed to certify the Rules of Friendly Societies, London."

On the 20th of November, 1844, the number of friendly societies which had direct accounts with the Commissioners for Reduction of the National Debt was 428, and the amount of their deposits was 1,770,775*l.* There were besides, at the same date, 10,203 friendly societies which had the sum of 1,272,046*l.* invested in savings' banks.

FUNDS. [NATIONAL DEBT.]
FUNERAL. [INTERMENT.]
FUR TRADE. [HUDSON'S BAY COMPANY.]

G.

GAME-LAWS. These laws determine what birds and beasts are to be considered game, and impose penalties on those who unlawfully kill or destroy game. They are the remnant of the ancient forest-laws, under which the killing one of the king's deer was equally penal with murdering one of his subjects; or, as Sir W. Blackstone somewhat quaintly expresses it, "from this root has sprung a bastard slip, known by the name of the game-law, now arrived to and wantoning in its highest vigour, both founded upon the same unreasonable notion of permanent property in wild creatures, and both productive of the same tyranny to the commons; but with this difference, that the forest-laws established only one mighty hunter throughout the land, the game-laws have raised a little Nimrod in every manor" (iv. 416).

Some portion of the history of the game-laws in this country will be found under FOREST-LAWS, and WARREN, FREE. Game has constantly been a subject of legislation from the Conquest to the present time. The last general statute which relates to game (2 Wm. IV. c. 32) was enacted in 1831, and it repealed twenty-four acts, eight of which had been passed in the reign of George III. It is doubtful whether the evils of the game-laws have been much diminished by the act of 1831. Some of them are beyond the reach of legislative enactments. In the first place, however, we shall briefly show what are the principal statutory provisions relating to game.

Game is declared to include hares, pheasants, partridges, grouse, heath or moor game, black game and bustards. Snipe, quail, landrail, woodcock, and conies are not game, but they can only be taken or killed by certificated persons.

Woodcocks and snipes may be taken with nets or snares, and also rabbits, by the proprietor, in an enclosed ground, or by a tenant and his servant. A penalty not exceeding 2*l.* over and above the value of the bird is incurred for killing, wounding, or taking any house-dove or pigeon when the offence does not amount to a larceny (7 & 8 Geo. IV. c. 29).

Any person who purchases a certificate or licence may kill game upon his own land, or on the land of any other person with his permission. This important alteration of the law was effected so recently as 1831, by 2 Wm. IV. c. 32, before which time a person was required to be possessed of a qualification by estate or birth to entitle him to kill game. The statute 13 Richard II. c. 13, the title of which was, 'None shall hunt but they who have a sufficient living,' was the first introduction of a qualification to kill game. This statute prohibited laymen who had not lands or tenements of 40*s.* a year, and priests who had not 10*l.* a year, from taking or destroying deer, hares, or conies, upon pain of one year's imprisonment. By 3 Jac. I. c. 13, the qualification to kill game was increased to 40*l.* a year in land and 200*l.* in personal property. By 22 & 23 Car. II. c. 25, the qualification was limited to persons who had a freehold estate of 100*l.* per annum or a leasehold for 99 years of 150*l.* annual

value. Some personal qualifications were added, as being the son and heir apparent of an esquire. Persons who had not these qualifications were not allowed to have or keep game dogs. Certificates were first required to be taken out by persons qualified to kill game by the act 25 Geo. III. c. 50. The certificate itself, which costs 3*l.* 13*s.* 6*d.*, now gives a qualification. It must be taken out annually, and expires in July. A sportsman who refuses to show his certificate when demanded by collectors of taxes, gamekeepers, landlords, occupiers, and lessees, is liable to a penalty of 20*l.* Uncertificated persons who kill or take any game, or who use any dog, gun, &c. for the purpose of searching for or killing or taking game are liable, on conviction before two justices, to a penalty not exceeding 5*l.* for each offence, with additional penalties under the Certificate Act of 23*l.* 13*s.* 16*d.* All penalties under 1 & 2 Wm. IV. c. 32 are given to the parish to be applied in aid of the county rate.

The right which a certificate gives to kill game is subject to a number of restrictions. A certificated person is liable to a penalty of 5*l.*, with costs, for taking or killing game on Sunday or Christmas-day, and to a penalty not exceeding 20*s.* for each head of game taken or killed at the season when the pursuit of each kind of game is prohibited. He is subject to the general law of trespass for going upon another person's land. Generally speaking, the right of killing the game is reserved by the landlord, when he leases his land, and when this is the case the occupier of the land can neither kill game nor give permission to another person to do so. He is liable under § § 11, 12 of 1 & 2 Wm. IV. c. 32 to a penalty of 20*s.*, with costs, for every head of game killed by him or other persons authorized by him. The landlord when he reserves it may kill game on the tenant's land, or authorize any certificated person to enter on the land and kill game. The tenant may kill woodcocks, snipes, quails, landrails, or rabbits, on the land which he occupies, but he cannot authorize other persons to kill them. The person who has the right of killing the game, or the occupier of the land, or gamekeepers, or any person authorized by either of them, may require a person found trespassing in pursuit of game to quit the land, and to give his name and place of abode; and in case of refusal, the trespasser may be taken instantly before a magistrate, who may fine him 5*l.*; but if not brought before a magistrate within twelve hours, proceedings must be taken by summons or warrant. If five or more persons together trespass in pursuit of game, and any one of them be armed with a gun, and if threats or violence are used to prevent any authorized person from approaching them for the purpose of requiring them to quit the land, or to tell their names and abodes, every person so offending is liable to a penalty not exceeding 5*l.*, in addition to any other penalty with costs.

The law is very severe against persons not authorized, who take or destroy game by night. By 1 & 2 Wm. IV. c. 32, 'day-time' is to be deemed from one hour before sun-rise to one hour after sun-set. The 9 Geo. IV. c. 69, enacts, that if any person by night shall take or kill game or rabbits on any land, or shall enter therein with gun, net, engine, or other instrument, for the purpose, he shall, on conviction before two justices, be committed to hard labour in the house of correction for a term not exceeding three months, and, at the expiration of that period, find securities for twelve months, himself in 10*l.* and two others in 5*l.* each, or one security in 10*l.* In case of not finding sureties (and it is not a likely case that night-poachers should be able to find them), the offender may be further imprisoned six months. For a second offence the term of imprisonment is extended to six months, the sureties are doubled, and required for a period of two years. If the offender cannot find sureties, he may be further imprisoned for twelve months. The third offence is punishable with transportation for seven years, or imprisonment with hard labour in the house of correction for a term not exceeding two years. Offenders under this act may be apprehended on the spot by owners and occupiers of lands, their servants and assistants; and if they assault or offer violence with gun, club, stick, or

otherwise, they are liable to be transported for seven years, or to be imprisoned with hard labour for two years. The punishment for night-poaching is still more severe when three or more persons enter any land for the purpose of taking or destroying game or rabbits, armed with a gun, bludgeon, or other offensive weapon, and they are subject to transportation for a period not exceeding fourteen years, or to imprisonment with hard labour for not exceeding three years. In 1844 an act was passed (7 & 8 Vict. c. 29) which extended the provisions of 9 Geo. IV. c. 69, against night-poaching to persons who take or kill game or rabbits upon public roads or highways, and other roads and paths leading to enclosed gates, and also at the gates, outlets, and openings between such lands and roads or paths.

By § 36 of 1 & 2 Wm. IV. c. 32, it is enacted, that if any unauthorized person be found by day or night on any land in search of game, and have in his possession any game which "appear to have been recently killed," any authorized person, as gamekeepers, occupiers, or others who have the right of killing the game, may demand such game and seize it if not immediately delivered.

A penalty not exceeding 10*l.* is incurred for laying poison with intent to destroy game (1 & 2 Wm. IV. c. 32).

If any person who is not authorized to kill game himself, or who has not permission from a person who has such right, shall take out of the nest or destroy the eggs of any bird of game, or of any swan, wild duck, teal, or widgeon, or shall knowingly have in his possession any such eggs so taken, he shall be liable on conviction to a penalty not exceeding 5*s.* with costs for each egg. (1 & 2 Wm. IV. c. 32, § 24.)

By the act 7 & 8 Geo. IV. c. 29, it is felony to course, hunt, snare, carry away, kill, or wound, or attempt to kill or wound, any deer kept in any enclosed land, whether forest, chase, or purlieu, or other place wherein deer is usually kept. The punishment is transportation for seven years, or imprisonment for two years. If the offence be committed in the uninclosed part of a forest, chase, &c., the penalty for the first offence is a sum not exceeding 50*l.*: and for a second offence, transportation or imprisonment.

Such are the principal legal provisions respecting game which exist at the present day. This right of appointing persons called game-keepers, who are, properly speaking, a game police, does not belong to all owners of lands. Gamekeepers were first allowed to be appointed by 22 & 23 Car. II. Before the act 1 & 2 Wm. IV. c. 32 was passed, a person could only appoint one gamekeeper. By this act lords of manors may appoint one or more gamekeepers to preserve or kill game within the manor for their own use. Lords of manors may depute any person to be a gamekeeper to a manor, with authority to kill game for his own use or that of any other person named in the deputation. The gamekeepers are authorized to seize all dogs, nets, and other engines used for killing game by uncertificated persons.

Until the passing of the act 1 & 2 Wm. IV., c. 32, no person was allowed to sell game; but it was made saleable by this act, as the law was systematically evaded. A dealer in game must obtain an annual licence from the justices, who hold a special session in July for the purpose of granting such licences. Innkeepers, victuallers, retail beer-sellers, guards, coachmen, carriers or higglers, or persons in the employ of any of these classes of persons, are prohibited from dealing in game. Licensed dealers who buy game of any person not authorized to sell it are liable to a penalty of 10*l.* with costs. A person not being licensed, who buys game of an unlicensed person, subjects himself to a penalty not exceeding 5*l.* for each head of game, with costs.

The preservation of game is an object of constant solicitude to nearly all those who belong to the landed gentry in this country. The pursuit of game is not only followed for the sport which it affords, but because ideas derived from the feudal times still attach a social distinction to the right of killing birds and beasts of game. It is only fifteen years since this privilege was acquired only by property or birth. It is still sufficiently restricted to confer upon

those who enjoy it a petty importance to which common-minded persons may attach some value. Within the last fifty years game has been preserved to an excess which was previously unknown. Most of the laws relating to game which have been passed within this period have been to enable game preservers to indulge in this taste, and to visit with greater severity those who are tempted by the abundance of game to become poachers. The accumulation of game in preserves, watched and guarded by numerous keepers, has led to changes in the modes of sporting. The sportsman of the old school was contented with a little spoil, but found enjoyment in healthful recreation and exercise, and was aided by the sagacity of his dogs. In the modern system of battue-shooting, the woods and plantations are beaten by men and boys; attendants load the sportsman's guns, and the game is driven within reach of gun-shot, and many hundred heads of game are slaughtered in a few hours. The true sportsman would as soon think of spoiling a poultry-yard. Battue-shooting is the end of excessive game-preserving; and in this so-called sport, members of the royal family, ministers of state, and many of the aristocracy eagerly participate. In an ordinary day's sport of this description, seven or eight hundred head of game will be killed by three or four sportsmen in about four hours, and perhaps fifty or sixty wounded will be picked up on the following day. A couple of gentlemen will kill nine hundred hares in one day. On a great field-day, when the sportsmen are more numerous, the slaughter is immense. Whole waggon-loads of hares are sent off to the London and other great markets for sale, as the result of one day's sport.

The effect of protecting game by oppressive laws is, perhaps, more injurious to the morals of the rural population than any other single cause. The gentry of England are distinguished by many good qualities; but the manner in which many of them uphold their amusements at the cost of filling the gaols with their poor neighbours, who acquire those habits which lead to the ruin of themselves and families, is a blot on their character which has yet to be wiped off. With a densely crowded population, thousands of whom are often pressed by hunger, and frequently in a state of the most lamentable poverty, the temptation to kill game is irresistible. It swarms before the labourer as he returns home in the evening from his long day of hard toil. *He* does not recognize property in game. No man can claim an individual hare or partridge like an ox or a sheep. The latter must be fed at the expense of their owners: but game is fed by no one in particular. This man, then, who probably would not, for all his poverty, violate the laws of property in the case of poultry, and who at the bottom recognizes no greater right of property in a partridge than in a sparrow, sets a snare in the haunts frequented by game near his cottage, and is pounced upon by the keeper. When he comes out of the gaol, often the training school for profligacy—the farmers perhaps dare not employ him lest they should offend the game-preservers their landlords. The justice and the rural police look upon the gaol-bird with suspicion; and only at the beer-shop, with men of his own stamp and character, does he feel at home. It is hardly necessary to sketch his further progress. In nine cases out of ten, it is from bad to worse: and this because for objects of selfish gratification men have given to a bird or beast of little worth in itself an arbitrary value, and protected it by statutory regulations stricter than are applied to many other things which are recognised as objects of property by all mankind.

The number of persons convicted at assizes and sessions in 1843, for infractions of the game-laws in England and Wales, was 4,529, of whom 40 were transported. Between 1833 and 1844, there were 41 inquests on game-keepers found dead, and in 26 cases verdicts of wilful murder were returned. In 1843, out of 201 persons summarily convicted in Bedfordshire, 143 were committed for poaching, and sentenced to prison for an average period of seven weeks each. In the same year, out of 539 persons committed to the county

gaol for Buckinghamshire, 169 were for offences against the game-laws. The wives and families of these men must be maintained during the husband's imprisonment; and hence the poor-rates and the county-rates are at the same time increased. Gaols require to be enlarged; and as poaching leads to other crimes, a more extensive police is required for the protection of property. The time of this force is not a little taken up in preventing, detecting, and apprehending poachers. The game-laws are in this way a heavy burden on the occupiers of land.

The total expenditure which the preservation of game occasions is probably more onerous than that which is required for the support of the immense mass of pauperism which exists in this country. Game, and the game-laws, are among the greatest hindrances to the improvement of agriculture. They not only prevent a gain, but they occasion a loss to the actual aggregate of agricultural products.

Many landowners in their enthusiasm respecting game take means to ensure its preservation which none but tenants in a wretched state of dependence would submit to. The tenant is not allowed to use his best skill in the application of his own capital to the land, but is interfered with on account of the game. This game devours the produce of the land, is fattened at the tenant's expense (compensation for the destructiveness of game being generally futile and deceptive), and the landlord pockets the money which the game thus fed produces in the market. The effect would be far less injurious if the landlord turned a certain proportion of his oxen and sheep to feed with those which belong to his tenants. There are instances where the landlord lets the game on the tenant's land to a third person, and thus gets two rents, one for the land, and another rent for the game after it has been fed by the farmer.

It has often been stated that from three to five hares eat and destroy as much as would keep one sheep. On many farms the number of hares average at least two per acre; and the destruction by hares alone is often equal to an additional rental of 10*s.* per acre on the whole of the farm: there is, besides, the waste and destruction caused by rabbits, pheasants, and partridges. On some farms of 500 acres where the game is strictly preserved, but not excessively, the loss caused by hares will often amount to above 200*l.* The landlord sells the hares at perhaps 1*s.* 6*d.* each, and pockets 75*l.* This is short-sighted enough, setting aside the bad moral effect of the practice. The operations of the poacher, if he escape detection, are in one sense beneficial to the tenant-farmer, for the destruction of the game adds to the farmer's profit; but if the poacher be convicted and sent to gaol, then the support of the man and his family adds to the loss which the game occasions.

Many of the reservations and covenants in leases in relation to game are fit only for the copyholders of a manor four or five centuries ago. There are many farms on which the tenants are forbidden either to mow wheat or drill turnips. Mowing costs less than reaping, and the tenant has besides the advantage of an extra quantity of straw for the stock and for manure; but then the ground is left too bare to shelter the partridges, and therefore the scythe must not be used, nor any other instrument which cuts lower than twelve inches. Drilling turnips is now an essential operation in all good systems of farming; but though it gives a much greater weight of roots per acre, it encourages the birds to run, and spoils sport. In some districts, where game is preserved with great strictness, a farmer is not allowed to sow winter tares. To drain land where rabbits are kept would be a waste of property. Legislation cannot produce any improvement in this state of things. It arises from the dependent condition of the great majority of the tenant farmers; and if a law were passed which gave them the right to kill the game on their lands it would be of no advantage to them. The gamekeepers and other retainers of the great and small game-preservers are spies on the tenant, and in the intense competition for farms he dare not contravene the wishes of his landlord. Public opinion may and does produce some effect on the landlord's exercise of his power, but this is confined to isolated cases.

The administration of the game-laws in England is in the hands of persons who are either game-preservers themselves, or who, generally speaking, are not unfavourable to the system, and hence the rigour with which offences against the law are visited. Impartiality is scarcely to be expected when those who sit in judgment have to decide upon offenders against their own cherished privileges. Before the act 1 & 2 Wm. IV. c. 32 was passed, penalties for infractions of the game-laws could be recovered before one justice; but now conviction can only take place before two justices, and an appeal lies to the quarter-sessions, but a certiorari is not allowed. There was no appeal formerly, and great obstacles were thrown in the way of obtaining a certiorari.

On the 27th of February, 1845, on the motion of Mr. Bright, M.P. for Durham, a select committee was appointed to inquire into the operation of the game-laws. At the close of the session the committee reported that they had not concluded their inquiry, and it is to be resumed in the session of 1846. Certain members of the committee voted against printing the evidence already taken, and when the chairman, who had given notice of his intention, was about to bring the question before the House, the House was counted out. The evidence cannot therefore be printed before 1846.

The number of certificates taken out annually to kill game is about 40,000 in Great Britain, and the number of licences to sell game about 800.

In other countries, as well as in England, game-laws have been an instrument of oppression. In France before the first revolution there were edicts for preserving game which "prohibited weeding and hoeing, lest the young partridges should be disturbed; steeping seed, lest it should injure the game; manuring with night soil, lest the flavour of the partridges should be injured by feeding on the corn so produced; mowing hay, &c. before a certain time, so late as to spoil many crops, and taking away the stubble which would deprive the birds of shelter." (Arthur Young's *Travels in France in* 1787-88-89). The tyranny of the manorial courts rendered it hopeless to escape from this oppressive system. The Constituent Assembly abolished this exclusive "droit de la chasse," which the seigneurs arrogated to themselves. Offences against the game-laws in France are now few and simple, and the punishment trivial.

GAMING, or GAMBLING, is an amusement, or we might properly call it a vice, which has always been common in all civilized countries and among all classes, but more particularly those who have no regular occupation. A passion for gaming is not confined to the nations called civilized: wherever men have much leisure time and no pursuit which will occupy the mind and stimulate it to active exertion, the excitement of gaming, which is nothing more than the mixed pleasure and pain arising from the alternations of hope and fear, success and failure, is a necessity which all men feel, though in different degrees, according to the difference of temperament. The Germans, says Tacitus (*De Moribus Germanorum*, c. 24), stake their own persons, and the loser will go into voluntary slavery, and suffer himself to be bound and sold, though stronger than his antagonist; and many savage nations at the present day are notoriously addicted to gambling. Gaming has been described by Cotton, an amusing author who wrote in the beginning of the last century, as "an enchanting witchery gotten betwixt idleness and avarice." Besides the pleasure derived from the excitement that attends games of chance, there is no doubt that the desire to enjoy without labour is one motive which operates on a gambler; but this motive operates more on those who are practised gamesters than on those who are beginning the practice; and instances are not wanting of men strongly addicted to gaming, who have yet been indifferent to money, and whose pleasure has consisted in setting their property on a die.

In France, and many other parts of the Continent, government has derived a considerable revenue from games of chance. In Paris, the exclusive right of keeping public gaming-houses was, until the year 1838, let out to one company, who paid an annual sum of 6,000,000 francs (about 240,000*l.*) for the privilege. They kep

six houses, namely, Frascati's, the Salons, and four in the Palais Royal. In a trial in Paris, it came out in the course of the evidence, that the clear profit for 1837, exclusive of the duty, had been 1,900,000 francs (76,000*l.*), of which three-fourths was paid to the city of Paris, leaving the lessee 19,000*l.* for his own share. The average number of players per day was stated at 3000, and about 1000 more refused admittance. The games played were chiefly Roulette and Rouge-et-Noir, of which the latter is the favourite. It is very seldom that large sums are staked at Roulette, as the chances against the player are considered immense by *professional* men, a class of gentlemen who are gamblers by profession. Rouge-et-Noir is played with four packs of cards, and the 'couleur' which is nearest 31 wins; the black being dealt for first, and then the red. All the houses were open from one o'clock in the afternoon till one or two after midnight; and latterly till five or six in the morning. The highest play, especially at Frascati's, was carried on between three and six in the afternoon. Ten or twelve thousand francs were constantly lost at a sitting, and once within these few years 100,000 francs, which constituted the 'Banque' of the day, was won by a French nobleman. The actual chance of the table or 'Banque' is considered to be 7½ per cent. above that of the player, supposing the game to be fairly played, as it no doubt was in Paris, under the old system; the cards being examined and stamped by the government, and there being an agent of the police always present and ready to detect any attempted fraud on the part of the company. But admitting the game to be fairly played, the coolness of the 'croupiers' or dealers, who had no interest at stake (the whole of the losses or gains being taken by the company), and the large capital of the latter, made it absolutely impossible for the player to win, in the long run; nay, it is clear that he must lose, and in that proportion to his stake, which probably is regulated by his means. Nevertheless, under the influence of those causes which first lead men to gaming, confirmed by habit and example, they still continue to indulge their passion till they are reduced to beggary, which is often followed by suicide.

That a vice which causes so much wretchedness should not merely be permitted and superintended by the government, but that it should contribute considerably to the public revenue, has been a subject of loud complaint in France; and at last the ministers, in compliance with the desire of the Chamber of Deputies, determined to grant no more licences after the 1st of January, 1838.

In this and in many other difficult questions, as to how far and in what manner a state should interfere with the acts of its citizens, many zealous advocates for change and reform do not perceive the great distinction between making an enactment or establishing some practice with reference to a certain end, and repealing the same enactment after it has been long in force. The reasons which would be good reasons for not making such enactment, may also, either in their whole extent or to some extent, be good reasons for not repealing such enactment when once in force, or not discontinuing such practice when once established.

In England, before the passing of 8 & 9 Vict. c. 109, the law considered wagers in general as legal contracts, and the winner of a wager could enforce his claim in a court of law. The exceptions to this rule were, where the wager was an incitement to a breach of the peace or to immorality; where it affected the feelings or interests of third persons, or exposed them to ridicule or inconvenience; or where it was against sound policy or prohibited by statutory enactment. In cases not comprehended within the above exceptions the judges frequently refused to try actions respecting wagers when they considered the matter to be of a frivolous or of an improper nature.

In Scotland the courts followed an opposite rule to that which prevailed in England. They held that "they were instituted to try adverse rights, and not to determine silly or impertinent doubts or inquiries of persons not interested in the matters in question;" and they decided "that their proper functions are to enforce the rights of parties arising out

of serious transactions, and not to pay regard to *Sponsiones ludicrae.*"

In 1844 a select committee of the House of Commons on gaming recommended that "wagering in general should be free and subject to no penalty;" and they also expressed an opinion in favour of the law of England being assimilated to that of Scotland.

In the session of 1845 the act 8 & 9 Vict. c. 109 was passed, which enacts "That all contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made: provided always, that this enactment shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or toward any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise."

By 16 Charles II. c. 7, any person who won any sum of money by fraud, cosenage, or deceit was to forfeit treble the value won. Under 8 & 9 Vict. c. 109, cheating at play is to be punished as obtaining money under false pretences.

The act 16 Charles II. c. 7 was also designed to repress excessive gaming by restraining it to playing for ready money. By § 2 it was provided that if any person shall play or bet, &c. other than with or for ready money, and shall lose any sum, &c. exceeding 100*l.* at any one time or meeting, upon ticket or credit, or otherwise, and shall not pay down the same at the time, the party losing shall not be compelled to pay; any contract or securities for the payment are declared void; and the person winning shall forfeit treble the value. This act is repealed by 8 & 9 Vict. c. 109.

The act 9 Anne, c. 14, also prohibits all gaming or betting on any game on credit, and enacts that any person who shall at any one time or sitting, by playing at cards, dice, or other game whatsoever, or betting on the sides of such as do play, lose to any one or more persons in the whole the sum or value of 10*l.*, and shall pay the same or any part thereof, may within three months sue for and recover the same; and if the loser do not within three months sue for the same, any other person may sue and recover with treble the value of the wager, and costs. This act made void all notes, bills, bonds, mortgages, and other securities or conveyances whatever given for gaming debts; but by 5 & 6 Wm. IV. c. 41, bills and mortgages given for such debts were not void, but were made recoverable by action at law as if they had been given for an illegal consideration. Other descriptions of securities mentioned in 9 Anne, c. 14, and also in 16 Charles II. c. 27, were not affected by the act 5 & 6 Wm. IV. c. 41.

It was enacted by 13 Geo. II. c. 19, that no horse-race shall be run for any prize less than 50*l.* in value. According to the decision of the courts, a wager was illegal when the race was for a stake of less than 50*l.* The above act of 13 Geo. II. was repealed so far as relates to horse-racing by 3 & 4 Vict. c. 5. The 18 Geo. II. c. 34, was an act similar to the one of 13 Geo. II. It was designed "to explain, amend, and make more effectual the laws in being to prevent excessive and deceitful gaming, and to restrain and prevent the excessive increase of horse-races," and contained a clause to the effect that nothing contained in the act should repeal or invalidate the act 9 Anne, c. 14, which prohibited betting for sums exceeding 10*l.* The later statutes (13 Geo. II. c. 19, and 18 Geo. II. c. 34), however, made it lawful for horses to run for a stake of 50*l.*, and were therefore inconsistent with the statute of Anne, and must be considered as having so far superseded it; but as respects betting on horse-races the statute of Anne was not affected.

The provision of the statute of Anne against bets exceeding 10*l.* was so much a dead letter, that its existence appears to have been almost forgotten, until in 1843 a number of actions were brought by common informers against several noblemen and gentlemen who had violated the law by betting sums of more than 10*l.* on horse-races. On the plea that they were

ignorant of the law which they had broken, a bill was brought in early in the session of 1844, for the relief of these persons, and was passed through its several stages with an alacrity which excited some attention at the time. The act is c. 3, 7 Vict., and it was entitled 'An Act to stay proceedings for three calendar months, and till the end of the present session of Parliament, in certain actions under the provisions of several statutes for the prevention of excessive gaming, and to prevent any proceedings being taken under those statutes during such limited time.' Select committees were appointed in both Houses of Parliament to inquire into the laws respecting gaming, and another act (7 Vict. c. 7) was passed to indemnify witnesses implicated in gaming transactions who should give evidence before these committees. Before the session was over, and to prevent the consequences of the act 7 Vict. c. 3 being allowed to expire, another act was passed (7 & 8 Vict. c. 58) which further stayed proceedings in the actions for gaming.

It is to be observed that the act 8 & 9 Vict. c. 109, repeals those parts of 9 Anne, c. 14, and 18 Geo. II. c. 34, which rendered it illegal to win or lose any sum exceeding 10*l.* at play or by betting; and there is a clause under which all actions and informations commenced previous to this act under former statutes against gaming are to be discontinued on payment of costs.

The act 7 Geo. II. c. 8, which was made perpetual by 10 Geo. II. c. 8, entitled 'An Act to prevent the infamous practice of stock-jobbing,' is violated hourly on the London Stock-Exchange by the practice of time-bargains.

The acts 19 Geo. II. c. 37, and 14 Geo. III. c. 48, are intended to prevent transactions of the nature of gaming or wagering on policies of marine and life insurance.

Various acts were passed at different times for suppressing lotteries not allowed by law, and at length the state lotteries themselves were put an end to.[LOTTERY.]

All gaming-houses are regarded as nuisances at common law, and those who keep them are liable at common law (independently of statutory provisions) to be indicted and punished by fine and imprisonment at discretion.

The statute 33 Hen. VIII. c. 9 entitled 'The bill for the maintaining artillery and the debarring of unlawful games,' prohibits the keeping for gain, lucre, or living, any house or place of "bowling, coyting, cloysh-cayls, half-bowl, tennis, dicing-table, or carding, or any other manner of game prohibited by any statute heretofore made, or any unlawful game now invented or made, or any other new unlawful game then or hereafter to be invented, found, had, or made," on pain of forfeiting 40*s.* a-day. The same statute imposes a penalty of 6*s.* 8*d.* for every time upon any person using such houses and there playing.

By 8 & 9 Vict. c. 109, public billiard and bagatelle boards are not to be kept without a licence, and the places where they are kept are to be closed entirely on Sundays, and on other days at midnight, except Saturday, when the hour of closing is fixed at eleven o'clock.

The act 8 & 9 Vict. c. 109, greatly facilitates proceedings against any common gaming-house, by enacting that in default of other evidence it shall be sufficient to prove that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; and every such house or place shall be deemed a common gaming-house. It is not necessary under this act to prove that any person found playing at any game was playing for any money, wager, or stake. The act dispenses with the necessity of obtaining the allegation of two householders that any house is a common gaming-house; and provides, that on the report of a superintendent of metropolitan police, it shall be lawful for either of the commissioners of police to authorize the superintendent by a written order to enter any house or room with constables, and, if necessary, to use force for the purpose of effecting such entry, whether

by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize and destroy all tables and instruments of gaming found in such house or premises, and also to seize all monies and securities for money found therein. If any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game be found in any house or room which the police have entered as a suspected gaming-house, or about the person of any of those who shall be found therein, it shall be evidence until the contrary be made to appear, that such house or room is used as a common gaming-house, and that the persons found in the room where such instruments of gaming shall have been found, were playing therein, although no playing was actually going on in the presence of those who made the entry. Before this act was passed, persons found in a gaming-house could not be searched; and proof of play was necessary before entry. In all other places out of the metropolitan police district the justices may by warrant empower constables to enter gaming-houses. Witnesses who have been concerned in unlawful gaming are indemnified.

The punishment which may be inflicted on gaming-house keepers in addition to the penalties mentioned in 33 Hen. VIII. c. 9, are a penalty not exceeding 100*l.* or imprisonment with or without hard labour for a term not exceeding six months.

Gambling in the palace where the king resides for the time being, is excepted both in the statute of Anne c. 14, and of Geo. II. c. 34.

By 5 Geo. IV. c. 83, persons betting &c. in any street or open and public place are punishable summarily as rogues and vagabonds.

On the night of the 8th of May, 1844, a simultaneous entry was made by the police into all the common gambling-houses, seventeen in number, which were then known to exist in the metropolitan police district. Gambling is also carried on in the metropolis at places where billiard tables are kept, at public-houses, and also at cigar-shops. The evidence taken before the select committees on gaming in 1844 contains a mass of information on the subject of gaming and gambling both in London and elsewhere.

In most parts of Germany gaming is allowed; and the magnificent saloons set apart for roulette and rouge-et-noir at Baden and other German watering places, are well known to English travellers on the Continent. The respective princes of the states in which these fashionable gaming-places exist derive a large revenue by letting the exclusive privilege of keeping gaming establishments.

In the United States of America, but more particularly in the southern States, the practice of gambling is very common, though restrained, we believe, in all the States by legislative enactments. In the state of New York, wagers are considered a good ground of an action. In Pennsylvania the Supreme Court has decided that no action can be maintained to recover money lost by any wager or bet.

Gaming (alea) among the Romans was played with dice. The earliest enactment against it is referred to by Plautus and Cicero; but it is not certain what the penalty was. Under the late republic and the empire gaming was a common vice, but it was considered to be disreputable. The little that is known of the penalties against gaming is contained in the Digest (xi. tit. 5) and the Code of Justinian (iii. tit. 43). The praetor in this, as in many like cases, placed the encourager of gaming under disabilities. If a man lent his house for gaming, and, while the gaming was going on there, was beaten or had anything stolen from his house, the praetor refused him all remedy. A Senatus consultum, the name and time of which are not mentioned, prohibited all playing for money, except the stake was made upon the five athletic exercises enumerated; and, as we must infer, by the persons who joined in the exercises. If a slave, or a son in the power of his father, lost money at gaming, the father or owner of the slave might recover it. If a slave won money, there might be an action for it against the master; but the demand against the master could not exceed the amount of the slave's peculium, that is, the property which the slave held as his own, according to Roman

custom, with the permission of his master. The praetor's edict also allowed an action against parents and patrons in respect of money lost (to children or the patrons' freed men, as we must understand it). Justinian made several constitutions against gaming. A man who lost money at gaming was not bound to pay it; and if he did pay, it could be recovered by him or his successors (in the Roman sense) from the winner or his heredes any time within thirty years. If they did not choose to recover it, the father or defender (defensor) of the town in which the money was lost might recover it, or any other person might. The money, when recovered, was laid out for public purposes. Gamblers were also liable to a fine. Spiritual persons who violated the gaming laws, or were present at gambling, were suspended for three years and confined in a monastery (*Novell.* 123, c. 10).

The following abstracts of the laws relating to gaming in different countries were prepared by J. M. Ludlow, Esq., and were laid before the Select Committee of the House of Commons on gaming, by H. Bellenden Ker, Esq.:—

By the French law, as it stood before the Revolution, minors alone could recover their losses at play; but no winnings could be sued for except in the case of warlike sports; when not excessive, games of strength and skill were permitted, games of mere chance absolutely forbidden.

The Code Français allows an action for monies won at games of strength and skill, when the amount is not excessive; but monies paid can never be recovered, unless on the ground of fraud. The keepers of gaming-houses, their managers or agents, are punishable with fine (100 to 6000 francs) and imprisonment (two to six months), and may be deprived of most of their civil rights. A trifling fine is imposed on those who set up lotteries, or games of chance in public places; the furniture, implements, &c. are in all cases to be seized.

By the Prussian Code all games of chance, except when licensed by the state, are prohibited. Gaming debts are not the subject of action; but monies paid cannot be sued for by the loser. Wagers give a right of action when the stakes are constituted in cash in the hands of a third person; they are void when the winner had a knowledge of the event, and concealed it. Monies lent for gambling or betting purposes, or to pay gambling or betting debts, cannot be sued for. Gaming-house keepers are punishable with fine, professed gamblers with banishment; and if they break the ban, by imprisonment. Occasional cheating at play obliges to compensation; professed swindlers at play are punishable as for theft, and banished afterwards. Monies won from a drunken man, if to a considerable amount, must be returned, and a fine paid of equal value.

In Austria no right of action is given either to winner or loser. All games of chance are prohibited, except when licensed by the state. Cheating at play is punishable with imprisonment, according to the amount of fraudulent gain. Playing at unlawful games. or allowing such to take place in one's house, subjects the party to a heavy fine, or in default to imprisonment.

The provisions of the Sardinian civil code are similar to those of the French, giving an action for monies won at games of strength or skill, when not excessive in amount; but not allowing the recovery of monies lost, except on the ground of fraud or minority (a provision taken from the old French law).

The Bavarian code is somewhat special in its provisions; it distinguishes between games of pure skill, and mixed skill and chance on the one hand, and games of mere chance on the other. In the two former, monies honestly won, and not excessive in amount, may be lawfully claimed, and monies lost cannot be recovered; but with respect to fraudulent or excessive gaming, and also as to all games of mere chance, the winner may be called upon to repay his gains, and is liable, together with the loser (except as to the latter, in the case of fraud), to a penalty of varying amount. Gaming-house keepers and professed gamblers are subjected to various penalties. Distinctions are also taken as to wagers, which are only void for fraud or immorality, but the amount of which is liable to be re-

duced, if excessive. When monies lost at play are proved to have been the property of some other person than the player, the true owner may recover them.

Wagers also appear to be lawful in Spain, when not in themselves fraudulent, or relating to anything unlawful or immoral. (Johnson's *Institutes of the Civil Law of Spain*, p. 242.)

GAOL DELIVERY. The commission of gaol delivery is directed to the justices of assize of each circuit, the serjeants and king's counsel attending that circuit, the clerk of the assize, and the judges associate. It is a patent in the nature of a letter from the king, constituting them his justices, and commanding them, four, three, or two of them, of which number there must be one at least of the judges and serjeants specified, and authorising them to deliver his gaol at a particular town of the prisoners in it; it also informs them that the sheriff is commanded to bring the prisoners and their attachments before them at a day to be named by the commissioners themselves. Under this commission the judges may proceed upon any indictment of felony or trespass found before other justices against any person in the prison mentioned in their commission and not determined, in which respect their authority differs from that of justices of oyer and terminer, who can proceed only upon indictments found before themselves. (2 Hale, *P. C.*) [ASSIZE.]

Antiently it was the course to issue special writs of gaol delivery for each prisoner, but this being found inconvenient and oppressive, a general commission has long been established in their stead. (4 Bl. *Com.*; Hawk, *P. C.*)

GARDEN ALLOTMENTS. [ALLOTMENTS.]

GARTER, ORDER OF THE, one of the most ancient and illustrious of the military orders of knighthood in Europe, was founded by King Edward III. The precise year of its institution has been disputed, though all authorities agree that it was established at Windsor after the celebration of a tournament. Walsingham and Fabyan give 1344 as its date; Stowe, who, according to Ashmole, is corroborated by the statutes of the Order, says 1350. The precise cause of the origin or formation of the Order is likewise not distinctly known. The common story respecting the fall of the Countess of Salisbury's garter at a ball, which was picked up by the king, and his retort to those who smiled at the action, "*Honi soit qui mal y pense*," which afterwards became the motto of the Order, is not entirely given up as fable. A tradition certainly obtained as far back as the time of Henry VI. that this Order received its origin from the fair sex. Ashmole's opinion was, that the Garter was selected at once as a symbol of union and a compliment to the ladies.

This Order was founded in honour of the Holy Trinity, the Virgin Mary, St. George, and St. Edward the Confessor. St. George, who had become the tutelary saint of England, was considered as its especial patron and protector. It was originally composed of twenty-five knights, and the sovereign (who nominates the other knights), twenty-six in all. This number received no alteration till the reign of George III., when it was directed that princes of the royal family and illustrious foreigners on whom the honour might be conferred should not be included. The number of these extra knights was fifteen in 1845. The military knights of Windsor are also considered as an adjunct of the Order of the Garter.

The officers of the Order are a prelate, who is always the Bishop of Winchester; a chancellor, who till 1837 was the Bishop of Salisbury, but is now the Bishop of Oxford, in consequence of Berkshire, and of course Windsor, being transferred to that diocese; a registrar, who is the Dean of Windsor; garter principal king-at-arms of the Order; and a gentleman usher of the black rod. The chapter ought to meet every year on St. George's Day (April 23rd), in St. George's Chapel, Windsor, where the installations of the Order are held, and in which the banners of the several knights are suspended.

The original dress of the Knights of the Garter was a mantle, tunic, and capuchin or hood, of the fashion of the time, all of blue cloth; those of the knights com-

panions differing only from the sovereign's by the tunic being lined with miniver instead of ermine. All the three garments were embroidered with garters of blue and gold, the mantle having one larger than all the rest on the left shoulder. The dress underwent various changes. Henry VIII. remodelled both it and the statutes of the Order, and gave the knights the collar, and the greater and lesser George, as at present worn. The last alteration in the dress took place in the reign of Charles II.: the principal parts of it consist of a mantle of dark blue velvet, with a hood of crimson velvet; a cap or hat with an ostrich and heron plume; the stockings are of white silk, and the garter, which is of dark blue velvet, having the motto embroidered in gold letters, is worn under the left knee. The badge is a gold medallion representing St. George and the Dragon, which is worn suspended by a blue ribbon; hence it is a form of speech to say, when an individual has been appointed a Knight of the Garter, that he has received the blue ribbon. There is also a star worn on the left breast. The fashion of wearing the blue ribbon suspended from the left shoulder was adopted in the latter part of the reign of Charles II.

From the institution of the Order of the Garter to at least as late as the reign of Edward IV., ladies were admitted to a participation in the honours of the fraternity. The queen, some of the knights-companions' wives, and other great ladies, had robes and hoods of the gift of the sovereign, the former garnished with little embroidered garters. The ensign of the garter was also delivered to them, and they were expressly termed *Dames de la fraternité de St. George*. The splendid appearance of Queen Philippa at the first grand feast of the Order is noticed by Froissart. Two monuments also are still existing which bear figures of ladies wearing the garter; the Duchess of Suffolk's, at Ewelme, in Oxfordshire, of the time of Henry VI., represents her wearing it on the wrist, in the manner of a bracelet; Lady Harcourt, at Stanton Harcourt, in Oxfordshire, of the time of Edward IV., wears the garter on her left arm.

When Queen Anne attended the thanksgiving at St. Paul's in 1702, and again in 1704, she wore the garter set with diamonds, as head of the Order, tied round her left arm. Queen Victoria wears the blue ribbon suspended from the shoulder.

The fees which are payable upon the installation of a Knight of the Garter amount to a considerable sum. If the honour is conferred on any foreign prince or other distinguished foreigner, these fees are commonly, if not invariably, charged upon the civil contingencies, and are consequently paid by the public. When the King of Prussia was installed, in 1842, the following were the fees paid by the public:—

	£
To the Register of the Order .	40
the Dean and Canons of Windsor	20
the Military Knights of Windsor	20
Garter King of Arms, in lieu of the upper garment . .	60
the Usher of the Black Rod .	20
Garter King of Arms, his installation fee	30
the Officers at Arms . .	30
the Church of Windsor, for the offering	11
the Choir of Windsor . .	16
Accustomed charges for the Royal Banner, Garter Plate, Helmet, Sword, and other achievements for his Majesty, with extra embroidery, ornaments, and decorations, with a variety of contingent expenses . . .	138
Fees to the Secretary of the Chancellor of the Order, on warrants for Robes and Jewels, and on the Patent for Dispensation .	21
Extra ingrossing and emblazoning and otherwise ornamenting the Patent of Dispensation transmitted to his Majesty the King of Prussia, printing additions to the Statutes of the Order, &c.	22
Expenses to Windsor on putting up Achievements, &c. . .	10
	£439

GAVELKIND, a customary tenure existing at this day in the county of

Kent only. It seems that this tenure was the common socage tenure among the Anglo-Saxons (Glanvil, l. 7, c. 3), and the reason of its continuance in Kent has been ascribed to the resistance which the inhabitants of the county made to the Norman invaders. This tenure also prevailed in Wales until the 34th Henry VIII., when it was abolished by statute. Various derivations of the term Gavelkind have been suggested: that adopted by Sir Edward Coke and his contemporaries was, *gave all kinde*, from the consequences of the tenure—an etymology worthy of Coke. But that generally received at the present day is from the Saxon *Gavel* (Rent); Gavelkind, that is, land of such a kind as to yield rent. A very elaborate examination of the several proposed derivations is given in the 1st chapter of Robinson's 'Treatise on Gavelkind.' The chief distinguishing properties of this tenure are: "That upon the death of the owner without a will the land descends to all the sons in equal shares, and the issue of a deceased son, whether male or female, inherit his part; in default of sons, the land descends in equal shares to the daughters; in default of lineal heirs, the land goes to the brothers of the last holder; and in default of brothers, to their respective issue."

The tenant may aliene at 15 years of age, by means of a feoffment, and the estate does not escheat in case of an attainder and execution, the maxim being, "the father to the bough, the son to the plough." The husband is tenant by curtesy of a moiety of his wife's lands, without having any issue by her; but if he marries again, not having issue, he forfeits his curtesy. A wife is endowed of a moiety of the lands of which her husband died seised, not for life as by the common law, but during chaste widowhood only. Gavelkind lands were generally devisable by will before the statute of wills was passed.

Several statutes have been passed, at the request of holders of Gavelkind lands, to render them descendible according to the course of the common law, or, as it is called, to disgavel them. These statutes however only alter the partible quality of the customary descent; they do not affect the other incidents to the tenure. And notwithstanding the extent of the disgavelling statutes, it is always presumed that lands in Kent are of this tenure, until the contrary is proved. The names of all the persons whose lands in Kent have been disgavelled may be found in Robinson's *Treatise*, before mentioned, p. 381. This was one of the tenures proposed to be abolished or modified by the Real Property Commissioners in their third Report. (2 Blackstone, *Com.*; Robinson's *Gavelkind.*)

This tenure existed also in Ireland as an incident to the custom of tanistry—and as such ceased with that custom in consequence of the judgment against it (Davis's *Reports*, 28.) In the reign of Queen Anne, with the view of weakening the Roman Catholic interest in Ireland, the land of Roman Catholics was made descendible according to the custom of Gavelkind, unless the heir conformed within a limited time; but by the stat. 17 and 18 Geo. III., c. 49 (Irish), the lands of Catholics are made descendible according to the course of the common law. (Robinson, p. 21.)

This customary descent is followed in some manors, particularly in the manors of Stepney and Hackney. (See the custumal of these manors printed in 2 Watkins, *Copyh.*, 508.)

GAZETTE. [NEWSPAPER.]

GENDARMERIE (from *Gens d'Armes*, men-at-arms) was a chosen corps of cavalry under the old monarchy of France: it is mentioned with praise in the wars of Louis XIII. and Louis XIV. Under the present system the gendarmerie is a body of soldiers entrusted with the police all over France; it furnishes patrols, arrests criminals, examines the passports of travellers, and contributes to the maintenance of good order. Gendarmes are generally stationed at the barriers or gates of the towns, at the principal inns on the roads, at markets and fairs, and along the lines of the frontiers. They are divided into foot and horse: *gendarmes à pied, gendarmes à cheval.* They form a distinct corps in the army, under their own superior officers, who are under the orders of the

ministers of the interior and of police; but in case of war, they may be called into active service like the other corps of the army. The gendarmerie is mostly recruited from old and deserving soldiers of other regiments, who consider it as a promotion, as they have better pay and enjoy greater liberty. This explains why the gendarmes, generally speaking, are remarkably well behaved and trusty men, who, while strictly executing their duties, behave with considerable civility towards unoffending people, such as travellers, and especially foreigners. The same description of troops exists in the Italian states, where they are called Carabineers.

GENEALOGY. [CONSANGUINITY; DESCENT.]

GENERAL, a title conferred on military men above the rank of field-officers. In all the states of Europe it indicates the commander-in-chief of the forces of the nation; the commander of an army or grand division, and also those who, under the latter, exercise his functions, with the particular designations of lieutenant-general and major-general.

The origin of the title appears in the history of France, in which country it seems to have been conferred on the commander of the royal army about the middle of the fifteenth century, when something like a regular military force was first established in Europe. The kings were then considered as holding the chief command of the army in virtue of their birth; and, on appointing persons under them to exercise a general superintendence of the forces, they gave to such officers the title of *lieutenant-general*, in order to designate at the same time the extent of their duties and their dependence on the sovereign whom they represented. By a decree made in the year 1450, in the reign of Charles VII., John, count of Dunois, was so qualified; and the title of lieutenant-general, denoting the immediate commander-in-chief of an army, was long retained in the French service. In the course of time, by an abbreviation in language, the prefix of the title was omitted, and the term *general* alone was applied to persons holding such command.

Previously to the epoch above mentioned the title of Grand Sénéchal of France appears to have conferred the right of commanding the royal armies; but the dignity being hereditary in the counts of Anjou, when that province passed to the crown of England in the reign of Henry II., the right ceased, and the kings of France delegated their authority to noblemen chosen at pleasure. In 1218 Philip Augustus conferred the command on Mathieu de Montmorenci, the constable of France; and the successors of that high officer held it till the reformation of the army in the reign of Charles VII.

It must be remarked, however, that at a period more early than that of the creation of lieutenant-generals under the sovereign, the title of captain-general had been conferred on certain officers with military jurisdiction over particular districts. This species of command is supposed to have been first instituted in 1349 by Philip of Valois, who placed Guy de Nêle, already Maréchal de France, over the district of Xaintonge; within which he was authorised to inspect the castles and fortified towns, and to superintend all the military affairs. The nature of the duty therefore seems to have resembled that of the inspecting field-officers now appointed to particular divisions of this country and the colonies. But in 1635, that is, about eight years after the suppression of the post of constable of France, Louis XIII. gave the title of captain-general, for the army of Italy, to the Duke of Savoy; and this appointment was precisely that of commander-in-chief, since it placed the duke above the Maréchal de Créqui, who was previously at the head of the army.

It is about this time that the term lieutenant-general, in the sense which it now bears, first appears. For, according to Père Daniel, who quotes the history of Cardinal Richelieu for the fact, when the Prince of Condé was made commander-in-chief of the army destined against Spain, the Marquis de la Force was appointed his *lieutenant-general*, and M. de Feuquières held the same rank under the Duc de Longueville, who was to act with an army in Franche-Compté. We have

here but one lieutenant-general for each army: but the writer above mentioned observes that, during the reign of Louis XIV., the armies of France being much more numerous than before, the officers were also greatly multiplied; and adds that, in 1704, there were more than sixty who had the title of lieutenant-general.

The title of captain-general above mentioned must not be confounded with that which was created by Cardinal Richelieu, in 1656, in favour of the Marquis de Castelnaut: this officer was placed above the lieutenant-generals of the army, but was subordinate to the marshal of France, who commanded in chief; and it appears that some of the former having retired from the service in disgust, in consequence of the new appointment, the cardinal was obliged to create others in their places.

In the reign of Francis I. the title of colonel-general was instituted; and it was first in 1544 conferred on M. de Taix, with the command of all the infantry of the nation. The title existed however only to the time of Louis XIV., by whom it was abolished.

The English nation has nearly followed the practice of France in matters appertaining to the military service. Thus the lord-high-constable and the lord-marshal of England, in former times, were at the head of the military establishments of the country; and, when the first office was suppressed by Henry VIII. in 1521, the title of captain-general appears to have been adopted for the commander-in-chief. This title occurs in the list of the army which served at St. Quintin in 1557, of which list a copy is given by Grose from a MS. in the British Museum. From the same list it appears that a lieutenant-general for the whole army was immediately subordinate to the former; and that under the last was a general of horse, a captain-general of foot, with his lieutenant, and a serjeant-major (corresponding to a present major-general). But the title of captain-general probably did not long remain in use; for, in the list of the army raised by Elizabeth in 1588, the highest officer is styled lieutenant-general, the queen herself being probably considered as the commander-in-chief. In the army which, in 1620, it was proposed to raise for the recovery of the Palatinate, and in that raised by Charles I. in 1639, the commander is entitled the lord-general; a lieutenant-general appears as the second in command, and the third is designated as serjeant-major-general. It was probably soon after this time that the last officer was called simply major-general; for we find that in 1656 Cromwell appointed twelve officers under that title to have civil and military jurisdiction over the counties of England. (Clarendon, b. 15.)

It is evident, from the histories of the northern states, that the armies in that part of Europe have always been commanded nearly in the same manner as those of France and England. Sir James Turner, who wrote his 'Military Essayes' in 1670, states that in Germany, Denmark, and Sweden, the commander-in-chief was designated field-marshal, and that he had under him lieutenant-generals of the whole army, besides generals and major-generals of horse and foot. With respect to the first title, he considers it to have been granted, as a more honourable distinction than that of lieutenant-general, only within about fifty years from his time; and he appears to ascribe the introduction of it to the king of Sweden (Gustavus Adolphus), who, when he invaded Poland, thought fit to gratify some of his generals by designating them lieutenant-field-marshals. (*Pallas Armata*, ch. 13.) From that time, both in Germany and Great Britain, such title, omitting the word lieutenant, has been considered the highest in the army.

In France, during the reign of Louis XIV., and perhaps at an earlier time, the naval commander immediately below the rank of vice-admiral was entitled lieutenant-general. A similar designation seems to have been early employed in the English service, for in the time of Queen Elizabeth the commander of a squadron was called the *general*; and as late as the time of the Commonwealth a joint commission of admiral and general was given to Blake and Montague though the expedition on which the flee

was sent was confined to an object purely naval.

The administration of military affairs in the great nations of Europe becoming highly complicated during the eighteenth century, the commanders-in-chief, even when not actually on the field of battle, found themselves fully occupied with the higher departments of the service; and it became indispensable that the number of subordinate generals should be increased, in order that all the steps which were to be taken for the immediate security of the armies, and for the acquisition of the necessary supplies, might be duly superintended by responsible officers. The division of an army, for the purpose of occupying important positions or of obtaining subsistence, led also to the appointment of several distinct commanders, each of whom required his own particular staff; and this circumstance, added to the necessity of having a number of officers prepared at once to assume the command of troops when circumstances should require it, will explain why military men holding the rank of general appear now to be so numerous.

In the British service in 1845 there are 88 full generals, 131 lieutenant-generals, and 147 major-generals; but of this number many command particular regiments as colonels, or hold military governments in the country and colonies; some of them have only local rank; and 20 have retired from the service, retaining the title, but without receiving the pay or being qualified for obtaining any progressive promotion.

The military *staff* of Great Britain at head-quarters consists of the commander-in-chief, the adjutant-general, and the quartermaster-general. The charge of this staff is provided for in the estimates for Public Departments, and amounted in 1845 to 14,640*l.* The field-marshal the commander-in-chief receives 5999*l.* 13*s.* 9*d.* a year, and has an allowance of 720*l.* for forage. The military secretary has 2000*l.* a year, and 146*l.* for forage, and the four aides-de-camp of the commander-in-chief have an allowance of 9*s.* 6*d.* a day each, and 88*l.* a year each for forage. The annual cost of the adjutant-general's office is 3242*l.* which includes the pay of a deputy adjutant-general, an assistant adjutant-general, and a deputy assistant. The charge of the quartermaster-general's office is 2705*l.* a-year, which includes his own pay and that of the assistant and deputy quartermasters-general. Besides the staff at head-quarters there is a general staff which consists of the generals commanding districts and their aides-de-camp in Great Britain and Ireland, the aides-de-camp to the queen, &c.: the charge of this department in 1845 was 44,504*l.* in pay, and 25,000*l.* for contingencies. There is also the military staff of the colonies, which in the same year cost 88,726*l.* of which 33,000*l.* was for contingencies and 55,726*l.* for pay. The total of the contingencies and pay of the home and foreign staff amounted to 158,230*l.*

The duty of the adjutant-general falls partly under that of the serjeant-major-general in the sixteenth century: in the field he receives the orders from the general officer of the day, and communicates them to the generals of brigades; he makes a daily report of the situations of all the posts placed for the security of the army; and, in a siege, he inspects the guards of the trenches.

The quartermaster-general corresponds in part to the harbinger of the army in the sixteenth century. This officer has the charge of reconnoitring the country previously to any change being made in the position of the army; he reports concerning the ground which may be favourable for the site of a new encampment, and upon the practicability of the roads in the direction of the intended lines of route. He also superintends the formation of the encampment and the disposition of the troops in their cantonments.

The first notice of a commander of the artillery occurs in the time of Richard III.: this officer was designated simply master of the ordnance till 1603, when the Earl of Devon was dignified with the title of general. The head of this department is now styled master-general of the ordnance.

GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND. This is the Scottish ecclesiastical parliament; it is a representative, legislative, and judi-

cial body, which differs essentially in its constitution from the Convocation of the English church [CONVOCATION], in being composed of representatives of the laity, as well as of the clergy; and, therefore (like the British House of Commons), may be considered as a delegation from its constituency, the church. The following is the composition of the General Assembly:—

Eighty presbyteries, each of which consists of a certain number of parishes, varying from six to thirty-six, send to the Assembly 218 ministers and 94 elders; the city of Edinburgh sends 2 elders, and 65 other royal burghs send each one elder; the four universities send each a representative, and an additional one is sent from Marischall college, Aberdeen—these five may be either ministers or elders; one minister and one elder represent the churches in India in connexion with the church of Scotland. The kirk of Scotland has 1023 parishes, with 1050 ministers.

The General Assembly meets annually, in the month of May, in Edinburgh. The session lasts only ten days; but special business not decided within the period of the session may be referred to a commission, which is, in fact, the Assembly under another name; the commission can hold quarterly meetings. The speaker, or president of the assembly, is called moderator; he is chosen annually, and is, in modern times, a clergyman, it being a rule that the moderator should preach a sermon before the opening of the Assembly; but laymen have occasionally filled the chair.

Each parish in Scotland has its kirk session, composed of the minister and lay elders of the parish, which manages the parochial business. From the decision of the kirk session there is an appeal to the presbytery in which the parish lies. Each presbytery is composed of the ministers and elders of a certain number of parishes; but the presbyteries vary considerably in the number of parishes of which they are formed. A higher court, called a synod, is composed of two or more presbyteries. From the decision of a synod an appeal lies to the General Assembly, whose decision is final. The functions of the Assembly are analogous to a combination of the functions of both houses of parliament. Its members speak and vote; it judges all matters connected with the government of the church; and it can proceed judicially against any member of the church, clerical or laical, for alleged impropriety or inconsistency of conduct or doctrine.

The connexion of the Church of Scotland with the State is indicated in the General Assembly by the presence of a functionary, who, under the title of lord-high-commissioner, represents the king. The Scottish church however does not recognise the king as head of the church, but as head of the state, with which the church is allied, for purposes of protection and civil authority. The lord-high-commissioner has no voice in the assembly; business is not necessarily interrupted by his absence; and his presence merely implies the sanction of the civil authority. On the conclusion of the session of the General Assembly, the moderator, after mentioning the day in the following year on which the Assembly meets again, dissolves the meeting in the name of the Lord Jesus Christ, the head of the church (sometimes the words 'the only head' are used), and then the lord-high-commissioner adds the sanction of the civil authority by appointing in the name of the king the Assembly to meet on the day named by the moderator.

GENERALISSIMO, the commander-in-chief of an army which consists of two or more grand divisions under separate commanders. The title is said by Balzac to have been first assumed by Cardinal Richelieu, when he led a French army into Italy, and it has been since occasionally given to officers at the head of armies on the Continent, but it has never been adopted in this country.

GENTLEMAN, a corruption of *gentilhomme*, our Saxon ancestors having very early substituted "mon," or "man," for the corresponding term of the Norman-French, from which they originally received the term. Some form of this word (a compound of *gentilis* and *homo*) is found in all the Romance languages (*gentil-homme* in French, *gentil-uomo* in

Italian, and *gentil-hombre* in Spanish), and it is undoubtedly one of the many traces of the great influence which the laws and polity of Rome have exercised upon modern society and civilization.

In the earliest form of the Roman constitution the populus, or ruling portion of the community, was divided into gentes, which were united by a common name, and the performance of certain sacred rights. Each gens was again subdivided into several familiæ, distinguished by a surname in addition to the common Gentile appellation. Thus the gens Cornelia comprised the families of the Scipiones, the Lentuli, the Sullæ, &c. In default of Agnati, the property of a deceased person reverted, not to the whole populus, but to the gens. [CONSANGUINITY.]

The Gentile privileges were much discussed in the quarrels between the patricians and the plebeians; and the phrase *gentem habere* (Livy x. 8) is often employed as distinctive of the patricians. When the members of the plebs obtained the right of intermarriage with patrician families, and access to the honours of the state, a new order of nobility (nobiles) was formed, which rendered the old distinction between Patrician and Plebeian of less importance. Still the old Patrician families of Rome had a superior rank in public estimation, as being descended from the old nobility. There were both Patrician and Plebeian Gentes at Rome: the origin of the Plebeian Gentes is not capable of being explained historically; but it may have arisen in several ways. In Cicero's time the word Gentilis is defined in a way that suited his period, but would have been too comprehensive in the earliest periods of the Roman states. Gentiles, according to Cicero (*Top.* 6), denote those who had the same name, whose ancestors had always been free, who were not capite diminuti, or had lost none of their civil rights. Hence also, in an opposite sense, "*sine gente*" is employed by Horace (*Sat.* ii. v. 15) and Suetonius (*Tib.* 1) for ignobly born and of servile parentage.

The privilege of succession, which was called *jus gentilitatis*, or simply *gentilitas* (Cic., *De Oratore*, i. 38), and formed one of the enactments of the Twelve Tables, was gradually undermined by the encroachments of the praetors on the civil law, and finally disappeared (Gaius, iii. 25); but the name of gentle (gentile) man, has survived in all the languages of Western Europe, which are derived from the Latin or have received large additions from it.

According to Selden (*Titles of Honour*, p. 852), "a gentleman is one that either, from the blood of his ancestors, or the favour of his soveraigne, or of those that have the vertue of soveraignte in them, or from his own vertue, employment, or otherwise, according to the customes of honour in his countrie, is ennobled, made gentile, or so raised to an eminencie above the multitude, that by those lawes and customes he be truly nobilis, or noble, whether he have any title, or not, fixed besides on him." That the word was formerly employed in this extensive signification is clear, from a patent of Richard II., by which one John de Kingston is received into the estate of a gentleman and created an esquire ("Nous lui avons resceivez en l'estate de gentilhome et lui fait esquier"); and from another of Henry VI., who there, by the term "nobilitamus," creates one Bernard Angevin, a Bourdelois, a gentleman. And, according to Smith (*De Rep. Ang.*, lib. i. c. 20, 21), under the denomination of gentleman are comprised all above yeomen, whereby noblemen are truly called gentlemen.

In a narrower sense a gentleman is generally defined to be "one who, without any title, bears a coat of arms, or whose ancestors have been freemen; and by the coat that a gentleman giveth, he is known to be, or not, descended from those of his name that lived many hundred years since." (Jacobs' *Law Dictionary*.) There is also said to be a gentleman by office and in reputation, as well as those that are born such (2 *Inst.* 668); and according to Blackstone, quoting Sir Thomas Smith (1 *Comm.*, p. 406), "Whosoever studieth the laws of the realm, who studieth in the universities, who professeth the liberal sciences, and (to be short) who can live idly and without manual labour, and well bear the port, charge and countenance of a gentle-

man, he shall be called master, and taken for a gentleman."

The author of the Commentaries must have been somewhat puzzled with his definition of a gentleman, as understood in his time. Having defined a gentleman to be one who studieth the laws, &c., he adds (to be short), that he who can live idly and bear the port, &c. of a gentleman, is a gentleman; that is, if he can live idly, and if he can also do as a gentleman does (it not being said what this is), he is a gentleman. Perhaps a definition of the term, as now used, could not be easily made; it being extended by the courtesy of modern manners to many who do not come within the ancient acceptation of the term, and denied by public opinion to many whose rank and wealth do not make up for the want of other qualifications.

GERMANIC CONFEDERATION. The constitution of the old German Empire is noticed under GERMANIC EMPIRE. After the first French Revolution, most of the States of Germany were joined in a Confederation under the protection of Napoleon. [CONFEDERATION OF THE RHINE.] The reverses of Napoleon put an end to the Confederation of the Rhine, and in its place the Germanic Confederation, which still exists, was constituted by an act of the Congress of Vienna, dated 8th of June, 1815. It consists of thirty eight Independent States. The central point and organ of the Confederation is the Federative Diet, which sits at Frankfort on the Main. Its sessions were opened on the 5th of November, 1816. It exercises its authority in a double form: 1, as a general assembly, called Plenum; and 2, as a minor council, or the Federative government. The Plenum meets only whenever an organic change is to be introduced, or any affair relating to all the Confederation is to be decided. The Plenum contains seventy votes, of which Austria and the five German kingdoms, Prussia, Hanover, Saxony, Bavaria, Wirtemberg, have each four votes, and the other states, in proportion to their importance, three, two, or one vote each. The Federative government is composed of seventeen votes, out of which eleven principal states have each a single vote, and the remaining twenty-seven only six joint votes. Austria presides in both the assemblies, and decides in case of equality. The Federative government has the initiative, and deliberates on the projects which are presented to the Plenum, where they are not debated, but simply decided by a majority of ayes or noes. It executes the enactments of the Plenum, and despatches the current business of the Confederation. It decides by a simple majority, and seven votes form a quorum. The meetings of the Federative diet are either those wherein preparatory debates take place, but no protocols are made, or those wherein affairs are finally decided.

The object of the Germanic Confederation and the duties of the Federative Diet are—the maintenance of external security or mutual defence from a common enemy, and the preservation of internal peace among the Federative states, which must not declare war on each other, but must submit their differences to the decision of the diet. The maintenance of internal security comprehends not only the prevention of conflicts among the Federative states, but also the suppression of any attempt by the subjects of any of the states to subvert the existing order of things. It was in consequence of this principle that the central commission of inquiry into revolutionary measures was established at Mainz in 1819-20. A further development of the same principle, occasioned by the revival of liberal opinions throughout Germany by the French Revolution of July, was made on the 28th June, 1832, by the proclamation of the following articles, particularly directed against the constitutional states of Germany:—1st. The German princes are not only authorised but even obliged to reject all propositions of the states which are contrary to the fundamental principle, that all sovereign power emanates from the prince, and that he is limited by the assent of the states only in the exercise of certain rights. 2. The stoppage of supplies by the states, in order to obtain the adoption of their propositions, is to be considered as sedition against which the Confederation may act. 3. The legislation of the federative states

must never be in contradiction either to the object of the Federation or to the fulfilment of federal duties; and such laws (as for instance, the law of Baden, which established the liberty of the press) may be abolished by the diet. 4. A permanent commission of federal deputies shall watch over the legislative assemblies of the federal states, in order that nothing contrary to the federal act may occur. 5. The deputies of the legislative assemblies of the federal states must be kept by the regulations of their governments within such limits that the public peace shall not be disturbed by any attacks upon the Confederation. 6. The interpretation of the federal laws belongs exclusively to the federal diet. On the 5th July, 1833, the federal diet proclaimed a new law consisting of the following 10 articles: 1. All German works containing less than 20 sheets which appear in foreign countries cannot be circulated in the federal states without the authorisation of the several governments.* 2. Every association having a political object is prohibited. 3. Political meetings and public solemnities, except such as have been established for a long time and are authorised, cannot be held without the permission of the several governments. 4. All sorts of colours, badges, &c. denoting a party are proscribed. 5. The regulations for the surveillance of the universities, proclaimed in 1819, are renewed and rendered more severe. By the remaining 5 articles the federative states pledged themselves to exercise a vigilant watch over their respective subjects, as well as over foreigners residing in their states, in respect of revolutionary attempts; to surrender mutually all those individuals who had been guilty of political offences, with the exception of their own subjects, who are to be punished in their own country; to give mutually military assistance, in case of disturbance, and to notify to the diet all measures adopted with reference to the abovementioned objects.

On the 30th October, 1834, the meeting of the Federative diet unanimously agreed to the proposition of Austria, to establish a tribunal of arbitration in order to decide differences which might break out in any state of the Confederation between the government and the chambers respecting the interpretation of the constitution, or the encroachments on the rights of the prince by the chambers, or their refusal of subsidies. This tribunal consists of thirty-four arbitrators nominated by the seventeen members of the minor council, each member nominating two arbitrators. [FEDERATION.]

GERMANIC EMPIRE. The modern history of Germany commences in the ninth century, when Louis le Debonnair, the grandson of Charlemagne, became, by the treaty of Verdun, A.D. 843, the first king of the Germans. After A.D. 918, the crown became elective. The emperors of Germany assumed the title of Roman emperors from the time of Otho I., who died A.D. 973: when a successor to the throne was elected during the emperor's lifetime, he was called the king of Rome. On the 6th of August, 1806, when the German States had most of them fallen under the power of Napoleon, the emperor, Francis II., abdicated the imperial crown of Germany, declared the dissolution of the Germanic empire, and took instead the title of emperor of Austria. The Confederation of the Rhine had been formed by the policy of Napoleon, July 12th, 1806. [CONFEDERATION OF THE RHINE.]

Before the first French revolution the states of the Germanic empire consisted of the following members, divided into three colleges, or chambers:—

I. The Electoral College, which consisted of the Ecclesiastical Electors.

1. The archbishop of Mainz, arch-chancellor of the empire for Germany. 2. Archbishop of Treves, arch-chancellor of the empire for Gallia and the kingdom of Arles (a purely titular office). 3. Archbishop of Cologne, arch-chancellor for Italy (also a titular office).

II. The Secular Electors were—

4. The king of Bohemia, arch-cup-

* In 1836 the diet prohibited editors of newspapers and political writers from publishing accounts of the debates of the representative bodies, except they had previously appeared in the official papers of the respective governments. [PRESS, LIBERTY OF.]

bearer of the empire: he presented the emperor at the coronation banquet with a cup of wine and water. 5. The elector of Bavaria, arch-carver of the empire: he bore at the coronation-procession the golden bull before the emperor, and presented to him the dishes at the banquet. 6. The elector of Saxony, arch-marshal of the empire: he bore in the great solemnities of the empire the sword of state, and at the coronation preceded the emperor on horseback. 7. The elector of Brandenburg, arch-chamberlain of the empire: he bore in the coronation-procession the sceptre, and presented to the emperor a basin with water to wash his hands. 8. The elector palatine of the Rhine had the title of the arch-treasurer of the empire: his duties were to scatter at the coronation gold and silver medals, struck for the occasion, amongst the people. This electorate became united with that of Bavaria by the accession of the elector to the throne of the last-named principality in 1777, after the extinction of the reigning house of Bavaria. 9. The elector of Brunswick-Lüneburg, or Hanover, created by the Emperor Leopold I. in 1692, received in 1706 the title of arch-treasurer; when the emperor, having put to the ban of the empire the elector of Bavaria, took from him the office of the arch-carver, and bestowed it on the elector palatine of the Rhine, whose office on that occasion was given to Hanover.

The Second College consisted of the princes of the empire, who were in rank next to the electors: they had each a vote in the diet of the empire, and were divided into Spiritual and Temporal princes.

The Spiritual princes of the empire who had a vote in the diet were:—the archbishop of Salzburg, and formerly the archbishop of Besançon; the grand-master of the German order; the bishops of Bamberg, Würzburg, Worms, Eichstaedt, Speyer, Strassburg, Constanz, Augsburg, Hildesheim, Paderborn, Freysingen, Passau, Ratisbon, Trent, Brixen, Basel, Münster, Osnabrück, Liège, Chur, Fulda, Lübeck; the princely (gefürstete) abbot of Kempten; the princely prebendaries of Berchtolsgaden and Weissenburg; the princely abbots of Prüm, Stablo, and Cervey.

The Temporal princes were:—the arch-duke of Austria; the dukes of Burgundy, and Magdeburg; the counts palatine of Lautern, Simmern, and Neuburg; of Deuxponts (Zweibrücken), of Veldenz, and Lautereken; the dukes of Bremen, of Saxen-Weymar, Eisenach-Gotha, Altenburg, Coburg; the margraves of Brandenburg-Culmbach, and of Brandenburg-Onolzbach; the dukes of Brunswick, Zell, Grubenhagen, Calenberg, and Wolfenbüttel; the prince of Halberstadt; the dukes of Upper and Lower Pomerania; of Verden, Mecklenburg-Schwerin, Mecklburg-Gustrow (afterwards Strelitz); of Wirtemberg; the landgraves of Hessen-Cassel and Hessen-Darmstadt; the margraves of Baden-Baden, Baden-Durlach, and Baden-Hochberg; the dukes of Holstein, Gottorp, of Saxe-Lauenburg; the prince of Minden; the landgrave of Leuchtenberg; the prince of Anhalt; the princely count of Henneberg; the princes of Schwerin, Kamin Ratzeburg, and Hersfeldt; the princely count of Montbeliard. The princes enumerated belonged to the old body; the following who were elevated to their dignities after the time of the Emperor Ferdinand II., were called the new: the duke of Aremberg; the princes of Hohenzollern, Salm, Lobkowitz, Dietrichstein, Nassau-Hadamar, Nassau-Dillenburg, Auersberg, East Friesland, Schwarzenberg, Lichtenstein, Thurn-Taxis, and Schwarzburg. Many of these principalities were in the possession of one individual, who had consequently several votes, the votes being attached to the states and not to individuals.

The prelates, abbots, and abbesses of the empire were divided into two benches, the Suabian and the Rhenish, of which each had one vote. The counts and nobles of the empire were divided into four benches; of Suabia, Franconia, Westphalia, and of Wetterau, each having one vote. They belonged to the second college.

The free Imperial cities formed a college at the diet, divided into two benches, the Rhenish with fourteen cities, and the Suabian with thirty-seven. Each town had a vote.

The above-mentioned three colleges

formed the Diet of the empire, whose ordinary meetings were formerly summoned by the emperors twice a-year, in addition to extraordinary meetings. From the year 1663 the Diet sat at Ratisbon. The emperor at first appeared personally at the Diet, but in course of time he sent a delegate, called Principal Commissarius, who was always himself a prince of the empire, and who had an assistant, called Con-commissarius. The elector of Mainz, as arch-chancellor for Germany, or his deputy, presided in the Diet, and every despatch addressed to the Diet was directed to him, and communicated from his chancery to the members of the Diet. The president of the first college was the elector of Mainz; of the second, alternately, the archbishop of Salzburg and the arch-duke of Austria; and of the third, the representative of the town where the Diet was held. Every college voted separately; and when their respective decisions on the subject under discussion agreed, the matter was presented for the ratification of the emperor; after which it became law, and was called *conclusum imperii*. The emperor could refuse his ratification, but could not modify the decisions of the diet.

The Diet enacted, abolished, and interpreted laws; declared war: concluded peace; contracted alliances; and received foreign ambassadors. A declaration of war was decided on an Imperial proposition, by a majority of votes; and when it was decided, even those states that had voted against it were obliged to furnish their contingents. The diet also imposed taxes for the general expenses of the empire.

There were two tribunals for the decision of points in dispute between the members of the empire; the AULIC COUNCIL of the empire, which had its seat always at the residence of the emperor; and the Cameral tribunal of the empire (Cameralgericht), which sat at Wetzlar. They were composed of members delegated by the different states of the empire, and an imperial deputy presided.

The emperor was elected only by the electors, who could do it either personally or by deputies. The place of election was Frankfort on the Main, where the coronation also took place, although the golden bull of Charles IV. declared that the emperor should be elected at Frankfort, and crowned at Aix-la-Chapelle. All strangers, even the princes of the empire and foreign ambassadors, were obliged to leave the town on the day of the election, which took place in a chapel of St. Bartholomew's Church. Mainz was the teller; and after having collected the votes, he gave his own to Saxony. The emperor, immediately after the election, swore to the constitution, or, as it was legally termed, capitulation. He could do it either personally or by deputy.

GILD. [MUNICIPAL CORPORATIONS.]

GLASS. There are five distinct kinds of glass, which differ from each other in regard to some of the ingredients of which they are made, and in the processes of manufacture. These kinds are flint-glass, or crystal; crown-glass, or German sheet-glass; broad-glass, or common window-glass; bottle, or common green glass; and plate-glass. The principal ingredients used for the production of each of these kinds of glass are silex, or flint, and an alkali. The differences in the various kinds result from the description of alkali employed, and from the addition of certain accessary materials, usually metallic oxides.

The time at which glass was invented is very uncertain. The popular opinion upon this subject refers the discovery to accident. It is said (Plin., *Nat. Hist.*, lib. xxxvi. c. 26), "that some mariners, who had a cargo of *nitrum* (salt, or, as some have supposed, soda) on board, having landed on the banks of the river Belus, a small stream at the base of Mount Carmel in Palestine, and finding no stones to rest their pots on, placed under them some masses of nitrum, which, being fused by the heat with the sand of the river, produced a liquid and transparent stream: such was the origin of glass." The antient Egyptians were certainly acquainted with the art of glass-making. This subject is very fully discussed in a memoir by M. Boudet, in the 'Description de l'Egypte,' vol. ix., Antiq. Mémoires. The earthenware beads found in some mummies have an external coat of glass, coloured with a metallic oxide; and among the ruins of Thebes, pieces

of blue glass have been discovered. The manufacture of glass was long carried on at Alexandria, from which city the Romans were supplied with that material; but before the time of Pliny the manufacture had been introduced into Italy, France, and Spain (xxxvi. c. 26). Glass utensils have been found among the ruins of Herculaneum.

The application of glass to the glazing of windows is of comparatively modern introduction, at least in northern and western Europe. In A.D. 674 artists were brought to England from abroad to glaze the church windows at Wearmouth in Durham; and even in the year 1567 this mode of lighting dwellings was confined to large establishments, and by no means universal even in them. An entry then made in the minutes of a survey of Alnwick Castle, the residence of the Duke of Northumberland, informs us that the glass casements were taken down during the absence of the family to preserve them from accident. A century after that time the use of window-glass was so small in Scotland that only the upper rooms in the royal palaces were furnished with it, the lower part having wooden shutters to admit or exclude the air.

The earliest manufacture of flint-glass in England was begun in 1557, and the progress made towards perfecting it was so slow, that it was not until near the close of the seventeenth century that this country was independent of foreigners for the supply of the common article of drinking-glasses. In 1673 some plate-glass was made at Lambeth, in works supported by the Duke of Buckingham, but which were soon abandoned. It was exactly one century later that the first establishment of magnitude for the production of plate-glass was formed in this country; and works upon a large scale were erected at Ravenhead, near Prescot in Lancashire, which have been in constant and successful operation from that time to the present day.

At an early period of its history in this country the glass manufacture became an object of taxation, and duties were imposed by the 6 & 7 William and Mary, which acted so injuriously, that in the second year after the act was passed one half of the duties were taken off, and in the following year the whole was repealed. In 1746, when the manufacture had taken firmer root, an excise duty was again imposed, at the rate of one penny per pound on the materials used for making crown, plate, and flint glass, and of one farthing per pound on those used for making bottles. In 1778 these rates were increased 50 per cent. upon crown and bottle glass, and were doubled on flint and plate-glass. These rates were further advanced from time to time in common with the duties upon most other objects of taxation. The precise rates of duty charged upon each kind of glass in 1793, 1806, and 1834 were as under:—

	1793. Per cwt.		1806. Per cwt.		1834. Per cwt.	
	s.	d.	s.	d.	s.	d.
Crown-glass .	16	1¼	36	9	73	6
Plate-glass ..	21	5½	49	0	60	0
Flint-glass...	21	5½	49	0	56	0
Broad-glass..	8	0½	12	3	30	0
Bottle-glass..	4	0¼	4	1	7	0

In 1813 the rates of 1806 were doubled and with the exception of a modification in 1819 in favour of plate-glass, then reduced to 3*l.* per cwt., were continued at that high rate until 1825. In that year a change was made in the mode of taking the duty on flint-glass, by charging it on the weight of the fluxed materials instead of on the articles when made, a regulation which did not affect the rate of charge. In 1830 the rate on bottles was reduced from 8*s.* 2*d.* to 7*s.* per cwt. In 1835, in consequence of the recommendation contained in the thirteenth Report of the Commissioners of Excise Inquiry, the rate upon flint-glass was reduced from 6*d.* to 2*d.* per pound, a measure which was rendered necessary by the encouragement given under the high duty to the illicit manufacture, which was carried on to such an extent as to oblige several regular manufacturers to relinquish the prosecution of their business. The duties varied from 200 to 300 per cent. on the value of most articles of glassware, and the cost of collecting the duty on flint-glass amounted to 57 per cent.

The number of establishments for the manufacture of glass in the United Kingdom, in 1833, was 126, of which 10

were in England, 10 in Scotland, and 10 in Ireland. In 1841 the number of persons employed in the glass manufacture in Great Britain was 7464.

In 1845 the duty was wholly repealed, a proposal to this effect having been brought forward by Sir Robert Peel in introducing the budget, February 14th. The total abolition of this duty redounds greatly to the credit of the minister. There was no duty which required such a system of perpetual and vexatious interference on the part of the Excise. While the exports of earthenware have been constantly increasing, those of glass have fallen off, for our manufacturers, while subject to be interfered with in their operations, were unable to compete with the manufacturers of Belgium, France, and more particularly those of Bohemia, where the glass manufacture has attained the highest perfection. Foreign glass found its way into our bonded warehouses, and was exported to our own colonies, while the exports of English glass to these colonies were gradually falling off. On proposing the entire abolition of the duty on glass, Sir Robert Peel remarked that it was difficult to foresee to what perfection this beautiful fabric might not be brought when the manufacturers were allowed to exercise their skill without restraint, and it was also impossible to say to what new purposes glass might not be applied in this country. He stated that in France, where the ingenuity of the manufacturer was unfettered, glass pipes for the conveyance of water were beginning to be used, and that they cost 30 per cent. less than iron pipes, and could bear a greater external pressure. Balance-springs for chronometers could be made of glass, and were much superior to any others; but the manufacture was so expensive, and required so much skill, that he doubted whether under the existing system of restriction this valuable improvement could be generally adopted. At the Cambridge meeting of the British Association for the Advancement of Science, in June, 1845, Sir John Herschell adverted to the important improvements which might be anticipated in the manufacture of scientific instruments in which glass forms a part, now that the skill and ingenuity of the manufacturer may be freely developed.

In 1793, when taxation was comparatively low, the quantity of all kinds of glass made and retained for use in the Kingdom was 407,203 cwt., and the amount of revenue obtained from it 177,408*l.* The average rate of duty was therefore 8*s.* 8½*d.* per cwt. upon the whole quantity. In 1834 the rate of duty was by progressive additions fourfold what it was in 1793, the average being 35*s.* 7¼*d.* per cwt. upon the aggregate quantity used; and although the population had in the meantime increased more than 60 per cent., the quantity of glass which was taken for use was only 374,351 cwt., or one-twelfth less than was so taken in 1793. If the quantity used in proportion to the population had continued the same, that quantity would in 1834 have amounted to 663,740 cwt., and a revenue equal to what was realized would have resulted from an average rate of 20*s.*, instead of 35*s.* 7¼*d.*

The quantity of each description of glass brought to charge by the excise, in 1834 and 1836, was as follows:—

	1834. Cwt.	1836. Cwt.
Crown . .	136,708	163,928
Flint . .	83,323	102,653
Plate . .	18,922	22,169
Broad . .	6,766	7,629
Bottle . .	344,014	448,789

In 1841-42-43 the quantities charged by the excise were as under:—

	1841. Cwt.	1842. Cwt.	1843. Cwt.
Crown . .	116,895	97,495	102,222
Flint . .	97,523	83,652	85,157
Plate . .	27,639	21,528	20,923
Broad . .	20,855	25,500	29,154
Bottle . .	501,194	390,485	336,014
	764,106	618,660	573,470
Duty .	£898,368	767,904	779,800

In 1843 the quantity of glass manufactured in England was 477,693 cwt.; Scotland, 84,898 cwt.; Ireland, 10,897 cwt.

In 1827 the real value of glass-ware exported from the United Kingdom was 534,549*l.* From 1828 to 1832 inclusive, the average annual value was 441,849*l.*

In 1832 the value of glass exported was only 402,757*l.* In the three following years, 1833, 1834, and 1835, the exports increased, and in 1835 amounted to 640,410*l.* The exports from 1838 to 5th of June, 1845, were as under:—

1838 . . .	£377,283
1839 . . .	371,208
1840 . . .	417,178
1841 . . .	421,936
1842 . . .	310,152
1843 . . .	339,918
1844 . . .	388,608
1845, Jan. 5th to June 5th	215,639

The principal countries to which glass was exported from the United Kingdom in 1842 were as follows:—

	£
East India Company's Territories and Ceylon . .	74,211
British West Indies . .	45,539
British North America . .	43,259
British Australia . . .	32,324
Brazil	21,445
Other parts of South America .	11,763
United States of North America	12,220
Cape of Good Hope . .	9,217
Mauritius	7,175
Northern Europe . . .	12,351
Southern Europe . . .	11,613

In 1836 the exports to Northern Europe amounted to 22,210*l.*; to Southern Europe, 15,440*l.*; to British North America, 103,481*l.*; and to the United States of North America, 98,045*l.*; but the exports generally in this year, especially to the United States, were much higher than usual; still, in 1837, the exports of glass to the United States amounted to 63,800*l.*; but recent alterations in their tariff have occasioned an increase in the domestic manufacture. In 1840 there were 81 glass-houses in the United States.

GLEANING. The practice of gleaning in corn-fields what the reapers of the harvest leave behind is vulgarly supposed to be a legal custom which the "owner or occupier of the field has no right to prohibit, and that the poor who enter a field for this purpose are not guilty of trespass;" but the only authority in support of this view is an extra-judicial dictum of Lord Hale. Blackstone, in his 'Commentaries,' book iii. c. 12, remarks that this humane provision seems borrowed from the Mosaical law (*Levit.*, c. xix. v. 9, and c. xxiii. v. 22, &c.), and apparently adopts Lord Hale's opinion. The question has, however, twice been tried in the Court of Common Pleas. In the first case the defendant pleaded that he being a poor, necessitous, and indigent person, entered the plaintiff's close to glean; and in the second the defendant's plea was the same, with the addition that he was an inhabitant legally settled within the parish. Mr. Justice Gould gave a judgment in favour of gleaning; but the other three judges clearly decided that the claim had no foundation in law, and that "it was a practice incompatible with the exclusive enjoyment of property, and was productive of vagrancy and many mischievous consequences." (1 H. Bl., *Rep.* 51, quoted in Christian's ed. Blackst., *Com.*, vol. iii. p. 213.)

The general custom in all parts of England is to allow the poor to glean, in some cases before the harvest is carried, but more generally perhaps not until afterwards. Persons who are not actually necessitous sometimes avail themselves of permission to glean, and by commencing their labours as soon as it is daylight, they gain as much as they would have done from the wages which they would have earned if they had been employed by the farmer to secure the crop. In this case the privilege is abused, and the community not benefited. In some districts the farmers meet together and establish rules for regulating the practice of gleaning, with a view of protecting themselves, and likewise of confining the privileges to the necessitous poor of the neighbourhood. The following are rules which were agreed upon at a meeting of farmers in Hertfordshire, 11th August, 1845:—1, That no person shall be allowed to glean in any field, until the day after the corn shall have been carted and the field cleared; 2, That no person be allowed to enter the fields for the purpose of gleaning until after eight o'clock in the morning, or to remain therein after six o'clock in the evening; 3, That no able-bodied labourer above sixteen years of age and under sixty shall be allowed to glean in any of the fields situated within the parishes [above named]; 4, That any per-

son or persons found breaking the rules laid down in the foregoing resolutions shall be considered a trespasser, and prosecuted accordingly. In some cases the only restriction is as to the hours when gleaning is allowed; and this is a very proper one, as in the absence of any rule gleaners have been known to commence before three o'clock in the morning, that is, before daylight, and while the crop was still in the field.

The following table is from a paper prepared by Dr. Kay Shuttleworth, on the earnings of agricultural labourers in Norfolk and Suffolk (*Journal of Statistical Society of London*, vol. i., p. 183), and it professes to show the value of corn gleaned by 388 families:—

	Average number of Children in a Family.	Average Annual Amount.
46 families with no children		£0 17*s.* 10½*d.*
110 „ „ all the children under 10 .	$2\frac{7}{8}$	0 18 7½
97 „ „ one child above 10 . . .	$3\frac{7}{10}$	1 0 6¼
85 „ „ two children	$4\frac{9}{10}$	1 5 6½
37 „ „ three	$5\frac{3}{4}$	1 9 6¼
13 „ „ four	7	1 6 9½

The total value of gleanings of the 338 families was 423*l.* 12*s.*, and the average for each family 1*l.* 1*s.* 10*d.*, which was one-fifth of the average harvest wages of each of the same number of families.

GLEBE LAND. [BENEFICE.]

GLUTS. [DEMAND AND SUPPLY.]

GOODS AND CHATTELS. [CHATTELS.]

GOVERNMENT is a word used in common speech in more than one sense. 1, It denotes the *act of governing*, as when we speak of "the business of government." 2, The *persons who govern* are called "the government;" and we thus speak of "the French government," "the Russian government," &c. 3, The word "government," is used for the phrase *form of government*, as when we speak of "a monarchical, aristocratical, or republican government;" or again of "the English or French government," meaning the English or French form of government, or the English or French constitution.

Of these three meanings of the word "government," the first and the last are the most important. Each of them opens out a large and interesting field of inquiry; and correspondent to each of them is a science.

First, there is the science which (to use the briefest mode of expression possible) relates to the business of government; and secondly, there is that which relates to the formation of government. The first of these two sciences enumerates and classifies the operations of governing; the second, the forms of government; and the end of government being the production of the greatest possible amount of happiness for those who are governed, the first seeks to determine how the operations of governing shall best be carried on, and the second how the government shall best be formed, with reference to the attainment of this end.

The science of government, in the first of the two senses, is more commonly called the science of legislation. So the art which flows from this science, or the art of governing, is called the art of legislation. [LEGISLATION.] In the present article we concern ourselves exclusively with the second of the two sciences, and with that sense of the word "government" in which it stands for the phrase "form of government."

It is hardly necessary to explain the phrase "form of government," though, if it were necessary, many changes of phrase might be resorted to. Thus we might say that the form of government is but another and a shorter phrase for the mode of distributing the powers of government, or ("powers of government" and "sovereignty" being interchangeable expressions) of distributing the sovereignty in a state. And many other changes of phrase, which it is not worth while to enumerate, might be employed. Or we might explain the phrase by enumerating the various items which it comprehends. Thus, not professing now to make anything like a complete enumera-

tion, we might say that the number of the governors or governing bodies, their relations to one another (if more than one), and the modes in which they are severally appointed, are so many elements of a form of government. But an enumeration of these elements will obviously be contained in an enumeration of the forms of government.

1. A government consists either of one person, or of more than one.

When it consists of one person only, the appropriate name for the form of government would be *monarchy*. But this name is generally given to a particular class of governments of more than one; while a government of one only is called by the names of *absolute monarchy*, *despotism*, and *tyranny*. Of these three names, the last two may be objected to as names, because they always imply disapprobation, or because they are not only names, but also (to employ Mr. Bentham's phraseology) words dyslogistic. But the essence of this form of government is the complete dependence of the governed on the will of one person, which is well expressed by the terms despotism and tyranny; and the sense of disapprobation which hangs about these terms, or their dyslogistic character, is to be traced to the accidental circumstance of the conjugate terms *despotic* and *tyrannical* being commonly used to describe other forms of government, in which the arbitrary conduct of the governors resembles that of the generality of despots or tyrants.

2. A government of more than one may either consist of one homogeneous body, or (changing the phrase) of one body all whose members are appointed in the same way; or it may be mixed, compound, or consist of heterogeneous parts.

When the members of the one governing body, if hereditary, are a decided minority of the state, or, if deriving their powers from without their own body, they so derive them from a portion of the state which is yet a decided minority, the government is called by the names *aristocracy* and *oligarchy*. There is a difference in the use of these two terms which it is impossible to mark exactly. But it may be said roughly that the term oligarchy is used where the minority is very small, and the term aristocracy where it is not. The latter term also would be always employed where the members of the governing body derive their powers from without, or where the body is elective.

When again the members of the one governing body either themselves constitute, or derive their powers from, a portion of the state which is a decided majority, the government is called a *democracy*.

3. Before proceeding any further, we may remark that the forms of government of which we have now spoken, namely, absolute monarchy or despotism, aristocracy, oligarchy, and democracy, are commonly called (as being governments of one person, or of one homogeneous body) pure forms of government, in contradistinction to the mixed forms, which yet remain to be considered. The division of forms of government into pure and mixed is a complete division, which the common division into monarchy, aristocracy, and democracy is not.

4. A mixed form of government is one compounded of the whole or of any two of the three elements which exist separately in the three pure forms of government, and also of individuals or bodies deriving their powers from different portions of the state, even though each of these different portions is a decided majority of the state. It is not necessary to enumerate all the mixed forms of government which arise from all the possible combinations. Besides that all the possible combinations may be easily seen, some of them produce forms of government which have never existed, and which consequently are no objects of interest. It will be sufficient then to speak of those combinations, or rather of those classes of combinations, with which men are familiar, and for which common speech supplies names.

The mixed forms of government which occur may be divided into two classes, according as an hereditary chief does or does not enter into their composition.

Governments which contain an hereditary chief united either with an aristo-

cratic and a democratic body, or with an aristocratic body by itself, or with a democratic body by itself, are generally called *monarchies*. They are also called *limited monarchies*, as if to distinguish them from the governments of one only, to which, as we have said, the name monarchy more appropriately belongs, but to which, without the epithet *absolute* being prefixed, it is seldom or never applied.

As regards the governments of which an hereditary chief forms no part, it will be convenient to observe at the beginning, that the combinations of an elective chief with one or more democratic bodies are the only combinations which possess any interest for men; if indeed, judging from the past, we may not also say that they are the only ones which are practicable. And having premised this, we may say that the governments into the composition of which an hereditary chief does not enter are generally called *republics*, or *representative governments* (the relation of the democratic body or bodies in the government to the portion or portions of the state that appoint them being known by the name representation), or again, *pure representative governments*, as if to distinguish these from the forms of government in which a democratic body is united either with an hereditary chief and aristocratic body together, or with either of these by itself.

Thus far we have been employed in enumerating the forms of government. In our mode of enumeration we have been guided entirely by the terminology in common use, and have not sought to twist the names which men commonly apply to different forms of government, so as to make them suit a fanciful division.

We proceed now to consider the question, which is the best form of government? And in considering this question, we make abstraction of all local and occasional circumstances which are incidental to particular states, as well as of the present existence of some particular form of government in each particular state, and of the difficulties standing in the way of its removal.

Now a government is a means to a certain end. The best form of government is that which is best adapted to the attainment of the end. "The question with respect to government" being then, as Mr. Mill begins his well-known essay by observing, "a question about the adaptation of means to an end," it is necessary that we should first enunciate the end.

The end of government is the production of the greatest possible amount of happiness for the governed. Strictly and more largely, its ultimate end is the production of the greatest possible amount of human happiness. But inasmuch as each government contributes most to increase human happiness generally by applying itself to the production of the greatest possible amount of happiness among that particular portion of mankind over which it is set, and inasmuch as the attainment of the larger and general end is thus included in the attainment of the smaller and special end, it is sufficient, while it is more convenient for our purpose, if we keep in view the latter of the two ends only. With regard to the term happiness, by which we express the end of government, it is unnecessary that we should here analyze it. Suffice it to observe, that the increase of knowledge and intelligence, and the moral improvement of a nation, are among the most valuable of the objects included in the general end, happiness, which it is the duty of a government to strive after.

Now a government will have a greater or less tendency to increase the happiness of those who are governed,—

1. According as it is controlled, whether in the way of participation, or of election and consequent responsibility to the elector, by a greater or smaller number of such as, having an interest favourable to good government, are fit respectively to participate or to elect.

2. According as it tends, by its mode of construction, to prevent or to create diversity of interests.

3. According as it interferes less or more with those pursuits which are necessary to a very large majority of every community for the attainment of a livelihood.

The union of these three considera-

tions, which seem to be all that are pertinent to the subject, leads us to what we have called above a pure representative government. The first of the three makes for the existence of a democratic body, or union of such bodies, in the government; and while the second leads us to conclude against uniting with this body, or these bodies, a body of an aristocratic character, or an hereditary chief, the third points out one chief advantage of a democratic representative body, or union of such bodies, as compared with a government in which the great majority of the state directly participate.

It is necessary to enforce at somewhat greater length the considerations which we have adduced, and by which alone we test forms of government. In doing so, however, we shall not observe the order in which we have named them, but shall adopt a line of argument which leads most directly and conveniently to the "foregone conclusion" of a pure representative government.

It is desirable, in the first place, that the powers of government should not be vested solely in an individual, or in an aristocratic body, or (in other words) that the form of government should not be an absolute monarchy or an aristocracy, because there is a great probability that the despot or the aristocratic body will pursue respectively his or their own interest, to the detriment of the great bulk of the community, and because further the great bulk of the community are in such cases deprived of the means of improvement which a participation in government supplies. This improvement, we have already observed, is one chief way in which government may contribute to increase the happiness of the community. With reference to the probability of a despot or aristocratic body using his or their power, it is important to observe that we affirm no more than a probability. Some despots, or absolute monarchs, there have been in every way deserving of praise. There may have been also aristocratic bodies whose use of the powers possessed by them has been conducive to the general interest. But these are the exceptions. It is clearly in the nature of things probable that there will in such cases be an abuse of power; and the abstract question concerning forms of government is, after all, only a question of probability,—which form of government is it probable will conduce most to the happiness of a community?

Secondly, it is desirable that a share, whether direct or indirect, in the government should be possessed by as large a number as are likely to be fit to exercise the power thus conferred on them. There are two reasons for this extension of power, correspondent to the two reasons which have been already stated against its restriction to one or a few. First, the greater is the number of those who have a share in the government, the greater is the probability of the general interest being regarded; for the more widely are the powers of government distributed, the less division will there be in the community, and consequently the less will particular interests appear; and further, there is a greater probability, in an extensive distribution of political power, that all the disturbing effects of particular interests will neutralize one another, and merge in the pursuit of the general interest. Secondly, the more political power is extended the more widely will the improvement to be derived from its exercise be diffused.

But, in the third place, it is improbable that any very large number will be fit in any community to be members of a deliberative body, and have a direct share in legislation. Further, besides their being unlikely to possess the requisite amount of intelligence, it is unlikely that any very large number of men could spare time from such pursuits as are necessary to the attainment of a livelihood for the work of deliberation. Again, an assembly consisting of a majority of the community, or of a number approaching to the whole of the community, would, from its size, be unfit for the purpose of deliberation. For these three reasons it is desirable that the power which is extended through a large number should be one merely of election; and that the democratic body should be one not large, and in which the great bulk of the community have a direct share, but small, elected by the great bulk of the community, and (in

the common phrase) representing them. A large number will be found fit to elect, though not to deliberate; to judge of the amount of intelligence and honesty possessed by candidates for representation, though not to decide upon the many and important subjects which the representative is required to consider. The act of election, however frequent, will not interfere with the toils necessary for subsistence; and the amount of attention to political subjects occasioned by the duty of election will be sufficient to ensure the general intellectual development which we have spoken of as one of the tests of a good government.

Thus far we have merely been arguing for an extensive distribution of power, with which an hereditary chief or an aristocratic body might very possibly coexist in the government. It remains to complete the argument by pointing out the objections to a mixed government, or to a government which, by its very mode of construction, creates a diversity of interests. First, in so far as particular interests are embodied and made separately influential in a state, the attainment of what is for the general interest is impeded; secondly, from the separate embodiment of these particular interests collision ensues (for the much-talked-of balance of powers is only an imagination), and by collision is engendered ill-will. On the bad moral effects of the ill-will thus engendered it is unnecessary to dilate.

Such is a rapid sketch of the abstract argument in favour of a pure representative government; and such may be considered a brief general view of that science of government which employs itself in determining which form of government is best adapted to increase the happiness of the governed, or (briefly) is the best.

It cannot need to be remarked that when, abstracting ourselves from all particular circumstances of time and country, we conclude that a pure representative government is the best form of government, we do not contend either that such form of government should now be established in any particular states or state, or that it ought to have existed in all states in all periods of their histories. It were absurd even to think of a general distribution of political power, such as is employed in a pure representative government, in the early periods of ignorance and mental inactivity. And it were outrageous to attempt to establish in each state, in defiance of the many habits and interests which must have grown up around the forms of government already established, a new one, which is abstractly the best, or (in other words) is the best if we leave these habits and interests out of consideration.

Yet must not this science of government be pronounced idle and unprofitable. It may be out of the question, as generally it will be, to establish immediately, or perhaps even ultimately, that government which the abstract science tells us is the best. But though the goal of perfection be unattainable, it is useful to have it constantly in view. And while it will be the duty of each existing government, learning the feelings of its subjects and profiting by the opportunities of the time, to seek to approach nearer and nearer to that form of government which is abstractly the best, all such changes as are made with distinct reference to this abstract form of perfection will, as being made on the soundest principles, be the best.

GRACE, DAYS OF. [EXCHANGE, BILL OF.]

GRAND JURY. [JURY.]

GRAND SERJEANTY, one of the antient English tenures. Tenure by grand serjeanty is when a man holds his land or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his army, or to be his marshal, or to carry his sword before him at his coronation, or to be his carver, or his butler, or to be one of his chamberlains of the receipt of his exchequer, or to do other like services, &c. (Littleton, § 153.) The word serjeanty, *serjeantia*, is the same as service, *servitium*. Tenure by grand serjeanty still exists so far as relates to merely honorary services, but the burthensome incidents were taken away by the 12 Car. II. c. 24.

GUARDIAN, one who has the care of

a person and his property, who, by reason of his imbecility or want of understanding, is in law considered incapable of acting for his own interest. Guardians in the English law are appointed only to infants, though under the Roman law they were also assigned to idiots, lunatics, women, and sometimes prodigals. The law of England indeed provides guardians for idiots and lunatics, but the rules relating to them will be more conveniently considered under the head of LUNATIC, and in the Roman law the terms Tutor and Curator correspond in some degree to the English Guardian. [CURATOR.]

The usual division of guardians, according to the English law, and therefore the most convenient order in which to explain their office, is:—1. Guardians by the common law. 2. Guardians by custom. 3. Guardians by statute.

I. Guardians by the common law were of four kinds; guardians in chivalry, in socage, by nature, and for nurture.

Guardianship in chivalry is now abolished by the statute 12 Car. II. c. 24, which abolished the onerous portions of the feudal system. This guardianship arose wholly out of the principles of tenure, and it could only take place where the estate vested in the infant by descent. All tenants by knights' service, being males under 21, or females under 14, at the ancestor's death, were liable to it; and it continued over males till 21, and over females till 16 or marriage. It extended over the estate as well as the person of the infant, and entitled the lord to make sale of the marriage of the infant under the restriction of not making it a marriage of disparagement, and to levy forfeitures if the infant refused the marriage, or married, after tender of an alliance by the lord, against his consent. The lord was bound to maintain the infant; but subject to this obligation he was entitled to the profits of the estate for his own benefit. This guardianship being considered more an interest in the guardian than a trust for the ward, was saleable; and if not disposed of, passed at the lord's death to his personal representatives.

2. *Guardian in Socage.*—This also, like the former, is a consequence of tenure, and takes place only where lands of socage-tenure descend upon an infant under the age of 14. Upon attaining that age, the guardianship in socage ends, and the infant may appoint his own guardian. The title to his guardianship is in such of the infant's next of blood as cannot have the estate by descent in respect of which the guardianship arises, lest, it is said, the lamb should be delivered to the wolf to be devoured. The law of Scotland and the old laws of France prescribe a middle course: the estate is intrusted to the next in succession, because he is most interested in preserving it from waste, but he is excluded from the custody of the person of the ward. This is the principle upon which the Court of Chancery proceeds in its management of lunatics and their estates. The guardian in socage is entitled not only to the custody of the person and socage estates of the infant, but also to his hereditaments not lying in tenure, and even his copyhold estates, where no custom to the contrary exists in the manor of which they are held, and also his personal property. The guardianship in socage is regarded as a trust wholly for the infant's benefit, and is not saleable, or transmissible, but in the event of the death of the guardian the wardship devolves on the person next in degree of kindred to the infant, who cannot be his heir, and the guardian is accountable to the infant for the profits of his estate.

Guardianship in socage is however superseded both as to the person and estate of the infant, if the father appoints a guardian according to the statute, as will shortly be mentioned.

3. *Guardian by Nature.*—This species of guardianship has no connection with the rules of tenure. It extends only to the custody of the infant's person, and lasts till he attains 21. Any ancestor of the infant may be such a guardian, the first right being in the father, the next in the mother, and if they be dead the ancestor to whom the infant is heir has a right to the custody of his person. Until 14, it seems the guardian in socage is entitled to the custody of the person, and after that age the guardian by nature.

4. *Guardians for Nurture*—are the father and mother of the infant; in default of father or mother, the Ordinary, it is said, may appoint some person to take care of the infant's personal estate, and to provide for his maintenance and education, though this has been doubted. This species of guardianship extends only to the age of 14, in males and females. Both these last descriptions of guardianship are also superseded by the appointment of a guardian by statute.

Where an infant is without a guardian, the Court of Chancery has power to appoint one; and this jurisdiction seems to have vested in the king, in his Court of Chancery, upon the abolition of the Court of Wards. Where a proper case exists for the jurisdiction of this court, it will interfere not only with the property of the infant, but also with the custody of his person, and will, in case of any misbehaviour, remove a guardian, however he may have been appointed or constituted, and will appoint a proper guardian to the infant in his room. There was an instance of this jurisdiction in the case of the Duke of Beaufort *v.* Wellesley—where, though the father was alive, Lord Eldon deprived him of the custody of his children, as not being a fit person to have the charge of them. And though the infant may have elected and appointed a guardian, this will not exclude the jurisdiction of the Court of Chancery, but upon the case being brought before the court it will order an inquiry as to the fitness of the guardian appointed. All courts also have power to appoint a guardian *ad litem*, that is, to defend a prosecution or suit instituted by or against an infant. (Co. Litt., 88, b, Hargr. note.)

II. *Guardians by Custom.*—By the custom of the city of London the guardianship of orphans under age and unmarried belongs to the city; and in many manors particular customs exist relating to the guardianship of infants; but in the absence of any such, the like rules prevail as before mentioned of guardians in socage.

III. *Guardians by Statute.*—At common law no person could appoint a guardian, because the law appointed one in every case. The statute 4 & 5 Phil. and Mary, c. 8, seems to have given some powers to the fathers of infants to appoint guardians; but guardians by statute are now appointed by virtue of 12 Ch. II. c. 24. Under this statute fathers, whether under age or of full age, may, by deed or will attested by two witnesses, appoint any person or persons (except Popish recusants) guardians of their unmarried children until they attain twenty-one, or for any less period. But by 1 Vict. c. 26, §§ 7, 8, no will made by a person under twenty-one years of age is valid.

A guardian appointed under this statute supersedes all other guardians, except those by the custom of London, or any city or corporate town in favour of which an exception is made, and is entitled to the custody of the infant's person, and his estate, real and personal. If two or more persons are appointed guardians under the provisions of this statute, the guardianship remains to the survivor. The words of the statute empower only a father to appoint a guardian, and consequently, though the omission was probably unintentional, it has been decided that neither a mother, nor grandfather, nor any other relation, can make such an appointment. Neither can a father appoint a guardian to his natural child: but in all these cases the Court of Chancery will appoint the persons named to be guardians if they appear to be fit persons to exercise the trust reposed in them.

Guardians are rarely now appointed by infants themselves; the Court of Chancery provides safer and more effectual means for the management of their property; and since in many cases the court will interfere by petition without the institution of a suit, a cheap and speedy mode of procuring its interference is afforded. The guardian is considered as a trustee for his ward, and is accountable for the due management of the infant's property, and is answerable not only for fraud, but for negligence or omission.

Guardian of the Spiritualities is the person to whom the spiritual jurisdiction of any diocese is committed during the vacancy of the see.

Guardian of the Temporalities is he to whom the temporal jurisdiction and the

profits of the see are committed during the like period.

The words guardian and warden are of the same signification: indeed they were formerly used indifferently. Thus the warden of the Cinque Ports was styled guardian, or in the old French, gardeyn, and churchwardens, gardeyns del eglise.

GUILDS. [MUNICIPAL CORPORATIONS.]

H.

HA'BEAS CORPUS is a writ at the common law, used for various purposes. It derives its name, like other writs, from the formal words contained in it. When the writ of Habeas Corpus is spoken of without further explanation, it always means the important writ which will presently be described; but it is also used for certain purposes in the courts of common law at Westminster, as for removing prisoners from one court into another, and for compelling the attendance of prisoners as witnesses, &c. But the great writ of Habeas Corpus is that which in cases of alleged illegal confinement is directed to the person who detains another; and the purport of the writ is a command to such person to produce the body of the prisoner, and to state the day and the cause of his caption and detention, and, further, to do, submit to, and receive (ad faciendum, subjiciendum et recipiendum) whatsoever the judge or court that awards the writ shall direct.

All persons, whether natives or aliens, are entitled to this writ. The decision of the judges of the King's Bench in the early part of the reign of Charles I., that they could not, upon a Habeas Corpus, bail or deliver a prisoner, though committed without any cause assigned, in cases where he was committed by the special command of the king, or by the Lords of the Privy Council, caused the parliamentary inquiry which was followed by the Petition of Right, 1626, which recites this judgment, and declares that no freeman shall be imprisoned or detained without cause shown, to which he may make answer according to law. The court, however, and the judges still endeavoured to uphold the usurpation of the crown; and consequently the statute 16 Car. I. c. 10, was made, which enacted that any person committed by the king himself or his Privy Council, or any members thereof, should have the writ of Habeas Corpus granted to him upon demand or motion made to the Court of King's Bench or Common Pleas, which should thereupon, within three court days after the return of the writ, examine and determine the legality of the commitment, and do justice in delivering, bailing, or remanding the prisoner. Still, however, new devices were made use of to prevent the due execution of this enactment, and eventually the statute 31 Chas. II. c. 2, was passed, which is called the Habeas Corpus Act, and is frequently spoken of as another Magna Charta. This statute declares the cases and mode in which this writ may be obtained; and lest this statute should be evaded by demanding unreasonable bail or sureties for the prisoner's appearance, it is declared by the 1 W. & M. stat. ii. c. 2, that excessive bail shall not be required. (Blackstone, *Com.*, vols. i. and iii.) The provisions of the 31 Chas. II. c. 2, are extended to Ireland by the Irish act, 21 & 22 Geo. III. c. 11.

It has been customary in times of alleged danger to suspend the Habeas Corpus Act. A suspension of the Habeas Corpus Act is effected by an act of parliament which empowers the crown, for a limited period, to imprison suspected persons without stating any reason for the imprisonment. "The effect of a suspension of the Habeas Corpus Act is not in itself to enable any one 'to imprison suspected persons without giving any reason for so doing.' But it prevents persons who are committed upon certain charges from being bailed, tried, or discharged for the the time of the suspension, except under the provisions of the suspending act, leaving, however, to the magistrate or person committing all the responsibility attending an illegal imprisonment. It is very common, therefore, to pass acts of indemnity subsequently for the protection of those who either could not defend themselves without making improper disclosures of the information on which they

acted, or who have done acts not strictly defensible at law, though justified by the necessity of the moment. See 57 Geo. III. c. 3 and c. 55, for instances of suspending acts; and 58 Geo. II. c. 6, for one of an indemnifying act." (Coleridge's *Note on Blackstone*, i. 136.)

The statute 31 Chas. II. c. 2, has been re-enacted or adopted, if not in terms yet in substance, in most of the American States; and the New York revised statutes (vol. ii. p. 561) provide for relief under the writ *de homine replegiando*, in favour of fugitives from service in any other state; but this provision has been held to be contrary to the constitution and laws of the United States, and void in respect to slaves being fugitives from states where slavery is lawful. (Kent's *Com.*)

The 56 Geo. III. c. 100, which was passed "for more effectually securing the liberty of the subject," after reciting that the existing acts only apply to cases of imprisonment on criminal charges, enacts that if any person is imprisoned, except for crime or debt, any baron of the exchequer, as well as any judge of either bench in England or Ireland, shall, on complaint on behalf of the party confined, if reasonable cause appear to them, award in vacation time a writ of Habeas Corpus, returnable immediately before the judge awarding the same, or any other judge of the same court.

The statute 31 Chas. II. c. 2, introduced no new principle into the English law. The great charter (Magna Charta) declares that no freeman shall be taken or imprisoned but by the lawful judgment of his equals, or by the law of the land (c. 29). From the date of the great charter, at least, if a man was confined in prison on a criminal charge, he could apply to the Court of King's Bench for the writ of Habeas Corpus ad subjiciendum. This writ was directed to the person who detained the prisoner in custody, and it required him to produce the prisoner in court and the warrant of commitment, that the court might judge if the commitment was legal, and admit him to bail, send him back to prison, or order him to be discharged, according to the circumstances of the case. This writ could not be refused. The object of the statute of Charles was to prevent the abuses which had grown up to the detriment of this important privilege.

Habeas Corpus is not a form known in the Law of Scotland. The form by which a person imprisoned gets his trial brought on, or his release if he is not brought to trial, is there called 'Running Letters.'

HACKNEY COACH. [METROPOLITAN STAGE CARRIAGE.]

HERETICO COMBURENDO, WRIT DE. [HERESY.]

HAMLET. [PARISH.]

HANAPER, in low Latin *hanaperium*, a hamper. The Hanaper Office is one of the offices of the Court of Chancery in which writs and their returns relating to the subject are kept. Writs concerning matters in which the crown is interested are kept in the Petty Bag office. The clerkship of the hanaper is a sinecure, and is at present held by a clergyman, who receives 468*l.* annually. It is said that antiently the two descriptions of writs above mentioned were separately kept in a hamper (hanaperium), and in a small sack or bag (parva baga).

HAND-FASTING. [BETROTHMENT.]

HAND-WRITING, PROOF OF. [EVIDENCE.]

HARDWARE AND CUTLERY. The principal seats of this important branch of manufactures are at Sheffield and Birmingham. In 1841 the number of persons employed in making various articles of cutlery in Sheffield and the surrounding villages was 8564, and 729 were employed in making hafts and scales in connexion with cutlery. The number of file-makers was 2854; 1595 persons were employed in making various other kinds of tools; 771 in the manufacture of shovels, fire-irons, and other descriptions of hardware goods. In Birmingham and the neighbourhood, 5188 persons were employed in 1841 in the manufacture of hardware, 1093 of whom were employed in the manufacture of tools. There are only a few cutlers in Birmingham, and in fact most of the cutlery which is made in this country is manufactured at Sheffield, including a great part of the "London made" knives and razors which are stamped with the names of metropolitan cutlers. The

number of cutlers in the metropolis in 1841 was 657. The population of Sheffield increased from 45,755 in 1801 to 109,597 in 1841, and that of Birmingham and the suburbs increased in the same period from 73,670 to 190,542. Hence there can be no doubt that the staple manufacture of each of these places has been greatly extended during the present century. Within the last thirty years great improvements have been effected in the modes of production, and in the case of some articles the reduction in price amounts to nearly 100 per cent.

In the eight years from 1820 to 1827 inclusive, the annual average weight and declared value of hardware and cutlery exported was 10,238 cwts., valued at 1,274,187*l.*

In the seven years from 1828 to 1834 the annual average was 14,751 cwts., valued at 1,455,941*l.*

The exports in each year from 1836 to the present time were as under:—

	Cwts.	£.
1836	421,442	2,271,313
1837	267,433	1,460,807
1838	305,898	1,498,327
1839	423,537	1,828,521
1840	299,900	1,349,137
1841	353,348	1,623,961
1842	304,240	1,398,487
1843	343,664	1,745,519
1844	..	2,167,673
1845 Jan. 5 to June 5	..	877,355

In 1836, a year of great mercantile speculation, the exports of hardware and cutlery to the United States of North America amounted in value to 1,318,412*l.*, or nearly the value of the whole of the hardware and cutlery exported to all parts of the world in 1842, in which year the exports to the United States amounted only to 298,881*l.* The cessation of the demand from this quarter and the depressed state of the home market in 1841 and 1842 had a most disastrous effect upon the prospects of Sheffield, and about two thousand houses in the town became uninhabited. The principal countries to which hardware and cutlery was exported in 1843 were as follows:—

	£.
United States of North America	448,341
Germany	159,889
East India Company's Territories and Ceylon	142,607
British North America	102,260
France	92,553
Brazil	80,070
British West Indies	80,040
Italy	61,992
Chili	53,413
Foreign West Indies	48,609
Holland	47,045
Russia	44,203
British Australasia	43,270
Rio de la Plata	41,005
Peru	33,173
Belgium	30,717
All other countries	236,331
Total	1,745,518

The cutlery manufactured in Belgium is superior to that made in France and Germany, but is inferior to the English cutlery. A few years ago considerable quantities of Belgium cutlery were imported into this country for re-exportation, and it was discovered that in many cases the marks of English manufacturers were stamped on the articles. An act was passed under which goods thus surreptitiously marked are forfeited. Liège and Namur are the principal seats of the cutlery and hardware manufacture.

Cutlery is an important branch of manufacture in France, and is carried on principally at Langres, Thiers, Chatellerault, and St. Etienne. In 1835 the value of French cutlery exported amounted only to 61,065*l.*

The number of persons employed in the manufacture of hardware and cutlery in the United States of North America, according to the census of 1840, was 5492. Pittsburg is the principal place where this manufacture is carried on.

HAWKER. [PEDLAR.]

HEADBOROUGH. [CONSTABLE.]

HEALTH, PUBLIC. [PUBLIC HEALTH.]

HEIR. [DESCENT.]

HEIR-LOOMS. [CHATTELS.]

HERALD, an officer whose duty, during the middle ages, was to carry challenges or peaceful messages from one prince or nobleman to another, to

proclaim peace or war, to lay out the lists in jousts or tournaments, to be the witness of all combats, whether general or particular, and to record in writing the names of those who behaved most valiantly, to number the dead after battle, and specially to supervise all matters connected with the bearing of coat-armour, the marshalling of processions, and other state ceremonies. His functions were something like those of the Greek *kerux* (κῆρυξ), and the Roman *Fecialis;* but the origin of the name is much disputed, and the actual date of the institution uncertain. The word *Heraldus* occurs in the imperial constitutions of Frederick Barbarossa, A.D. 1152, about the same time to which the origin of heraldry is with most reason assigned. The earliest mention of a herald in England is in a pell-roll of the 12th Edward III.; but there is little doubt that the office existed as early at least as the dawn of hereditary coat-armour. The English heralds were first incorporated by Richard III. [HERALDS' COLLEGE.] There are three orders or grades of heralds, namely, kings of or at arms, heralds, and pursuivants. They were anciently created with much ceremony, and the mode is curiously detailed by Gerard Legh apud Upton. "It is necessary," says he, "that all estates should have couriers as their messengers for the expedition of their business, whose office it is to pass and repass on foot, being clad in their prince's colours 'parted upright;' that is to say, half of one colour and half of another, with the arms of their sovereigns painted on the boxes in which they carried their despatches, and which were fixed to their girdle, on the left side. It was not permitted to them to bear the arms of their lord in any other manner." "They were knights," he adds, "in their offices, but not nobles, and were called knights-caligate of arms, because they wore 'startuppes' (a sort of boot or gaiter) 'to the middle leg.' When they had conducted themselves properly in this situation for seven years, they were made chevaliers of arms, and rode on horseback to deliver their sovereign's messages, clad in one colour, their garments being only guarded or trimmed with the colour of their sovereign, and bearing their boxes aforesaid, with the arms painted on them, on the left shoulder, 'and not elsewhere.'" From these runners and riders the three orders of heralds were supplied, and the chevalier of arms, having served another seven years, was created a pursuivant. The herald of the province, to whom he was to be pursuivant, wearing his coat of arms, took the candidate by his left hand, holding in his right a cup of silver, filled with wine and water, and leading him to his sovereign, in the presence of many witnesses duly summoned for this purpose, inquired by what name the pursuivant was to be created; and upon the sovereign's answer, proclaimed his style accordingly, pouring some of the wine and water upon his bare head. He then invested him with the tabard, or herald's coat, emblazoned with the arms of the sovereign, but so that the sleeves hung upon his breast and back, and the front and hind parts of the tabard over his arms, in which curious fashion he was to wear it till he became a herald. Strutt has given a representation of the pursuivant so attired from the Harleian MS. 2278, without being aware of the distinction. The oath of office was then administered to him, and lastly the sovereign presented him with the silver cup aforesaid. Having once been made pursuivant, he might be created a herald, "even the next day," which was done by the principal herald or king of arms leading him in like manner before the sovereign, but bearing a gilt instead of a silver cup, and turning the tabard so that the sleeves hung in their proper place over the arms. A collar of SS was then put about his neck, one S being argent, or silver, the other sable, or black, alternately, and when he was named, the prince himself poured the wine and water on his head, and after the oath was administered gave him the cup as before; whereupon the herald cried, "A largess." The kings of arms were created and solemnly crowned by the princes themselves, and distinguished from the heralds by richer tabards, the embroidery being on velvet instead of satin, gilt collars of SS, and coronets composed of a

plain circle of gold surmounted by sixteen strawberry leaves, eight of which are higher than the rest.

Modern heralds of all classes are now made and appointed by the earl marshal, and their functions and privileges are much abridged and disregarded. The present number in England is fourteen, viz.: four kings of arms—Garter, Clarencieux, Norroy, and Bath. The second and third are provincial kings; Clarencieux has power over all parts of England south of the Trent, and Norroy over all parts north of it. Six heralds—Somerset, Chester, Windsor, Richmond, Lancaster, and York; and four pursuivants—Rouge Dragon, Portcullis, Blue Mantle, and Rouge Croix. In Scotland there is one king at arms, named Lyon; and in Ireland one, named Ulster. To these regular officers are sometimes added, by command of the king to the earl marshal, a herald or pursuivant extraordinary. Such were the heralds Arundel, Norfolk, and Mowbray; and on the occasion of the funeral of the late King William IV., Mr. Albert Woods, son of Sir W. Woods, Clarencieux king of arms, was created Fitzalan pursuivant extraordinary.

HERALDS' COLLEGE, or COLLEGE OF ARMS, a corporation founded by Richard III. in the first year of his reign by a charter dated the 2nd of March, 1483, in which he gives to the principal officers of the corporation a house called Colde Arbor, in the parish of All Hallows the Less, London. In the first year of the reign of Henry VII. this house was seized into the king's hands under the Act of Resumption as the personal property of John Writhe, then garter king at arms. During the reign of that king and of his successor Henry VIII. the heralds made several unsuccessful attempts by petition to obtain a restoration of it, or the grant of some other building for their general use. King Edward VI., in the third year of his reign, by a charter dated June 4th, confirmed to them all their ancient privileges; and Philip and Mary, by charter of the 18th of July, 1554, re-incorporated them, and granted to them Derby House, then occupying the site of the present college on St. Benet's Hill, near St. Paul's Church-yard. The old building was destroyed in the great fire of London, but all the books, papers, &c. were fortunately saved, and removed to the palace in Westminster, where the heralds held their chapters, &c., until the college was rebuilt. The corporation consists of the three kings at arms—Garter, Clarencieux, and Norroy (Bath not being a member); six heralds, and four pursuivants. [HERALD.] The arms of the college are argent, a cross, gules between four doves rising azure. Crest, on a ducal coronet, Or a dove rising azure. Supporters, two lions rampant gardant argent, ducally gorged Or. There is a heralds' college in Scotland, composed of Lyon king at arms, six heralds, and six pursuivants.

HERALDRY, the art of arranging and explaining in proper terms all that appertains to the bearing of coats of arms, badges, and other hereditary or assumed marks of honour; also the art of marshalling processions and conducting the ceremonies of coronations, instalments, creations of peers, funerals, marriages, and all other public solemnities.

The origin of heraldry, in the first and most commonly understood sense, has been attributed, by the general consent of the best writers on the subject, to the necessity for distinguishing by some outward sign, amidst the confusion of battle, the principal leaders during the expeditions for the recovery of the Holy Land. But nothing is absolutely known concerning it beyond the fact that the middle of the 12th century is the earliest period to which the bearing of heraldic devices, properly so called, can be traced; and the commencement of the 13th, the time about which they became hereditary.

The earliest roll of arms of which we have any notice is of the reign of Henry III.; and the reign of Edward I. presents us with the earliest heraldic document extant. The famous roll of Caerlaverock, a poem in old Norman French, rehearses the names and armorial ensigns of all the barons, knights, &c., who attended Edward I. at the siege of Caerlaverock castle, A.D. 1300. Heraldry is therein first presented to us as a system. The principal rules and terms of the art were then

in existence, and from about that time the terms are continually found in the fabliaux and romances of France and England.

The oldest writer on heraldry whose work has descended to us is Nicholas Upton, whose treatise 'De Militari Officio' was composed in the reign of Henry V., and translated in that of his successor by Juliana Berners, in the work known as the 'Boke of St. Albans.' As Upton quotes no earlier authorities, his definitions and explanations can only be looked upon as assertions made nearly three hundred years after the origin of the practice, and consequently to be believed, or not, according to the discretion of the reader. In the reign of Richard III. the English heralds were incorporated and the College of Arms founded, and in the following century a swarm of writers arose both in France and England, each contradicting the other, and wasting much learning and research in the most absurd and idle controversies.

On the decline of chivalry the study of heraldry became gradually neglected, and the art, which had formed for centuries a portion of the education of princes, and occupied the attention of some of the most learned men in Europe, was abandoned to the coach-painter and the undertaker, while kings of arms and pursuivants were looked upon as mere appendages of state pageantry, their office ridiculed, and their authority defied.

That the pedantry of such writers as Morgan, Ferne, Mackenzie, and others, contributed to these results, there can be little doubt. A taste for the critical study of antiquities generally is now however reviving throughout Europe, and the use of heraldry as a key to history and biography is daily becoming more acknowledged.

The rules of heraldry as now practised at the College of Arms are, as we have before remarked, comparatively modern, and vary in some points from those observed in France and Germany.

According to the received authorities there are ten classes of arms.

1. Arms of *Dominion*, being those which princes bear as annexed to the territories they govern.

2. Of *Pretension*, those borne by princes who are not in possession of the dominions to which such arms belong, but who claim or pretend to have a right to such possession, as for instance the kings of England from Edward III. to George III. quartered the arms of France.

3. Arms of *Community*, being those of bishoprics, cities, universities, and other bodies corporate.

4. Of *Assumption*, such as are assumed by a man of his proper right without the grant of his prince, or of a king at arms. As for instance, when a man of any degree whatsoever has taken prisoner in lawful war any gentleman, nobleman, or prince, he may bear the arms of that prisoner, and transmit them to his heirs for ever.

5. Arms of *Patronage*, such as governors of provinces, lords of manors, patrons of benefices, &c., add to their family arms, as a token of their superiority, rights, and jurisdiction.

6. Arms of *Succession*, borne by those who inherit certain estates, manors, &c., either by will, entail, or donation.

7. Arms of *Alliance*, such as the issue of heiresses take up to show their maternal descent.

8. Arms of *Adoption*, borne by a stranger in blood, with the special permission of the prince, applied for in order to fulfil the will of the testator who may bequeath certain monies or estates on condition of the party's assuming his name and arms.

9. Arms of *Concession*, augmentations granted by the prince of part of his own ensigns or regalia to such persons as he pleases to honour therewith.

10. Arms *Paternal* and *Hereditary*, such as are transmitted from the first possessor to his son, grandson, great-grandson, &c.; thereby forming complete and perfect nobility. The son being a gentleman of second coat-armour, the grandson a gentleman of blood, and the great-grandson a gentleman of ancestry.

These several sorts of arms are displayed on shields or escutcheons, and on banners, the ground of either being called the field, and the figures borne upon it the ordinaries and charges.

HEREDITAMENT. [DESCENT.]

HERE'DITAS JACENS. [ABEYANCE.]

HERESY. This word is the English form of the Greek Haéresis (αἵρεσις). It signifies literally 'a choice,' and hence it came to denote an opinion on any subject; and it was used to express a sect in philosophy. The word occurs in the New Testament, sometimes simply to denote a religious body, and sometimes as a term of reproach applied to the religious opinions of persons which differed from the opinion of him who used the term. When ecclesiastical councils determined what was the orthodox or Catholic faith, then Christians who would not acknowledge the decisions of such councils were called Heretics, and their guilt was expressed by the term Heresy: those who reject Christianity altogether are infidels and unbelievers.

The fifth title of the first book of the Code of Justinian contains penalties against Heretics, Manichæans, and Samaritans; which, in some cases, extended to death. Heretical books were ordered to be burnt. Before the Reformation in England heresy was the holding of opinions contrary to the Catholic faith and the determination of Holy Church: at least this is the definition of heresy in the statute 2 Hen. IV. c. 15. The court in which a man could be convicted of heresy, according to the common law, was that of the archbishop in a provincial synod. After conviction the criminal was delivered up to the king to do what he pleased with him. If the criminal had abjured his heresy and then relapsed, the king in council, upon a second conviction, might issue the writ De Haeretico comburendo, upon which the criminal was burnt alive. One Sawtre, it is said, was the first man burnt alive for heresy in England, and the writ De Haeretico comburendo was formed in his case. But the statute 2 Hen. IV. c. 15, empowered the diocesan alone, without a synod, to commit a man for heretical opinions, and to imprison him as long as he chose, or fine him; or if he refused to abjure, or after abjuration relapsed, the sheriff, mayor, or other officer, who should be present, if required, with the ordinary or his commissary, when the sentence was pronounced, was to take the convict and burn him openly, without waiting for the king's writ.

It is unnecessary to mention the statutes of Henry VIII. relating to heresy. The Reformation was not fully established till the reign of Elizabeth, and the statute 1 Elizabeth, c. 1, declares that the persons to whom the queen or her successors shall give authority to judge of heresies shall not declare any matters to be heresies except "such as heretofore hath been adjudged heresy by the authority of the canonical Scriptures, or by the first four general councils, or any of them, or by any other general council wherein the same was declared heresy by the express and plain words of the canonical Scriptures, or such as shall hereafter be adjudged heresy by parliament with consent of the clergy in convocation." But there is no statute that determines what heresy is. After this statute of Elizabeth the proceedings in cases of heresy remained as they were at common law; for this statute repealed all former statutes about heresy, which was accordingly punished, after the Reformation was fully established, by ecclesiastical censures, and by burning alive a criminal who had been convicted, in the manner above described, in a provincial synod. The writ for burning the heretic could not be demanded as a matter of right, but was left to the discretion of the crown; and both Elizabeth and James the First, in their discretion, thought proper to grant the writ. Elizabeth, it is said, burnt alive two Anabaptists, and James burnt alive two Arians.

The statute of 29 Charles II. c. 9, abolished the writ De Haeretico comburendo. Heresy is now left entirely to the ecclesiastical courts; and the punishment of death in consequence of any ecclesiastical censure was by that act abolished in England. As Elizabeth and James practically showed their approbation of burning heretics alive, so Lord Coke (3 *Instit.* c. 5) approves of the punishment.

At present the ecclesiastical courts punish for heresy, when they do punish, *pro salute animae*, as it is termed,—that is, solely out of regard to the soul of the offender. But it is difficult to say at present what can be called heresy; and

perhaps it is difficult to say what is exactly the punishment for it. It is remarked in the Report of the Criminal Law Commissioners on Penalties and Disabilities in regard to Religious Opinions, 1845 (p. 22), that "the jurisdiction, as it may affect the laity, and clergy not of the established church, or indeed as administered *pro salute animae*, appears to militate with the principles contained in modern acts of toleration, that are inconsistent with the infliction of punishments for mere opinions with respect to particular articles of faith or mode of worship." Indeed there seems no risk in asserting that much of the jurisdiction of the ecclesiastical courts in respect to heresy, whether it shows itself in speaking, writing, or preaching, has been destroyed by the various Toleration Acts. The Criminal Law Commissioners see no reason for retaining the jurisdiction of the ecclesiastical courts in matters of heresy, "except, so far as it may be directed, to prevent ministers of the Established Church from preaching in opposition to the Articles and doctrine of the establishment of which they receive their emoluments." So far as this, there is certainly no objection. There ought to be some speedy mode of depriving a man of these emoluments which he accepts upon certain terms. He who will receive alms [FRANK-ALMOIGNE], and yet preach against the doctrines which he is paid for teaching, deserves the reprobation of all mankind; and those who dislike ecclesiastical authority most could not be better pleased than to see such an offender handed over to his brethren to be dealt with in any way that the law of the church provides, to which the offender has solemnly submitted himself.

In the year 1845 proceedings were commenced in the Arches' Court of Canterbury against the Rev. Mr. Oakley for writing, publishing, and maintaining doctrines contrary to the articles of religion.

The history of Heresy in England is instructive. The change from burning alive to the free expression of opinion on religious matters is one of the steps in the social progress of England. For some other matters connected with the subject, see BLASPHEMY.

HERIOT is a feudal service consisting in a chattel which is given to the lord on the death of a tenant, and in some places upon alienation by a tenant. It is stated to have originated in a voluntary gift made by the dying tenant to his lord and chieftain of his horse and armour. This payment was first usual, then compulsory; and at an early period we find the antient military gift sinking into the render of the best animal (at the election of the lord) possessed by the tenant, and sometimes a dead chattel, or a money commutation.

Heriots are either heriots-custom or heriots-service. Where a heriot is due from the dying tenant by reason of his filling the character or relation of tenant within a particular seigniory, honour, manor, or other district, in which it has been usual from time immemorial to make such renders upon death or alienation, it is called *heriot-custom: heriot-service* is a heriot due in respect of the estate of the tenant in the particular land held by him.

For heriot-custom the lord cannot distrain, but he may seize the animal which he claims as heriot: for heriot-service the lord may either seize or distrain.

Heriot-custom formerly prevailed very extensively in freehold lands, but is now more commonly found in lands of customary tenure, whether copyholds,—the conventionary estates in Cornwall, held under the duke of Cornwall,—the customary estates called *customary freeholds* in the northern border counties,—or lands in antient demesne.

Heriots were known in England before the complete development of the feudal system which followed upon the Norman conquest. The Normans introduced reliefs without abolishing the analogous heriot. The *heregeate* (heriot) is mentioned and fixed by the laws of Canute, 67, &c. The Dano-Saxon "heregeat" is derived by Spelman, and after him by Wilkins, from *herge* (more properly *here*), army. A more probable derivation would be from the word "herr," lord. In Scotland, where the render upon the death of the tenant is a pecuniary payment, it is called "lord's money," "hergeld," or herrezeld."

HIGH COMMISSION COURT. [ESTABLISHED CHURCH, p. 849.]

HIGH CONSTABLE. [CONSTABLE.]

HIGH TREASON. [TREASON.]

HIGHWAY. [WAYS.]

HOLY ALLIANCE. The name commonly given to the convention concluded at Paris on the 26th September, 1815, between Alexander, Emperor of Russia, Francis, Emperor of Austria, and Frederick William, King of Prussia. The draught of the convention was shown to Lord Castlereagh by the Emperor of Russia before it had been seen by either the Emperor of Austria or the King of Prussia. (*Debates in Parliament.*) It was signed by the three princes with their own hands, without being countersigned by any minister. The document, which was first published by Alexander on Christmas-day following, commenced by an announcement of the intention of the subscribing parties to act for the future upon the precepts of the gospel; which they define to be those of justice, Christian charity, and peace. Then follow three articles, which, after stating the Scriptural command to all men to consider one another as brethren, deduce from it the inference, that the three contracting princes will remain united to each other by the bonds of a true and indissoluble fraternity, and that they will conduct themselves to their subjects and armies as the fathers of families. The third article is an invitation to other powers to join the confederacy. When this treaty was communicated to the English court, a reply was returned to the effect, that the forms of the British constitution did not permit the king formally to accede to it, but that no other power could be more inclined to act upon the principles which it seemed to involve. At this time many liberal politicians throughout Europe, especially in Germany, looked to the Holy Alliance with most sanguine expectations of its happy results. Most of the European princes finally became members of the Holy Alliance. At the congress of Aix-la-Chapelle, held in 1818, a declaration was prepared and subsequently published which stated that peace was the object of the alliance. This congress was the first of a series of congresses which were held for the purpose of regulating the policy of the Continent, and of keeping down especially the German, Italian, and Spanish liberals. [CONGRESS.] In 1821 England withdrew from the political system which the Holy Alliance was endeavouring to establish. The allied powers had issued a circular on the 8th December, 1820, from Troppau, where they were then assembled in congress, to consider the means of putting down the revolution which had just taken place in Naples. This note, which was addressed to the ministers and chargés d'affaires at the German and northern courts, drew from Lord Castlereagh, the then English minister for foreign affairs, a despatch addressed to his Majesty's missions at foreign courts, and dated the 19th January, 1821, in which it was intimated that this government could not acquiesce in the principles announced in the circular of the allied princes, or in their proposed application. England also protested against the invasion of Spain in 1823. After the death of the Emperor Alexander it may be difficult to say whether or not the convention so called had any substantial existence.

HOMAGE. [FEUDAL SYSTEM, p. 23; FEALTY.]

HOMICIDE. [MURDER.]

HOSPITALLERS. Hospitaller, in its literal acceptation, means one residing in an hospital, in order to receive the poor or stranger; from the Latin *hospitalarius*, a word found only in the language of the lower age. The *Knights Hospitallers* were an order of religious formerly settled in England, who took their name and origin from an hospital built at Jerusalem for the use of pilgrims going to the Holy Land, dedicated to St. John. The first business of these knights was to provide for such pilgrims at that hospital, and to protect them from injuries and insults upon the road. They were instituted about A.D. 1092, and were very much favoured by Godfrey of Bouillon and his successor Baldwin king of Jerusalem. They followed chiefly St. Austin's rule, and wore a black habit with a white cross upon it. They soon came into England, and had a house built for them in London A.D. 1100; and from a poor and mean beginning obtained so great wealth, honours, and exemptions, that their Supe-

rior here in England was the first lay-baron, and had a seat among the lords in parliament; and some of their privileges were extended even to their tenants. The order was suppressed in England.

There were also sisters of this order, of which one house only existed in England, at Buckland in Somersetshire.

Upon many of their manors and estates in the country the Knights Hospitallers placed small societies of their brethren, under the government of a commander. These were allowed proper maintenance out of the revenues under their care, and accounted for the remainder to the grand prior at London. Such societies were in consequence called Commanderies. What were commanderies with the Hospitallers were called Preceptories by the Templars, though the latter term was in use with both orders.

The Knights Hospitallers had several other designations. They were at first called Knights of St. John of Jerusalem; afterwards, from their fresh place of settlement, Knights of Rhodes; and after the loss of that island, A.D. 1522, Knights of Malta, from the island which had been bestowed upon them by the emperor Charles V. (Tanner, *Notit. Monast.*, edit. Nasmith, præf. p. xv.; Newcourt, *Repert. Eccles.*, vol. i. p. 530; ii. p. 199; Dugdale, *Monasticon Anglicanum*, new edit., vol. vi. p. 786.)

HOSPITALS. [SCHOOLS OF MEDICINE.]

HOTCHPOT. [STATUTE OF DISTRIBUTIONS.]

HOUSEBREAKING AND BURGLARY. The derivation of the word burglary is quite uncertain. By some writers it is supposed to have been introduced by the Saxons, and to be compounded of *burg*, a castle or house, and *larron* or *latro*, a thief. But Spelman conceives that the term was introduced into the criminal law of England from Normandy, and says that he finds no traces of it among the Saxons. (Spelman, *Glossary*, "Burglaria," "Hamesecken.)" The offence of burglary at common law is defined to be "a breaking and entering the dwelling-house of another in the night, with intent to commit some felony within the same, whether such felonious intent be executed or not." By 1 Vict. c. 86, "night-time" is declared to be from nine o'clock in the evening till six o'clock the next morning. By dwelling-house is meant the actual and personal residence of a man. Breaking within the "curtilage" of a dwelling-house and stealing is a different offence. If a dwelling-house is feloniously entered at any other time than in the night-time, the offence is simply house-breaking. Burglary is now only punishable with death when violence is used: in other cases the punishment is transportation for life or for not less than ten years, or imprisonment for a term not exceeding three years. Stealing in a dwelling-house, with menace or threat, is felony, and punishable with transportation for not exceeding fifteen years nor less than ten years, or imprisonment for not exceeding three years. In both cases principals in the second degree and every accessory before the fact are liable to the same punishment as the principal in the first degree. The punishment of every accessory after the fact (except only a receiver of stolen property) is imprisonment for not exceeding two years.

Committed for burglary in England and Wales in the five years from 1835 to 1839, 1657; in the five years from 1840 to 1844, 2873. In 1837 the capital punishment for burglary was abolished, except in case of burglary attended with violence to persons. The number of persons committed for burglary under circumstances of violence was 84 in the seven years ending 1844.

Committed for house-breaking in the five years ending 1839, 2326; in the ensuing five years, 3212.

The number of persons committed for breaking within the curtilage of dwelling-houses and stealing was 401 in the first five and 405 in the second five of the ten years from 1835 to 1844. The increase in the committals for burglary and house-breaking was 54 per cent. on a comparison of these two periods.

HUDSON'S BAY COMPANY AND THE FUR TRADE. In the sixth century the skins of sables were brought for sale from the confines of the Arctic Ocean to Rome, through the intervention of many different hands, so that the ultimate cost to the consumer was very great. For several centuries after that

time furs could not have become at all common in western Europe. Marco Polo mentions as a matter of curiosity in 1252, that he found the tents of the Khan of Tartary lined with the skins of ermines and sables which were brought from countries far north, from *the land of darkness*. But in less than a century from that time the fashion of wearing furs must have become prevalent in England, for in 1337 Edward the Third ordered that all persons among his subjects should be prohibited their use unless they could spend one hundred pounds a year. The furs then brought to England were furnished by the traders of Italy, who procured them from the north of Asia.

The fur trade was taken up by the French colonists of Canada very soon after their first settlement on the St. Lawrence, and the traders at first made very great profits. The animals soon became scarce in the neighbourhood of the European settlements, and the Indians were obliged to extend the range of their hunting expeditions, in which they were frequently accompanied by one or other of the French dealers, whose object it was to encourage a greater number of Indians to engage in the pursuit and to bring their peltries, as the unprepared skins are called, to the European settlements. When the hunting season was over the Indians came down the Ottawa in their canoes with the produce of the chase, and encamped outside the town of Montreal, where a kind of fair was held until the furs were all exchanged for trinkets, knives, hatchets, kettles, blankets, coarse cloths, and other articles suited to their wants, including arms and ammunition. A large part of the value was usually paid to the Indians in the form of ardent spirits, and scenes of riot and confusion were consequently of frequent occurrence.

The next stage of the Canadian fur trade was when some of the European settlers, under the name of *Coureurs des Bois*, or wood-rangers, set out at the proper season from Montreal in canoes loaded with various articles considered desirable by the Indians, and proceeded up the river to the hunting-grounds. Here they remained for an indefinite time, sometimes longer than a year, carrying on their traffic with the Indian hunters, and when their outward investments were exhausted, they returned, their canoes in general loaded with packs of beaver-skins and other valuable peltries. While engaged in these expeditions some of them adopted the habits of the tribe with whom they were associated, and formed connexions with the Indian women. This trade was for some time extremely profitable; the men by whom it was conducted, the *Coureurs des Bois*, were usually without capital, and their investments of European goods were furnished by the storekeepers of Montreal, who drew at least their full proportion of profit from the adventure. The return cargo was generally more valuable than the investments, in the proportion of six to one. Thus where the investment amounted to one thousand dollars, and the peltries returned sold for six thousand, the storekeeper first repaid himself the original outlay, and usually secured for himself an equal amount for interest and commissions, after which the remaining four thousand dollars were divided between himself and the Coureur des Bois.

The Hudson's Bay Company, established with the express object of procuring furs, was chartered by Charles II. in 1670. This association founded several establishments in America, and has ever since prosecuted the trade under the direction of a governor, deputy-governor, and a committee of management chosen from among the proprietors of the joint-stock, and resident in London. By this charter the Company obtained, as absolute lords and proprietors, all the lands on the coasts and confines of the seas, lakes, and rivers within the Hudson's Straits, not actually possessed by the subjects of any other prince or state, and the exclusive right of trading with the Indians. Persons who intruded on the Company's privileges were to forfeit merchandise and ship, one half to the Crown and one-half to the Company. In 1749 the Hudson's Bay Company had only four forts, occupied by 120 men, and they were threatened with the deprivation of their charter from non-user. Their exports for the ten preceding years had amounted to 36,000*l.*;

their establishment expenses and management to 157,000*l.*, their imports to about 280,000*l.*; and their net profit was estimated at about 8000*l.* a year. At this time the value of the furs imported from Canada into Rochelle amounted to 120,000*l.*

The charter of the Hudson's Bay Company did not extend to Canada, which in 1670 belonged to France, and when Canada was ceded to England in 1763, a vast region was opened to the fur traders without a licence. In 1783 various associations and a number of individuals were combined into one great body, the North-West Fur Company. A most interesting account of this association is given in Mr. Washington Irving's 'Astoria.' This company consisted of twenty-three shareholders, or partners, comprising some of the most wealthy and influential British settlers in Canada, and employed about 2000 persons as clerks, guides, interpreters, and boatmen, or *voyageurs*, who were distributed over the face of the country. Such of the shareholders as took an active part were called agents; some of them resided at the different ports established by the Company in the Indian territory, and others at Quebec and Montreal, where each attended to the affairs of the association. These active partners met once in every year at Fort William, one of their stations near the Grand Portage on Lake Superior, in order to discuss the affairs of the Company, and agree upon plans for the future. The young men who were employed as clerks were, for the most part, the younger members of respectable families in Scotland, who were willing to undergo the hardships and privations accompanying a residence for some years in these countries, that they might secure the advantage of succeeding in turn to a share of the profits of the undertaking, the partners, as others died or retired, being taken from among those who, as clerks, had acquired the experience necessary for the management of the business. About 1806 the hunters of the North-West Company are supposed to have first crossed the Rocky Mountains and to have established posts on the northern head-waters of the Columbia. In 1813 the Company bought Astoria, on the Columbia River, which Mr. Astor, of New York, and his other partners, were induced to relinquish in consequence of the war between Great Britain and the United States. The activity of the North-West Company at length roused the Hudson's Bay Company. In 1812 the latter Company exercised for the first time its rights to colonize, by selling a tract of land on Lake Winnipeg and the Red River to Lord Selkirk, who introduced a considerable number of persons from Scotland. An open war was carried on by the partisans of the North-West Company for some years against the Hudson's Bay Company. They attacked posts, drove away the inhabitants by force, or waylaid or destroyed them. In 1814 the Red River settlement was the object of attack, and after a war of two years the governor, Mr. Semple, with some others, were massacred, and the survivors were driven away. In 1821 this unfortunate state of things was fortunately put an end to by the union of the rival companies, and the trade has since been prosecuted peacefully and successfully.

To prevent in future the evils of irregular occupation of the Hudson's Bay Company by private adventurers, an act (1 & 2 Geo. IV. c. 66) was passed, the preamble of which recites that the animosities and feuds of the Hudson's Bay and North-West Companies had for many years past kept the interior of North America in a disturbed state, and it was then enacted that it shall be lawful for his majesty to give licence to any company or persons for the exclusive privilege of trading with the Indians in any part of North America, not being part of the territories of the Hudson's Bay Company, or of any of his majesty's provinces, or of territories belonging to the United States. The act then gives to the courts o. Upper Canada civil jurisdiction over every part of North America not within the existing British colonies and not subject to any civil government of the United States. Under this act his majesty is enabled to appoint justices of the peace within the territories of the Company, and to give them civil and penal jurisdiction not extending in civil suits beyond 200*l.*, or in penal cases to death or transportation. When the case is met by this limitation, it is reserved for the courts of Western

(Upper) Canada. The licences which have been granted in pursuance of this act have been granted to the Hudson's Bay Company. The terms are, that the Company shall provide for the execution of civil and criminal processes over their servants, and that the rules for conducting the Indian trade shall be submitted to the Crown, and be of such a nature as is calculated to diminish or prevent the sale of spirituous liquors to the Indians, and tend to their moral and religious improvement. The Company have established missions and schools in various parts of their territories. The right of the crown to establish any colony within the territories assigned to the Company is reserved, and also the right of annexing any part of such territories to any existing colony.

In the old territories of the Hudson's Bay Company, comprehended under the charter of 1670, the Company are lords of the soil and can sell their lands; but in the parts over which they have acquired jurisdiction at a more recent period they have no power to hold lands.

The posts of the Company stretch from the Frozen Ocean and Hudson's Bay to the Pacific on the west, the Columbia River on the south, and the Atlantic on the east. This vast territory is divided into four districts, the Northern, Southern, Columbian, and Montreal Departments, in which there are 136 establishments. Between the Rocky Mountains and the Pacific there are six permanent establishments on the coasts and sixteen in the interior country; and the Company maintain six armed vessels on the coast, one of which is a steam-vessel. The "posts" are described as stockades with wooden bastions, and they will accommodate thirty or forty persons, but the number of occupants is usually only four or five. The enumeration of the distances between some of these posts will give some idea of the vast extent of country in which the partners and servants of the Hudson's Bay Company carry on their operations. From Fort William on Lake Superior, to Cumberland House on the main branch of the Saskatchewan river, is 1018 miles; from Cumberland House to Fort Chepewyan on Lake Athabasca is 840 miles; thence to Fort Resolution on Great Slave Lake is 240 miles. The Mackenzie river flows out of this lake, and there are three forts on it: the first is Fort Simpson, 338 miles from Fort Resolution; Fort Norman, 236 miles lower down; and Fort Good Hope, 312 miles below Fort Norman, which is the most northerly of the Hudson's Bay Company's forts, is 3800 miles from Montreal. Yet the clerks in charge of these establishments look upon each other as neighbours. Fort Vancouver, about ninety miles from the mouth of the Columbia river, is the largest of the Company's forts. It comprises an area of four acres, a village of sixty houses, stores, mills, and workshops. A farm of 3000 acres forms a part of this establishment. The Company have, in fact, several farms in this quarter, and grain and cattle are raised in large quantities for the use of the Company's servants and the supply of the Russian-American settlements with provisions. Wool, hides, and tallow are exported to England. The terms of their charter do not permit the Hudson's Bay Company to embark their capital in trade, and a subordinate Company has therefore been formed, the members and officers of which belong to the Hudson's Bay Company, while the capital employed is their own. At the colony on the Red River the population exceeds 5000, and there is a Roman Catholic bishop.

The number of persons in the employ of the Hudson's Bay Company in North America, on the 1st of June, 1844, was 1212. In 1837 the Company's service consisted of 25 chief factors, 27 chief traders, 152 clerks, and about 1200 regular servants, besides boatmen and hunters occasionally employed. Many young men of superior education and of respectable family are in the service of the Company. "If they conduct themselves well as clerks, they are promoted and become traders, and afterwards factors. The chief factors and chief traders, as they are called, participate in the profits." (Evidence of Sir J. H. Pelly, Governor of the Hudson's Bay Company.) The administration of the Company has been highly beneficial to the people within its territories. "In all the countries," says Mr. Wyeth, "where the Hudson's Bay Company have exclu-

sive control, they are at peace with the Indians, and the Indians are at peace amongst themselves." (Territory of Oregon Report.)

All the furs collected by the Hudson's Bay Company are shipped to London; some from their factories at York Fort, and on Moose River, in Hudson's Bay; other portions from Montreal, and the remainder from the Columbia River. The furs taken in the whole of the Oregon territory are shipped from the Columbia. In 1844 the Company imported from the whole of their North American territories and hunting-grounds 433,398 skins, of the value of 173,936*l.*; of which Oregon furnished 61,365 skins, valued at 43,571*l.* In 1845 their importations from Oregon have been 57,628 skins, valued at 56,749*l.* (*Edinburgh Review*, No. 165.)

The fur sales of the Hudson's Bay Company are held every year in the month of March, and being of great magnitude, they attract many foreign merchants to London. The purchases of these foreigners are chiefly sent to the great fair in Leipzig, whence the furs are distributed to all parts of the continent of Europe.

The fur trade is prosecuted in the north-western territories of the United States by an association called the North American Fur Company, the principal managers of which reside at New York. The chief station of this company is Michilimackinac, to which are brought all the peltries collected at the other ports of the Mississippi, Missouri, and Yellowstone rivers, and through the great range of country extending thence to the Rocky Mountains. This Company employs steam-boats for ascending the rivers, which penetrate with ease to regions which could formerly be explored only through the most painful exertions in keel-boats and barges, or by small parties on horseback or on foot.

The ermine, called by way of pre-eminence "the precious ermine," is found almost exclusively in the cold regions of Europe and Asia. The stoat (which in fact is identical with the ermine), but the fur of which is greatly inferior to that of the European and Asiatic animal, is found in North America. The fur of the ermine is of a pure whiteness throughout, with the exception of the tip of the tail, which is black; and the spotted appearance of ermine skins, by which they are peculiarly known, is produced by fastening these black tips at intervals on the skins. The animal is from 14 to 16 inches long from the nose to the tip of the tail, the body being from 10 to 12 inches long. The best fur is yielded by the oldest animals. They are taken by snares and in traps, and are sometimes shot, while running, with blunt arrows. The sable is a native of Northern Europe and Siberia. The skins of best quality are procured by the Samoieds, and in Yakutsk, Kamtchatka, and Russian Lapland: those of the darkest colour are the most esteemed. The length of the sable is from 18 to 20 inches. It has been considered by some naturalists a variety of the pine-marten. Martens are found in North America as well as in Northern Asia and the mountains of Kamtchatka: the American skins are generally the least valued, but many among them are rich and of a beautiful dark-brown olive colour. The fiery fox, so called from its brilliant red colour, is taken near the north-eastern coast of Asia, and its fur is much valued, both for its colour and fineness, in that quarter of the world. Nutria skins are obtained from South America, and the greater part of the importations in this country come from the states of the Rio de la Plata. These skins are of recent introduction, having first become an article of commerce in 1810: the fur is chiefly used by hat-manufacturers, as a substitute for beaver. Sea-otter skins were first sought for their fur in the early part of the eighteenth century, when they were brought to Western Europe from the Aleutian and Kurile Islands, where, as well as in Behring's Island, Kamtchatka, and the neighbouring American shores, sea-otters are found in great numbers. The fur of the young animal is of a beautiful brown colour, but when older the colour becomes jet-black. The fur is extremely fine, soft, and close, and bears a silky gloss. Towards the close of the eighteenth century furs had become exceedingly scarce in Siberia, and it became necessary to look to fresh sources

for the supply of China and other Asiatic countries. It was about the year 1780 that sea-otter skins were first carried to China, where they realised such high prices as greatly to stimulate the search for them. With this view several expeditions were made from the United States and from England to the northern islands of the Pacific and to Nootka Sound, as well as to the north-west coast of America. The Russians then held and still hold the tract of country most favourable for this purpose, but the trading ships which frequent the coast are enabled to procure these skins from the Indians. Fur-seals are found in great numbers in the colder latitudes of the southern hemisphere. South Georgia, in 55° S. lat., was explored by Captain Cook in 1771, and immediately thereafter was resorted to by the colonists of British America, who conveyed great numbers of seal skins thence to China, where very high prices were obtained. The South Shetland Islands, in 63° S. lat., were greatly resorted to by seals, and soon after the discovery of these islands in 1818, great numbers were taken: in 1821 and 1822 the number of seal skins taken on these islands alone amounted to 320,000. Owing to the system of extermination pursued by the hunters, these animals are now almost extinct in all these islands, and the trade for a time at least has ceased. The seal-fishery, or hunting, in the Lobos Islands, is placed under restrictive regulations by the government of Montevideo, and by this means the supply of animals upon them is kept pretty regular.

Bears of various kinds and colours, many varieties of foxes, beavers, racoons, badgers, minks, lynxes, musk-rats, rabbits, hares, and squirrels, are procured in North America. Of all the American varieties, the fur of the black fox, sometimes called the silver fox, is the most valuable; next to that in value is the fur of the red fox, which is exported to China, where it is used for trimmings, linings, and robes, which are ornamented in spots or waves with the black fur of the paws of the same animal. The fur of the silver-fox is also highly esteemed. This is a scarce animal, inhabiting the woody country below the falls of the Columbia river. It has long thick fur of a deep lead colour, intermingled with long hairs white at the top, forming a lustrous silver-grey, whence the animal derives its name. The hides of bisons (improperly called buffaloes), of the sheep of the Rocky Mountains, and of various kinds of deer, form part of the fur trade of North America; and sometimes the skin of the white Arctic fox and of the Polar bear are found in the packs brought to the European traders by the most northern tribes of Indians.

There is but one species of fur which is peculiar to England, the silver-tipped rabbit of Lincolnshire. The colour of the fur is grey of different shades, mixed with longer hairs tipped with white. This fur is but little used in England, but meets a ready sale in Russia and China; the dark-coloured skins are preferred in the former country, and the lighter-coloured in China.

The number of skins imported into this country in 1843 was as follows:—

	Imported. No.	Home Consumption. No.
Bear . . .	11,640	1,235
Beaver . .	49,688	52,048
Cat . . .	5,430	1,992
Coney . .	60,655	63,279
Deer . . .	175,804	79,267
Ermine . .	105,847	89,073
Fitch . .	174,308	173,445
Fox . . .	80,927	4,120
Goat . . .	512,287	337,068
Kid, in the hair .	92,716	54,744
—— dressed .	446,372	444,071
Lamb, undressed .	1,288,902	1,332,400
—— tanned, &c.	10,391	7,348
Lynx . .	9,853	6,273
Marten . .	208,881	182,515
Mink . .	139,156	88,934
Musquash . .	865,337	1,045,713
Nutria . .	836,725	560,046
Otter . .	17,825	145
Racoon . .	381,049	57,556
Sheep . .	421,390	348,809
Squirrel or Calabar	1,987,965	1,872,594
Seal . . .	772,695	771,388

HUE AND CRY was the old common-law process of pursuing with horn and voice all felons and such as had dangerously wounded another.

Though the term has in a great measure fallen into disuse, the process is still recognised by the law of England as a means of arresting felons without the warrant of a justice of the peace. Hue and cry may be raised either by the precept of a justice of the peace, or by a private person who knows of the felony; who should acquaint the constable of the vill with the circumstances and the person of the felon: though, if the constable is absent, hue and cry may be made without licence. When hue and cry is raised, all persons, as well constables as others, are bound to join in the pursuit and assist in the capture of the felon. A constable also who has a warrant against a felon may follow him by hue and cry into a different county from that in which the warrant was granted, without having the warrant backed. The pursuers are justified in breaking the outer door of the house where the offender actually is, and are not liable to any punishment or suit if it should appear that the hue and cry was improperly raised, but the person raising the hue and cry wantonly and maliciously may be severely punished as a disturber of the public peace. (Blackstone, *Com.*; Stephens, *Criminal Law.*)

A printed sheet called the 'Hue and Cry' is issued three times a week from the Police Court, Bow-street, which contains descriptions of property stolen, notices of robberies, and descriptions of soldiers who have deserted. Copies of this paper are sent to the police offices throughout the country. The 'Hue and Cry' is published at the expense of the Home Office, and costs about 1200*l.* a year.

HUNDRED. [SHIRE.]

HUNDRED COURT. [COURTS; SHIRE.]

HUSBAND. [WIFE.]

HYPOTHECATION. [MORTGAGE; PLEDGE.]

I.

IDIOT. [LUNATIC.]

IGNORAMUS. [INDICTMENT.]

ILLEGAL CONTRACT. [PUBLIC POLICY.]

ILLEGITIMACY. [BASTARD.]

IMPEACHMENT. [ATTAINDER.]

IMPERIAL CHAMBER. [AULIC CHAMBER.]

IMPORTS AND EXPORTS. [BALANCE OF TRADE; DEMAND AND SUPPLY.]

IMPRESSMENT. [SEAMEN.]

IMPROPRIATE RECTORY. [BENEFICE, p. 341.]

IMPROPRIATION. [BENEFICE.]

IMPROPRIETOR. [BENEFICE, p. 342.]

INCLOSURE. The term Inclosure is applied to the inclosing and partitioning of lands in England and Wales, which are comprehended under the general name of Commons or Common Lands. A knowledge of the present condition of the lands comprehended under this term enables us to form a better estimate of the state of agriculture in England and its capabilities of improvement. We thus learn also what was the general condition of the lands in England before inclosures were made.

It is necessary to define the terms Commons, and Commonable and Intermixed Lands. Commons or Common Lands are lands in a state of nature or waste, of which individuals have not the severalty. Commonable Lands are those lands which during a part of the year are in severalty, that is, occupied severally by individuals as their own, to the exclusion for the time of other people. The amount of common land in England is not known, but it is conjectured that it may be about 8,000,000 of acres: the total area of England and Wales is supposed to be about 37,000,000 acres.

The amount of commonable and intermixed lands is not known. The nature of these commonable and intermixed lands may be collected from the following instances. "There are many parishes in the kingdom that consist altogether of intermixed or commonable lands; there are others in which there is a great intermixture of common land with the commonable and intermixed land. The township of Barmby on the Marsh in Yorkshire contains 1692 acres. There are 1152 pieces of open land, which contain 1015 acres, giving an average size of 3 roods and 23 perches, and there are

352 old inclosures containing 677 acres. In the parish of Cholsey in Berkshire, the total contents of which are 2381 acres, there are 2315 pieces of open land, which contain 2327 acres, giving an average rize of one acre." This open land generally consists of long strips which are so narrow that it is impossible to plough them across. Yet much of this land is the best in the kingdom for natural fertility, and is the oldest cultivated land.

There is great variety in these commonable lands; but they may be divided into three classes, exclusive of wood-lands, First, there is open arable and meadow land, which is held and occupied by individuals severally until the crop has been got in. After the crop has been removed, that is, during the autumn and winter, it becomes commonable to persons who have severalty rights in it, and they turn on to it their cattle without any limit, or without stint, as it is termed. Thus there is a divided use in these open lands: individuals have the exclusive right to the enjoyment of one or more of these strips of open land for a part of the year; and during another part of the year all these individuals enjoy this open land in common. Second, there is open arable and meadow land that is held in severalty during one part of the year, like the first class; but after the crop is removed, it is commonable not only to parties who have severalty rights, but to other classes of individuals: these lands are generally called Lammas Lands.

These commonable rights may belong to a particular class, as a body of freemen, or to all landholders. There is great variety in these two classes as to the severalty holdings also. "There are many cases in which the severalty holding varies year by year. There are in these open lands what is called a pane of land, in which there may be 40 or 60 different lots. It is reported to be a remnant of an old military custom, when on a certain day the best man of the parish appeared to take possession of any lot that he thought fit; if his right was called in question, he had to fight for it, and the survivor took the first lot, and so they went on through the parish. It often happens that in these shifting severalties the occupier of lot one this year goes round the whole of the several lots in rotation; the owner of lot one this year has lot two the next, and so on. When these lands are arable lands, they do not change annually, but periodically, according to the rotation of the crops. Then there is the old lot meadow, in which the owners draw lots for the choice. There are a great variety of circumstances under which the severalty ownership of these lands shifts from time to time—but after the severalty ownership has ceased, and after the crop has been removed, they all become commonable."

This is one among many instances of the existence of antient usages in England, which are the same or nearly the same as the usages of nations that we call barbarous. Tacitus (*Germania*, c. 26) says of the antient German mode of agriculture: "The lands, in proportion to the number of cultivators, are occupied by all in turns, which presently they divide among themselves according to their rank (merit). The extensive plains offer facility for division. They change the cultivated fields yearly; and there is still a superfluity of land." The meaning of Tacitus is not clear. The following passage in Cæsar's account of the Gauls (vi. 22) is more distinct: "They pay no attention to agriculture, nor has any man a fixed quantity of land and boundaries of property: but the magistrates annually assign to the clans and tribes who have come together, as much land as they please and where they please, and in the next year they compel them to move to another spot." Herodotus (ii. 168) says that each member of the military caste in Egypt had a certain portion of land assigned to him; but they enjoyed the lands in a rotation, and the same persons did not continue in the enjoyment of the same lands. Strabo (p. 315) mentions a custom amongst the Dalmatians of making a division of their lands every eight years.

"The third class is that of grazing lands, where the rights of parties are settled and defined, the ordinary stinted pasture. The commonable lands are subject to very great variety and peculiarity; for instance, in some of these lands the right of grazing sheep at all belongs to a

man called a flock-master, and he has the power, during certain months of the year, of turning his own sheep exclusively on all the lands of the parish; or, according to particular circumstances, his right is limited and restricted to turning sheep upon a certain portion of it, with a view to giving parties an opportunity of putting in a wheat crop. In those parishes where there is a flock-master who has a right of depasturing his sheep during a certain portion of the year over all the land of the parish, it is clear that no one can sow any wheat without having made a bargain with him for shutting up his own particular fields, or some proportion of them."

"There is a very large extent of woodland in this kingdom that is commonable, strange to say, where certain individuals have a right during the whole year to turn on stock, the owner of the wood having no means of preserving his property except by shutting out other commoners' stock by custom for some two or three years after felling. There is that right, as also the old right of estover, which is a very great inconvenience, viz. where parties have the right of cutting house-bote, and plough-bote, and fire-bote, and so on in woods belonging, *quâ* wood, to another party. There is a great deal of land subject to that ruinous custom. There are many varieties of these commonable lands, but these are the most prominent and remarkable of them."

Under such a system as this, it is obvious that these common fields must be ill cultivated. The intermixed lands cannot be treated according to the improved rules of good husbandry. It is stated that the simple re-distribution of intermixed lands, now held in parcels so inconvenient in form and size as to be incapable of good husbandry, would in many instances raise the fee-simple value of the lands from 15*s*. or 17*s*. an acre to 30*s*.

It is the opinion of witnesses examined before the parliamentary committee of 1844, on Commons' Inclosures, that judicious inclosure would make a large portion of common lands much more productive. At present open arable lands are so intermixed that effectual drainage is nearly impossible. One witness says: "I have had occasion to go over two small properties, about 150 acres each; one I found in 301 different pieces, and the other in a little more than a hundred. I mention this to show how the lands are frequently intermixed; they are therefore farmed at much greater expense; and it is impossible to drain them on the present improved mode of drainage, inasmuch as other parties are occupying the furrow by which the water should pass off." In the Midland counties, where there are these open arable fields, the course is two crops and a fallow, and every third year the flocks run over the whole field. The same witness considers that a fourth of all the open arable land is at present totally unproductive. In cases where common arable fields have been subdivided and allotted, "the great improvement is, that in the first place every man has his allotment, and he deals with it as he pleases; he drains it, and crops it upon a proper course of cropping; he puts it in seed and keeps sheep upon it; he grows turnips and clover, or whatever he thinks proper." The same witness is of opinion that the average improvement in the value of common fields which have been inclosed is not less than 25 per cent. Indeed, the evidence that was produced before the committee establishes to a degree beyond what otherwise would be credible, the immense inconvenience and loss which arise from the system of intermixed lands, and their being also subject to commonage.

As to Common Rights, that is, rights of pasture and so forth on commons or waste lands, they are described generally under COMMON, RIGHTS OF. As to the common pasture lands, they also require an improved management. It is stated that commons are generally overstocked, partly in consequence of persons turning out more stock than they have a right to do, and partly by persons putting their stock on the common who have no right. In consequence of commons being overstocked, they are profitable to nobody; and a rule for regulating the quantity of stock would therefore be beneficial to all persons who are entitled to this right of common. Violent disputes

also frequently arise in consequence of the rights of parties to commonage not being well defined. It is the opinion of competent judges that very great advantage would result from stinting those parts of commons that are not worth inclosure; and that "it would be in many instances highly desirable to inclose portions of a common for the purpose of cultivation, and to allot such portions of it, whilst it would be impolitic to do more than stint other portions of it." A *stint* may be defined to be "the right of pasturage for one animal, or for a certain number of animals, according to age, size, and capability of eating." The commons in fact are not now stinted by the levant and couchant right, a right which cannot be brought into practical operation; and besides this there are many commons in gross. [COMMON, RIGHTS OF.]

Inclosures of land have now been going on for many years. It is stated that since 1800 about 2000 inclosure acts have passed; and prior to that time about 1600 or 1700. It seems doubtful from the evidence whether the 1600 or 1700 comprehend all inclosure acts passed before 1800. These inclosure acts (with the exceptions which will presently be mentioned) are private acts, and the expense of obtaining them and the trouble attendant on the carrying their provisions into effect have often prevented the inclosure of commons.

In 1836 an act (6 & 7 Wm. IV. c. 115) was passed for facilitating the inclosure of open and arable fields in England and Wales. The preamble to the Act is as follows:—"Whereas there are in many parishes, townships, and places in England and Wales divers open and common arable, meadow, and pasture lands and fields, and the lands of the several proprietors of the same are frequently very much intermixed and dispersed, and it would tend to the improved cultivation and occupation of all the aforesaid lands, &c., and be otherwise advantageous to the proprietors thereof, and persons interested therein, if they were enabled by a general law to divide and inclose the same," &c. Inclosures have been made under the provisions of this act, but the powers which it gives are limited, for the "act applies solely to lands held in severalty during some proportion of the year, with this exception, that slips and balks intervening between the cultivated lands may be inclosed." The lands which cannot be inclosed under the provisions of this act are "the uncultivated lands, the lands in a state of nature, intervening between these cultivated lands, beyond those that are fairly to be considered as slips and balks." However, it was stated in evidence before the committee of the House of Commons in 1844, that a large extent of common and waste land has been illegally inclosed under the provisions of the act, and the persons who hold such lands have no legal title, and can only obtain one by lapse of time. The chief motive to this dealing with commons appears to have been, that they thus got the inclosure done cheaper than by applying to Parliament for a private act.

In 1844 a select committee of the House of Commons was appointed "to inquire into the expediency of facilitating the inclosure and improvement of commons and lands held in common, the exchange of lands, and the division of intermixed lands, and into the best means of providing for the same, and to report their opinion to the House." The committee made their report in favour of a general inclosure act, after receiving a large amount of evidence from persons who are well acquainted with the subject. The extracts that have been given in this article are from the printed evidence that was taken before the select committee.

In pursuance of the recommendation of the committee, an Act of Parliament was passed in 1845 (8 & 9 Vict. c. 118), the object of which is thus stated in the preamble: "Whereas it is expedient to facilitate the inclosure and improvement of commons and other lands now subject to the rights of property which obstruct cultivation and the productive employment of labour, and to facilitate such exchanges of lands, and such divisions of lands intermixed or divided into inconvenient parcels, as may be beneficial to the respective owners; and it is also expedient to provide remedies for the defective or incomplete execution and for the non-execution

of powers created by general and local acts of inclosure, and to authorize the renewal of such powers in certain cases," &c.

It is not within the scope of this article to attempt to give any account of the provisions contained in the 160 sections of this act; but a few provisions will be noticed that are important in an economical and political point of view.

The 11th section contains a comprehensive description of lands which may be inclosed under the act; but the New Forest and the Forest of Dean are entirely excepted. The 14th section provides that no lands situated within fifteen miles of the city of London, or within certain distances of other towns, which distances vary according to the population, shall be subject to be inclosed under the provisions of this act without the previous authority of parliament in each particular case. The 15th section provides against inclosing town greens or village greens, and contains other regulations as to them. The 30th section provides that an allotment for the purposes of exercise and recreation for the inhabitants of a neighbourhood may be required by the commissioners under the act, as one of the terms and conditions of an inclosure of such lands as are mentioned in § 30.

The 108th section makes regulations as to "the allotment which upon any inclosure under this act shall be made for the labouring poor," and (sect. 109) "the allotment wardens (appointed by sect. 108) shall from time to time let the allotments under their management in gardens not exceeding a quarter of an acre each, to such poor inhabitants of the parish for one year, or from year to year, at such rents payable at such times and on such terms and conditions not inconsistent with the provisions of this act, as they shall think fit." Section 112 provides for the application of the rents of allotments; the residue of which, if any, after the payments mentioned in this section have been defrayed, is to be paid to the overseers of the poor in aid of the poor-rates of the parish.

Sections (147, 148) provide for the exchanges of lands not subject to be included under this act, or subject to be inclosed, as to which no proceedings for an inclosure shall be pending, and for the division of intermixed lands under the same circumstances.

Under section 152 the commissioners are empowered to remedy defects and omissions in awards under any local act of inclosure, or under the 6 & 7 Wm. IV. c. 115; and under section 157, the commissioners may confirm awards or agreements made under the supposed authority of 6 & 7 Wm. IV. c. 115, if the lands which have been illegally inclosed or apportioned or allotted, shall be within the definition of lands subject to be inclosed under this act.

The provisions of this act seem to be well adapted to remedy the evils that are stated in the evidence before the select committee; and there can be no doubt that agriculture will be greatly improved, the productiveness of the land increased, and employment given to labour by this judicious and important act of legislation. The 'London Gazette,' of August 22nd, 1845, notified the appointment by the secretary of state of two Commissioners of Inclosures.

(*Report from the Select Committee on Commons' Inclosure, together with the Minutes of Evidence and Index.* The Report is accompanied with Maps which explain various parts of the evidence. A complete digest of these minutes of evidence would form a very instructive article on the state of agriculture in England. The little that has been here attempted is of necessity very incomplete. The witnesses appear to agree in the main, but there are some differences of opinion which a reader of the minutes will not fail to see.)

INCOME TAX. [TAXATION.]

INCUMBENT. [BENEFICE.]

INDENTURE. [DEED.]

INDIA LAW COMMISSION. The act of the 3 & 4 Wm. IV. c. 85, by which the privileges of the East India Company are regulated, provides for the establishment of a Law Commission in India. The 53rd section recites that it is expedient, subject to such special arrangements as local circumstances may require, that a general system of judicial establishments and police, to which all persons whatever, as well Europeans as natives,

may be subject, should be established in the East Indies, and that such laws as may be applicable in common to all classes of the inhabitants, having a due regard to the rights, feelings, and peculiar usages of the people, should be enacted, and that the laws, and customs having the force of laws, should be ascertained and consolidated. For this purpose the appointment of a commission of five members was authorised, to be called "The Indian Law Commissioners." They were to report from time to time, and to suggest such alterations as they should consider could be beneficially made in the courts of justice and police establishments, in the forms of judicial procedure and laws, due regard being had to the distinction of castes, difference of religion, and manners and opinions prevailing among different races, and in different parts of India. By subjecting the European population of India to the same system of laws as the native population, the influence of the opinion of the former in the administration of justice will prevent abuses to which the latter might be exposed without having the opportunity of urging their complaints in this country. Mr. T. B. Macaulay was the chief member of the first commission. The report of a penal code was presented to the Governor-General on the 15th of June, 1835. The ground-work of it is not taken from any system of law in force in India, though compared with and corrected by the practices of the country. The principles of the British law, the French code, and the code drawn up by Mr. Livingston for the State of Louisiana, are the foundations of it. Most of the articles which it contains are accompanied with illustrations to facilitate the application of the law, and it is thus a statute-book and a collection of decided cases. This report was signed by Messrs. Macaulay, J. M. Macleod, G. W. Anderson, and F. Millett. The progress of the present commissioners in dealing with the general law of India has not been published. (*Penal Code, Parliamentary Paper*, 1838, No. 673.)

INDICTMENT. In its Latinized form this word is Indictamentum, which is probably from "indicare," to indicate or exhibit. An indictment is defined by Blackstone to be "a written accusation of one or more persons, of a crime or a misdemeanor, preferred to and presented upon oath by a grand jury." [JURY.] The accusation is at the suit, that is, in the name and on the behalf of the crown. The grand jury are instructed in the articles of their inquiry by a charge from the presiding judge, and then withdraw to sit and receive bills of accusation, which are presented to them in the name of the crown, but at the suit of any private person. An indictment is not properly so called till it has been found to be a true bill by the grand jury: when presented to the grand jury it is properly called a bill. The decision of the grand jury is not a verdict upon the guilt of the accused, but merely the expression of their opinion that from the case made by the prosecutor the matter is fit to be presented to the common jury, and therefore in conducting the inquiry the evidence in support of the accusation only is heard. If the grand jury think the accusation groundless, they indorse upon the bill "not a true bill," or "not found;" if the contrary, "a true bill;" and in finding a true bill twelve at least of the grand jury must concur. Antiently the words "ignoramus" and "billa vera" were used for the like purposes. When a bill is found to be a true bill, the trial of the accused takes place in the usual form; and when the bill is found not to be true, or, as it is frequently called, "ignored," the accused is discharged, but a new bill may be preferred against him before the same or another grand jury. Sometimes, when the bill is ignored on account of some slip or error, the judge will direct the accused to be kept in custody, in order to prevent him from escaping from justice. An indictment may be exhibited at any time after an offence is committed, except in those cases where a time is limited by statute. (4 Blackstone, *Com.*)

INDORSEE, INDORSEMENT, INDORSER. [EXCHANGE, BILL OF.]

INDUCTION. [BENEFICE, p. 340.]

INFAMY (from the Roman infamia) in English law is not easily defined. Certain offences were formerly con-

sidered such that conviction and judgment for such offences rendered a man infamous and incompetent to be a witness. But the endurance of the punishment, pardon, or reversal of the judgment, restored a man's competency as a witness. The 9 Geo. IV. c. 23, § 3, enacts, that when a man convicted of a felony shall have undergone the legal punishment for it, the effect shall be the same as a pardon under the Great Seal; and (§ 4) no misdemeanour, except perjury or subornation of perjury, shall render a man an incompetent witness after he has undergone his punishment. The 6 & 7 Vict. c. 85, enacts that no man shall be excluded from giving evidence, though he may have been convicted of any crime or offence. [EVIDENCE, p. 860.]

Certain offences enumerated in the 7 & 8 Geo. IV. c. 29, § 9, are infamous crimes, with reference to the provisions of that act. Though infamy does not disqualify a man from being a witness, it may be urged as an argument against his credibility.

The only satisfactory definition of infamy would be a permanent legal incapacity to which a man is subjected in consequence of a conviction and judgment for an offence, and which is not removed by suffering the punishment for the offence. By 2 Geo. II. c. 24, § 6, persons who are legally convicted of perjury or subornation of perjury, or of taking and asking any bribe, are for ever incapacitated from voting at the elections of members of parliament. They are therefore infamous; they labour under infamy: and have lost part of their political rights.

The Roman term infamia is the origin of our term infamy. Infamia followed in some cases upon condemnation for certain offences in a judicium publicum; and in other cases it was a direct consequence of an act, as soon as such act became notorious. Among the cases in which infamia followed upon condemnation were, insolvency, when a man's goods were taken possession of by his creditors in legal form and sold; the actio furti, and vi bonorum raptorum; actio fiduciae, pro socio, tutelae, &c. In all these cases a judicial sentence, or something analogous to it, was necessary, before infamia could attach to a person. Among the cases in which infamia followed as an immediate consequence of acts which were notorious are the following: the case of a woman caught in adultery, of a man being at the same time in the relation of a double marriage, of prostitution in the case of a woman, or when a man or woman gained a living by aiding in prostitution. The consequence of infamia was incapacity to obtain the honours of the state, and probably the loss of the suffrage also; and it was perpetual. The infamis was still a citizen (civis), but he had lost his political rights. The infamous man was also under some disabilities as to his so-called private rights. He was limited by the Praetor's edict in his capacity to postulate (that is, take the initial measures for asserting or defending his rights in legal form), to act as the attorney of another in such cases, to be a witness, and to contract marriage.

The rules of Roman law as to infamia are chiefly contained in the *Digest*, iii tit. 1 and 2. (See Savigny, *System des heut. Röm. Rechts*, ii. § 76-83; Becker, *Handbuch der Röm. Alterthümer*, ii. 121; Puchta, *Institutionen*, ii. 441.)

INFANT. [AGE.]

INFANT HEIR. [DESCENT.]

INFANTICIDE. The practice of putting infants to death, or exposing them, has existed in many countries from the remotest periods on record. Both in the Grecian states and among the Romans the exposure of infants was a common practice; and it does not appear that it was punished by any legal penalty. The difficulty of maintaining children must always have been one motive for infanticide, or the exposure of children. Aristotle (*Politica*, vii. 16, ed. Bekker) proposes the following regulation:—"With respect to the exposure and nurture of infants, let it be a law that no infant shall be brought up which is imperfectly formed; but with respect to the number of children, if the positive morality do not permit it, let it be a law that no child that is born be exposed; for indeed the limit to procreation has been determined. But if any children should be born in consequence of cohabitation contrary to these rules, abortion should be

procured before the fœtus has perception and life, for that which is right and that which is not will be determined by perception and life." This is perhaps the meaning of the passage in Aristotle; but it is not free from difficulty, and it has been variously explained; but so much is certain, that he recommends the procuring of abortion in certain cases. Plato, in his 'Republic' (v. p. 25) recommends exposure of the infants of the poor, and imperfectly formed children: he also recommends abortion. It does not appear that any legal check was put on the practice of exposing children among the Romans till the time of Valentinian and his colleagues (*Cod.*, viii. tit. 51 (52), § 2); though the enactment of Valentinian refers to an existing penalty, and the penalty is not mentioned in the title here referred to. It is a disputed point whether the doctrine of Paulus (*Dig.* 25, tit. 3, "De Agnoscendis et alendis liberis," &c. § 4) is to be considered a moral precept or a law (Gibbon, *Decline and Fall*, ch. xliv. note 114). Paulus says, "It is the opinion (or my opinion, "videtur") that a man must be considered as causing death, not only if he suffocates an infant, but if he casts the infant away, or refuses it food, or exposes it in public places to obtain that compassion which he himself has not." This seems to imply that the legal conclusion was, that any of these acts was equivalent to killing a child. Now, though exposure of infants was common among the Romans, and for a long time was not punished, it cannot be inferred that direct means of depriving an infant of life were not punished, at least in the time of Paulus. The judgment of Paulus therefore would make child-exposure a punishable offence. The adoption of this maxim into the legislation of Justinian must be considered as giving to it the efficacy of a law. On the subject of child-murder among the Romans, see Rein, *Criminalrecht der Römer*, p. 439, and the modern writers referred to in his note.

In modern times, the practice is permitted in many countries. In China, or at least in some parts of the empire, a large proportion of the female population are put to death as soon as they are born. Among the Hindus it was practised to a very great extent, till the Marquis Wellesley, when appointed Governor General of India, used every possible exertion to put a stop to it. By the perseverance of Major Walker and others his endeavours were successful, though unhappily for only a short time, for Bishop Heber observes that "since that time things have gone on very much in the old train, and the answer made by the chiefs to any remonstrances of the British officers is, 'Pay our daughters' marriage portions, and they shall live'" (*Narrative of a Journey in Upper India*, and *Hindu Infanticide*, by E. Moor, F.R.S., 1811; including Walker's *Report*). Of the island of Ceylon, Heber also remarks that in 1821 "the number of males exceeded that of females by 20,000; in one district there were to every hundred men only fifty-five women, and in those parts where the numbers were equal the population was almost exclusively Mussulman." Here also, as in Hindustan, the difficulty and expense of educating female children, and the small probability of their marrying without some portion, while a single life is deemed disgraceful, are the motives leading to the perpetration of the crime. Among the Mohammedans the practice is not discountenanced, though the necessity for it is greatly lessened by the habit of producing abortion. In the numerous islands of the Pacific, infanticide is practised to such an extent, that some of them have at times, when pestilence has contributed its influence, been nearly depopulated. When Cook visited Otaheite, he found its population to be upwards of 200,000; but in the early part of this century it was reduced to between 5000 and 6000, and this principally from the practice of murdering their offspring. Mr. Ellis (*Polynesian Researches*) says that he does "not recollect having met with a female in the island, during the whole period of his residence there, who had been a mother, while idolatry prevailed, who had not imbrued her hands in the blood of her offspring." One of the consequences of the introduction of Christianity and civilization into heathen countries has been the decrease or cessation of this abominable custom.

Infanticide is common among the na-

tive tribes of Brazil. (*London Geog. Journal*, ii. 198.)

In Christian countries, although infanticide is regarded with the deepest abhorrence, and is visited with the extreme severity of the law, the expense and trouble of maintenance, and the fear of shame and loss of reputation, are motives sufficiently powerful for the occasional perpetration of the crime.

It is one of the most difficult questions of medical jurisprudence to establish the murder of a child lately born. The chief points for decision are,—1st, whether the infant, the subject of inquiry, was born dead or alive; and 2nd, whether its death was the result of violence or of natural causes.

To establish the former point it is necessary to prove, first, that the infant was not born before the end of the sixth month after conception, because before that time a fœtus cannot be deemed capable of maintaining an independent existence, or to be what is called *viable*. This being proved from the size and form of the child, the decision whether it was born alive or not must generally rest on the condition of the lungs and heart, in which certain remarkable changes are produced as soon as respiration in the air has commenced. The result of many experiments has established certain rules by which the fact of the child having breathed after birth can in general be ascertained. In more difficult cases the weight of the lungs and their specific gravity require to be examined.

The signs of a child having lived after birth, which are to be found in the heart and other parts, supply no positive information unless life has continued for at least a day, and then the lungs alone will always suffice for decision. We need not consider the evidence required to prove whether a child born alive was murdered or died from natural causes, for it must be similar in all respects to that which is necessary in cases of homicide.

If the result of the evidence be that the child was born alive, and that it was destroyed, the offence is murder, and punishable accordingly.

If a woman be quick with child (that is, if she has felt the child move within her), it is murder if she take, or any person administer to her, or use any means with intent to procure abortion. But in cases where the woman is not quick with child, the offence is punishable at the discretion of the court by transportation for any term not exceeding fourteen or less than seven years, or imprisonment with or without hard labour for any term not exceeding three years; and if the offender be a male, he is to be once, twice, or thrice publicly or privately whipped (if the court shall think fit), under 9 George IV. c. 31. But this statute has been amended, and an attempt to procure abortion is now punishable, under 1 Vict. c. 85, with transportation for life or any term not less than fifteen years, or imprisonment for a term not exceeding three years.

The murder of bastard children by the mother was considered a crime so difficult to be proved, that the statute 21 James I. c. 27, made the concealment of the death of a bastard child absolute evidence that it had been murdered by the mother, except she could prove, by one witness at least, that it had been actually born dead. This law was repealed by the 43 George III. c. 58; and this act also was repealed by the statute 9 George IV. c. 31. It is enacted by § 14 of this last act that if "any woman" be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a misdemeanour, and shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and it shall not be necessary to prove whether the child died before or after birth: provided that if any woman tried for the murder of her child be acquitted thereof, it shall be lawful for the jury to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

A like act (10 Geo. IV. c. 34, § 97), applies to Ireland.

There are institutions in this country, as well as many other European countries, which have been founded with the view of restraining infanticide, of which an account is given in the article FOUNDLING HOSPITALS.

The legislative provisions for the prevention of infanticide, and the existing laws upon the subject, which have been established in most of the countries of which we have any knowledge, are clearly and concisely stated in Dunlop's edition of Beck's 'Elements of Medical Jurisprudence,' pp. 185-194.

In the five years from 1835 to 1839, the total number of persons committed for trial or bailed in England and Wales for "concealing the birth of infants," was 224; and in the five years from 1840 to 1844 the number was 306. In 1844, the number was 87, which was considerably higher than the average.

In the ten years from 1835 to 1844 inclusive, the number of persons tried for "attempts to procure the miscarriage of women" increased from 21 in the first five years to 31 in the last five years. This offence is much more common than the numbers here mentioned would lead any one to suppose.

In the three years 1838-9-40 the number of children murdered under the age of one year was 76; and of these there were 14 in the metropolis; 20 in Wilts, Dorset, Devon, and Somerset; 5 in Cheshire and Lancashire; 10 in Sussex, Hants, Berks, and parts of Kent and Surrey not included in the metropolitan district. Out of the above number (76) the number of "infants" was 61.

The number of infants murdered in 1840 was 18, 5 of whom were illegitimate.

In Scotland the crime of infanticide is called child-murder. If a child be destroyed in the womb, it is the separate offence of procuring an abortion. It is not under statutory regulations, but may be the subject of accusation, trial, and proof according to the rules of practice and evidence applicable to any other kind of murder. "Concealment of pregnancy" has been, since the 49 Geo. III. c. 14, a separate offence, for which a person may be brought to trial; and not an alternative which the jury may find in a charge of infanticide. The punishment is imprisonment not exceeding a term of two years.

INFANTRY is a name given to the soldiers who serve on foot. It is immediately derived from the Italian word *fante*, which, though in strictness denoting a child, is in general applied to any young person. From the latter word comes *fantaccino*, and this is the origin of *fantassin*, a name which was once commonly applied to a foot soldier. During the time that the feudal system was in vigour, the numerous dependants of the nobility served in the wars, for the most part, on foot; and being called children, because they were so considered with respect to their patron lords, or to the towns from whence they were drawn, the word infantry became at length the general name for that species of troops. Boccaccio, who wrote in the fourteenth century, designates by the word *fanteria* the men who marched on foot in rear of the cavalry.

Among the antient nations of Europe the foot soldiers constituted the chief strength of the armies. In the best days of the Grecian and Roman states battles were mainly won by the force and discipline of the phalanges and legions, and the number of the infantry in the field far exceeded that of the cavalry. The cavalry were then, as at present, employed chiefly in protecting the wings of the army and in completing the victory which had been gained by the former. Most of the writers on tactics, from Folard downwards, express a decided preference in favour of the infantry.

The antient Franks, when they left the forests of Germany, were accustomed to march and fight on foot; and they persevered in this practice even after they had obtained possession of the country of the Gauls, which abounded with horses.

In this country the greater part of the Anglo-Saxon forces consisted of infantry, the cavalry being formed of the thanes, or rich proprietors of the land: the infantry were divided into heavy and light armed troops; the former being provided with swords and spears and large oval shields, and the latter having only spears, clubs, or battle-axes.

But soon after the time of Charlemagne the institutions of chivalry began to be generally adopted in the kingdoms of Europe. These led to frequent and splendid exhibitions of martial exercises on horseback, in presence of the princes and assembled nobles; and the interest inspired by the achievements of the knights on those occasions was naturally followed by a high regard for that order of men. By degrees the cavalry, which was composed of persons possessing rank and property, and completely armed, acquired the reputation of being the principal force in war; and the foot soldiers, ill armed and disciplined, were held in comparatively small estimation.

From the capitularies of the French kings of the second race it appears that the foot soldiers who served in the armies of France consisted of slaves and freed serfs: the latter were either peasants or artificers, who, for the benefit of the army, occasionally exercised their particular trades, as shoeing horses, forming intrenchments, &c.; and, in action, like the men of the inferior class, were employed as skirmishers or light-armed troops. Similarly the infantry of this country, for some time after the Conquest, consisted of the yeomanry, vassals and dependants of the feudal tenants; and occasionally foot soldiers were engaged by the kings, under indentures, to serve in the wars. The English troops at that time wore a plain iron helmet called a *bacinet*, and a linen doublet stuffed with wool or cotton; their arms were generally pikes, but frequently they had swords and battle-axes.

Under the third race of kings in France, the possessors of fiefs were not compelled to furnish infantry for the armies; and it appears that this duty was then imposed on the towns. The troops thus raised were obliged to serve only in or near the towns to which they belonged; or, if they were marched to a considerable distance from thence, they received pay. In the reign of Philip Augustus this militia must have been very numerous; for in some districts it was formed into legions, and was commanded by persons of distinction. At the battle of Bovines (1214) the municipal militia formed the first line of the French army, but it was defeated by the German infantry, which was more numerous, and even then of better quality than that of France.

In 1448 Charles VII. instituted the militia denominated *Francs Archers*, which consisted of 16,000 foot soldiers armed with bows. But this body existed only about forty years, when it was suppressed by Louis XI., who formed a standing army of 10,000 French infantry, to which were joined 6000 Swiss; and subsequently Charles VIII. added a large body of Lansquenets, or German infantry. The reputation of the native troops in France seems to have been then at a low ebb; for Brantôme, in his *Discours des Colonels*, describes them as being mostly the refuse of society—men with matted hair and beards, who for their crimes had had their shoulders branded and their ears cut off. On the other hand the Swiss soldiers were inured to discipline; they were protected by defensive armour and formed into deep battalions, in which state they were able to render the shock of cavalry entirely unavailing. Large divisions of these troops accompanied the army of Charles VIII. into Italy, in 1494, where their good conduct and discipline greatly contributed to raise the reputation of the infantry to its antient standard.

The superiority of this class of troops consists in their being able to act on ground where cavalry cannot move; and it is obvious that the latter must, at all times, have been nearly useless in the attack and defence of fortified castles or towns. Even when the cavalry were held in the highest estimation it was sometimes found convenient for the knights to dismount and act as infantry. Froissart relates that at the battle of Cressy the English troops were formed in three lines, consisting of men-at-arms who fought on foot and were flanked by archers. At Poictiers and Agincourt also the men-at-arms engaged in a similar manner.

The Spanish soldiery, probably from being almost constantly engaged in warfare with the Moors, had early acquired considerable reputation; and the gallantry of the troops on foot, in keeping the field after the cavalry had retired, has been

supposed, though this opinion of the origin of the name is now rejected as fanciful, to have been commemorated by the designation of infantry, which was bestowed upon them, it is said, in consequence of their having been headed on that occasion by an Infanta of Spain. The great share which the Spanish forces had in the wars carried on both in Italy and Flanders during the reigns of Ferdinand, Charles V., and Philip II.; their steady discipline, and the success which resulted from the association of musketeers with pikemen in their battalions, caused the infantry of Spain to be considered, during many years, as the best in Europe. But the rivalry in arms between the Emperor Charles V. and Francis I. of France, and the connection of Henry VIII. of England with both, led, in the several states of those monarchs, to the adoption of the improvements which had been introduced by the Spaniards. It may be added that the practice of keeping up standing armies composed of men trained in the art of war under a rigid system of discipline, together with the universal adoption of the musket, has now brought all the infantry of Europe to nearly the same degree of perfection.

In the British army there are 99 regiments of infantry and 1 brigade of riflemen. The number of commissioned officers in these regiments is usually 39, non-commissioned officers 64, rank and file 800, making the total strength of a regiment 903. The charge of fifty-one regiments of infantry in 1845, averaged 26,556*l.* each. The cost of the three regiments of foot-guards in the same year was as follows:—The Grenadier Guards, with 96 commissioned and 177 non-commissioned officers, and 2080 privates, cost 86,081*l.* The Coldstream Guards and the Scots Fusileer Guards each consisted of 61 commissioned and 109 non-commissioned officers and 1280 privates, and cost 53,011*l.* There are several colonial corps the charges of which are defrayed by this country by a parliamentary vote. In 1845 the number of infantry in the pay of the United Kingdom was 91,737 of all ranks (3879 commissioned officers and 6486 non-commissioned officers, and 81,372 rank and file), and their charge for the year amounted to 2,697,376*l.* There were besides twenty-three regiments of infantry, consisting of 26,073 officers and men, on service in the East Indies, the charges of which, amounting to 763,934*l.*, were defrayed by the East India Company. The number of infantry in the armies of the great European powers is as follows:—Prussia, 87,256; Russia, 500,000; Austria, 270,000, and the proportion of infantry to cavalry is as $5\frac{6}{10}$ to 1; and France has 100 regiments of infantry of the line.

INFANT SCHOOLS. [SCHOOLS.]

INFANT WITNESSES. [AGE.]

INFORMATION, an accusation or complaint exhibited before the Court of King's Bench, against a person for some misdemeanor. It differs from an indictment [INDICTMENT] principally in this, that an indictment is an accusation found by the oath of a grand jury, whereas an information is simply the allegation of the person who exhibits it. Informations are of two sorts: those which are partly at the suit of the king, and partly at that of a subject; and secondly, such as are in the name of the king only. Informations, which are partly at the suit of the king and partly at that of a subject, are generally exhibited upon penal statutes, which impose a penalty on the offender, if he is convicted, one part of which is for the king and the other part for the informer. But no such information, when the penalty is divided between the informer and the crown, can be brought by any common informer when one year after the commission of the offence is expired; nor can it be brought on behalf of the crown after the lapse of two years more; nor when the penalty is originally given to the king only, can it be brought when two years since the commission of the offence have expired (31 Eliz. c. 5).

Informations exhibited in the name of the king alone are either filed ex-officio by the king's attorney-general at his own discretion, when they are called ex-officio informations; or they are exhibited in the name of the king by some private person or informer, and are filed by the master of the crown office. Ex-officio informations are filed in the case of great misdemeanors which disturb the king's

government, or interfere with the discharge of his kingly office. Those filed by the master of the crown office relate to riots, batteries, libels, which disturb the public peace, but do not directly tend to disturb the king's government. No information can be filed, except those in the name of the attorney-general, without the leave of the court of King's Bench, and the application for leave must be supported by affidavits which the party complained of has an opportunity of answering. When any information is filed, it must be tried in the usual way by a petit jury in the county in which the offence was committed. (Blackstone, *Com.* 307; 4 & 5 Will. and Mary, c. 18.)

When it is necessary for the court of chancery to interfere with the regulation or management of any charity, the attorney-general as informant, on the relation of some person (who is called the relator), files an information in the court of chancery for the purpose of bringing the case before the court. This is simply called an information: the other informations here mentioned are distinguished by the name of criminal informations.

If the office of attorney-general is vacant, the solicitor-general has power to file informations.

INFORMER. An informer is a man who lays an information, or prosecutes any person in the King's courts for some offence against the law or a penal statute. Such a person is generally called a common informer, because he makes a business of laying informations for the purpose of obtaining his share of the penalty. [INFORMATION.] Persons are induced to take the trouble of discovering offences, for which a pecuniary penalty is inflicted on the offender, by the promise of the reward; and if the penalty is imposed for the public interest, he who makes the offender known does the public a service. But still, the business of a common informer is looked on with dislike, and he who follows it is generally despised; and, perhaps, the character of common informers is generally such that they deserve all the odium they receive. They stand in a like situation to the common hangman. This dislike of informers, simply as such, is one of the anomalies of society, who hate their benefactor. The real foundation of the dislike, however, among those who can form a just judgment of things is, not the act of information, but the devices, tricks, and meannesses to which a man must often resort in order to know the facts on which his information must be founded. It is the same principle which leads us often to condemn a man for making certain statements in public, not because of the statements, but because of the means by which he may have obtained his knowledge. When a penalty is too heavy, or when the law that imposes it is generally disliked by the people for any reason, good or bad, the popular dislike finds a definite object in the informer who gives effect to the law. The legislature that made the penal law is overlooked, because the legislature is a number of persons: the informer is one, and his agency is seen and felt.

In absolute governments there are spies and political informers, who are the tools of a government which has no rule but its own pleasure. Some people have been dull enough to confound all informers in one class; not seeing that there is a difference between an informer who helps to give effect to a law, and an informer who helps a tyrannical government to entrap and punish persons suspected of disaffection to the government or of designs against it.

INHERITANCE. [DESCENT.]

INJUNCTION. An injunction is a writ issuing by the order and under the seal of a court of equity, and is of two kinds, remedial and judicial.

The remedial writ is used for the following purposes among many others: to restrain parties from proceeding in other courts, from negotiating notes or bills of exchange, to prevent the sailing of a ship, the alienation of a specific chattel, to prevent waste by felling timber or pulling down buildings, the infringement of patents or copyright, to repress nuisances, and to put an end to vexatious litigation. The writ of injunction is useful in stopping or preventing wrongs for which the ordinary legal remedy is too slow.

The remedial writ of injunction is again distinguished as of two kinds, the special and the common injunction, both of

which are obtained on motion before the court.

As a general rule, no injunction will be granted except there is a bill already filed.

Special injunctions are usually obtained before appearance upon motion in court, supported by a certificate of the bill having been filed, and an affidavit verifying the material circumstances alleged in the bill of complaint; but in pressing cases, where the court is not sitting, the process will be granted upon petition supported in like manner.

Special injunctions are also obtained upon the merits disclosed by the answer in those cases which do not appear to be of so urgent a nature that mischief may ensue if the plaintiff were to wait until the bill is answered. The special injunction granted upon the merits after answer continues until the hearing of the cause.

The writ called the common injunction only stays proceedings at common law; and in the first instance it only stays execution, and does not stay trial if issue be joined; but it may by affidavit be immediately extended to stay trial.

The common injunction and the injunction extended to stay trial continue in force until the defendant has fully answered the plaintiff's bill, *and* the court has made an order to the contrary. The defendant therefore cannot apply to dissolve this injunction until he has put in a full answer; but the special injunction before answer continues until answer *or* further order, and consequently the defendant may move upon affidavits to dissolve a special injunction before putting in his answer.

It would be useless, in an article of this description, to state the various rules which govern the practice of the courts as to granting, extending, continuing, or dissolving injunctions. They are laid down at length in the various books of practice, and do not admit of compression.

The judicial writ of injunction issues subsequently to a decree, and is a direction to yield up, to quit, or to continue the possession of lands, and is described as being in the nature of an execution. This writ, however, is virtually abolished by the statute 11 Geo. IV. and 1 Wm. IV. c. 36, sec. 11, rule 19, which gives the writ of assistance at once, in such cases rendering the intermediate steps by injunction, attachment, &c. unnecessary.

The Roman Interdictum was in many respects similar to the English injunction. [INTERDICTUM.]

INJUNCTION, SCOTLAND. [INTERDICT.]

INNS OF COURT AND OF CHANCERY. When the houses of law were first established seems very doubtful; but the fixing of the Court of Common Pleas at the palace at Westminster appears greatly to have contributed to their origin. This brought together a number of persons who (as Spelman says) addicted themselves wholly to the study of the laws of the land, and, no longer considering it as a mere subordinate science, soon improved the law and brought it to that condition which it attained under King Edward I. They purchased at various times certain houses between the city of London and the palace of Westminster, for the combined advantage of ready access to Westminster and of obtaining provisions from London. "For their liberties and privileges" (observes Mr. Agard, in an essay written in the end of the seventeenth century), "I never read of any granted to them or their houses: for having the law in their hands, I doubt not but they could plead for themselves, and say, as a judge said (and that rightly), that it is not convenient that a judge should seek his lodging when he cometh to serve his prince and his country."

In Fortescue's time there were four inns of court and ten inns of chancery, the former being frequented by the sons of the nobility and wealthy gentry, and the latter by merchants and others who had not the means of paying the greater expenses (amounting to about "twenty marks" per annum) of the inns of court. The first were called *apprenticii nobiliores*, the latter *apprenticii* only.

On the working days, says Fortescue, in his 'De Laudibus Legum Angliæ,' most of them apply themselves to the study of the law; and on the holy days to the study of Holy Scripture. But it appears that they did not entirely neglect lighter pursuits, for, says the same learned author, they learn to sing and to exercise

themselves in all kind of harmony, and they also practise dancing and other noblemen's pastimes. He says they did everything in peace and amity, and although the only punishment that could be inflicted (as is the case now) was expulsion, they dreaded that more than other criminal offenders fear imprisonment and prisons. The inns of court, formerly called "hostels," are Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn.

The Inner Temple, as well as the Middle Temple, owes its name to the Knights Templars, who appear to have established themselves here about the year 1185, and called their house the New Temple. After the dissolution of that order, it was granted to the Knights of St. John of Jerusalem by King Edward III., and was soon after, according to Dugdale, demised by them to "divers professors of the common law that came from Thavye's Inn, in Holburne."

The church, which is common to both societies, was founded by the Templars, upon the model of that of the Holy Sepulchre at Jerusalem, and was consecrated in 1185, and dedicated to the Virgin Mary. It consists of a round tower at the western entrance, and three aisles running east and west, and two cross aisles. This church has been recently restored and beautified.

Besides these four inns of court, there are eight inns of chancery, which are a sort of daughter inns to the inns of court. They are now only used as chambers, and are principally inhabited by solicitors and attorneys. Two belong to Lincoln's Inn, namely, Furnival's Inn and Thavye's Inn; the former of these two has lately been rebuilt, and has a front towards Holborn; it comprises upwards of 100 sets of chambers. Four belong to the Temple, Clifford's Inn, Clement's Inn, New Inn, and Lyon's Inn. All these are outside Temple Bar, near the Strand. The remaining two, Staple Inn and Barnard's Inn, belong to Gray's Inn. Most of the inns of chancery have a hall, in some of which dinners are provided and terms kept, as in the inns of court; but these terms do not qualify the student to be called to the bar.

Each inn of court is governed by its own benchers, or "antients," as they were formerly called, who fill up the vacancies in their own body. Any barrister of seven years' standing may be elected a bencher; but that honour is now usually conferred only on queen's counsel. The Benchers of each inn exercise the power of calling to the bar the members of their own inn. [BARRISTER.] They also exercise the power of disbarring a barrister, that is, depriving him of the privileges which they have conferred by calling him to the bar, if they see sufficient reason for such a proceeding.

INQUEST. [CORONER.]

INSANITY, LEGAL. [LUNACY.]

INSOLVENT is, literally, a man who cannot pay his debts. But a man is not properly called insolvent till he has been found to be so by the process to which he is liable under the insolvent acts, if he does not pay his creditors. Statutes have from time to time been passed for the purpose of releasing from prison, and sometimes from their debts, persons whose transactions have not been of such a nature as to subject them to the Bankrupt Laws. These statutes have been passed for a limited time only, and have been continued by subsequent enactments.

The Insolvent Law of England was consolidated by the 7 George IV. c. 57, continued by the 1 William IV. c. 38, and since by annual statutes for one year. It was somewhat modified by 1 and 2 Victoria, c. 110. The law is administered by commissioners appointed by the crown, in a court called the Insolvent Debtors' Court, and three of the commissioners from time to time make circuits, and give their attendance at the assize towns or other places where prisoners may be ordered to appear. [CIRCUITS.]

By the 1 & 2 Vict. c. 110, no person can be arrested upon mesne process in any civil action, except in certain cases specially provided for by the act.

The general object of the law as to insolvency is to release the debtor from prison, to free his person from liability as to debts contracted previous to his discharge, but to make all his present and future ac-

quired property available for the benefit of his creditors. Where new creditors have a claim on the insolvent's subsequently acquired property, which is of such a nature that it cannot be taken in execution, it may be necessary to apply to a court of equity, which in administering such estate of a deceased insolvent, will pay the creditors subsequent to the insolvency first, and then the creditors prior to the insolvency.

It is not easy to state the law and practice as to insolvency at present, in consequence of several acts having been recently passed in a great hurry, and in consequence of the last act having only just come into operation.

From August, 1842, to August, 1845, three acts have been passed relating to insolvent debtors: these are 5 & 6 Vict., c. 116; 7 & 8 Vict., c. 96; and 8 & 9 Vict., c. 127.

The act 5 & 6 Vict., c. 116, which came into operation 1st November, 1842, enabled a person who was not a trader within the meaning of the bankrupt laws, or a trader who owed debts which amounted in the whole to less than 300*l.*, to obtain by petition a protection from the Court of Bankruptcy in London or the commissioners of the District Courts of Bankruptcy in the country, from all process whatever (except under a judge's order), either against his person or property until the case was adjudicated by the court. In the interim the insolvent's property was vested in an official assignee appointed by the court. If, on the hearing of the petition, the commissioner were satisfied with the allegations which it contained, and that the debts were not contracted by fraud, breach of trust, or by any proceedings for breach of the la s, he was empowered to make a final order for the protection of the petitioner from all process, and to cause his estate and effects to be vested in an official assignee, together with an assignee chosen by the creditors. The commissioner might also, if he thought fit, make an order for carrying into effect such proposal as the petitioner might have set forth in his petition, and direct some allowance to be made for the support of the insolvent out of his effects.

The act 7 & 8 Vict., c. 96, passed 9th August, 1844, is entitled 'An act to amend the law of Insolvency, Bankruptcy, and Execution.' It enacted that any prisoner in execution upon judgment in an action for debt, who was not a trader, or whose debts, if a trader, were under 300*l.*, may, without any previous notice, by petition to any court of bankruptcy, be protected from process and from being detained in prison for any debt mentioned in his schedule; and if so detained, the commissioners of any bankruptcy court may order his discharge.

The property of the insolvent may be seized for the benefit of his creditors with the exception of the wearing apparel, bedding, and other necessaries of the petitioner (the insolvent under 7 & 8 Vict. c. 96) and his family, and the working tools and implements of the petitioner not exceeding in the whole the value of 20*l.* Under the 7 & 8 Vic. c. 96 (§ 39) if a petitioner for protection from process (pursuant to the provisions of that act) shall wrongfully and fraudulently omit in the schedule, which schedule he is required to make (5 & 6 Vic. c. 116), any property whatsoever, or retain or exempt out of such schedule any wearing apparel, bedding, or other necessaries, property of greater value than 20*l.*, he shall, upon being duly convicted thereof, be liable to be imprisoned and kept to hard labour for any period not exceeding three years.

The 7 & 8 Vic. c. 96 made a great alteration as to debts under 20*l.* The 57th section is as follows: "Whereas it is expedient to limit the present power of arrest upon final process, be it enacted, That from and after the passing of this act, no person shall be taken or charged in execution upon any judgment obtained in any of her Majesty's superior courts, or in any county court, court of requests, or other inferior court, in any action for the recovery of any debt wherein the sum recovered shall not exceed the sum of 20*l.* exclusive of the costs recovered by such judgment." The 58th section provided that upon application to a judge, of one of the superior courts of law at Westminster, or to the court in which such judgment as is mentioned in section 57,

shall have been obtained, all persons in execution at the time of passing this act be discharged, when the debt exclusive of costs did not exceed what is specified in the 57th section. Accordingly, such persons, on making application pursuant to the 58th section of this act, were discharged from prison in England and Wales.

The consequences of the legislation contained in the 57th and 58th sections of 7 & 8 Vict. c. 96, were these. All persons who were in confinement for debts under 20*l.*, exclusive of costs, might get their liberty; but the judgment upon which the debtor was taken in execution remained in force (§ 58), and the judgment creditor or creditors had their remedy and execution upon every such judgment against the property of the debtor, just as they might have had if he had never been taken in execution upon such judgment. The 59th section gave to the judge who should try such cause (§ 58), being either a judge of one of the superior courts or a barrister or attorney at law, power to imprison the defendant (debtor) for such times as are mentioned in § 58, if he should appear to have been guilty of fraud in contracting the debt, or had contracted it under the other circumstances mentioned in the 59th section.

The amount of debts in England and Wales under 20*l.* must always form a very considerable proportion of all the debts that are at any time due in England and Wales. Such debts comprehend a large part of the dealings of shopkeepers and petty tradesmen; probably in a very large number of cases debts under 20*l.* may comprehend every debt that is due to a large body of petty tradesmen. The tradesmen no doubt do in many cases give credit to persons who have no reasonable means of payment, and with whose character and condition they are very imperfectly acquainted. Many persons are always willing to contract a debt, but never intend to pay if they can help it. Another class of debtors consists of those whose morality is not so well fixed as to make them good and willing payers, but who will pay and do pay under the combined influence of some feeling of honesty and some fear of the consequences of non-payment. A third class, which we hope may be the most numerous of all, is willing to pay, but often requires time, and must be deprived of many comforts if they cannot command the credit which their character and earnings fairly entitle them to. [CREDIT.]

The 57th and 58th sections of the 7 & 8 Vict. c. 96, deprived creditors of their hold upon their debtors for sums under 20*l.*, and left to all persons who had claims upon persons in prison for sums above 20*l.*, the power of still keeping their debtors there. As to debts under 20*l.* existing before the act, and for which the debtor was not in execution, it left the creditor no remedy except against his property. And here we may remark that the question as to the imprisonment of debtors seems reducible within narrow limits, if we view it merely as it affects the interests of the community. The object in allowing a debtor to be seized is not to punish him as a debtor, but that he may be subjected to a complete examination for the purpose of discovering what his property is, that he has not parted with it to defraud his creditors, and that there was no fraud in the contracting of the debt. The simple fact of being indebted and unable to pay should not be punished. The contracting debts under such circumstances as amount to fraud ought to be punished. The principle then which should guide a legislature should be, not to punish a man simply because he is indebted and cannot pay his debts, but to punish him for any fraud that is committed either in contracting the debt or in attempting to evade the payment of it. Now in the case of a debtor, fraud, both in contracting a debt and in attempting to evade payment, is known by experience to be a thing of frequent occurrence; and it is therefore just and reasonable that judgment creditors should have the power to secure the person of their debtor until he has paid his debts or made a full and honest statement of his means of payment.

The effect of the last-mentioned act was of course to diminish the credit given by small dealers to all persons.

The act also relieved many dishonest debtors from the payment of their past debts, for it deprived the creditor of his most efficient remedy; and as to all future dealings, it rendered the small tradesman less willing to give credit to those who, under the old system, had it. But the act did more: it encouraged fraud and a fraudulent system of trade. Persons who were refused credit by respectable tradesmen, who honestly paid for their goods, could still obtain credit of tradesmen whose practices were not so honest. The amount of mischief, both pecuniary and moral, caused by this unwise measure, may be estimated from the loud complaints against it from all parts of the kingdom, from a great variety of tradespeople, especially tailors, shoemakers, butchers, bakers, grocers, three-fourths of whose debts, and of retail tradesmen generally, are ordinarily in sums under 20*l.* In some wholesale trades three-fourths of the debts are also in sums under 20*l.* Their debtors set them at defiance, as, except in cases of fraud, there was no power of obtaining payment except by an action in one of the superior courts, in which case the creditor would have to pay the costs out of his own pocket, and in the end might be unable to obtain satisfaction for the debt. Even in the small debts' courts, the costs allowed being small, the creditor who sued was generally charged extra costs, which could not be charged to the debtor. Many tradesmen had debts in sums of less than 20*l.* which in the aggregate amounted to a large sum, perhaps in some cases to 2000*l.* or 3000*l.* In some of the provincial towns it was stated that the aggregate amount owing in sums under 20*l.* was not less than 100,000*l.*

It would seem as if the legislature made this alteration as to 20*l.* debts under the opinion that all persons liable to that amount and under, must be very ill-used people who required relief, and that the creditors need not to be regarded in the matter. The creditors, however, did not fail to make their complaints known, and never were complaints more reasonable.

The legislature have now remedied the mischief which they did by a new act, 8 & 9 Vict., c. 127, and intituled very significantly 'An act for the better securing the payment of small debts;' and it began by declaring, which every thinking man will allow to be true, that "it is expedient and just to give creditors a further remedy for the recovery of debts due to them." The sums to which the act applies are debts under 20*l.*, exclusive of costs. The powers of 7 & 8 Vict., c. 96, and of the several acts relating to insolvency are applicable to 8 & 9 Vict, c. 127.

The act (8 & 9 Vict. c. 127) gives to creditors the means of obtaining payment of sums under 20*l.*, besides the costs of suit, by the following process. A creditor who has obtained judgment, or order for payment of a debt not exceeding 20*l.* (exclusive of costs) may summon his debtor before a commissioner of bankruptcy; or he may summon his debtor before any court of requests or conscience, or inferior court of record for the recovery of small debts, if the judge of such court is a barrister-at-law, a special pleader, or an attorney of ten years' standing. It may here be remarked that this part of the act which takes the jurisdiction of the courts of request out of the hands of non-professional commissioners is a new provision. The judges of these courts are made removeable for misbehaviour or misconduct, and the courts will be assimilated in some degree to the Bankruptcy and Insolvency Courts.

On the appearance of the debtor before the commissioner or court upon summons, he will be examined by the court, or by the creditor if he think fit, "touching the manner and time of his contracting the debt, the means or prospect of payment he then had, the property or means of payment he still hath or may have, the disposal he may have made of any property since contracting such debt." The commissioner is empowered to make an order on the debtor "for the payment of his debt by instalment or otherwise;" and if the debtor fails to attend or to make satisfactory answer, or shall appear to have been guilty of fraud in contracting the debt, or to have wilfully contracted it without reasonable prospect of being able

to pay it, or to have concealed or made away with his property in order to defeat his creditors, the commissioner or judge of the court may commit him for any time not exceeding forty days; but such imprisonment will not operate in satisfaction of the debt. Wearing apparel and bedding of a judgment debtor, and the implements of his trade, amounting in the whole to a sum not exceeding 5*l.* in value, are exempted from seizure. The powers of all inferior courts under this act are assimilated; and a suit commenced in one small debt court cannot be removed to another similar court in the same town. When a debt exceeds 10*l.*, the suit may be removed by certiorari to the superior courts. Any of her Majesty's secretaries of state are empowered to alter or enlarge the jurisdiction of all small debts and inferior courts. The act itself enlarges the jurisdiction of courts of requests, where sums not exceeding 2*l.* could heretofore only be recovered, and now sums not exceeding 20*l.* may be recovered in them. It is provided by the act, that all suitors' money paid into court and not claimed for six years, is to go into a fund for the payment of the necessary expenses of carrying on the business of the court.

The act 7 & 8 Vict. c. 70, which came into operation 1st September, 1844, and is entitled 'An Act for facilitating arrangements between Debtors and Creditors,' is of the nature of an insolvent act. Under this act a debtor who is not subject to the Bankrupt Laws may apply by petition to a court of bankruptcy and obtain protection from arrest, provided his petition be signed by one-third in number and value of his creditors. The debtor's petition must set forth the cause of inability to meet his creditors, and contain a proposition for the future payment or the compromise of his debts, and a statement of his assets and debts. Any one of the commissioners of bankruptcy may examine the petitioning debtor, or any creditor who may join in the petition, or any witness produced by the debtor, in private; and if he be satisfied with the statements made, he may convene a general meeting of all the petitioner's creditors, and appoint an official assignee, registrar, or a creditor to report the proceedings. If at the first meeting the major part of the creditors in number and value, or nine-tenths in value, or nine-tenths in number of those whose debts exceed 20*l.*, shall assent to the proposition of the debtor, a second meeting is to be appointed. If at the second meeting three-fifths of the creditors present in number and value, or nine-tenths in value, or nine-tenths in number of those whose debts exceed 20*l.*, shall agree to the arrangement made at the first meeting and reduce the terms to writing, such resolution shall be binding, provided one full third of the creditors in number and value be present. Under this arrangement the affairs of the debtor may be settled. When this has been effected, a meeting of the creditors is to be held before the commissioner, who is to give the debtor a certificate, which shall operate as a certificate under the statute relating to bankrupts.

The regulations of the 7 & 8 Vict. c. 96, as to debts under 20*l.* caused universal dissatisfaction among creditors in England and Wales, as we have already observed. The debtors, we may presume, were satisfied with the new law. The evidence taken before the Lords' Committee in 1845 proved the necessity of amending this act. The history of this piece of unwise legislation and of its correction is useful. It shows how ill-considered measures may sometimes become law in this country, in which the mass of public business is so enormous that important statutes are sometimes enacted in great haste and consequently without due deliberation. It also shows that the force of opinion, when sustained by sound reasons and directed by men of judgment, is strong enough to induce the legislature to amend their mistakes.

The law of debtor and creditor has been a difficulty in all countries. In England an insolvent debtor may, in certain cases, be subjected to the operation of the Bankrupt Laws. [BANKRUPT.] If he cannot claim the benefit of the Bankrupt Laws, he is subject to the law that relates to insolvent debtors. The question of arrest and imprisonment for debt has been chiefly discussed with reference to insolvent debtors, that is, the

class of debtors whose debts have not been contracted in the operations of trade or commerce, or under such circumstances as to bring them within the Bankrupt Laws.

Formerly there were two kinds of arrest in civil cases, that which took place before trial, and was called arrest on mesne process; and that which takes place after trial and judgment, and is called arrest on final process. In the arrest on mesne process it was only necessary for the plaintiff to make an affidavit that the cause of action amounted to 20*l.* (7 & 8 Geo. IV. c. 71), upon which he could sue out a writ called a *capias*, which was directed to the sheriff, who thereupon gave his officers a warrant for seizing the alleged debtor. The statute 1 & 2 Vict. c. 110, §§ 2, 3, 4, 5, 6, enacted that no person can be arrested for alleged debt before a judgment has been obtained against him, unless it can be shown to the satisfaction of a judge of one of the superior courts that the plaintiff has a cause of action against such person to the amount of 20*l.* or upwards, and that there is probable cause to believe that the defendant is about to quit England. A defendant may also be arrested upon mesne process when he has received an unfavourable judgment in the court for the relief of insolvent debtors (1 & 2 Vic. c. 110, § 85).

Arrest in execution is therefore now the only arrest that is of any practical importance: it means the arresting of a man after a court of justice has decided that he owes a debt. The ground of arresting the man is, that he does not pay the debt pursuant to the judgment; in other words, he disobeys the command of the court, which has declared that he must pay a certain sum of money to the plaintiff.

On the subject of maintaining the law of arrest in execution there has been difference of opinion. The best arguments in favour of it that we have seen are contained in a 'Supplementary Paper on Bankruptcy and Insolvency, by William John Law, Esq. Dissentient from the Report. Presented to both Houses of Parliament, 1841.' Mr. Law did not sign the report of the other commissioners on the subject because he did not agree with them; and the Supplementary Paper contains the reasons of his dissent.

With respect to arrest in execution, Mr. Law's intimate knowledge of the relation of debtor and creditor has enabled him to answer fully all the arguments of those who attempt to show the insufficiency of this final arrest. He has proved beyond doubt the justice of this final arrest, or if the word justice be objected to, its usefulness to the community. A man is not now arrested till he has disobeyed the judgment of a court of justice. It is his business to show why he disobeyed the judgment; and in the mean time either his person must be secured, or the judgment of the court must be treated as a mere idle form. It may be said, the plaintiff can proceed to take the debtor's property: but even visible property cannot always be got at; for when the sheriff goes to seize it, "some one on the premises holds up a bit of parchment called a bill of sale, and frightens him out again; there is not one plaintiff in five hundred, great or small, who has courage enough to indemnify the officer, and defy the fraud." If there is this difficulty as to the taking possession of a debtor's visible property, what must be the difficulty of getting at the property of the debtor which is not visible? And what other mode can be suggested of compelling the defendant to give a true account of all his property than to imprison him until he does? "A defendant has always been prone to place his property out of reach of an execution, but there has been this one restraint: he says to himself, 'If I make my property safe, they will take me, and then I must bring it forward.' When property only can be touched, the argument is changed, it becomes this: 'If I make my property safe, my enemy can do nothing.' So necessary is process against the person for process against the property, and so unreasonable is it to require of the creditor by record the establishment of any further case, in order to entitle him to an execution. His judgment is his case: the clearest duty lies on the other party to establish his exemption from the task of satisfying it."

The great argument of the Report from which Mr. Law dissents is this: that all execution against the person presumes fraud. This argument is very absurd. The presumption ought to be against the debtor who does not obey the judgment of the court. He may be guilty of fraud or he may not: it is his business to explain why he disobeys the order of the court. This argument against execution is founded on the presumption being in the debtor's favour, instead of being, as it is, against him. "The practical justice and wisdom is in subjecting all (debtors) to searching inquiry, for the purpose of ascertaining whether they are dishonest or not. I am quite sure that in that court (the Insolvent Court) where searching inquiry is known and practised, it is found necessary to be applied to every case as the means of disclosing its true character and merits."

"Blamelessness must not be presumed: faultiness is to be presumed: it may or may not be that which is told by the word fraud; the precise shade cannot be presumed; the character and degree are to be learned through a deliberate and forced enquiry. It is misrepresentation to say that *fraud* is presumed and punished on presumption; the coercion which was once purely punishment is now necessary coercion to the investigation of a question in which presumption is and ought to be against the party coerced. The debtor in execution is the applicant for indulgence; he has to establish his case; but he is at liberty to institute proceedings towards this question instantly on his arrest; and not only is he at liberty to seek exemption from the consequences of the injury which he has done to the particular party who has pursued him, but to use the same opportunity for acquiring a privilege against every person in the kingdom towards whom he stands in a similar predicament: on giving to the true owners a part of their property, or on showing that there remains no part to surrender, he receives, if excuse is found for granting it, this great boon—a total freedom for the future of person and property; save that if ever he become in the full and fair sense of the words of ability to pay, there will reside in a competent tribunal the power to ascertain that ability and to exact that payment.

"It is almost unnecessary to say that these results ought not to be enjoyed without that full disclosure of the history of his property which is found in the schedule of an insolvent debtor; that full opportunity for the creditors to challenge this history; and that fair, deliberate, and effective investigation of its truth which is made in that court."

These general arguments in favour of the justice of final execution are supported by Mr. Law with facts equally strong, which also prove the efficacy of such arrest. The mode in which he has examined the arguments in favour of abolishing arrest, which are derived from certain returns, is completely convincing. The wonder is that such shallow arguments against the law of arrest should ever have been brought forward. The efficacy of arrest must not be estimated "by the extent of dividends made in the Insolvent Debtors' Court, or the proportion of unfavourable judgments;" though it must be remembered that the dividends are not none at all, as some people suppose.

It is clearly shown by Mr. Law that arrest does make people pay, who do not pay till they are arrested; it is found that the examination to which insolvents are subjected exposes a great amount of fraud; and it is also certain that the number of those who are induced to pay by the fear of arrest is considerable, just as the fear of other punishment prevents many persons from committing crimes, who have no other motive to deter them. The fear of arrest is precisely that preponderating weight which is wanted to induce those whose honesty is wavering to incline to the right side.

The arguments of Mr. Law should be read by every man who wishes to form a sound judgment on the law of insolvent debtors in England; and so much of his arguments as have here been given, may help to diffuse some juster opinions on a subject in which a sympathy with debtors, to the total forgetfulness of creditors, has led many well-meaning people to adopt conclusions that tend to unsettle all the

relations of society, and to confound honest men and rogues.

In *Scotland*, the being in a state of insolvency has the same effect in regard to questions of stoppage in transitu, and others connected with sale and delivery, as it has in England. The word is often used in connection with the bankrupt law, because being insolvent is one of the ingredients of Notour Bankruptcy. [BANKRUPT.] Cessio bonorum is the name of the procedure that in Scotland stands in place of the insolvency relief system in England. [CESSIO BONORUM.]

INSTANCE COURT. [ADMIRALTY, COURTS OF.]

INSTITUTION. [BENEFICE, p. 340.]

INSURANCE, FIRE. Among those associations whose object it is to secure individuals from the consequences of accidental loss, companies for assuring the owners of property from loss arising from fire are among those of most obvious utility, and have long been successfully established in this country. It might have been expected that the great advantage to society in general of individuals providing against their ruin by means of trifling annual contributions would have been so far acknowledged on the part of the British legislature as to prevent the imposing of a tax upon the prudence of the people. Such, however, is not the fact, and a duty is levied at the rate of 3*s.* per cent. per annum upon the amount of property insured against destruction by fire, which rate is, in most cases, equal to 200 per cent. upon the premium demanded by the insurance offices, which premium is found sufficient to cover all losses, as well as to defray the expenses of management, and to afford an adequate return to capitalists who embark their property in the undertaking. How far the imposition of this tax prevents insurances being effected it is not possible to determine. That many persons neglect to insure against the risk of fire from being compelled to pay 4*s.* 6*d.* for each 100*l.* value of their property, who would not neglect such precaution if they could attain security by payment of 1*s.* 6*d.* for a like amount, will be readily acknowledged; and the propriety of repealing this tax has been frequently urged. But this tax produces to the revenue above a million sterling, and as the amount is raised without trouble and at little cost, the tax offers to the minister of the day an inducement for its continuance which it will be difficult to overcome. There is indeed no individual who can complain of special injury or grievance from the tax: it is imposed on all persons alike; and the insurance offices, by which it is collected and paid over to the government, have an advantage in its continuance, in respect of the discount or allowance which is made to them on the amount—an advantage, however, more specious than real, as the repeal of the tax would greatly increase the business of the offices.

During a period of distress experienced by the agriculturists, the landowners and farmers of Great Britain, acting through their representatives in parliament, obtained in 1833 an advantage over other classes of the community by the repeal of the duty upon insurance of farm produce, farming stock, and implements of husbandry (3 & 4 Wm. IV. c. 23).

There is no reason why the insurance of farm produce should have this advantage over any other kind of produce; and the total repeal of this impolitic and now unjust tax, since it no longer falls equally on all, would be loudly called for by all classes of the community, if they were aware of their true interests. It is the interest of the state that partial losses should be distributed among a large number of capitalists, to each of whom the loss is trifling, while by the contributions of many individuals one individual may be saved from ruin, and that capital which he is productively employing in some branch of business may not be all at once withdrawn from it. The advantage to the individual whose property is destroyed, of having it restored to him so that he does not lose his business or occupation, is too obvious to need any remark. The advantage to the labourer is equally great, for in many cases the loss of the employer would throw him and others out of profitable employment; and if his employer were not indemnified by a fire insurance, the labourer would often be ruined as well as the employer.

Cases occur in which frauds are practised by parties insuring for more than their property is worth; and there are also cases in which property has been burnt by insolvent persons in order to obtain the insurance money. The companies sometimes consider it prudent to pay the money, though the claim might be disputed; and sometimes it is successfully disputed. The best institutions are liable to be abused; but institutions are useful when their object can be effected in the great majority of cases, and the exceptions must be put to the account of accident, just as it is useful to plough and sow, though accident sometimes prevents the reaping.

The amount of farming stock insured in 1843 was 60,232,999*l.*, of which 4,598,794*l.* was insured in Scotch and Irish offices; 33,628,007*l.* in London offices; and 22,006,198*l.* in English country offices. In 1843 the Norwich Union office insured farming stock to the amount of 9,618,306*l.* The Fire Offices have on some occasions refused to insure farming stock in districts where the agricultural labourers were badly off and acts of incendiarism very frequent.

The sums insured against fire in England, Scotland, and Ireland, in 1801 and 1841 were as follows:—

	1801	1841
England .	£219,623,954	£605,878,933
Scotland . .	3,786,146	44,655,300
Ireland . .	8,832,125	31,005,606

The total sums insured in the United Kingdom in each of the years 1801, 1811, 1821, 1831, and 1841, and the increase per cent. on a comparison of each year with 1801 were as under:—

	£	Inc. per cent.
1801	232,242,225	
1811	366,704,800	57·8
1821	408,037,332	75·6
1831	526,655,332	126·7
1841	681,539,839	193·4

(Porter's 'Progress of the Nation,' iii. p. 123.)

The duty on fire insurances has exceeded a million sterling annually for the last few years. The duty in the following years was:—

	£		£
1837	903,311	1841	1,022,312
1838	944,984	1842	1,027,467
1839	968,476	1843	1,051,543
1840	974,610	1844	0,000,000

In one London Fire Insurance Office the duty paid in 1843 amounted to 171,692*l.* and in another to 125,921*l.*, or, together, 297,613*l.* out of 1,051,543*l.* paid by all the offices in the United Kingdom. The duty paid by Scotch and Irish offices in 1843 was 115,770*l.*; 690,446*l.* by London offices; and 245,327*l.* by country offices in England.

INSURANCE, LIFE. [LIFE INSURANCE.]

INSURANCE, MARINE. [SHIPS.]

INTERDICT, in the law of Scotland, a judicial prohibition of injurious illegal proceedings. Although both the term and the practice have been derived from the interdictum of the Romans, the process has much more analogy with the "injunction" of the English Equity Courts. It has to be kept in view, however, that in Scotland neither a real nor a nominal conflict between courts administering the law of civil rights is known, and therefore there is nothing analogous to an injunction in a court of equity against proceedings in a court of law. Interdicts granted by the ordinary law courts against proceedings in the ecclesiastical courts are however not uncommon, and in the late discussions which produced the secession of the "Free Church," many interdicts were granted by the Court of Session against the execution of proceedings of the ecclesiastical courts which were supposed to interfere with the rights of individuals. The Court of Session and the local courts of the sheriffs can grant interdicts. The practice is, when a case of immediate danger from any anticipated proceeding can be made out, to grant an interim interdict on an ex parte application, the other party being heard before it is made final. Where no case of immediate urgency is made out, the court appoints parties to be heard on the merits, or technically "passes the vote to try the question." In the Court of Session interdicts are applied for to the Lord Ordinary on the bills, and his decision may be carried to

the inner house. On a late occasion, some persons having contracted with the proprietors of a grave-yard in Edinburgh for a site on which a public monument should be erected to the memory of "The political martyrs of 1793-4," some persons who had family burial places in the grave-yard applied for interdict, on the plea that the proposed monument was offensive to them. The interdict was granted by the Lord Ordinary on the bills, but recalled by the Inner House.

INTERDICTUM. In the Roman law the general distinction between an action (actio) and an interdict (interdictum) is this. In the case of an action, the prætor, upon the application of a complainant, if he saw no objection, granted him an action in these terms: judicium dabo, or actionem dabo. A judex was then appointed, whose business it was to examine into the matter pursuant to the prætor's formula, and to decide or pronounce a judgment. In the case of an interdict, when application was made to the prætor by a complaining party, if a sufficient case was made out, the prætor immediately made an order, which varied according to the case, and was indicated by one of these words: restituas, exhibeas, veto. The general description of the prætor's interdictum is this: it ordered a certain thing to be done, or it forbade a certain thing to be done. When the order was to produce (exhibere) a certain thing, or to make some restitution (restituere) as to a certain thing, the order was properly called a decretum. When the order forbade a certain thing, as for instance, to disturb a man fairly (bonâ fide) in possession of a thing, it was properly called an interdictum. But the term interdictum was also applied as a general term to both kind of orders.

The prætor's order might in some cases settle the matter in dispute. If the defendant submitted, no farther proceeding would be necessary. If further proceedings were necessary, the interdict must be viewed merely as the commencement of judicial proceedings, which were comprehended under the term actio in its wider sense. The matter in dispute was brought before a court (judex, or recuperatores) named by the prætor.

As to the exact nature of the Roman interdict, there is some difference of opinion. The question is, whether the interdict was merely a summary process, or whether it was (originally) a mode of giving relief when there was no other mode.

The authorities for the Roman interdict are Gaius iv., 138-170; Paulus, *Sententiae Receptae*, v., tit. 6; Dig. 43; See also Savigny, *Das Recht des Besitzes*, p. 403-516, 5th ed.; Puchta, *Institutionen*, ii. p. 138.

INTEREST. [USURY.]

INTERMENT, the burial of a dead body in the earth. The manner of disposing of the bodies of the dead has varied in different nations; but the most general modes have been interment in the earth and burning on a funeral pile. The practice of burying is probably the oldest mode, and with most nations has been the ordinary mode of sepulture; but the custom of burning the body, and afterwards collecting the ashes and depositing them in a tomb or urn, became very general among the Greeks and Romans. Among the Greek nations, however, both the burning of the dead and the interment of dead bodies in the earth were practised. The Romans in the earlier periods of their history certainly buried their dead. It is recorded that Sulla was the first member of the Cornelia gens who was burnt. The Egyptians do not seem to have ever adopted the practice of burning the dead; and though, as we have observed, burning became common among the Greeks and Romans, it seems that interment was always practised by the lower orders among the Romans. At Rome bodies were sometimes buried in pits (puticuli), or thrown to decay in certain unfrequented places. (Varro, *De Ling. Lat.* v. 25; Horace, 1, Sat. v. 8, &c.) Tacitus (xvi. 6) speaks of the embalming and interment of Poppæa, the wife of Nero, as a deviation from the general practice. The practice of burning the dead appears to have gradually gone into disuse under the Empire; and probably it was never practised by the Christians.

A Constitution of the Emperor Justinian (A.D. 537) regulated the expense of

funerals in Constantinople. The constitution refers to prior legislation of Constantine and Anastasius. The object of the regulation is well expressed in the following words:—It was to "secure men against the double calamity of losing their friends, and at the same time incurring heavy pecuniary liabilities on their account." Provision was made for securing interment to each person free of cost, and for protecting the surviving friends from the extortion of those who buried the dead. Funds were appropriated for the purpose of interment, which was conducted by persons appointed for the purpose, and with decency, but at little cost. All persons were to be buried alike, with some small allowance in favour of those who wished for a little more display at their own cost; but even this additional expense was limited; and it is said, "thus there will be nothing undetermined; but both those who wish to have funerals on a moderate scale will enjoy the advantages of our rule, and those who wish for more liberal arrangements will not be mulcted heavily, and will be enabled to show their liberality at moderate cost." The whole Constitution is very curious; but a full explanation of it would require some labour. The objects of it have, however, been sufficiently stated here. The means by which they were accomplished would not be suitable to this country. (*Novell*, 59.)

At Bombay, says Niebuhr (*Reisebeschreibung*, &c. ii. 50), "the Parsees have a peculiar manner of interring their dead. They do not choose to rot in the earth like the Jews, Christians, and Mohammedans, nor be burnt like the Indians; but they let their dead be digested in the stomachs of birds of prey. They have at Bombay a round tower on a mountain at some distance from the city, which is covered on the top with planks. Here they place their dead, and after the birds of prey have eaten the flesh, they collect the bones below in the tower, and the bones of the men and women in separate vessels." Herodotus (i. 140) says of the antient Magi that they never interred their dead till they were torn by birds or dogs. In Herbert's 'Travels' (ed. 1638, p. 54), there is a representation of one of these Parsee towers. Some nations have eaten the aged and also killed and eaten those who were attacked by disease, and thus anticipated the trouble of interment. This revolting practice is established on sufficient evidence (Herodotus, i. 216, iii. 99; *London Geograp. Journal*, ii. 199; BATTAS, *Penny Cyclopædia*.) Dr. Leyden states that the Battas frequently eat their aged, or infirm relatives as an act of pious duty. The Battas are not a ferocious, but a quiet and timid people. Niebuhr says in a note to the extract given just above, "At Constantinople I heard, that in the southern part of Russia there is a people who think that they can show to their dead friends and relations no greater honour than to eat them. So different are the opinions of mankind."

These are, however, singular exceptions to the general practices of all nations. Among the Europeans and those descendants of Europeans who have settled in parts beyond Europe, the interment of the dead in the earth is the universal practice. It was proposed, indeed, to revive the practice of burning during the French revolution, but the proposal was not adopted. It has also been the practice of all nations called civilized, and perhaps of most nations called barbarous, to treat the dead with decency, and to accompany the funeral ceremony with religious rites.

The places set apart for the burial of the dead are generally called cemeteries, which is a Greek term signifying "a place of rest or sleep," and was applied to common places of interment by the early Christians. Among the Greeks cemeteries were perhaps always without the cities. Among the Romans the tombs were generally placed by the sides of the public roads. It was an enactment of the Twelve Tables that a dead body was not to be buried or burnt within the city (Dirksen, *Zwölf-Tafel Fragmente*, p. 657). The prohibition against burning in the city is supposed by Cicero to have been made to prevent risk from fire: the reason for interment not being allowed within the city is not stated. A regulation of the Twelve Tables appears to have limited expenses at funerals (Dircksen, p. 665); and a law to the same effect was

passed in the time of the Dictator Sulla (Plutarch, *Sulla*, c. 35).

The early Christians followed the custom of the Romans in burying outside of cities; but they afterwards transferred their burial-places to the vicinity of the churches and within towns, where they have continued to be generally situated up to the present time, the churchyard being the usual place of interment, though, when the church is surrounded by houses, it is by no means a fit situation; for the putrid exhalations arising during the decomposition of animal bodies are injurious to health, and capable of giving rise to, or at least of encouraging, the progress of various pestilential diseases, of which the most common in this country are low nervous or typhus fevers. Thus the situation of cemeteries becomes an important consideration, in connexion with public health. The advantage, in point of salubrity, of having burial-places removed to some distance from large towns, is now beginning to be seen, and it is to be hoped that in a few years the practice of burying the dead in this country in the midst of crowded cities and in churches will entirely cease. Cemeteries should be placed on high ground, and to the north of habitations, so that southerly winds should not blow over the houses charged with the putrid exhalations; low wet places should be avoided, and care should be taken that bodies are not interred near wells or rivers from which people are supplied with water.

There are now many cemeteries in the neighbourhood of London, and also in the neighbourhood of other large towns in England.

The subject of interment possesses considerable interest in a legal point of view, for it is often of great importance to determine how long a body has lain in the ground; and by observing the changes which naturally take place in bodies at different stages of decomposition, it is possible in some cases to determine whether certain marks are the result of decomposition or the remains of injuries inflicted before death.

Of late years the subject of interment has attracted much attention in England, and a great amount of information has been collected. Though opinions are not unanimous, the evidence appears to prove that emanations from crowded burial-grounds and from the vaults of churches do injuriously affect the health of persons who live near them; and that these emanations, when sufficiently concentrated, may produce speedy death. The general "conclusion that all interments in churches or in towns are essentially of an injurious and dangerous tendency" (*Report on the Practice of Interment in Towns*), is at least made a strong probability, and strong enough, coupled with other reasons, to justify the legislature in forbidding such interments, and placing all burying grounds under such regulations as may prevent the effluvia from the dead from becoming detrimental to the health of the living. The Report to which reference has been made contains, in addition to the evidence on the injurious effects of crowded burial places, much valuable information on the injury to health caused, particularly among the poor, by the delay in interments. The following remark will show the nature and extent of this evil: "In a large proportion of cases in the metropolis and in some of the manufacturing districts, one room serves for one family of the labouring classes: it is their bed-room, their kitchen, their wash-house, their sitting-room, their dining-room; and, when they do not follow any out-door occupation, it is frequently their work-room and their shop. In this one room they are born, and live, and sleep, and die, amidst the other inmates." Among the poor in some parts of London the average time that a body is kept is about a week, which sometimes arises from inability to raise money for the funeral expenses, as well as other causes; and where there is only a single apartment, the dead and the living occupy it together. The injurious consequences to health from the presence of a dead body, sometimes in a state of rapid decomposition, in a small ill-ventilated apartment, and particularly when death has been the consequence of malignant disease, cannot be disputed; and the moral effect on the living is demoralizing. The expense

of funerals is another head which is examined in this Report, where it is well remarked that "the expense of interments, though it falls with the greatest severity on the poorest classes, acts as a most severe infliction on the middle classes of society" (p. 46). The cost of interment in London varies from 4*l.* for a labourer to 1000*l.* for a gentleman: for persons of the condition of a gentleman it is stated that 150*l.* would be a low average. But these charges do not include anything except the undertaker's bill. The account of the details of an expensive funeral, "which is strictly the heraldic array of a baronial funeral, the two men who stand at the doors being supposed to be the two porters of the castle, with their staves in black," &c., is ludicrous enough; but the disposition to laugh is checked by considering the pecuniary embarrassment which this absurd display often entails on the survivors.

The subject of interment, like many others relating to the economy of society, may at first sight not seem to require any particular attention on the part of the state. It may be said, let every man bury his dead as he best can, and as he chooses. With respect to the rich, the expense is an absurd waste of money, and the example is bad; with respect to the middling classes, it is a heavy burden; and to the poor, interment of their dead is often almost an impossibility. To diminish these expenses, to secure the decency of interment amongst all classes and particularly among the poor, and to prevent the contamination of the living by the dead, are objects well worthy of the attention of a legislator. The information collected in the Report above alluded to lays bare a revolting picture of moral and physical facts; but it is truly said, "General conclusions can only be distinctly made out from the various classes of particular facts, and the object being the suggestion of remedies and preventions, it were obviously as unbecoming to yield to disgusts or to evade the enumeration and calm consideration of these facts, as it would be in the physician or surgeon, in the performance of his duty with the like object, to shrink from the investigation of the most offensive manifestations of disease."

The Report makes a proximate estimate of the total expense of funerals in London, which, according to the estimate, amounts to 626,604*l.* per annum; and a like estimate of the expense of all the funerals in England and Wales in one year is 4,870,493*l.* This sum, enormous as it is, may be considered an under estimate. "The cost of the funerals of persons of rank and title varies from 1500*l.* to 1000*l.* or 800*l.* or less, as it is a town or country funeral. The expenses of the funerals of gentry of the better condition vary from 200*l.* to 400*l.*, and are stated to be seldom so low as 150*l.*" The average cost of funerals of persons of every rank above paupers in the metropolis may be taken at 14*l.* 16*s.* 9*d.* per head. But owing to circumstances, fully explained in the Report, even this lavish expenditure does not secure the proper and solemn discharge of the funeral ceremony, which in crowded and busy districts seems to be totally impracticable. It is fully shown that the expenses of funerals may be greatly reduced and the due performance of the religious ceremonies may be secured by other arrangements. The establishment of cemeteries by Joint Stock Companies has done something by diminishing the amount of interments in crowded places, but the expenses of interment have perhaps not been at all diminished by them.

The Report concludes (p. 197) with a summary of the evils which require remedies; and there is not one of the evils which has not been proved to exist. There may be difference of opinion as to the degree in which the evils exist; but none as to the existence itself. The remedies that are suggested for these evils appear to have been well considered, though, when an evil is ascertained to exist, people are not always agreed as to the best remedy. One of the proposed remedies, which involves many important considerations, and would probably meet with some opposition, is "that national cemeteries of a suitable description ought to be provided and maintained (as to the material arrangements) under the direc-

tion of officers duly qualified for the care of the public health." Another is, "that for the abatement of oppressive charges for funeral materials, decorations, and services, provision should be made (in conformity to successful examples abroad) by the officers having charge of the national cemeteries, for the supply of the requisite materials and services, securing to all classes, but especially to the poor, the means of respectable interment, at reduced and moderate prices, suitable to the state of the deceased and the condition of the survivors." The numerous matters contained in the Report can only be indicated here. It should be consulted by all who take an interest in the well-being of society, as a most valuable contribution to the statistics of civilized life.

(*A Supplementary Report on the Results of a Special Inquiry as to the Practice of Interment in Towns, made at the request of her Majesty's principal Secretary of State for the Home Department*, by Edwin Chadwick, Esq., Barrister-at-Law. London, 1843.)

INTERNATIONAL LAW. This term was originally applied by Bentham to what was previously called the "law of nations," and it has been generally received as a more apt designation than that which it superseded. When the term "law of nations" was in use, that of "law of peace and war" was sometimes employed as a synonyme, and as indicative of the boundaries of the subject. It was thus in its proper sense restricted to the disputes which governments might have with each other, and did not in general apply to questions between subjects of different states, arising out of the position of the states with regard to each other, or out of the divergences in the internal laws of the separate states. But under the more expressive designation, International Law, the whole of these subjects, intimately connected with each other as they will be found to be, can be comprehended and examined, and thus several arbitrary distinctions and exclusions are saved. To show how these subjects are interwoven, the following instances may be taken:—A port is put in a state of blockade; a vessel of war of a neutral power breaks the blockade: this is distinctly a question between nations, to be provided for by the law of peace and war, in as far as there are any consuetudinary rules on the subject, and the parties will submit to them. But suppose a merchant vessel belonging to a subject of a neutral power attempts an infringement of the blockade, and is seized—here there is no question between nations in the first place. The matter is adjudicated on in the country which has made the seizure, as absolutely and unconditionally as if it were a question of internal smuggling; and it will depend on the extent to which just rules guide the judicature of that country, and not on any question settled between contending powers, whether any respect will be paid to what the party can plead in his own favour, on the ground of the comity of nations, or otherwise. But there is a third class of cases most intimately linked with these latter, but which are completely independent of any treaties, declarations of war, or other acts by nations towards each other. They arise entirely out of the internal laws of the respective nations of the world, in as far as they differ from each other. The "conflict of laws" is a term very generally applied to this branch of international law, and the circumstances in which it comes into operation are when the judicial settlement of the question takes place in one country, but some of the circumstances of which cognizance had to be taken have occurred in some other country where the law applicable to the matter is different. One of the most common illustrations of this subject is,—a judicial inquiry in England whether a marriage has taken place in Scotland according to the law of that country; or an inquiry in Scotland whether a marriage has taken place according to the law of England; in either of which cases there will generally be the farther and nicer question, Which country's law ought to prevail as the criterion?

Thus the three leading departments of international law are—

1. The principles that should regulate the conduct of states to each other.

2. The principles that should regulate the rights and obligations of private par-

ties, arising out of the conduct of states to each other.

3. The principles that should regulate the rights and obligations of private parties, when they are affected by the separate internal codes of distinct nations.

The First of these has been the principal subject of the well-known works of Grotius, Puffendorf, Vattel, and other publicists, who have derived from general principles of morality and justice a series of minute abstract rules for the conduct of nations towards each other, and subsidiarily for the conduct of their subjects in relation to international questions. It has been usual to call this department the "Law of Nature," as well as the Law of Nations, on the supposition that, though it has not the support of the authority of any legislature, it is founded on the universal principles of natural justice.

It is clear that thus in its large features, as a rule for the conduct of independent communities towards each other, the law of nations wants one essential feature of that which is entitled to the term law—a binding authority. Nations even the most powerful are not without checks in the fear of raising hostile combinations and otherwise; but there can be no uniformity in these checks; and in general when the interest is of overwhelming importance, and the nation powerful, it takes its own way. The importance of the questions which may be involved in the law of nations thus materially affects the question how far it is uniformly obeyed. In a set of minor questions—such as the safety of the persons of ambassadors, and their exemption from responsibility to the laws of the country to which they are accredited, and in other matters of personal etiquette, a set of uniform rules has been established by the practice of all the civilized world, which are rarely infringed. But in the more important questions, regarding what is a justifiable ground for declaring war? what territory a nation is entitled to the sovereignty of? what is a legitimate method of conducting a war once commenced? &c.—the rules of the publicists are often precise enough; but the practice of nations has been far from regular, and has been, as every reader of history knows, influenced by the relative strength of the disputing parties more than by the justice of their cause. The later writers on this subject have from this circumstance directed their attention more to the means by which any system of international law can be enforced, than to minute and abstract statements of what may be theoretical justice, but has little chance of being enforced. They have found several circumstances which have an influence in the preservation of international justice, though of course no sanctions which can give it the uniformity and consistency of internal laws. The combinations for the preservation of what is called the Balance of Power [BALANCE OF POWER] are among the most useful restrictions of ambition. All periods of history furnish illustrations of this principle. Hume found that the Peloponnesian war was carried on for the preservation of the balance of power against Athens. The late war exhibited a noted illustration of combination to prevent universal conquest on the part of the French. The safety of small states from being absorbed by their larger neighbours, is in the jealousy which these neighbours feel of each other's aggrandisement. Thus the jealousy of rulers is one barrier to national injustice. Another is public opinion: sometimes that of the nation whose rulers would be prepared to commit injustice—sometimes that of other nations. Of course it can only be to a very limited extent that the public feeling of a despotic government can check the grasping spirit of its rulers; but the public feeling of the constitutional and democratic states is the great check on the injustice that might be perpetrated by a nation when it becomes so powerful as Great Britain.

The seizure of the Danish fleet by the English has been a subject of warm censure in this country. Necessity—even the plea that Napoleon would have used the fleet to invade our own shores—has not been accepted in palliation of the act; and the manner in which it has been canvassed is very likely to prevent any British government from adopting the precedent. The partition of Poland is

an instance of national injustice condemned by the public feeling of countries other than those by which it was perpetrated; and it may be questioned whethe states which accomplished the partition may not yet suffer by it. Good fame in the community of nations is like respectability in private circles, a source of power through external support; and the conduct of Russia towards Poland has frequently diverted from the former country the sympathy of free nations. It need scarcely be observed that the press, whether fugitive or permanent, is the most powerful organ of this public opinion, and that the views of able historians, jurists, and moralists, have much influence in the preservation of international justice. Among the principal subjects of dispute in this department of international law are—the sovereignty of territory and the proper boundaries of states, as in the question at present under debate regarding the Oregon territory in North America; questions as to discovery and first occupancy of barbarous countries; questions as to any exclusive right to frequent certain seas,—and here there is a well-known distinction between the broad ocean and the narrow seas that lie close to particular territories; questions regarding the right of navigation in rivers which may be either between the upper and lower territories, or between states on opposite banks; questions as to the right of harbour or fishing, &c.; and questions as to the right of trading with particular states. A very advantageous method of adjusting minor international disputes has been frequently had recourse to of late in a submission to the arbitration of a neutral power. Pride and the spirit of not yielding to intimidation or aggrandisement have often more influence in a nation's resistance of another's claim, than the desire to keep what is demanded. In such a case the national pride is not injured when that which is yielded to is the award of a neutral party, not the demand of an opponent. It has been suggested by Bentham and Mill that the civilized states of the world should establish among themselves a congress, which should adjudicate on all disputes between its members, the members being excluded from voting in their own disputes.

The Second department into which we have considered international law divided —the rights and obligations of individuals as affected by the conduct of states towards each other—has, like the first, been examined by the publicists in their theoretical manner; but it has never, perhaps, received so much practical illustration as it did in the British courts, particularly the Prize Admiralty Court, during the late wars. In a despotic country it would of course scarcely ever occur that the bench should fail to give effect to the national policy of the government, whatever that may be. But in England it was the rule that foreigners as well as natives were entitled to the rigid administration of the law, and that, if the proceedings of the government were at variance with the rights of parties according to the law of peace and war, individuals might have redress. Thus, when Great Britain, in opposition to the Berlin decrees, tried to establish a "paper blockade," that is to say, by force of orders in council to declare places to be under blockade, whether there were a force present to support it or not, Sir William Scott found that "in the very notion of a complete blockade, it is included that the besieging force can apply its power to every point in the blockaded state. If it cannot, it is no blockade of that quarter where its power cannot be brought to bear."

It has frequently been observed, that as to all departments of the law of nations, uncivilized countries are at the mercy of the civilized: that not having any means of reciprocating the action of international laws, from their having no systematic judicatories of their own, they have not even the frail tenure of generally received opinions as to what the conduct of independent nations towards each other ought to be, for their protection. This is in some measure true. If a weak civilized nation, which can eloquently appeal to the law of nations, is feebly protected against the injustice of a strong nation, still less effectually are a barbarous community, who never heard of international law, and know not how

to appeal to its acknowledged principles, protected by it; and, in regard to them, the humanity and conscience of the powerful nations coming in contact with them are their protection, rather than any rules of international law. Thus when, as in the instance of a colonial government or otherwise, such a nation as the British has to deal with the inhabitants of a barbarous country, it cannot be said that these inhabitants have the law of nations to appeal to if they are unjustly treated, and there is no sanction for their being well and humanely used but the morality and conscience of the British nation and its government. How far civilized nations had in former times disregarded all feelings of common humanity in their intercourse with inferior races, the history of colonization, and especially that relating to the continent of America, is a horrible record. In later days higher notions have been entertained of the responsibility of superior power, and the civilized man has in some measure ceased to make his first advances to the notice of the barbarian in the character of a murderer and a pillager. Britain has in this improved morality so far advanced before other nations, as to be the protector of barbarous races from the oppression of others, in her efforts for the abolition of the slave trade and the preservation of aboriginal nations. These efforts, in so far as they are an anomaly in the general conduct of nations, have introduced some necessary exceptions to the rules of international law applicable to the rights of persons. This has consisted in the necessity of treating those who are injured by the slave trade, viz. the slaves carried off, as if they were subjects of this country subjected to injury, while the deporters have likewise been of necessity treated in the general case as if they were subjects of this country doing the injury. The effect of this state of matters, as an exceptional principle in international law, was lately curiously illustrated. A foreign slaver had been captured and taken possession of. The crew rose, and putting the captors to death, recaptured the vessel. They were tried and condemned to death for murder in an English court; which refused to listen to the plea that, as the capture had taken place under our laws, not their laws, they were entitled to regain possession by any means which they might choose to adopt. It was necessary, in fact, to treat the ship as a prison, and the captured seamen as persons in a British prison. It is fortunate that the humane and enlightened motive of this divergence from the law of nations is a guarantee for its being beneficially exercised.

The rights of individuals have sometimes been so much affected by the conduct of nations towards each other, that their own nation has been induced to make war against the nation aggressing. This has twice occurred in our intercourse with America: one war was caused by our restrictions on the commerce of America by the orders in council; another by our searching American merchant vessels for British seamen. On the subject of the present unsatisfactory state of the question as to this right of search, Mr. Reddie, in his 'Maritime International Law' (ii. pp. 43-44), says, "Unfortunately this claim of right was left undecided either way even by the hastily concluded treaty of Ghent in 1814, which terminated the war between the parent state and what were originally her colonies. And as the divergence in the personal appearance, language, habits, and manners of the inhabitants of the two countries was not likely, for generations, to be such as to facilitate the discrimination of the subjects of the two states, it is to be regretted the question was not subsequently settled by the negotiations of 1818 upon the equitable footing of regular authentic lists or registers of British and American seamen being made up and kept, and of the nationality of the seamen being thereby determined."

The Third division of international law is that which most properly comes under the head "Conflict of Laws," viz. the principles that should regulate the rights and obligations of private parties when they are affected by the separate internal codes of distinct nations. This has some points in common with the preceding department of the subject. It involves questions with individuals, and not, at least in the first instance, questions with states;

and the adjustment of each question depends on the view taken by the law of the country to which the individual or his property is amenable. But it has this distinctive feature, that the circumstances under which disputes may arise are not in the conduct of one nation towards another, but in differences between the internal laws of the countries, which internal laws disagree, not because the one nation has a dispute with the other, but in the general case because its legislators have taken its internal situation solely into consideration, and have overlooked the existence of other nations. There can be no part of the world where this species of international law can be so well illustrated as in the United States—a collection of communities, each having an internal system of administration, but each acting on principles of harmony and alliance with the other states of the Union. It is thus natural that America should have produced the best work on the subject, in Professor Story's 'Commentaries on the Conflict of Laws Foreign and Domestic, in regard to Contracts, Rights, and Remedies; and especially in regard to Marriages, Divorces, Wills, Successions, and Judgments,' of which two editions are now known and esteemed in this country. The leading rule of international law in this department is, that each civilised nation is to give efficacy to the laws of another country, unless its own laws or the general principles of justice are thereby invaded. We have the broadest and most distinct illustrations of this rule in the criminal law. The progress of opinion has lately been in favour of each nation rendering back fugitive criminals, to be dealt with according to the law of the country where they have committed any private crime against person or property. In conformity with this principle, treaties were lately made with France and the United States of America, for enforcing which, in this country, two acts of parliament were passed (6 & 7 Vict. c. 75 and c. 76), by which a secretary of state, on the requisition of the ambassador or other representative of France or the United States, might issue a warrant to magistrates to seize a person accused of a crime, a magistrate being enjoined to put it in force on his being satisfied that the charge is of such a nature as would authorise him to commit a person charged with perpetrating it in his own jurisdiction. [CONVENTION TREATIES.] But it has been a rule in many countries, and particularly in our own, that no aid is to be given for the enforcement of the political laws of foreign states. As in other branches of international law, our enlightened principles on the subject of slavery have here been the cause of perplexing difficulties. With slave-holding countries slavery comes to be a question of property, but with us it can only be a question of government; and we cannot view any rules regarding property in slaves as laws relating to private rights, an infringement of which, when held to be criminal in the slave-holding country, must be so also here. Accordingly, in the celebrated case of the Creole, in November, 1841, when certain American slaves escaped and found protection in a British settlement, it was found that we could not send them back to their owners as robbers who had with violence stolen their own persons from the custody of their proprietors.

As on the one hand the criminal law is that to which this department of international law most broadly and distinctly applies, on the other hand the position of real or landed property is that to which it has generally the least reference. The reasons of this distinction are very obvious: his own personal conduct is that object of the law which a man most completely carries about from one country to another; his connection with landed property is the relation in which a tribunal out of the country in which the property is, can have the least chance of adjudicating. Between these extremes there are many questions regarding persons in their relations to each other, and regarding contracts as to moveable or personal property. It came thus to be a general principle, that rights connected with landed property must always be settled by the law of the place where the land lies, while questions regarding other property might be subjected to other criterions of jurisdiction. Perhaps historical circum-

stances in the early history of the European nations favoured this division. The various tribes which occupied the territory of the Roman empire appear to have carried with them their own peculiar laws and customs. Savigny quotes a letter from Bishop Agobardus, in which he says it often happens that five men, each under a different law, may be found walking or sitting together—a state of society at this day exemplified in some oriental nations. Among all these distinct tribes the feudal system arose as the general and uniform territorial law. Through a series of circumstances which need not be here narrated, the civil or Roman law became the ruling principle as to persons in their relation to each other when that relation was not of a feudal character, and as to claims regarding moveable goods. The common law of England has perhaps had the least affinity with the other European codes. But it has fortunately happened that those departments of the law with which international questions are chiefly concerned,—the consistorial and the admiralty law,—have been considered as the legitimate offspring of the civil law, and have adopted in a great measure its principles as they have been in practice throughout Europe. The mercantile law in general of England has accommodated itself to the custom of merchants; and this custom has in a great measure arisen out of the adaptation to modern commerce of the principles of the civil law. The portion of the commercial code of England which is least in harmony with that of other countries is perhaps the bankruptcy law, which, being statutory, has not so pliantly adapted itself to the exigencies of foreign commerce as the consuetudinary portions of the commercial law have done. Thus, under the old sequestration or bankruptcy statute of Scotland, which was supposed to give the trustee or assignee full power for obtaining possession of the bankrupt's property in all parts of the world, it was found that he had no right of action for a debt due to the bankrupt in England—the right of the trustee being that of an assignee merely, and a right to a debt being a chose in action, and therefore not capable of being assigned by the law of England. See Jeffrey *v.* M'Taggart, 6 M. & S. (K. B.), 126. The law of bankruptcy appears to be one of the most difficult of adjustment to international principles. There are clauses in the bankruptcy and insolvency acts of England by which, through registration of the vesting order, the assignee becomes invested with all real or landed property in any part of the British dominions where a conveyance of such property requires to be recorded. (See 1 & 2 Wm. IV. c. 56, § 27, and 1 & 2 Vict. c. 110, § 46.) It could not have been the intention of this provision to give an English assignee privileges which a trustee of a bankrupt estate does not hold in Scotland; but while the latter requires to make up a feudal title before he can be the recorded proprietor of real property, it was found by the Court of Session in the strict interpretation of the English provision that no such preliminary was necessary, and that the registration of the vesting order was sufficient. (Rattray *v.* White, 8th March, 1842, 4 D., 880.)

The conflicts of laws between England and Scotland are of course in this part of the world the most important and interesting. The consuetudinary or unstatutory law of England has perhaps fewer principles in common with that of Scotland than the latter has with the law of any other country in Europe; and this divergency has been the cause of many difficult questions. In these the law of marriage and that of succession have been particularly fertile. In the former the difference between the institutions of the two countries, when subjected to the principles of international law, has been productive of very remarkable effects. In England there are certain acts which are necessary ingredients, by the statute law, of a valid marriage. In Scotland the consent of parties to hold each other as man and wife, when sufficiently attested, is, according to the doctrines of the civilians, sufficient. But in England it is a principle of international law that a marriage valid in the place where it is contracted is valid there; the consequence is, that the lax principle of marriage by simple attested consent would

have probably fallen into desuetude and oblivion in Scotland, were it not kept up by English parties, who thus evade the restrictions of their own law. On the subject of succession, a series of decisions in both countries has settled two very important principles—that in the case of landed property it follows the *lex rei sitæ*, or the law of the place where the property is; while in moveable or personal property it follows the *lex domicilii*, or law of the domicile in which the person leaving it died.

INTESTACY. [ADMINISTRATION.]
INVENTION. [PATENT.]
INVENTORY. [EXECUTOR.]
INVESTITURE. [FEUDAL SYSTEM.]

IRON. The iron trade in Great Britain in all its various branches is of very great importance. According to the census of 1841 there were employed in Great Britain 10,949 persons in iron-mines, and 29,497 in the smelting of the ore and the manufacture of the metal. The quantity of iron made in this country at different periods is not accurately known, but the following estimates have generally been considered as not far from the truth by those best acquainted with the subject. The estimate for 1823 and each subsequent year is given on the authority of Sir John Guest, one of the greatest ironmasters in this country:—

	Tons produced.		Tons produced.
1740	17,000	1825	581,000
1788	68,000	1828	703,000
1796	125,000	1835	1,000,000
1806	258,000	1836	1,200,000
1823	452,000	1840	1,500,000

The next table, which shows the parts of Great Britain in which the manufacture of iron was carried on in 1840, and the quantity made in each district, is taken from the evidence given by Mr. Jessop, of the Butterley Ironworks, Derbyshire, before the Commons' Committee on Import Duties in 1840:

	Tons.
Forest of Dean	15,500
South Wales	505,000
North Wales	26,500
Northumberland	11,000
Carried forward	558,000
Brought forward	558,000
Yorkshire	56,000
Derbyshire	31,000
North Staffordshire	20,500
South Staffordshire	407,150
Shropshire	82,750
Scotland	241,000
	1,396,400

The number of furnaces in blast was 402, and 162 used the process of blasting with hot air. Mr. Jessop estimated the quantity of coal used in smelting at 4,877,000 tons, and an additional quantity of 2,000,000 tons, was used in converting the produce of the ore into wrought-iron.

The price of pig-iron has fluctuated during the ten years from 1835 to 1845 between the two extremes of 6*l.* 13*s.* per ton in 1836 and 2*l.* 5*s.* in January, 1843.

About 16,000 tons of foreign iron are annually imported, principally from Sweden, Norway, and Russia. It is used for converting into steel, for which it is better adapted than the English coal-smelted iron.

The quantity of iron and steel, wrought and unwrought, exported in 1843 was 448,925 tons, declared value 2,590,833*l.* In 1844 the declared value of iron and steel exported amounted to 3,194,901*l.* There are in addition about 17,000 or 18,000 tons of hardware and cutlery exported. Mr. Porter estimated the home consumption of British iron in 1841 at 1,139,111 tons. (*Progress of the Nation*, iii. 87.)

The principal countries to which bar-iron and pig-iron were exported in 1842, were as under:—

	Bar-Iron. Tons.	Pig-Iron. Tons.
United States of North America	39,964	13,075
Italy	19,854	3,174
Germany	17,783	6,246
E. I. Company's Territories and Ceylon	17,017	240
Holland	16,980	26,666
Prussia	13,202	12,564
Denmark	6,227	7,573
Turkey and Continental Greece	5,191	..
Carried forward	136,218	69,538

	Bar Iron. Tons.	Pig Iron. Tons.
Brought forward .	136,218	69,538
British N. America .	4,971	3,199
France . . .	4,566	16,464
Foreign W. Indies .	3,084	20
All other countries .	33,540	4,636
Total	172,379	93,851

The quantities of other descriptions of iron and steel exported in the same year were:—

	Tons.
Bolt and Rod Iron . . .	18,921
Cast Iron	15,934
Iron Wire	1,611
Anchors, Grapnels, &c. . .	2,693
Hoops	14,914
Nails	6,000
Other sorts	35,891
Old iron, for re-manufacture	3,890
Unwrought Steel . . .	3,308

The total weight of iron and steel wrought and unwrought (exclusive of hardware and cutlery) exported in 1842 was 369,398 tons, valued at 2,457,717*l.*

In 1841 there were smelting-works in 59 different departments of France, and in 20 other departments the making of pig and bar iron was carried on from ore obtained out of the departments. One half of all the iron made in France in 1841 was produced in the nine departments of Haute Marne, Moselle, Côte d'Or, Loire, Nièvre, Ardennes, Cher, Haute Saône, and Meuse. Five-sevenths of all the iron is produced in eighteen departments, and the remaining two-sevenths are distributed amongst 61 departments. The number of smelting-works, and works for making bar-iron, increased from 894 in 1836 to 1023 in 1841. In the Haute Marne, where the iron-works are on the largest scale, 86 establishments produced iron valued at 479,349*l.* The total value of all the iron manufactured in France in 1841 was estimated at 5,671,581*l.*, which was an increase of 14 per cent. since 1836. The fuel used was 594,418 tons of wood-charcoal, 175,924 tons of coke, 349,276 tons of coal, and 176,659 stères of wood; and the total products were 377,142 tons of cast-iron, 263,747 tons of bar-iron, and 6886 tons of steel. The value of the fuel consumed amounted to 2,179,664*l.*, or 38½ per cent. on the value of the metal. The number of workmen employed (including 15,783 miners) was 47,830, which is more than the number employed in Great Britain, while the quantity of iron made in France is only one-fourth of that made in England. The price of pig-iron in France was 6*l.* 11*s.* per ton in 1841, and that of bar-iron 15*l.* 13*s.* The iron manufacture is, in fact, a very oppressive monopoly in France, and is especially injurious to the agricultural class. The country is not half supplied by the French iron-masters; enormous duties prevent the supply of foreign iron, and scarcely 50,000 tons are imported annually; and the French submit to the injustice of paying prices which are from 100 to 200 per cent. higher than the same article costs in England. (*Jour. of Lond. Stat. Soc.*, vol. vii. 282-291. Paper by G. R. Porter, Esq., on the Mining Industry of France.)

In Belgium the iron-mines are principally situated between the Sambre and the Meuse, and in the province of Liège. The produce when smelted amounted in 1836 to 150,000 tons.

In 1837 the iron-mines of Prussia produced 679,874 tons.

The iron of Sweden is deservedly held in high estimation. The number of smelting furnaces, great and small, in Sweden, is under 350. The annual produce is estimated at from 85,000 to 95,000 tons of pig-iron, which is capable of being converted into from 60,000 to 66,000 tons of malleable iron. An iron-master can send no more iron to market than the quantity which he is authorised by his licence to produce. Each furnace and forge pays an annual tax; and no licence is granted to any one who has not a forest sufficient to supply the necessary charcoal. (M'Gregor's *Commercial Statistics*, ii. 882.)

The following particulars respecting the iron manufacture of the United States of North America are from Hunt's 'Merchants' Magazine,' a work of authority on commercial statistics. There are 540 blast furnaces, which yield 486,000 tons of pig-iron; 954 bloomeries, forges,

rolling and splitting mills, &c., which produce 291,600 tons of bar, hoop, sheet, and other wrought iron, 30,000 tons blooms, and 121,500 tons as cuttings, such as machinery, stove-plates. Two-fifths of all the iron made in the States is produced in Pennsylvania. The total quantity is rather more than the produce of Great Britain in 1823. The probability is, that in the course of another quarter of a century the United States will be the greatest iron-producing country in the world. The duty on foreign iron varies from 50 to 150 per cent. and the quantity imported is about 100,000 tons per annum. The price of American bar-iron in 1845 was from 75 to 80 dollars per ton. The price in England, with a large prospective demand, was under 9*l.* per ton.

J.

JACOBINS is the name of a faction which exercised a great influence on the events of the French Revolution. This faction originated in a political club formed at Versailles, about the time of the meeting of the first National Assembly, and which was composed chiefly of deputies from Brittany, who were most determined against the court and the old monarchy, and some also from the South of France, among whom was Mirabeau. When the National Assembly removed its sittings to Paris (October 19, 1789), the Breton club followed it, and soon after established their meetings in the lately suppressed convent of the Jacobins, or Dominican monks, in the Rue St. Honoré. From this circumstance the club and the powerful party which grew from it assumed the name of Jacobins. During the year 1790 the club increased its numbers by admitting many men known for violent principles, which tended not to the establishment of a constitutional throne, but to the subversion of the monarchy. A schism broke out between these and the original Jacobins, upon which Danton, Marat, and other revolutionists seceded from the club, and formed themselves into a separate club called 'Les Cordeliers,' from their meetings being held in a suppressed convent of Franciscan friars. These men openly advocated massacre, proscription, and confiscation, as the means of establishing the sovereignty of the people. In 1791 the Cordeliers reunited themselves with the Jacobin club, from which they expelled the less fanatical members, such as Louis Stanislas Freron, Legendre, and others. From that time, and especially in the following year, 1792, the Jacobin club assumed the ascendancy over the legislature; and the measures previously discussed and carried in the club were forced upon the assembly by the votes of the numerous Jacobin members, and by the out-door influence of the pikemen of the suburbs, with whom the club was in close connection. The attack on the Tuileries in August, 1792, the massacres of the following September, the suppression of royalty, and most of the measures of the reign of terror, originated with the club of the Jacobins. [COMMITTEE OF PUBLIC SAFETY.] The club had affiliations all over France. After the fall of Robespierre in July, 1794, the convention passed a resolution which forbade all popular assemblies to interfere with the deliberations of the legislature. The Jacobins, however, having attempted an insurrection in November, 1794, in order to save one of their members, Carrier, who had been condemned to death for his atrocities at Nantes, the convention ordered the club to be shut up; and Legendre, one of its former members, proceeded with an armed force to dissolve the meeting, and closed the hall. The spirit of the club, however, survived in its numerous adherents, and continued to struggle against the legislature and the Executive Directory, until Bonaparte put an end to all factions, and restored order in France. The name of Jacobin has since been used, though often improperly, like other party names, to denote men of extreme democratical principles, who wish for the subversion of kingly government and of all social distinctions, and are not over-scrupulous about the means of effecting their object.

JETSAM. [FLOTSAM.]

JEWS. It does not appear at what time the Jews came into Great Britain,

but they were settled here in the Saxon period, and as early as A.D. 750. From the time of the Conquest the Jews in England rapidly increased in number. Under the first three Norman kings they lived undisturbed, so far as we are informed. But under Stephen and his successors they suffered from the rapacity of the kings and the intolerance of the people. The persecutions which they experienced from all persons, both lay and ecclesiastic, poor and rich, are fully attested by the evidence of their enemies. Finally, in the reign of Edward I., about A.D. 1290, all the Jews were banished from the kingdom. Their numbers at that time are conjectured (but on what grounds we are not aware) to have been between 15,000 and 16,000. It was not till after the Restoration, A.D. 1660, that the Jews again settled in England; and though under the Protectorate they had entered into negotiations with Cromwell to obtain permission to enter the island, nothing seems to have been done in the matter, and those who have investigated the subject bring forward no proof of leave being formally granted to them to return. After the Restoration it seems probable that they came in gradually without either permission or opposition, and since that time foreign Jews have been on the same footing as other aliens with respect to entering the country. In the reign of Queen Anne (1 Anne, c. 30) an act was passed, by which, "if any Jewish parent, in order to the compelling of his or her Protestant child to change his or her religion, shall refuse to allow such child a fitting maintenance, suitable to the degree and ability of such parent, and to the age and education of such child," the Lord Chancellor, upon complaint made to him, shall make such order for the maintenance of such Protestant child as he shall think fit. In the year 1753 an act was passed to enable foreign Jews to be naturalized without taking the sacrament; but the act was repealed in the following session, under the influence of the popular feeling, which was most strongly opposed to the measure of 1753. Since this year they have lived in the United Kingdom unmolested. In 1830 the number of Jews in London was estimated at 18,000, and in the rest of England about 9000. But since the act for the registration of marriages, &c. was passed, and the number of marriages among the Jews is accurately ascertained, we know that this calculation was too high; and if the proportion of marriages amongst the Jews is the same as amongst other portions of the population, the number of Jews in England and Wales in 1843 was only 18,700. The number in Scotland and Ireland is probably small, but we are not aware that there is any good estimate as to their numbers in these parts of the United Kingdom.

During their residence in England, up to their banishment in the time of Edward I., the Jews were considered as the villains and bondsmen of the king, a relation which seems to explain the power over their persons and property which was assumed and exercised by the king in the most oppressive manner. They however could purchase and hold land, subject only to the right of the king, whatever it might be, to levy heavy taxes on them and seize their lands if they were not paid. By the statute of the 54th and 55th of Henry III. the Jews were declared incapable of purchasing or taking a freehold interest in land, but might hold, as in time past they were accustomed to hold, houses in the cities, boroughs, and towns where they resided. Another statute (Statutum de Judaismo), 3 Edward I., forbade Jews from alienating in fee, either to Jew or Christian, any houses, rents, or tenements which they then had, or disposing of them in any way without the king's consent; they were permitted to purchase houses and curtilages in the cities and boroughs where they then resided, provided they held them in chief of the king; and they were further permitted to take lands to farm for any term not exceeding ten years; such permission, however, was not to continue in force for more than fifteen years from the date of the act. Since the time of their banishment no statute has been passed which in direct terms affects the right of the Jews to hold real estates in England, and it has been a matter of dispute whether they can now legally

hold such estate. It has been contended that the statute called the 54th and 55th Henry III. is not an act of parliament, but only an ordinance of the king, which however, to say the least, seems a very questionable proposition; and if it is an act, it is by some persons contended that it has been indirectly repealed. Some Jews, we believe, do hold real estate, and it is contended by some that they are legally entitled to do so. But nothing short of a declaration of the legislature can remove all doubts on this subject.

The act of the 9th Geo. IV. c. 17, substitutes for the sacramental test a form of declaration to be made by every person, within one calendar month next before or upon his admission into any of the corporate offices mentioned in that act, or within six calendar months after his appointment to any place mentioned in the fifth section of that act. As this declaration contains the words "upon the true faith of a Christian," it has the effect of excluding Jews from corporate offices, and, in connection with the Abjuration Act, from places under government, so far as they are not relieved by the Annual Indemnity Act. The abjuration oath, which contains the same words, has the effect of excluding the Jews from parliament. (1 Geo. I. st. ii. c. 13; 6 Geo. III. c. 53.) But in 1845 an act was passed (8 & 9 Vict. c. 52), by which, instead of the declaration required to be made by 9 Geo. IV. c. 17, every person of the Jewish religion is permitted to make and subscribe another declaration, of which a form is given in the act, within one calendar month next before or upon his admission into the office of mayor, alderman, recorder, bailiff, common councilman, councillor, chamberlain, treasurer, town-clerk, or any other municipal office in any city, town corporate, borough, or cinque port within England and Wales or the town of Berwick upon Tweed. The declaration, instead of the words "upon the true faith of a Christian," runs in this form: "I, A. B., being a person professing the Jewish religion, having conscientious scruples against subscribing the declaration contained in an act, &c. (referring to the 9 Geo. IV. c. 17), do solemnly, sincerely, and truly declare, that," &c. [JUSTICES OF THE PEACE, p. 154.]

It is considered to be the law at present that all gifts for the support of the Jewish religion are void, as being what are legally termed superstitious uses. There is a singular decision by Lord Hardwick (De Costa *v.* De Paz, Ambler's *Reports*) in the case of a gift for the support of the Jewish religion. Part of the money intended by the Jewish donor to support his own creed, was given to the Foundling Hospital.

It seems to be the general opinion that the Jews are within the benefit of the Toleration Act of the 1 William and Mary, as extended by the 53 Geo. III. c. 160. Though a legacy given for the instruction of Jews in their religion is not one which will be supported by the Court of Chancery, any other kind of charitable bequest for the benefit of Jews is valid. It is a vulgar error, still entertained by some people, that Jews, even if born in this country, are aliens. Jews are British subjects, like any other persons who are born here.

(Blunt's *History of the Establishment and Residence of the Jews in England, with an Enquiry into their Civil Disabilities*, London, 1830; Goldsmid's *Remarks on the Civil Disabilities of British Jews*, London, 1830; *Report of the Criminal Law Commissioners, on Penalties and Disabilities in regard to Religious Opinions*, 1845. This report states also the law as to Jews in Ireland and Scotland.)

JOINT-STOCK COMPANY. Joint-stock companies are such companies as are unincorporated, and which trade upon a joint stock. All trading associations, however numerous, and although not established by charter or act of parliament, are legal, provided their purposes be legal, and provided they do not attempt to exercise the privileges of a corporation, such as the power of making their shares transferable at the will of the holder. The partners in joint-stock companies are of two classes: one consists of directors, trustees, and others who are actively employed in conducting the concern; the other, of a number of persons who take little or no part in its management, and many of whom become shareholders for the sake only of a profitable

investment of their money. The general conduct of the trade falls upon the directors, while the more particular transactions are usually managed by paid agents who are not shareholders. The funds and other property of the company are vested in the trustees. The deed of settlement is a covenant made between a few of the shareholders chosen as trustees for that purpose, and the others; by which each of the latter covenants with the trustees, and each of the trustees covenants with the rest of the shareholders, for the due performance of a series of articles which are specifically set forth, and which point out the duties of the trustees, directors, and auditors; define their powers, and all other necessary matters. In all matters which might have been provided by the deed, but are not, the law of partnership prevails.

The private property, to its full extent, of every member of an unincorporated trading company is liable for the whole debts of the company. The most important object to be gained by an act of parliament for a joint-stock company is by the clause which enables it to sue and be sued through the medium of one of its officers; without which advantage the difficulties attendant upon suits by or against such companies are beyond calculation.

A partnership in the working of a mine is considered by courts of equity as a partnership in a trade, and therefore subject to the usual rules as to partnership.

The chief rules of Roman law as to partnership may be collected from Gaius, iii. 148-154; *Dig.*, xvii. tit. 2; Cicero, *Pro Publio Quintio.*

The constitution and regulation of joint-stock companies have been more particularly defined by several recent statutes.

The act 7 & 8 Vict. c. 110, applies to companies formed subsequent to 1st Nov. 1844, which consist of more than twenty-five members, provided they are not constituted by charter or by act of parliament. The most important feature of the act consists of provisions for subjecting joint-stock companies to certain regulations while in their provisionary state, and before operations have been commenced. It is required that before any public advertisement of an intended joint-stock company be issued, the promoters are to effect a "provisional registration" at an office established for the purpose, which registration must set forth the name and nature of the proposed company, the names, occupations, and places of abode of the promoters and officers, the names of subscribers, with various other particulars; and copies of each prospectus must be deposited before being issued. There is a penalty for issuing advertisements which falsely pretend that any joint-stock project is patronized, directed, or managed by eminent or opulent persons.

When the company is formed a "complete registration" is to be made, and until this is effected, all their proceedings are of a provisionary character. The "complete registration" is accomplished by sending in schedules which give full particulars respecting the constitution of the company. Every shareholder must enter into a covenant to pay up instalments; the deed is to be registered; accounts are to be audited, and balance-sheets made and produced to the shareholders, yearly, and the right of the shareholders to examine the books for a certain time must be granted. The balance-sheet and auditors' reports are also to be annually registered. The act imposes other conditions on joint-stock companies, amongst which are the following: shareholders whose instalments are all paid, have a right to be present at all general meetings, and to take part in the discussions; to vote on any question, either in person or by proxy, unless the deed of settlement precludes proxies; and they have a vote in the choice of electors and auditors. Patrons and directors must hold shares in the company under a penalty of 20*l.* A "register of shareholders" is to be kept which must show the number and amount of shares held by each shareholder: each shareholder has a right to inspect this register on demand; and he is entitled to a certificate of the number of shares which he holds, and the amount paid thereon, which certificate may be evidence in a court of law. When completely registered, shares may be transferred, but all the instalments due must first be paid up, and the

transfer must be registered before the holder is entitled to share in the profits or to vote. The act contains a number of other regulations. The registrar of joint-stock companies is required to make an annual report, which is to be presented to parliament. This act does not apply to joint-stock banks, nor to schools or scientific and literary institutions; nor to loan or benefit building societies duly enrolled, nor to friendly societies or similar institutions, unless they assure to the amount of 200*l.* on any one life. The act does not extend to companies in Scotland, except they have branch establishments in England or Ireland.

In the same session another act was passed (7 & 8 Vict. c. 111) which is entitled 'An Act for facilitating the winding up the affairs of joint-stock companies unable to meet their pecuniary engagements.' By this act a fiat in bankruptcy may be issued in the same way as in the case of single traders against incorporated commercial or trading companies or any other body of persons associated together for commercial or trading purposes; but the bankruptcy of a company does not involve the bankruptcy of any member individually. A copy of the balance sheet must be sent to the Board of Trade, accompanied by the written opinion of the Court of Bankruptcy as to the cause of failure of the company; and the Queen, upon the recommendation of the Board of Trade, may then revoke any privileges granted to the company, and determine the same, notwithstanding any charter, letters-patent, or act of parliament; but until the determination of the company by the crown, it shall be considered as subsisting for the original purposes. This act applies to all banking companies which have more than six partners.

Another act (7 & 8 Vict. c. 113) was passed during the session of 1844, under which joint-stock banks are now regulated. Every new joint-stock bank before it can commence business is required to present a petition to her majesty in council, signed by at least 7 shareholders, praying for a grant of letters-patent. This petition must set forth—1, The names and abodes of all the partners of the proposed company. 2, The proposed name of the Bank. 3, The place and street, &c., where the business of the bank is to be carried on. 4, The proposed amount of the capital stock, not being in any case less than 100,000*l.* and the means by which it is to be raised. 5, The amount of capital stock then paid up, and where and how invested. 6, The proposed number of shares. 7, The amount of each share not being less than 100*l.* each. The petition of the proposed company, in which these particulars are set forth, will be referred to the Board of Trade, which will report as to the provisions of the act having been complied with; and her majesty may then, if she so think fit, grant the letters-patent prayed for. The deed of partnership must be drawn up in accordance with a form approved of by the Board of Trade, and, in addition to any other provisions which may be introduced, must contain specific provisions for the following purposes. 1, For holding ordinary general meetings at least once a year, at an appointed time and place. 2, For holding extraordinary general meetings, on the requisitions of nine or more shareholders who have at least 21 shares. 3, For the qualification and election of directors, and for general management. 4, For the retirement of at least one-fourth of the directors annually, and for preventing their re-election for at least 12 calendar months. 5, For preventing the company from purchasing any shares or making advances of money or securities for money to any person on a security of a share or shares in the bank. 6, For the publication of the assets and liabilities of the bank once at least in every month. 7, For the yearly audit of the accounts of the bank by auditors chosen at a general meeting of the shareholders and not being directors at the time. 8, For the yearly communication of the auditors' report, and of a balance sheet, and profit and loss account to every shareholder. This deed must be executed by the holders of at least one-half the shares on which not less than 10*l.* on each share of 100*l.* has been paid up; but the banking business cannot be commenced until the deed has been executed by all the shareholders, nor until one-half at least of each

share has been paid up, no portion of which can be repaid without the sanction of the Board of Trade. Under letters-patent for a term of years not exceeding twenty the shareholders of a joint-stock bank may become one body politic and corporate with perpetual succession, a common seal, and power to purchase and hold lands, of such annual value as shall be expressed in each letters-patent.

This act contains some other provisions which are deserving of notice as improvements. Every year, between the 28th of February and 25th of March, a memorial is required to be transmitted to the Commissioners of Stamps, setting forth, amongst other particulars, the name, style, and firm of the banking company, the names and places of abode of the several members thereof, and of the directors, managers, and other officers; and this document may be inspected at the Stamp-office on payment of a fee of one shilling. A list of the registered names and places of abode of all the members of the company for the time being must also be printed and conspicuously placed for the use of the public in the bank. The manager or one of the directors is required to transmit from time to time to the Commissioners of Stamps an account of changes which have taken place in the list of directors, managers, officers, and shareholders. The Commissioners of Stamps are to give a certified copy of these memorials on payment of a fee of 10*s*. Persons whose names are in the memorial last delivered, are themselves or their representatives liable to legal proceedings, as existing shareholders.

When joint-stock banks were first established, each shareholder was answerable to the extent of his own property. By 1 Vict. c. 73, they were rendered liable only to the extent of their shares, but the liability did not extend to the shareholders as a body. By 7 & 8 Vict. c. 113, the liability of any shareholder extends equally to the whole body of shareholders as a company; but if execution of any judgment against the company shall be ineffectual to obtain satisfaction, then any shareholder may be proceeded against. The acts of an individual partner were formerly binding on all the other shareholders, but it is only the acts of an individual director or other officer properly appointed which are now binding on the co-partnership. [PARTNERSHIP.]

At one time a great part of the foreign commerce of England was engrossed by chartered companies. An account of two of these companies has been already given. [HUDSON'S BAY COMPANY; EAST INDIA COMPANY.] There were several others, which have ceased to exist, whose operations constitute an important feature in our commercial history. The Russia Company, which was chartered in 1555, succeeded in establishing a trade with the Czar of Muscovy, and a year or two afterwards Jenkinson, a very active servant of the company, struck out a new line of commercial intercourse through Russia into Persia. One of the main objects of the association was the discovery of new trades. Before the close of the sixteenth century the company embarked in the whale fishery at Spitzbergen, in which, as well as in their operations elsewhere, private traders, termed "interlopers," were not allowed to engage. In 1669, when the Czar had greatly reduced the privileges of the company or placed the Dutch on the same commercial footing, the association ceased to be a joint-stock concern, but became what was called a regulated company, in which each person traded with his own capital, subject to the general regulations of the association. The Russia Company was at the cost of maintaining embassies. The Russia Company still exists, that is, officers are elected, and a dinner is annually given, which is generally attended by the Russian ambassador. The expenses of the company are paid out of trifling dues levied on imports from Russia.

In 1581 Queen Elizabeth granted to a company the exclusive right of trading to Turkey. This was the origin of the Turkey or Levant Company. Its exclusive privileges of trade extended to the dominions of the Grand Seignor, whether in Europe, Asia, or Africa. Factories were established, and the company was at the cost of supporting an English ambassador at Constantinople, and consuls at Aleppo,

Smyrna, and other places. Adam Smith speaks of the Turkey Company in his time, seventy or eighty years ago, as "a strict and oppressive monopoly." The Turkey Company surrendered its charter in 1825.

Several companies for trading to Africa were successively established in the seventeenth century, but from various causes they all failed. The company established in 1662 was bound by its charter to supply the West India plantations with three thousand negroes annually. This was the third African company established during the century; but it was broken up, as its predecessors had been, and a fourth company was established, at the head of which were King Charles II. and the Duke of York. After the Revolution companies for exclusive trading were declared illegal unless they obtained the sanction of an act of parliament, and the African trade was thrown open. The different African Companies had, however, been at considerable cost in erecting forts and factories, and maintaining officers; and to indemnify the existing association, an act was passed in 1698 for levying a duty upon private traders to Africa, who were no longer to be deemed interlopers. In 1730 parliament granted 10,000*l.* for the purpose of keeping up establishments in Africa. The trade was now entirely thrown open, and the powers of the African Company confined to the government of forts and factories. In 1821 the charter of the African Company was surrendered and the company ceased to exist.

The South Sea Company, so famous for its association with a gigantic commercial bubble, was vested with the exclusive privilege of trading to the Pacific Ocean and along the east coast of South America from the Orinoco to Cape Horn. The company engaged to supply negroes to the Spanish dominions in South America under the Assiento treaty. [ASSIENTO TREATY.] The privilege of exclusive trade to the south-east and elsewhere was taken away by 47 Geo. III. c. 23, and by a subsequent act duties called South Sea Duties were imposed on goods imported from the limits (with some exceptions) to which the privilege had been confined. These duties were to form a guarantee fund, and were to cease when the fund had reached a certain amount.

Besides these companies there were the Eastland, the Hamburg, and the Greenland companies, with some others, but none of them were of so much importance as those we have just noticed.

JOURNALS OF THE LORDS AND COMMONS. [PARLIAMENT.]

JUDEX, JUDICIUM. It is of some importance to form a correct notion of the terms *judex* and *judicium* in the Roman writers. The *judicia privata* were those in which one party claimed something of or against another party, and must be distinguished from the *judicia publica*. The former had relation to *actiones*, and may be generally described as Civil actions; the latter were of the nature of Criminal prosecutions.

In the Judicia Privata the party complainant (actor) came before the prætor or other magistrate who had jurisdiction (jurisdictio), and made his claim or complaint, to which the defendant (reus) might put in a plea (exceptio). The prætor then made an order by which he referred the matter to Judices, or Recuperatores, or Arbitri, whose chief office was to ascertain the facts in dispute. The formula, or order of the prætor, was of the nature of a provisional decree: it stated the matter at issue between the parties and the judgment that was to follow upon the determination of the facts. The plaintiff had to prove his case, or the defendant to prove his plea, before the judices. Sometimes there was only one judex. The speech of Cicero 'Pro Publio Quintio' was made before a single judex, aided by assessors (consilium).

The patroni or orators appeared before the judices to support the cause of their clients. The judices were sworn to act impartially. Witnesses were produced on each side and examined orally; and it is clear from the remarks of Cicero (*Pro Cæcina*, c. 10), where he is commenting on the evidence in the case of Cæcina, that he had cross-examined and put to confusion an impudent witness on the other side (see also the Oration *Pro Flacco*, c. 10). It is clear also from the oration 'Pro Cæcina,' that the inquiry

before the judices was public. Written documents, such as letters and books of accounts, were produced before the judices by way of evidence. (Cicero, *Pro Q. Roscio.*) When the orators had finished their speeches, the judices decided by a majority. The sentence was, if necessary, perhaps in some cases carried into effect by the lictors of the magistrate who appointed the judices. The form in which the judices pronounced their decision was that of a judgment or decree.

The difference between the judicium and arbitrium was this: in the judicium the claim, demand, or damages was a sum fixed; in the arbitrium it was a sum uncertain; and this difference was attended with certain variations in the procedure. This is very clearly expressed by Cicero (*Pro Q. Roscio*, c. 4).

The judices must to some extent have settled questions of law, inasmuch as the determination of the facts sometimes involved the interpretation of the law. They were accordingly allowed to have assessors (consilium) learned in the law (jurisconsulti), but the jurisconsulti merely advised the judices, who alone delivered the decision. In case of doubt as to the law, the judices might consult the magistrate under whom they were acting; but as to the matters of fact, the judices were the sole judges, and could take no advice from the magistrate (*Dig.*, v. 1. 79). Gellius (xiv. 2) gives an amusing account of the difficulty which he felt on being appointed a judex, and how he got rid of the business by declaring on oath, as the judex always might do, that he could not come to any decision. The difficulty which he experienced was exactly one of those which a person not practically acquainted with legal proceedings would experience.

We may presume that the judices were generally persons qualified by a sufficient education, though they were not necessarily lawyers; but it does not appear that they were named out of any determinate class, and there is good reason for thinking that both parties generally agreed upon the judices, or at least had the power of rejecting them. It would seem as if every Roman citizen was considered competent to discharge the functions of a judex in civil actions, at least under the emperors: but this part of the subject is not free from difficulty.

Appeals from the decisions of the judices were not uncommon. (Ulpian, *Dig.*, xlix. 1. 1; Scaevola, *Dig.*, xlix. 1. 28.)

So far seems pretty well ascertained. Such being the qualifications of the judices, and the magistrates who had "jurisdictio" being only annual functionaries, it appears that there was no class of men among the Romans, like our judges, who were the living interpreters of law for a series of years in succession. The jurisconsulti seem to have kept the Roman law together as a coherent body, and it is from their writings alone that the Digest is compiled. [JUSTINIAN'S LEGISLATION.]

The Judicia Publica were in the nature of criminal prosecutions, in which any person, not disqualified, might be the prosecutor, and in which the verdict was followed by a legal punishment. Judices were employed here also, and were a kind of assessors to the magistrate who presided. The judices were the judges of the facts laid to the charge of the accused. Both the accuser and the accused might challenge a certain number of the judices. Witnesses were examined before them; slaves by torture, freemen orally. The judices, at least in the more important matters, voted by ballot: each judex put into the urn the tablet of Acquittal, of Condemnation, or the tablet N. L. (non liquet, "it is not clear"), according to his pleasure. The magistrate pronounced the verdict according to the tablets which made a majority. A lively picture of the intrigues and bribery which were not unusual on such trials is given by Cicero in speaking of the affair of Clodius and the Bona Dea (*Ad Attic.*, i. 13, 16). The various changes made at Rome as to the body from which the judices were chosen refer only to the judicia publica.

This subject is not free from difficulty. What is above stated must be taken only as correct in the main features. Further inquiry is still wanted on several matters connected with the functions of the judices. Enough has been said to enable the reader to compare the Roman Judices

with the English jury, and to show the difference of the institutions.

(Gaius, lib. iv.; Heineccius, *Syntagma*, &c., by Haubold; Unterholzner, *Ueber die Rede Cicero für den Schauspieler Roscius*, *Zeitschrift*, &c., i. 248; and his remarks on the difference between the *condictio* and the *actio in personam*, with reference to the *judices*; 'De Judiciis,' *Dig.*, v. 1; 'De Judiciis Publicis,' *Dig.*, xlviii.; *Instit.*, iv. tit. 18.)

Dr. Pettingall's 'Enquiry into the Use and Practice of Juries among the Greeks and Romans,' London, 1769, may be consulted as to the functions of the Roman judices in the Judicia Publica. The author's conclusions seem in the main to be correct, though his essay is an ill-arranged and unmethodical production. The 'Attische Process,' by Meier and Schömann, and the essay of Pettingall, may be consulted with reference to the functions of the Attic Dicastæ.

JUDGE (from the French *juge*, which is from the Latin *judex*). [JUDEX.] A judge in England and Wales is a man who presides in a court duly constituted, declares the law in all matters that are tried before him, and pronounces sentence or judgment according to law. There are judges of the three Superior Courts of Law at Westminster, judges in the Courts of Equity, a judge in the Court of Bankruptcy, judges of the Insolvent Court, judges in the Ecclesiastical and Admiralty Courts, and some others. Some judges are called Recorders, and there are other names, but the name does not alter the nature of the offence. When the judges simply are spoken of, the judges of the superior courts of common law are meant. There are fifteen judges of these courts: five in the Court of Queen's Bench, five in the Court of Common Pleas, and five in the Court of Exchequer. There are at present five judges in Equity. [COURTS; EQUITY.]

The judges of the superior courts of law are appointed by the crown. They hold their office during good behaviour, but they can be removed by the crown on the address of both houses of parliament (13 Wm. III. c. 2). Formerly their commissions ceased upon the demise of the crown, but by the 1 Geo. III. c. 23, they continue to hold their office during good behaviour notwithstanding any demise of the crown, and their salaries are secured to them so long as they hold their office. The judges of the courts of Equity are also appointed by the crown. [CHANCELLOR; CHANCERY.]

By various acts of parliament retiring pensions of a determinate amount may be granted to the fifteen judges of the three superior courts of law, and to the judges in Equity. The lowest retiring pension is 3500*l.*, and this amount may be given to all puisne judges of the three courts. The highest retiring pension is 5000*l.*, which may be granted by the crown to the lord chancellor upon his resignation. But to be entitled to these pensions all the judges of the superior courts of law, and the judges in Equity, except the lord chancellor, must have held the office for fifteen years, unless bad health has prevented them from holding office so long.

Judges of Courts of Record [COURTS] are not liable to prosecution for anything done by them as judges, but they may be prosecuted in parliament. Nor are they liable to an action for any error in judgment, or for wrongful imprisonment, at least when they are acting within their jurisdiction. Judges are punishable for bribery by loss of office, fine, and imprisonment.

The powers and duties of judges would form the subject of an elaborate treatise. It may be sufficient to observe that in England the judges of the superior courts are so well protected in the discharge of their duty and so sure in their office, as to make them entirely independent of all political and private influence, and they are paid well enough to secure them against all temptation of lucre. Accordingly an instance of misconduct in any judge of the superior courts of law, or any judge who holds a high office, is now seldom or never heard of. The only question that can be raised is, whether the most competent persons are always appointed, and whether persons are not sometimes appointed who, though not absolutely incompetent, are much less competent than others, and sometimes hardly competent. This danger is somewhat limited by public opinion, and particu-

larly by the opinion of the members of the bar, so that the risk of a totally incompetent person being appointed is not great. But as the appointment of the judges in the superior courts of law, and the judges in Equity, is really made by those who for the time act as the ministers of the crown, the appointments of judges are, like other appointments made by the ministers, nearly always conferred on those who belong to the political party which for the time is in power. This evil, so far as it is an evil, is inseparable from the practical working of the constitution, and is probably a much less evil than any other mode of appointment that could be suggested.

JUDICIARY. [COURTS.]

JURISCONSULTI. [JUDEX; JURISPRUDENCE.]

JURISDICTION. This term is the Latin word Jurisdictio, which simply signifies the "declaration of jus or law." He who had jurisdictio was said "jus dicere," to "declare the law." The whole office (officium) of him who declared the law was according expressed by the word Jurisdictio. (*Dig.*, 2, tit. *De Jurisdictione.*) Jurisdictio was either voluntary (voluntaria) or litigant (contentiosa). The jurisdictio voluntaria related to certain acts, such for instance as those forms of manumission and adoption, which must be done before a magistratus in order to be valid. The jurisdictio contentiosa related to litigation, and such legal proceedings were said to be "in jure," before the magistratus, as opposed to the proceedings before a judex, which were said to be "in judicio." The magistratus was said "jus dicere" or "reddere," when he exercised his functions; and "magistratus" and "qui Romae jus dicit" are accordingly convertible terms. Jurisdiction in England means an authority which a court of law or equity has to decide matters that are litigated before it or questions that are tried before it. The courts at Westminster have jurisdiction all over England and Wales; but the jurisdiction of other courts is limited by being confined to certain limits of space and to certain kinds of causes or matters in dispute. When the jurisdiction of a court extends all over England, it may still be limited as to the kind of causes which it tries. Thus the superior courts of law and the courts of equity have their several jurisdictions as to matters which they hear and determine. [EQUITY.] The ecclesiastical courts also have their separate jurisdiction; and other courts, such as the Court of Insolvency, Borough Courts, and others, have their several jurisdictions. It follows, that if proceedings are commenced against a man before a court which has no jurisdiction in the matter brought before it, the defendant may answer by alleging that the court has no jurisdiction; which is called pleading to the jurisdiction. When a party is convicted by a court that has no jurisdiction in the matter, the proceedings may be moved into the Court of King's Bench by the writ of Certiorari and quashed. [CERTIORARI.] Those who have limited jurisdiction are liable, it is said, to an action, if they assume a jurisdiction which they have not.

JURISPRUDENCE. The Latin word *prudentia* (contracted from *providentia*) came, by a natural transition, to mean *knowledge* or *understanding*. "Habebat (says Nepos, *Life of Cimon*, c. 2) magnam prudentiam tum juris civilis tum rei militaris:" hence persons skilled in the Roman law were called *juris prudentes*, or simply *prudentes*; in the same manner that they were called *consulti*, as well as *juris consulti*. (Haubold's *Lineamenta Instit. Juris Romani*, lib. iv. cap. 5; Hugo, *Geschichte des Römischen Rechts*, p. 458, ed. xi.) A large part of the Roman law was gradually adopted by the legislature and the judices from the writings of the jurists: the emperors moreover sometimes appointed persons whose opinions (or *responsa*) the judex was bound to follow. (*Dig.*, lib. i. tit. 2, No. 2, § 5-7, 35-47; *Inst.*, lib. i. tit. 2, § 8.) According to the acceptation of the term *prudens* or *juris prudens* in the Roman law, *juris prudentia* is sometimes limited to the dexterity of a practical lawyer in applying rules of law to individual cases; whence the technical use of the term *jurisprudence* in the French legal language for law founded on judicial decisions or on the writings of jurists.

By *general jurisprudence* is properly

meant the science or philosophy of positive law, as distinguished from *particular jurisprudence*, or the knowledge of the law of a determinate nation. "General jurisprudence, or the philosophy of positive law, is not concerned directly with the science of legislation: it is concerned directly with principles and distinctions which are common to various systems of particular and positive law, and which each of those various systems inevitably involves, let it be worthy of praise or blame, or let it accord or not with an assumed measure or test. General jurisprudence is concerned with law as it necessarily is, rather than with law as it ought to be; with law as it must be, be it good or bad, rather than with law as it must be, if it be good." (Austin, *Outline of a Course of Lectures on General Jurisprudence*, p. 3.) For example, every system of positive law must involve such notions as sovereignty, legal right, legal duty, legal sanction, civil or criminal injury, the grounds of imputation or legal guilt, and of non-imputation or legal innocence, property, possession, &c., which therefore belong to the province of general jurisprudence. [LAW; LEGISLATION.]

A detailed, precise, and lucid description of the province of general jurisprudence will be found in Mr. Austin's work on the subject (8vo. London, 1832), and the annexed outline of a course of lectures. (*Journal of Education*, No. 8, p. 285.) A list of works on general jurisprudence may be seen in Krug's 'Philosophisches Lexicon,' in the article *Rechtslehre*.

The jurists of the seventeenth and eighteenth centuries treated the subject of general jurisprudence under the name of the *law of nature*, and often combined it in the same treatise with *International Law*, or the *Law of Nations*, in the modern acceptation of that term. The work of Grotius, 'De Jure Belli et Pacis,' though professedly limited to International Law, is in part composed upon this principle; but that of Puffendorf, 'De Jure Naturæ et Gentium,' affords the best example of this mode of treatment. These works ought to be read with the excellent and instructive commentary of Barbeyrac. [INTERNATIONAL LAW.]

JURY. A jury is an assembly of men authorised to inquire into or to determine facts, and bound by an oath to the faithful discharge of their duty. The word is from the Latin *juro*, to swear, whence we find this institution called in law Latin *jurata*, and the persons composing it *jurati*; in French *les jurés*, and in English *the jury*. In the English law, when the object is inquiry only, the jury is sometimes called an inquest or inquisition, as in the instance of a grand jury or coroner's inquest; but when facts are to be determined by it for judicial purposes, it is styled a jury. When the trial by jury is now spoken of, it signifies the determination of facts in the administration of civil or criminal justice by twelve men sworn to decide facts truly according to the evidence produced before them.

Inquiry into facts on behalf of the crown by means of juries was frequent in England long before the trial by jury was commonly used in courts of justice. Thus we find, immediately after the Conquest, inquisitions *ad quod damnum* (which anciently took place in all grants by the crown, though now of more limited use); inquisitions *post mortem*, which were instituted on the death of the king's tenants, to ascertain of what lands they died seised; inquisitions of lunacy (*de lunatico inquirendo*); and several other inquests, which were called inquests of office, and took place where the crown was concerned in interest: all these inquiries were made by means of juries of the neighbourhood, who were presumed to be conversant with the facts. In England also in the reign of John, when the lands of the Normans were seised into the hands of the king, inquisitions by jury were executed in each county to ascertain their value and incidents. (See the forms of these inquests in Hardy's *Rotuli Normanniæ*, vol. i. p. 122.)

Besides these juries of inquiry (*inquisitoria jurata*), there were accusatory juries (*jurata delatoria*), who presented offences committed within their district or hundred to the king or his commissioned justices. These inquests were immediately connected with the administration of justice, their duty being to charge offenders, who, upon such accusa-

tion, were put upon their trial before judges, and were afterwards condemned or "delivered" by them according to the result of the trial. These accusatory juries were probably the origin of our present grand juries. Juries of inquiry and accusatory juries might consist of more or occasionally of fewer than twelve men.

The third species of jury is that jury which we mean when we speak of *trial by jury*. Dr. Pettingall, in a tract published in 1769, expresses a confident opinion that juries of this description are the same as the Dicastæ (δικασταί) of the Athenians and the Judices of the Romans, and he maintains that our trial by jury was derived immediately from Rome, and ultimately from Greece. But it is more probable that they are rather to be ascribed to the accidental resemblance of popular institutions for the administration of justice in different countries than to identity of origin. The precise time at which this species of trial originated in England has been the subject of much discussion; and in particular whether it was known to the Anglo-Saxons, or was introduced by the Conqueror. Coke and Spelman, among earlier legal antiquaries, and, in later times, Nicholson (*Preface* to Wilkins's *Anglo-Saxon Laws*, p. 9), Blackstone (*Commentaries*, book iii. c. 22), and Turner (*History of Anglo-Saxons*, vol. iv. book xi. cap. 9), maintain the existence of this institution before the Conquest. On the other hand, Hickes (*Dissert. Epist.*, p. 34), Reeves (*History of the English Law*, vol. i. p. 24), and several other learned writers, contend that it was introduced by the Conqueror, or at least that it was derived from the Normans, and was not of Anglo-Saxon origin. The latter opinion is adopted by Sir Francis Palgrave, in his *History of the English Commonwealth*, vol. i. p. 243.

Traces of the trial by jury, in the form in which it existed for several centuries after the Conquest, are more distinctly discernible in the ancient customs of Normandy than in the few and scanty fragments of Anglo-Saxon laws. The trial by twelve compurgators, which was of canonical origin, and was known to the Anglo-Saxons and also to many foreign nations, resembled the trial by jury only in the number of persons sworn; and no conclusion can be drawn from this circumstance, as twelve was not only the common number throughout Europe for canonical and other purgations, but was the favourite number in every branch of the polity and jurisprudence of the Gothic nations. (Spelman's *Gloss.*, tit. *Jurata*; also *Edinburgh Review*, vol. xxxi. p. 115.) For this reason Mr. Hallam justly observes (*Middle Ages*, vol. ii. p. 401) that in searching for the origin of trial by jury, "we cannot rely for a moment upon any analogy which the mere number affords." Besides this, the trial by compurgators under the name of Wager of Law continued to be the law of England until it was abolished, in 1833, by 3 & 4 Wm. IV. c. 42, § 13, and is treated by all writers and noticed in judicial records ever since the Conquest as a totally different institution from the trial by jury. The trial *per sectatores* or *per pares* in the county court, which has sometimes been confounded with the trial by jury, was a different tribunal. The sectatores or pares were, together with the sheriff or other president, judges of the court,—as are the suitors (sectatores) in the county courts at present; and it appears to have been the common course with the Gothic nations that twelve assessors should be present with the king or judge to decide judicial controversies. (Du Cange, *Gloss.*, ad vocem *Pares*.) The *pares curiæ* resembled permanent assessors of the court, like the *scabini* mentioned in the early laws of France and Italy, much more nearly than sworn jurors indiscriminately selected, and performing a subordinate part to the judge. On the other hand, the incidents of the mode of trial prevalent in Normandy before the Conquest correspond in a striking manner with those of our trial by jury as it existed for centuries afterwards. In Normandy offenders were convicted or absolved by an inquest of good and lawful men summoned from the neighbourhood where the offence was supposed to have been committed. The law required that those were to be selected to serve on such inquest who were best informed of

the truth of the matter; and friends, enemies, and near relatives of the accused were to be excluded. Also in the Norman Writ of Right, those were to be sworn as recognitors who were born and had even dwelt in the neighbourhood where the land in question lay, in order that it might be believed that they knew of the truth of the matter and would speak the truth respecting it. (*Grand Coustumier*, cap. 68, 69, 103.) These incidents, though unlike our present mode of trial (which has entirely altered its character within the last four centuries), are nearly identical with the trial by jury as it is described first by Glanville and afterwards by Bracton, and correspond almost verbally with the form of the jury process, which has continued the same from very early times to the present day; by which the sheriff is commanded to return "good and lawful men of the neighbourhood, by whom the truth of the matter may be better known, and who are not akin to either party, to recognize upon their oaths," &c. On the other hand (as Madox remarks, in his *History of the Exchequer*, p. 122), "if we compare the laws of the Anglo-Saxon kings with the forms of law process collected by Glanville, they are as different from one another as the laws of two several nations."

Though there are some traces of the trial by jury in the four reigns which immediately succeeded the Norman Conquest, it was not till a century afterwards, in the reign of Henry II., that this institution became fully established and was reduced to a regular system. Its introduction into frequent use at this period was probably owing to the law or ordinance for the trial by assize in pleas of land or real actions, made by Henry II. This law has not come down to our times, but it is fully described by Glanville (lib. ii. cap. 7), and the greater part of the treatise of that writer is occupied by an account of the trial by twelve men which he warmly eulogises and represents as having been introduced in opposition to the unsatisfactory mode of trial by battle or duel. In the reign of Henry II. it appears also that a jury was sometimes used in matters of a criminal nature—the proceeding in such cases being noticed as an inquiry *per juratum patriæ vel vicineti*, or *per juramentum legalium hominum*. Thus in the 'Constitutions of Clarendon,' enacted in 1164, it is directed that "if no person appeared to accuse an offender before the archdeacon, the sheriff should, if requested to do so by the bishop, cause twelve lawful men of the neighbourhood or of the township to be sworn, who might declare the truth according to their conscience." These however were probably accusatory juries, similar to our grand inquests, and not juries employed for the actual trial or "deliverance" of criminals, which do not seem to have been commonly used until a later period.

The law of Henry II. introduced the trial by assize or jury in real actions as a mode of deciding facts which the subject might claim as a matter of right. Glanville calls it "a certain royal benefit conferred upon the people by the clemency of the sovereign with the advice of the nobility." Accordingly we find in the *Rotuli Curiæ Regis* in the time of Richard I. and John, many instances of trials by jury being claimed by parties, though it appears from these curious records that at this time the trial by battle was still in frequent use. In the reign of John we first begin to trace the use of juries for the trial of criminal accusations. At first it seems to have been procured by the accused as a special favour from the crown, a fine, or some gift, or consideration being paid in order to purchase the privilege of a trial by jury. Several instances of this kind are collected in the Notes and Illustrations to Palgrave's *Commonwealth of England*, vol. ii. p. 186. The payment of a fine took place also not unfrequently in civil cases where any variation from the regular course was required. (*Rotuli Curiæ Regis*, vol. i. pp. 354, 375; vol. ii. pp. 72, 92, 97, 101, 114.) It is clear, however, from Bracton and Fleta, that at the end of the thirteenth century the trial by jury in criminal cases had become usual, the form of the proceedings being given by them in detail. (Bracton, p. 143.) Introduced originally as a matter of favour and indulgence, it gradually superseded the barbarous customs of battle, ordeal, and wager of law, until at length it became,

both in civil and criminal cases, the ordinary mode of determining facts for judicial purposes.

It is a common error that the stipulation for the *judicium parium* in Magna Charta referred to the trial by jury. Sir Edward Coke, in his commentary upon Magna Charta, expressly distinguishes between the trial by peers and the trial by jury (2nd Inst. 48-9); but Blackstone says, "The trial by jury is that trial by the peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the Great Charter." (*Com.*, vol. iv. p. 349.) This is confounding two distinct modes of trial. The *judicium parium* was the feudal mode of trial, where the *pares* or *convassalli ejusdem domini* sat as judges or assessors with the lord of the fee to decide controversies arising between individual *pares* or peers. It was a phrase perfectly understood at the period of Magna Charta, and the mode of trial had been in use long before in France and all parts of Europe where feuds prevailed. (Du Cange, *Gloss.*, v. *Pares.*) It was essentially different from the trial by jury, which could never be accurately called *judicium parium.* We read frequently in the records of those times (and even in Magna Charta itself) of *juratores*, of *veredictum* or *juramentum legalium hominum*, and *jurata vicineti* or *patriæ*, all of which expressions refer to a jury; but not a single instance can be found in any charter, or in any ancient treatise or judicial record, in which the jury are called *pares*, or their verdict *judicium.* (Reeves's *History of the Law*, vol. i. p. 249.) In the records of the 'Curia Regis' in the first year of John's reign, among numerous entries of *Ponit se super juratum vicineti* or *patriæ*, are also entries of *Ponit se super pares suos de eodem feodo*, which plainly indicates a distinction between the two modes of trial. (*Rotuli Curiæ Regis*, vol. ii. p. 90.)

Until about the reign of Henry VI. the trial by jury was a trial by witnesses. The present form of the jurors' oath is that they shall "give a true verdict, *according to the evidence.*" At what time this form was introduced is uncertain; but for several centuries after the Conquest the jurors both in civil and criminal cases were sworn merely *to speak the truth.* (Glanville, lib. ii. cap. 17; Bracton, lib. iii. cap. 22; lib. iv. p. 287, 291; Britton, p. 135.) Hence their decision was accurately termed *veredictum*, or verdict, that is a "thing truly said;" whereas the phrase "true verdict" in the modern oath is not an accurate expression. Many other incidents of the trial by jury, as recorded in ancient treatises, conclusively show that the jury were merely witnesses. They were brought from the neighbourhood where the disputed fact was suggested to have occurred, because, as the form of the jury process says, they were the persons "by whom the truth of the matter might be better known." Again, if the jurors returned by the sheriff in the first instance declared in open court that they knew nothing of the matter in question, others were summoned who were better acquainted with it. (Glanville, lib. ii. cap. 17.) They might be excepted against by the parties upon the same grounds as witnesses in the Court Christian. They were punished for perjury if they gave a wilfully false verdict; and for *crassa ignorantia* if they declared a falsehood or hesitated about their verdict upon a matter of notoriety, which all of the country (*de patriâ*) might and ought to have known. (Bracton, p. 290.) And ancient authors strongly admonish judges to "take good heed in inquisitions touching life and limb, that they diligently examine the jurors from what source they obtain their knowledge, lest peradventure by their negligence in this respect Barrabas should be released and Jesus be crucified." (Bracton, lib. iii. cap. 21; Fleta, lib. i. cap. 34.) It is one of the numerous circumstances which show the character of the jury in the earlier periods of the history of the institution, that though all other kinds of murder might be tried by a jury, murder by poison was excepted, "because," say the ancient writers, "the crime is so secret, that it cannot be the subject of knowledge by the country." (Bracton, lib. iii. cap. 18; Fleta, lib. i. cap. 31.)

The original principle and character of the trial by jury in criminal cases in Scotland appear to have been the same as

in England. The following extract is taken from a curious paper delivered to the Speaker of the House of Commons, and recorded on the Journals at the date 4th June, 1607. (*Comm. Journ.*, vol. i. p. 378.) "In Scotland, criminal causes are not governed by the civil law; but *ordanes** and juries pass upon life and death, very near according to the law here (in England). Which jury being chosen out of the Four Halfs about (as the Scottish law terms it), which is to say, out of all places round about that are nearest to that part where the fact was committed, the law doth presume that the jury may the better discern the truth of the fact by their own knowledge; and therefore they are not bound to examine any witnesses, except out of their own disposition they shall please to examine them in favour of the party persuer; which is likewise very seldom or almost never used. It is of truth that the judge may either privately beforehand examine such witnesses as either the party persuer will offer unto him, or such others as in his own judgment he thinks may best inform him of the truth; and then when the jury is publicly called and admitted, he will cause these depositions to be produced and read; and likewise if the party persuer desire any witness there present to be examined, he will publicly do it in presence of the jury and both parties." The mode of commencing the introduction of evidence to juries, as described in this document, bears a strong resemblance to the growth of the proceeding in England.

The earliest traces of the examination of witnesses or of evidence being laid before juries in England, which formed the commencement of a total change in their character, occur in the reign of Henry VI. The change was not effected suddenly, or by any particular act of parliament, but was introduced by slow degrees; and though distinctly discernible in the reign of Henry VI., was not completely effected before the times of Edward VI. and Mary. Fortescue, in the 26th chapter of his work 'De Laudibus Legum Angliæ,' written at the end of the reign of Henry VI., and about the year 1470, expressly mentions that witnesses were examined and sworn before the jury; but he calls the jury indiscriminately *testes* and *juratores*, and makes frequent allusions to their character as witnesses. Shortly after Fortescue's time, namely, in the year 1498, there is a reported case between the Bishop of Norwich and the Earl of Kent (*Year-Book*, 14 Henry VII.), in which a jury had been separated by a tempest "while the parties were showing their evidence;" and one question raised for the opinion of the court was, whether, when the jury came together again, they were competent to proceed with the case and to give a verdict. The objection pressed was that the jury had separated before the evidence was given; to which it was answered that "the giving the evidence was wholly immaterial, and made the matter neither better nor worse; that evidence was only given in order to inform the consciences of the jury respecting the rights of the parties; but that if neither party chose to give evidence, still the jury would be bound to deliver a verdict."

In the reign of Henry VII., it appears from records printed in Rastell's Entries that demurrers to evidence were an acknowledged form of proceeding, which shows that at that time evidence of some kind was given, and consequently that the character of the jury had been in some degree changed from that of *witnesses* to that of *judges* of facts upon testimony. The proofs mentioned in these records are called *evidentia;* and it is most probable that at first the only evidence given consisted of deeds, writings, and of depositions of absent witnesses taken before the justices of the peace or other magistrates, and that oral testimony was not common until a later period. The entire absence of all mention of evidence or witnesses, as contradistinguished from jurors, in treatises, reports, records, or statutes, previously to the sixteenth century, strongly corroborates the fact of the early character of the trial by jury. There is no trace of any rules of evidence, nor of any positive law compelling the attendance of witnesses, or punishing them for false tes-

* This word is so printed in the Journals, but it is probably a mistake for some other word.

timony or non-attendance, nor of the existence of any process against them before the statute 5 Eliz. c. 9 (1562). In the case of Summers *v.* Mosely, reported in 2 Crompton and Meeson, p. 485, Mr. Baron Bayley says that he had been unable to find any precedents of the common *Subpœna ad testificandum* of an earlier date than the reign of Elizabeth, and expresses a conjecture that this process may have originated with the above-mentioned statute. The *Subpœna ad testificandum* does not appear in the registers of Writs and Process until the reign of James I. (West's *Symboleography.*) Witnesses were examined orally upon the trial of Sir Thomas More, in the reign of Henry VIII.; but the reported state trials in the reigns of Edward VI. and Mary show that the practice in that respect was then by no means settled. In the reign of Elizabeth, however, there is abundant proof, from Sir Thomas Smith's 'Commonwealth of England,' and other authorities, that oral testimony was used without reserve (except in state prosecutions) both in civil and criminal trials; and consequently it cannot be doubted that about the middle of the sixteenth century the trial by jury had fully assumed the character in which we are now familiar with it, namely, an institution deciding facts for judicial purposes by means of testimony or evidence produced before the jury.

This view of the original character and office of the jury seems to account for the practice of fining or otherwise punishing juries by the court when they gave an unsatisfactory verdict, a practice which was partially continued, though not without remonstrance by legal authorities, after the nature of the institution had been changed. If juries, who were merely witnesses sent for to inform the court of facts which they were presumed to know, returned a wilfully false verdict, they were guily of a contempt of justice, and might properly be punished; but when their character was changed, and their verdict depended not on their own knowledge of the facts, but upon the impressions produced on their minds by the evidence, such a punishment became injustice; and though occasionally practised in the sixteenth century, was declared to be illegal soon after the Restoration by the judgment in Bushell's case, reported in Vaughan's Reports, p. 135.

The juries now in use in England in the ordinary courts of justice are grand juries, petty or common juries, and special juries. There is also the coroner's jury. [CORONER.] Grand juries are exclusively incident to courts of criminal jurisdiction; their office is to examine into charges of crimes brought to them at assizes or sessions, and if satisfied that they are true, or at least that they deserve more particular examination, to return a bill of indictment against the accused, upon which he is afterwards tried by the petty jury. [INDICTMENT; LAW, CRIMINAL.] A grand jury must consist of twelve at the least, but in practice a greater number usually serve, and twelve must always concur in finding every indictment. No further qualification is required for grand jurors (except in the case of grand jurors at the sessions of the peace, 6 Geo. IV. c. 51, § 1) than that they should be freeholders, though to what amount is uncertain; or freemen, lawful liege subjects, and not aliens or outlaws. (Hawkins, *Pleas of the Crown*, chap. 25, sect. 16.)

Until the end of the thirteenth century the only qualification required for petty or common juries, for the trial of issues in criminal or civil courts, was that they should be "free and lawful men;" *freemen*, as holding by free services or free burgesses in towns; and *lawful* men, that is, persons not outlawed, aliens, or minors, but entitled to the full privileges of the law of England. By the statute of Westminster 2, passed in the thirteenth year of Edward I. (1296), it was enacted that no man should be put on juries who had not some freehold of the value of 20*s.* a year within the county, or 40*s.* without it; and this qualification was raised to 40*s.* in counties by the stat. 21 Edward I. The object of these statutes was to protect poor persons from being oppressed and injured by being summoned on juries, and also to obviate the evil of the non-attendance of jurors, which frequently occurred from their inability to leave their agricultural or handicraft occupations. The stat. 2 Henry V. however

was intended to secure the intelligence and responsibility of jurors by requiring a property qualification; and it enacted that no person should be a juror in capital trials, nor in any real actions or personal actions where the debt or damages declared for amounted to 40 marks, unless he had lands of the yearly value of 40*s.*; and if he had not this qualification he might be challenged by either party. This continued to be the qualification of common jurors until the passing of the statute 6 George IV. c. 50, which repealed all former statutes upon this subject, and entirely remodelled the law respecting juries. By this statute "every man (with certain specified exceptions) between the ages of twenty-one years and sixty years who has within the county in which he resides 10*l.* a year in freehold lands or rents, or 20*l.* a year in leaseholds for unexpired terms of at least twenty-one years, or who, being a householder, is rated to the poor-rate in Middlesex on a value of not less than of 30*l.*, and in any other county of not less than 20*l.*, or who occupies a house containing not less than fifteen windows, is qualified and liable to serve on juries in the superior courts at Westminster and the courts of the counties palatine for the trial of issues to be tried in the county where he resides, and also to serve on grand juries at the sessions of the peace, and on petty juries, for the trial of issues triable at such sessions in the county in which he resides." The exceptions are:—peers, judges of the superior courts, clergymen, Roman Catholic priests, dissenting ministers following no secular employment but that of a schoolmaster, serjeants and barristers at law, and doctors and advocates of the civil law actually practising; attorneys, solicitors, and proctors actually practising; officers of courts actually exercising the duties of their respective offices; coroners, gaolers, and keepers of houses of correction; members and licentiates of the College of Physicians actually practising; surgeons, being members of one of the royal colleges of surgeons in London, Edinburgh, or Dublin, and actually practising; apothecaries certificated by the Apothecaries' Company, and actually practising; officers in her Majesty's navy or army on full pay; pilots licensed by the Trinity House; masters of vessels in the buoy and light service; pilots licensed by the lord-warden of the cinque-ports, or under any act of parliament or charter; household servants of the sovereign; officers of customs and excise; sheriffs' officers, high constables, and parish clerks.

Lists of all persons qualified to be jurors are made out by the churchwardens and overseers of each parish, and fixed on the church door for the first three Sundays in September in each year; these are afterwards allowed at a petty sessions and then delivered to the high constable, who returns them to the next quarter-sessions for the county. The clerk of the peace then arranges the lists in a book, which is called the 'Jurors' Book' for the ensuing year, and afterwards delivers it to the sheriff. From this book the names of the jurors are returned in panels to the different courts.

Special juries are composed of such persons as are described in the 'Juror's Book' as esquires, and persons of higher degree, or as bankers or merchants; and it is the duty of the sheriff to make a distinct list of such persons, which is called the 'Special Jurors' List.' When a special jury is ordered by any of the courts, which must always be the result of a special application of one of the parties, 48 names are taken by ballot from this list in the manner particularly described in the statute, which are afterwards reduced to 24 by means of each party striking out 12; and the first 12 of these 24 who answer to their names in court are the special jury for the trial of the cause.

The mode of objecting to a jury by the parties is by challenge, though in modern practice this course is seldom resorted to, having yielded to the more convenient usage of privately suggesting the objection to the officer who calls the jury in court; upon which the name objected to is passed over as a matter of course without discussion. This practice, though a less troublesome and obnoxious mode of effecting the object of obtaining a jury indifferent between the parties than a formal challenge, is strictly speaking irregular,

and being considered to take place by consent, and as a matter of favour, cannot be insisted upon as a right. Challenges are of two kinds: challenges to the *array*, and challenges to the *polls*. The challenge to the array is an objection to the whole panel or list of jurors returned for some partiality or default in the sheriff or the under-sheriff by whom it has been *arrayed*. Challenges to the polls are objections to particular jurors, either on the ground of incompetency (as if they be aliens, or of insufficient qualification within the provisions of the Jury Act, 6 Geo. IV. cap. 50), or of bias or partiality, or of infamy. Upon these challenges the cause of objection must in each case be shown to the court; but in trials for capital offences the accused is entitled to challenge *peremptorily* (that is, without giving any reason) thirty-five jurors. The king, however, as nominal prosecutor, has no right of peremptory challenge, though he is not compelled to show his cause of challenge until the panel is gone through, and unless a full jury cannot be formed without the person objected to.

The trial by jury, originally introduced into the law of France in criminal cases by the National Assembly, was retained in the French code. An account of the proceeding and of the qualifications and formation of the jury will be found in the *Code d'Instruction Criminelle*, livre ii., tit. 2, chap. iv. and v. [CODES, LES CINQ.] Of late years the advantage of the trial by jury has been frequently the subject of debate among German and French jurists, and in particular the propriety of its introduction has been discussed in the various commissions issued with a view to reforming the laws of several of the German States. The French code is the law of the Rhenish Province of Prussia, and the trial by jury in criminal cases exists there.

In Scotland all crimes are tried by jury, with the exception of certain breaches of police regulations and petty depredations, which are summarily adjudicated on. The number on a criminal jury or "assize" is fifteen, and the verdict is that of the majority. It may be "guilty," "not guilty," or "not proven"—the last as well as the second being an acquittal. In the course of the improvements of the court of session, projected and partly executed in the years 1808 and 1809, an attempt was made to introduce the trial by jury into civil proceedings in Scotland; but great opposition was made to it in that country, and the proposition was not at that time carried into effect. But in the year 1815 a statute (55 Geo. III. c. 42) was passed, though then still much opposed in Scotland, which established a jury court not as a separate and independent tribunal, but as subsidiary to the court of session, for the trial of particular questions of fact to be remitted for trial by the judges of the court of session at their discretion. In order to meet a conscientious difficulty much insisted upon in petitions from Scotland against this measure, namely, that it would be often impossible for a jury to give a unanimous verdict unless some of the members violated their oaths, it was provided by the act that if the jury are not unanimous in twelve hours, they shall be discharged, and a new trial granted. The judges of this court, called the 'Lords Commissioners of the Jury Court in Civil Cases,' were appointed by commission, and consist of a chief judge and two other judges. The stat. 59 Geo. III. c. 35, which recites that the introduction of the trial by jury in civil cases by the former act had been found beneficial, made a variety of improvements in the machinery of the jury court. By the stat. 11 Geo. IV. & 1 Wm. IV. c. 69, the jury court as a separate tribunal was abolished, and the trial by jury was united with the ordinary administration of justice in the court of session.

JUSTICE CLERK OF SCOTLAND. This name properly designated the clerk of court, of the chief justice or lord justiciar, of Scotland; and originally there were as many justice clerks as there were justiciars, that is to say, one for Galloway, one for Lothian, or the territory of the Scots king south of the Forth, and one for Scotland then strictly so called, or the territory north of the Forth.

The same circumstances also which reduced the number of justiciars to one justice-general for the whole realm, reduced likewise the number of justice

clerks. The calamitous affair of Flodden however, to which we especially refer, had a further effect on the latter: for by the fall of Lawson and Henryson on that fatal field, the offices of both king's advocate and justice clerk became vacant at one time, and this at a period when perhaps few remained capable of either. Wishart of Pittarrow was appointed to both places, and in his time a deputy was first constituted, to act as clerk to the justice court. This was the first step in the singular rise of the justice clerk from the table to the bench of the Court of Justiciary.

At the Institution of the court of Session in 1532, the justice clerk was made one of the judges. This will not surprise us when we consider the constitution of that court. It was in fact an ecclesiastical tribunal, and, agreeably to the practice of such, deliberated in secret with shut doors. It was necessary therefore for the security of the crown that some of the crown officers should be continually present. The justice clerk was one of these: he was public prosecutor on behalf of the crown. The king's treasurer was another; and accordingly both of them were lords of session. For the same reason the king's advocate was made a lord of session: and when from there being no vacancy, or otherwise, such appointment did not or could not take place, these officers had special writs from the crown authorising them to remain in court during its deliberations.

A further rise of official dignity took place: for it having become usual to appoint certain lords of session as assessors or assistant judges to the lord justice-general, the justice clerk began in the early part of the seventeenth century to be appointed to that duty; and about the middle of the same century he had acquired the style of "lord justice clerk." In ten years afterwards the privy council met and passed an act, declaring the justice clerk a constituent part of the justice court; and in the act of parliament 1672, c. 16, he was made the president of the Court of Justiciary, to preside in absence of the justice-general. His rise in the Court of Session followed; for in 1766, when Miller, afterwards Sir Thomas Miller of Glenlee, took his seat on the bench, it was, by desire of the court, on the right of the lord president; to which latter office he himself afterwards rose, being the first justice clerk so promoted. And in 1808, when the Court of Session was, by 48 Geo. III. c. 151, divided into two chambers, the lord justice clerk was made *ex officio* president of the second division. His salary is 2000*l.*, besides an equal sum as a lord of session.

With respect to the *justice clerk depute*, that officer was long so termed; but at length, when the justice clerk acquired the style of lord, and was declared a constituent part of the Court of Justiciary, his *depute* came to be termed "the principal clerk of justiciary," and this becoming a sinecure, he got himself a "depute" about the middle of last century, and the second depute about thirty years ago an "assistant;" all of whom continue to this day, and are in the gift of the lord justice clerk. It is not a little remarkable, that on both occasions when these changes took place, there took place also not a diminution, as we might expect, but a duplication of the salary; that of the first depute being raised in 1764 from 100*l.* to 200*l.*, and that of the second depute, in 1795, from 80*l.* to 150*l.*

Besides these there are three other justice clerk deputes, and his appointees. They are commonly called the "circuit clerks," being his deputies to the three circuits of the Court of Justiciary. They had their origin in the act 1587, c. 82, which directed such circuits to be made, in place of the former practice of the justiciar passing through the realm from shire to shire successively.

JUSTICES, LORDS. [LORDS JUSTICES.]

JUSTICES OF THE PEACE are persons appointed to keep the peace within certain limits, with authority to act judicially in criminal causes, and in some of a civil nature arising within those limits, and also to do certain other things ministerially, that is, as servants of the crown performing official acts in respect of which they are intrusted with no judicial discretion. The authority of justices of the peace is derived from the king's prerogative of making courts for

the administration of the law, or created by different statutes; their duties are expressed in the royal commission which appoints them to the office or are prescribed by those statutes.

Before the reign of Edward III. there were in every county conservators of the peace, whose duty it was to afford protection against illegal force and violence. These conservators were chosen by the freeholders assembled in the county court under the king's writ. [CONSERVATORS OF THE PEACE.]

The following account is generally given of the origin of the present justices of the peace. Upon the compulsory resignation of Edward II., Edward III., or rather his mother Isabella, in his name, sent writs to the different sheriffs, stating that his accession had taken place with his father's assent, and commanding that the peace should be kept on pain of disinheritance and loss of life and limb. Within a few weeks from this time it was ordained, by 1 Edward III. c. 16, that for the better keeping and maintaining of the peace in every county good and lawful men who were not maintainers of barretry (malveiz barrets) should be assigned to keep the peace. The mode in which these new keepers of the peace were to be assigned was construed to be by the king's commission; and this ordinance had the double effect of transferring the appointment from the people to the crown, and of laying the foundation for the gradual accession of those powers which are now exercised by justices of the peace.

By 12 Richard II. c. 10, the wages of justices of the peace are fixed at four shillings per day of sessions, and two shillings for their clerks, payable out of the fines and amerciaments at such sessions; but these wages, like those of members of parliament, have long ceased to be received, and justices of the peace act without any pay or emolument.

Justices of the peace are appointed either by act of parliament, by royal charter (in the case of justices in boroughs not within the Municipal Corporations Act the charter usually appointing certain municipal officers to be justices, and prescribing the manner in which vacancies in the offices are to be filled up), or by a commission from the crown under the statute of 1 Edward III. The form of the commission of the peace has from time to time been altered, and the authority of the justices enlarged. As now framed, it consists of two distinct parts, and contains two separate grants of authority. Of these the former gives to any one or more justices not only all the power relating to the maintenance of the peace which was possessed by the conservators at common law, but also all the additional authority mentioned in the statutes. The latter defines the power of justices when the whole body, or such of them as choose to attend, act together in general sessions. [SESSIONS.]

The former part of the commission is as follows:—"Victoria, &c., to AB, CD, EF, &c., greeting: Know ye that We have assigned you jointly and severally, and every one of you, Our justices to keep Our peace in Our county of Z, and to keep and cause to be kept all ordinances and statutes for the good of the peace and for the preservation of the same, and for the quiet rule and government of Our people made, in all and singular their articles in Our said county, as well within liberties as without, according to the force, form, and effect of the same, and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; and to cause to come before you or any of you all those who to any one or more of Our people, concerning their bodies or firing their houses, have used threats, to find sufficient security for the peace or their good behaviour towards Us and Our people; and if they shall refuse to find such security, then them in Our prisons, until they shall find such security, to cause to be safely kept."

By 5 Geo. II., c. 18, no attorney, solicitor, or proctor shall be a justice of the peace for any county whilst he continues in practice. By 18 Geo. II. c. 20, no person shall be capable of acting as a justice of the peace for any county, riding, or division within England or Wales, who shall not have, in law or equity, to and for his own use and benefit, in pos-

session a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years determinable upon life or lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments in England or Wales, of the clear yearly value of 100*l.* over and above all incumbrances affecting, and all rents and charges payable out of or in respect of the same, or who shall not be seised of or entitled to, in law or equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, and hereditaments, leased for one, two, or three lives, or for any term of years determinable on lives upon reserved rents, and which are of the yearly value of 300*l.*, and who shall not have taken and subscribed an oath stating the nature of the qualifying estate. The third section of this statute imposes a penalty of 100*l.* upon those who act without having taken and subscribed the oath, and for acting without being qualified. The statute, however, excepts from these provisions certain official persons. A justice of the peace cannot legally act after he has ceased to be qualified; but it is not necessary that he should continue to retain the same qualification, nor will the absence of a qualification render his acts absolutely void.

Justices appointed by act of parliament or by the king's charter are not removeable except for misconduct, but the authority of a justice appointed by the king's commission may be determined at the pleasure of the crown, either directly by writ under the great seal, or impliedly, by making out a new commission, from which his name is omitted. But until notice of the revocation of the authority, or publication of a new commission, the acts of the ex-justice are valid in law, and the warrant of a justice remains in force until it be executed, although he die before its execution. The commission is also determined by the death of the king by whom it was issued; but now by 6 Anne, c. 7, § 8, all offices, civil and military, are to continue for six months after the demise of the crown, unless sooner determined.

The 9 Geo. IV. c. 17, repeals the statutes which imposed the taking the sacrament of the Lord's Supper as a qualification for office, and requires the following declaration:—"I, AB, do solemnly and sincerely, in the presence of God, profess, testify, and declare on 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 of justice of the peace, 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 or clergy are or may be entitled." The omission to subscribe this declaration does not subject a person acting as a justice of the peace to any penalty; the statute (§ 5) merely renders the appointment void; and whilst the justice continues in the exercise of his office his acts are not either void or voidable so as to affect the rights of those who are not privy to such omission. Persons of the Jewish religion have therefore in a few instances acted as county magistrates. The act passed in 1845 for the relief of persons of the Jewish religion applies only to offices in municipal boroughs. [JEWS.]

Justices of the peace, when they are out of the county, &c. for which they are appointed, have no coercive power; but examinations, recognizances, and informations voluntarily taken before them in any place are good. But by 28 Geo. III. c. 49, justices who act for two or more adjoining counties may act in one of those counties for another of them; and those who act for a county at large may act for such county within any city, town, &c. being a county of itself, and situated within, surrounded by, or adjoining to any such county at large; and by 1 & 2 Geo. IV. c. 63, a similar power is given to county justices to act within any city, town, &c. having exclusive jurisdiction, though not a county of itself. In towns which have a separate quarter sessions under the Municipal Corporations Act, the county justices have no authority.

Justices of the peace have in general no authority over matters arising out of the district for which they are appointed, but they may secure the persons of those

who are charged before them with felony or breach of the peace; and by the Municipal Corporations Act, § 111, in every borough to which the king does not grant a separate court of quarter-sessions the justices of the county within which such borough is situated are to exercise in it the same jurisdiction as in any other part of the county.

By 24 Geo. III. c. 55, if any person against whom a warrant is issued escape, go into, reside, or be in any other county, &c. out of the jurisdiction of the justice granting the warrant, any justice of the county, &c. where such person escapes, &c., upon proof on oath of the handwriting of the justice granting the warrant, is to indorse his name thereon, which will be a sufficient authority to execute the warrant in such other jurisdiction, and carry the offender before the justice who indorsed the warrant, or some other justice of the county, &c. where it was indorsed. Summonses and warrants issued by borough justices, appointed under the provisions of the Municipal Corporations Act, in a matter within their jurisdiction, may be executed at any place within the county in which the borough is situated, or at any place within seven miles of such borough, without being backed. [CONSTABLE, p. 614.]

The judicial authority of a justice out of sessions is both civil and criminal—civil, where he is authorized by statute to adjudicate between master and servant, or to enforce the payment of rates, &c., or the observance of the regulations of friendly societies, &c.; criminal, where he requires surety of the peace or a recognizance for the peace or for good behaviour, or where he acts in the suppression of riots, or where he acts with summary power to decide upon the guilt or innocence of the party accused, according to the view which he may take of the evidence, and to punish the offender. (See LAW, CRIMINAL, for a notice of offences punishable on summary conviction, and for some remarks on the subject of summary punishment.) But all proceedings before justices, whether civil or criminal, if removed into the Queen's Bench, are there treated as belonging to the crown side of the court.

Where a statute empowers justices to hear and determine an offence in a summary way, it is implied that the party be first cited to appear, so that he may have an opportunity of being heard, and of answering for himself; and to proceed against an offender without causing him to be summoned is a misdemeanor. A statute authorizing justices to require any person to take the oath of allegiance, or to do some other specific act, impliedly gives them power to issue their precept requiring the attendance of the party.

Upon the hearing of informations and in other preliminary proceedings before justices out of sessions, neither the prisoner on the one hand, nor the prosecutor on the other, can claim as of right, and against the will of the justices, to have a legal adviser present, except, it would seem, in cases in which the deposition may by some statutory provisions be made evidence against the accused upon his trial for the offence in the event of the death of the witness. In practice, however, both counsel and attorneys are generally admitted as a matter of courtesy to advise and protect the interest of prisoners. Every person has a right to be present before a justice, acting in his judicial capacity. But although in such a case counsel or attorneys, or any third persons, are at liberty to attend, they could not formerly claim to be heard on behalf of their clients; the justices might refuse to hear them, or to allow them to interfere with the proceedings. But now, by 6 & 7 Wm. IV. c. 114, in all cases of summary conviction, persons accused are to be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney. In all cases where justices are directed to take examinations or evidence, it will be implied that the examination or evidence is to be taken under the sanction of an oath or solemn affirmation.

Statutes frequently empower justices to award damages to an injured party, as in cases of assault, or malicious injuries to property.

Where a complaint is made before a justice, and a summons or warrant issues,

the justice upon hearing and determining the matter may award costs to either party, and enforce the payment of such costs.

Justices ought not to exercise their functions in cases in which they are themselves the persons injured. They should cause the offenders to be taken before other justices, or, if present, should desire their aid. In all cases which a justice may hear and determine out of sessions upon his own view, or upon the confession of the party, or upon oath of witnesses, he ought to make a record on parchment under his hand of all the proceeding and proofs, which record should in the case of summary convictions be returned to the next sessions and there filed.

By 27 Geo. II. c. 20, in all cases where a justice is required to issue a warrant for the levying of any penalty inflicted, or any sum of money directed to be paid, by any statute, the justice granting the warrant is empowered therein to order and direct the goods distrained to be sold within a certain time, to be limited in such case (so as such time be not less than four days, or more than eight days), unless such penalty, or sum of money, with reasonable charges of taking, keeping, and selling the distress, be sooner paid.

When justices refuse to hear a complaint over which they have jurisdiction, or to perform any other duty which the law imposes on them, the party aggrieved by such refusal may apply to the Court of King's Bench for a writ of mandamus, a process by which the king requires the party to whom it is addressed to do the thing required or to show cause why it is not done. If no sufficient excuse be returned, a peremptory mandamus issues, by which the party is commanded absolutely to do the thing required. But as justices have no indemnity in respect of their acts because done in obedience to a mandamus, this process is not granted where there is anything like a reasonable doubt of the justice's authority to do the required act.

Justices of the peace are strongly protected by the law in the execution of their office. Opprobrious words which would not subject the speaker to any proceeding, civil or criminal, if uttered under other circumstances, yet if spoken of a justice whilst actually engaged in his official duties, may be made the subject of an action or of an indictment; or if spoken in the presence of the justice, may be punished by commitment to prison, as for a contempt of court; this commitment however must be by a written warrant.

Where a justice of the peace acting in or out of sessions acts judicially in a matter over which he has jurisdiction, and does not exceed his jurisdiction, he is not liable to an action, however erroneous his decision may be; nor will even express malice or corruption entitle a party aggrieved by such decision to any remedy by action: the delinquent magistrate is answerable only to the crown as for an offence committed against the public. Where the justice has no jurisdiction, or exceeds his jurisdiction, or having jurisdiction deviates from the prescribed legal form to an extent which renders the proceedings void, or where a conviction under which the justice has granted a warrant is set aside by a superior court, an action will lie against the justice to recover damages in respect of any distress, imprisonment, or other injury which may have resulted from his acts, though done without malice or other improper motive. But even in these cases, if the justice has acted *bonâ fide* in his magisterial capacity, if he has intended to act within his jurisdiction, though by mistake he may have exceeded it, and not acted within the strict line of his duty, and also in cases where a justice has acted or intended to act in the execution of his ministerial duties, he is entitled to the protection of several important statutory regulations.

No action can be brought against a justice of the peace for anything done by him in the execution of his office without one calendar month's previous notice in writing, specifying the cause of the intended action, within which period of one month the justice may tender amends to the party complaining, which will be a bar to the action, if refused and found to be sufficient by the jury. Nor can any such action be maintained unless it be

commenced within six calendar months after the committing of the act complained of, nor unless it be brought or laid in the county in which the act was committed. The defendant in such action may, under the general issue, *i. e.* a plea simply denying the alleged trespass, &c., give in evidence any matter of justification or excuse without being bound, as other defendants are, to select one particular line of defence, and set that defence with precision upon the record in the shape of a special plea. When the plaintiff in such action obtains a verdict. and the judge certifies that the injury for which the action is brought was wilful and malicious, the plaintiff will be entitled to double costs of suit.

Where the action is brought on account of any conviction which may have been quashed, and cannot therefore be produced as a justification of the consequent distress or imprisonment, the plaintiff is disabled, by 43 Geo. III. c. 141, from recovering more than 2*d.* damages, or any costs of suit, unless it be expressly alleged in the declaration that the acts complained of were done maliciously and without any reasonable or probable cause.

When a justice acts with partial, corrupt, or malicious motives, he is guilty of a misdemeanor, for which he may be indicted, and in a clear case of misconduct the Court of Queen's Bench, which exercises a general superintendence over the conduct of those to whom the administration of the criminal law of the country is intrusted, will, if the application be made without delay, give leave to file a criminal information. But the court will consider, not whether the act complained of be strictly right or not, but whether it proceeded from unjust, oppressive, or corrupt motives, among which motives fear and favour are both included. If the affidavits filed in support of the application disclose nothing which may not be attributable to mere error or mistake, the court will not even call upon the justice to show cause why a criminal information should not be filed. The court will not entertain a motion for a criminal information against a justice of the peace, unless notice of the intended application have been given in sufficient time to enable him, if he thinks proper, to meet the charge in the first instance by opposing the granting of the rule to show cause.

The proceedings after an information has been filed, or an indictment found against justices of the peace for criminal misconduct, are the same as in other cases of misdemeanor. If the defendant suffer judgment by default, or is found guilty by the verdict of a jury, the punishment is by fine or imprisonment, or both; after which an application may be made to the lord chancellor to exclude him from the commission; and when affidavits are filed in the Queen's Bench impeaching the conduct of justices of the peace, such affidavits are frequently directed by the court to be laid before the chancellor, to enable him to judge whether such persons ought to remain in the commission.

The institution of justices of the peace has been adopted in most of the British colonies, and has with some modifications been retained in the United States of America. A great deal of the vitality of the English social system is owing to the number of persons in nearly every rank of life who are called into activity and employed in the functions of provincial or local administration, instead of the various duties which they discharge being performed by paid officers appointed by the central government, as in most European countries. [DEPARTMENT.] There are no doubt some disadvantages in the English system, but on the whole they are more than counterbalanced by the peculiar benefits which are inherent in it. We have already stipendiary magistrates who have received a legal education, and a still more numerous body of unpaid justices of the peace many of whom have not had this advantage, but the unpaid and unprofessional justices of the peace, generally speaking, decide upon most of the matters which come before them quite as satisfactorily as the stipendiary professional magistrates, and considering that the unpaid justices are by far the most numerous class, complaints of their administration are far less frequent than might be expected.

A parliamentary paper was issued in

1831 which showed the number of justices of the peace for counties who had qualified in England and Wales. The total number was 4842, namely, 4330 in England and 512 in Wales. The number of clergymen who had qualified as justices was 1090 in England and 143 in Wales. In Derbyshire and Sussex there was not one clerical magistrate. [CLERGY, p. 520.]

JUSTICIAR OF SCOTLAND. The earliest individual in this high office which extant records name seems to be Geoffrey de Maleville of Maleville, *temp.* K. Malc. IV.

The term "Scotland" was then less extensive in its application than at present: it designated, properly speaking, not the whole territory of the realm, but that part only which lay north of the Forth, or *Scots sea*, as it was called; and accordingly, contemporary with Maleville there was another justiciar, David Olifard, justiciar of Lothian, that is to say, the territory south of the Forth, excepting the district of Galloway, which had long its own peculiar laws and customs. About the middle of the thirteenth century, however, Galloway too had its justiciar, so at this time there were *three* justiciars in the realm of Scotland—a justiciar of Galloway, a justiciar of Lothian, and a justiciar of Scotland strictly so called. They were all probably of coordinate authority: each, next to the king, supreme in his district; but the district of the last was the most extensive, and contained the metropolis of the kingdom. The justiciars of Scotland were accordingly the most conspicuous men of the time:—the Comyns, earls of Buchan; the Mac Duffs, earls of Fife; Melville; and Sir Alan Durward. This last had an eye to the crown itself; for having married the illegitimate daughter of King Alexander II., he gained over the chancellor to move in council her legitimation, and that, on failure of issue of the king's body, she and her heirs might inherit her father's throne. But the king conceived so great a displeasure at this, that he immediately turned the chancellor out of office, and soon afterwards the justiciar also. The proud Durward removed to England, joined King Henry III. in France, and served in his army, till in a few years he was, by the influence of the English king, restored to his office of justiciar, whence he was displaced only by the more powerful Comyn. The incident in Durward's life to which we have just alluded was not singular: the justiciar was *caput legis et militiæ*, at the head both of the law and also of the military force of the kingdom, and repeated instances occur in early times of their military prowess as well as judicial firmness.

The death of King Alexander III. left the crown open to a competition which allowed Edward I. of England to invade the kingdom. In 1292 the English Court of King's Bench sat for some time in Roxburgh; and in 1296 Sir William Ormesby, a justice of the Common Pleas and justice in eyre in England, was constituted, by Edward, lord justiciar of Scotland. This appointment was of short duration; but in 1305 Edward, having again put down the Scots, distributed the kingdom into four districts, and constituted for each district two justices (an Englishman and a Scotchman), in the nature of the English justices of assize—with a view to put the whole island under one and the same judicial system. Edward's early death however rendered the scheme abortive; and Galloway had soon its own laws, and Lothian and Scotland their justiciars as before, with this difference, that the metropolis of the kingdom was now shifting southwards to Edinburgh, and the term Scotland, in its strict acceptation, had given place to the appellation "north of the Forth." Sir Hugh de Eglinton, justiciar of Lothian in the middle of the fourteenth century, and distinguished for his poetical genius, was now therefore "Hugh of the Awl Ryal," or of the royal palace; and towards the end of the next century Andrew lord Gray was advanced from the situation of justiciar north of Forth to that of justiciar south of Forth. He continued in this place with approbation for eleven years, and died but a few months before the calamitous affair of Flodden.

On this event, which happened in the beginning of the sixteenth century, the office of lord justiciar, or, as he was now

styled, justice-general (in contradistinction to the special justiciars, now frequently appointed as well for particular trials as for particular places and districts), came into the noble family of Argyle, where it was hereditary for a century, and comprehended at once the entire kingdom. The High Court of Justiciary then also began to be settled at Edinburgh, and the regular series of its records, or books of adjournal, to commence. It was at this time also that the Court of Session was erected by ecclesiastical influence. Various attempts had been made by the clergy in former reigns to establish such a court. In 1425 the first "Court of the Session" was instituted under the influence of Wardlaw, bishop of St. Andrew's and founder of the university there; but immediately on his death, which happened soon after, it drooped and expired. In 1468 Bishop Shoreswood, the king's secretary, tried to revive it; and about thirty years after, Elphinstone, bishop of Aberdeen, did so likewise. In 1494 however the latter founded, or rather re-founded, the university of Aberdeen, and had interest enough to get an act passed in parliament to enforce in all the courts of the kingdom the study and practice of the Roman laws; and in 1503 the "Court of Daily Council" was established. This court had a more extensive jurisdiction than the former: it was universal, being instituted to decide all manner of summonses in civil matters, complaints, and causes, daily as they happened to occur; and it was calculated to be permanent. But the present was not an opportunity to be lost; and accordingly, in the minority of King James V. and while the nation was weakened and distracted by the loss at Flodden, the Court of Session was established under the lord chancellor, and with a majority of ecclesiastics both on its bench and at its bar. The consequence was, that from that day forward the Court of Justiciary declined; its civil jurisdiction ceased, being engrossed by the Court of Session; and the latter became in its place the supreme court of the kingdom. The Reformation effected a change in the composition of the Court of Session, but not much in its position or powers; and in 1672 an act was passed in parliament constituting a certain number of the judges, or lords of session, judges of justiciary under the justice-general and justice clerk, who was now made vice-president of the Court of Justiciary.

Nothing else of consequence touching the constitution of the court occurred till lately, when, by 1 Wm. IV. c. 69, sec. 18, the office of lord justice-general, which had become in a manner a perfect sinecure, was appointed to devolve on and remain with the office of lord president of the Court of Session, who should perform the duties thereof as presiding judge in the Court of Justiciary; the effect of which enactment is to place the lord justice-general again at the head of the administration of the law; and thus, by a singular revolution, restore him, after the elapse of 300 years, to his former situation of lord chief-justice of Scotland. On the death, in 1836, of the late Duke of Montrose, who was lord justice-general, the office devolved on Mr. Hope, who was then lord president of the Court of Session.

JUSTICIARY, CHIEF, an office of high importance in the early history of the English judicial system. It originated in a separation of the functions of the Grand Seneschal, an officer who ranked the first in dignity in the state after the king, and who had civil and military jurisdiction. The corresponding modern title for the Grand Seneschal is Lord High Steward. [STEWARD, LORD HIGH.] The office of Grand Seneschal was made hereditary shortly after the Norman conquest, and it became expedient to assign to others the active duties. The judicial functions of the Grand Seneschal were transferred to an officer who was styled the High or Chief Justiciary. He presided in the king's court and in the exchequer, and his authority extended over all other courts. He was ex-officio regent of the kingdom in the king's absence. Writs ran in his name and were tested by him. The last who held the office and bore the title of Capitalis Justitiarius Angliæ was Philip Basset, temp. Henry III. In the 52nd Henry III. Robert de Bruis was the first who was appointed Capitalis Justitiarius ad placita coram

Rege tenenda, *i. e.* chief-justice of the King's Bench. (For an elaborate notice of the office of Chief Justiciary see *Pictorial Hist. of England*, i. 567.)

JUSTIFIABLE HOMICIDE. [MURDER.]

JUSTINIAN'S LEGISLATION. Justinian, soon after ascending the throne, instructed (Feb. A.D. 528) a commission consisting of Joannes and nine other persons, among whom were Tribonian or Tribunian, and Theophilus, to make a general compilation of the best and most useful laws, or "constitutions," which had been promulgated by the emperors his predecessors, beginning from Hadrian's Perpetual Edict down to his own time. [CONSTITUTIONS, ROMAN; EQUITY, i. pp. 844-5.] Partial compilations had been made in the time of Constantine by private individuals, Gregorianus and Hermogenianus, of which only fragments remain, and a more complete compilation was made under Theodosius II. [THEODOSIAN CODE.] All these were now merged in the new code of Justinian. A remarkable difference of style and manner is observable between the older constitutions issued before Constantine and those promulgated afterwards. The former, being issued at Rome and framed upon the decisions, or "responsa," of learned jurists, are clear, sententious, and elegant: the latter, which were promulgated chiefly at Constantinople in the decay of the Roman language, are verbose and rhetorical. Joannes and his nine associates completed their task in fourteen months, and the new code, having received the imperial sanction, was published in April, A.D. 529. A few years after, Justinian, by the advice of Tribonian, ordered a revision of his code to be made by Tribonian and four others. These commissioners suppressed several laws, as either useless or inconsistent with present usage, and added many constitutions which the emperor had been promulgating in the mean time, as well as fifty decisions on intricate points of law. The code thus revised was published in December of the year 534, under the title of 'Codex Justinianeus Repetitæ Prælectionis,' and thenceforth had the force of law.

The Code is divided into twelve books; every book is subdivided into titles, and each title into heads which are numbered 1, 2, 3, and so on. Book i. treats of the Catholic faith, defines its creed agreeably to the first four general councils, and forbids public disputations on dogmas; it then treats of the rights, privileges, and discipline of bishops and other ecclesiastical persons; next of heretics, Samaritans, Jews, apostates, &c., against whom it contains several penal enactments; after which the book proceeds to speak of the laws, and their different kinds, and lastly of the magistrates. Book ii. treats of the forms to be observed in commencing a suit; then of restitution, compromises, sureties, and lastly, of the oath of calumny.* Book iii. treats of judicia and judices, and judicial proceedings generally; of holidays, of the various jurisdictions, of inofficious (inofficiosa) testaments and donations, of inheritances, of the Lex Aquilia, of mixed actions, of actions for crimes committed by slaves, of gaming, of burying-places and funeral expenses. Book iv. begins with the explanation of personal actions which are founded on loan and other causes; of obligations and actions, with their effect in relation to heirs and other persons bound by them; of testimony and written evidence: of things borrowed for use; of contract by pledge, and the personal action thereon; of compensation, interest, deposit, mandate, partnership, buying and selling, permutation, hiring, and emphyteutic contracts. Book v. treats of betrothment, gifts in contemplation of marriage, of marriages, women's portions (dos), and the action that lies for the recovery of the dos, of gifts between husband and wife, of estates given in dos, of alimony, of concubines, natural children, and the process of legitimation. It next treats of guardianship (tutela), of the administration by tutors, and of the alienation of minors' estates. Book vi. treats of slaves, and freedmen, and the rights of their patrons; then it explains at large the Prætorian possession called "Bonorum pos-

* Many of the terms here used are terms of Roman law, and as such do not admit of translation by equivalent English terms.

sessio:" after which it expounds the whole matter of testaments, as institutions and substitutions of heirs, preteritions and disinheritings, disclaiming of inheritance, the opening of wills, of codicils, legacies, and fiduciary bequests, and lastly of succession to the property of intestates. Book vii. treats of manumissions; afterwards of matters relating to prescription, of judgments (sententiæ) and appeals, of the cession of estate or goods, of the seizure of goods, of the privileges of the exchequer (fiscus), and the revocation of alienations made to defraud creditors. Book viii. begins with interdicts: it then treats of pledges and pawns, of stipulations, novations, delegations, &c. It treats next of the paternal power, of the emancipation of children, and their ingratitude; it then explains what is meant by custom (consuetudo); it next speaks of gifts (donationes mortis causâ, &c.) and their various kinds; and lastly, of taking away the penalties of celibacy. Book ix. treats of crimes, criminal judgments and punishments. Book x. treats of the rights and prerogative of the fiscus, of vacant goods, of treasure found (treasure trove), de Annonis et tributis; of the decuriones and their office; of domicile, of public offices and exemption from them, and of the various kinds of public offices and functions appertaining to them. Book xi. treats of the rights common to the city of Rome and municipal towns, corporate bodies and communities, and a great variety of other matter. Book xii. continues the same subject, explaining the right of cities as to having offices civil and military, and also as to having functionaries for the execution of judgments and the orders of magistrates. This enumeration gives a general, though very imperfect view of the contents of the Justinian Code.

The learned Gothofredus, in his Prolegomena to his edition of the Theodosian code, observes that Tribonian and his associates have been guilty of several faults in the compilation of the Code; that the order observed in the succession of the titles is confused, that some of the laws have been mutilated and have been rendered obscure, that sometimes a law has been divided into two, and at other times two have been reduced to one; that laws have been attributed to emperors who were not the authors of them, or had given contrary decisions; all which would be still more injurious to the study of the Roman law, if we had not the Theodosian code, which is of great use towards rightly understanding many parts of the code of Justinian.

In the year following the publication of the first edition of his Code, Justinian undertook a much greater and more important work; to extract the chief rules of law contained in the writings of the Roman Jurisconsulti. In the course of centuries, under the republic and the empire, many thousand volumes had been filled with the learned lucubrations of the jurisconsults, which, as Gibbon observes, 'no fortune could purchase, and no capacity could digest.' The jurisconsults since the time of Augustus had been divided into opposite schools, and thus conflicting opinions were often produced, which only served to puzzle those who had to decide what was law. To put order into this chaos, was the object of Justinian. In December, 530, he commissioned seventeen lawyers, with Tribonian at their head, with full authority to select from the works of their predecessors what they should consider the best authorities. They chose about forty out of Tribonian's library, most of them jurisconsults who had lived during that period of the empire which elapsed from Hadrian to the death of Alexander Severus. From the works of these writers, said to have amounted to two thousand treatises, the commission appointed by Justinian was to extract and compress all that was suited to form a methodical, complete, and never-failing book of reference for the student of law and the magistrate. Justinian gave Tribonian and his associates ten years to perform their task; but they completed it in three years. The work was styled 'Digesta,'* and also 'Pandectæ' ("em-

* The word 'Digesta' is Roman and signifies 'matter arranged.' The term had already been used by some of the Roman Jurists as the title of legal compilations. 'Pandectae' is Greek and means 'general receivers' or 'all containers.' Gibbon observes that 'Justinian was in the wrong

bracing all"), and was published in December, 533. It was declared by the emperor that it should have the force of law all over the empire, and should supersede in the schools of Rome, Constantinople and Berytus, all the text-books of the old jurists, which in future were to be of no authority.

The excerpts from some of the jurists are very few and insignificant. Those from Ulpian, who lived under the emperor Alexander Severus, whose counsellor he was, amount to more than one-third of the whole mass; the excerpts from Paulus, who likewise lived under Alexander Severus, are the next in amount; and those from Gaius, who lived under the Antonines; Salvius Julianus, the compiler of the Edictum Perpetuum [EQUITY, p. 844]; Papinianus, who lived under Septimius Severus and Caracalla; and Cervidius Scævola, who lived under the Antonines, are the next in amount.

The 'Digesta' is divided into 50 books, and each book is also divided into titles, and subdivided into sections. The following are some of the principal heads. Book i. lays down the general principles and the different kinds of law; it establishes the division of persons and of things; speaks of senators, and of magistrates and their delegates and assessors: ii. treats of the jurisdiction of magistrates; of the manner of bringing actions, of compromises after an action is commenced; iii. explains what kind of persons are allowed to sue in law, and it defines who are styled infamous, and as such not permitted to sue; it then treats of advocates, proctors, syndics, and others; iv. treats of restitution, compromises, and arbitrations, after which it speaks of innkeepers and others in whose custody we leave anything; v. treats of trials; and complaints against inofficious (inofficiosa) testaments; vi. treats of real actions and their various kinds to recover property; vii. treats of personal services (servitutes, as usus fructus); viii. speaks of real services both urban and praedial; ix. treats of damage or crimes committed by a slave, the action of the lex Aquilia, and the action against those who throw anything into the highway by which any one is wounded or injured; x. treats of mixed actions, the action of partition of an inheritance, &c.; xi. speaks of interrogatories, and of such matters as are to be heard before the same judge (judex). It also treats of run-away slaves, of dice-playing, bribery, corruption, and false reports; and lastly, of burials and funeral expenses; xii. explains the action for a loan, condictions, &c.; xiii. continues the subject of the preceding, and treats of the action upon pawn; xiv. and xv. treat of actions arising from contracts made by other persons and yet binding upon us; of the Senatus Consultum Macedonianum; and of the peculium; xvi. treats of the Senatus Consultum Velleianum, and of compensation, and the action of deposits; xvii. treats of the mandate, and of partnership (societas); xviii. explains the meaning and forms of the contract of sale, the annulling of this contract; and treats of gain or loss in the thing sold; xix. treats of bargains, of actions of hiring, of the action called æstimatoria, of permutation, of the action called præscriptis verbis, &c.; xx. treats of pledges and hypothecæ, of the preference of creditors, of the distraction or sale of things engaged or pawned; xxi. contains an explanation of the Curule Ædiles' edict concerning the sale of slaves and beasts, and also treats of evictions, warranties, &c.; xxii. treats of interest (usuræ), fruits, accessions to things, and of proofs and presumptions, and of ignorance of law and fact; xxiii. is upon betrothment (sponsalia), marriage, marriage portion (dos), and agreements upon this subject, and lands given in dos; xxiv. treats of gifts between husband and wife, divorces, and recovery of the marriage portion; xxv. treats of expenses laid out upon the dos, of actions for the recovery of things carried away by the wife or other person against whom there is no action for theft, of the obligation to acknowledge children and provide for them, on the Rescript De Inspiciendo Ventre, and lastly of concubines; [xxvi. and xxvii. treat of tu-

when he used the two appellations as synonymous.' He adds, 'Is the word Pandects Greek or Latin, masculine or feminine? The diligent Brenckman will not presume to decide these momentous controversies (*Hist. Pandect. Florentin.*, p. 300-304).' Any diligent scholboy may decide them.

torship and curatorship, and the actions resulting from them; xxviii. treats of testaments, of the institution and disinheriting of children, of the institution of an heir, of substitutions, &c.; xxix. treats of military testaments, of the opening of wills, and of codicils; xxx., xxxi., xxxii. treat of legacies and fiduciary bequests in general; xxxiii. and xxxiv. treat of particular legacies, of the ademption of legacies, and of the Regula Catoniana; xxxv. treats of legacies on condition, and of the Lex Falcidia; xxxvi. treats of the Senatusconsultum Trebellianum, and of fiduciary bequests, of the time when they become due, of the security to be given by the heir, &c.; xxxvii. treats of bonorum possessiones and other matters; xxxviii. treats of the services due by freedmen to their patrons, of the succession of freedmen, of the succession of intestates, of heredes Sui and Legitimi, and of the Senatusconsultum Tertullianum and Orphitianum; xxxix. explains the means which the law or the prætor provides for preventing any one from receiving damage to his property, also treats of donations generally, and of such as are made in contemplation of death (mortis causâ); xl. relates to manumission or freeing of slaves; xli. treats of the various ways by which the property of things is acquired, and of the acquisition and loss of possession, and lastly of lawful causes which authorize possession and lead to usucaption; xlii. treats of definitive and interlocutory sentences, of admissions (de confessis) at trial, of the cession of goods, of the causes of seizure and their effects, of the privileges of creditors; of curators appointed for the administration of goods, and of the revocation of acts done to defraud creditors; xliii. treats of injunctions (interdicta) and possessory actions; xliv. speaks of pleas (exceptiones) and defences, and of obligationes and actions; xlv. of stipulations, &c.; xlvi. of sureties, novations, delegations, payments, discharges, prætorian stipulations, &c.; xlvii. treats of private offences; xlviii. treats of public offences; then follow accusations, inscriptions, prisons; and lastly it treats of torture, punishments, confiscation, relegation, deportation, and of the bodies of malefactors executed; xlix. treats of appeals; and then gives an account of the rights of the exchequer (fiscus), and of matters relating to captives, military discipline, soldiers and veterans; l. treats of the rights of cities and citizens, of decuriones and their children, of public offices, of immunities, of deputies and ambassadors; of the administration of things belonging to cities, of public works, fairs, &c.; of taxes laid upon the provinces, and it concludes with the signification of legal terms (de verborum significatione) and certain rules or maxims of the old law (de diversis regulis juris antiqui). This is a sketch, but a very imperfect one, of the subject matter of this great compilation.

To treat of the merits and imperfections of the 'Digest,' would be a difficult task. With all its faults it is a valuable work, and much superior to the Code in its style, matter, and arrangement; it has, in great measure, embodied the wisdom of the best jurists of the best age of the Empire, men who grounded their opinions on the principles of reason and equity, and who for the most part were personally unconcerned and disinterested in the subjects on which they gave their answer. The mode in which the compilers executed their labour is the subject of a valuable essay by F. Bluhme (Blume) in a German Journal (*Zeitschrift für Geschichtliche Rechtswissenschaft*, vol. iv.). Tribonian and his colleagues are charged with making many interpolations, with altering many passages in the writings of their predecessors, substituting their own opinions, and passing them off under the name of the ancient jurists. Justinian himself acknowledged that he was obliged to accommodate the old jurisprudence to the altered state of the times, and to "make the laws his own." Another charge, which is however unsupported by evidence or probability, is, that Justinian and his servants destroyed the old text books that had served them for the compilation of the 'Pandects.' Long however before Justinian's time, the works of the ancient jurists were partly lost, and the vicissitudes of the ages that followed may easily have obliterated the rest. While the Digest was being compiled, Justinian commissioned Tribonian and

two other jurists, Theophilus and Dorotheus, to make an abridgment of the first principles of the law, for the use of young students who should wish to apply themselves to that science. This new work, being completed, was published under the name of 'Institutiones,' about one month before the appearance of the Digest. The Institutions were in a great degree based on an older work of the same description and title by Gaius, which has been discovered within the present century ('Gaii Institutionum Commentarii IV.,' by Göschen. The second edition was published in 1824). The Institutions are arranged in four books, subdivided into titles. As the law has three objects, persons, things, and actions, the first book treats of persons or status; the second and third, and first five titles of the fourth, treat of the law of things; and the remaining titles of the fourth book treat of actions.

Besides these three compilations, the Code, the Institutes, and the Digest, Justinian, after the publication of the second edition of his Code, continued to issue new laws or constitutions, chiefly in Greek, upon particular occasions, which were collected and published together after his death under the name of Νεαραὶ Διατάξεις, or Novæ or Constitutiones Novellæ, or Authenticæ. The Novellæ are divided into 168 Constitutiones, or, as they are now often called, Novels. The Novellæ, together with thirteen Edicts of Justinian, make up the fourth part of his legislation. There are four Latin translations of the Novellæ, all of which were made after Justinian's death; the third is by Haloander, printed at Nürnberg in 1531; and the fourth was printed at Basel by Hervagius in 1561. The first translation is that which is printed in some editions of the Corpus Juris opposite to the Greek text, and is very valuable, notwithstanding it has been stigmatized by some with the name "barbarous:" it is sometimes called Authentica Interpretatio or Vulgata, or Liber Authenticorum. It contains 134 Novellae distributed in 9 Collationes, which contain 98 titles. The version of Haloander is also printed in some editions of the Corpus Juris. The Novellæ made many changes in the law as established by Justinian's prior compilations, and are an evidence that the emperor had a passion for legislating.

Tribonianus, who was mainly instrumental in the compilation of Justinian, was a native of Pamphylia, but his father was from Macedonia. His learning was extensive: he wrote upon a great variety of subjects, was well versed both in Latin and Greek literature, and had deeply studied the Roman civilians, of which he had a valuable collection in his library. He practised first at the bar of the prætorian prefects at Constantinople, became afterwards quæstor, master of the imperial household, and consul, and possessed for above twenty years the favour and confidence of Justinian. His manners are said to have been remarkably mild and conciliating; he was a courtier, and fond of money, but in other respects he may have been calumniated by his enemies. His death took place A.D. 545. (Ludewig, *Vita Justiniani Magni atque Theodoræ, nec non Triboniani*, Halle, 1731; Zimmern, *Geschichte des Römischen Privatrechts bis Justinian*, Heidelberg, 1826; Hugo, *Lehrbuch der Geschichte des Römischen Rechts*, Berlin, 1832; *History of the Roman or Civil Law*, by Ferriere, translated by J. Beaver, London, 1724; Hommelius, *Palingenesia*; Brinkmannus, *Institutiones Juris Romani*, Schleswig, 1822; *System des Pandekten-Rechts*, by Thibaut, 7th ed., Jena, 1828; *Das Corpus Juris in's Deutsche übersetzt von einem vereine Rechtsgelehrter und herausgegeben von* Otto, Schilling und Sintenis, Leipzig, 1831; *Les Cinquante Livres du Digeste, &c., Traduits en Français par feu* M. Henri Hulot, Paris, 1805; *Pandectes de Justinien mises dans un nouvel ordre, &c., par R. J. Pothier, traduites par Bréard Neuville, révues et corrigées par* M. Moreau de Montalin, Avocat, Paris, 1810; Pothier's edition of the *Digest*, reprinted at Paris in 5 vols. 4to., 1818—20, is a useful edition. There is a very cheap edition of the *Corpus Juris* published in Germany, by Beck, 3 vols. small fol., Leipzig, 1829; the editions of the Corpus Juris and of the Institutes are very numerous. Gibbon's 44th chapter contains a useful sketch of the history of the Roman Law and of the

Legislation of Justinian; and an outline of the contents of the Institutes. The *Institutionen* of Dr. E. Böcking, 1st vol. Bonn, 1843, pp. 55-88, contain a sketch of the Legislation of Justinian, and an enumeration of the editions of the Corpus Juris and its parts.)

K.

KEEPER, LORD. [CHANCELLOR.]
KIDNAPPING. [LAW, CRIMINAL.]
KIN. [DESCENT; CONSANGUINITY.]

KING. The primary signification of this word is a person in whom is vested the higher executive functions in a sovereign state, together with a share, more or less limited, of the sovereign power. The state may consist of a vast assemblage of persons, like the French or the Spanish nation, or the British people in which several nations are included; or it may be small, like the Danes, or like one of the Saxon states in England before the kingdoms were united into one; yet if the chief executive functions are vested in some one person who has also a share in the sovereign power, the idea represented by the word *king* seems to be complete. It is even used for those chiefs of savage tribes who are a *state* only in a certain loose sense of the term.

It is immaterial whether the power of such a person is limited only by his own will, or whether his power be limited by certain immemorial usages and written laws, or in any other way; still such a person is a king. Nor does it signify whether he succeed to the kingly power by descent and inheritance on the death of his predecessor, just as the eldest son of a British peer succeeds to his father's rank and title on the death of the parent, or is elected to fill the office by some council or limited body of persons, or by the suffrages of the whole nation. Thus there was a king of Poland, who was an elected king; there is a king of England, who now succeeds by hereditary right.

In countries where the kingly office is hereditary, some form has always been gone through on the accession of a new king, in which there was a recognition on the part of the people of his title, a claim from them that he should pledge himself to the performance of certain duties, and generally a religious ceremony performed, in which anointing him with oil and placing a crown upon his head were conspicuous acts. By this last act is symbolised his supremacy; and by the anointing a certain sacredness is thrown around his person. These kinds of ceremonies exist in most countries in which the sovereign, or the person sharing in the sovereign power, is known as king; and these ceremonies seem to make a distinction between the succession of an hereditary king to his throne and the succession of an hereditary peer to his rank.

The distinction between a king and an emperor is not one of power, but it has an historical meaning. *Emperor* comes from *imperator*, a title used by the sovereigns of the Roman empire. When that empire became divided, the sovereigns of the West and of the East respectively called themselves emperors. The emperor of Germany was regarded as a kind of successor to the emperors of the West, and the emperor of Russia (who is often called the czar) is, with less pretension to the honour, sometimes spoken of as successor to the emperor of the East. But we speak of the emperor of China, where emperor is clearly nothing more than king, and we use emperor rather than king only out of regard to the vast extent of his dominions. Napoleon usurped the title of emperor; and we now sometimes speak of the British empire, an expression which is free from objection. The word imperium (empire) was used both under the Roman emperors and under the later Republic, to express the whole Roman dominion. [EMPEROR.]

The word *king* is of pure Teutonic origin, and is found slightly varied in its literal elements in most of the languages which are sprung from the Teutonic. The French, the Italian, the Spanish, and the Portuguese continue the use of the Latin word *rex*, only slightly varying the orthography according to the analogies of each particular language. *King*, traced to its origin, seems to denote one to whom superior knowledge had given superior power, allied, as it seems to be,

to *know, con, can;* but on the etymology, or what is the same thing, the remote origin of the word, different opinions have been held, and the question may still be considered undetermined.

There are other words employed to designate the sovereign, or the person who is invested with the chief power, of particular states, in using which we adopt the word which the people of those states use, instead of the word *king.* Thus there is the *Shah* of Persia, the grand *Sultan,* and formerly there was the *Dey* of Algiers. In the United States of America certain powers are given by the Federal Constitution to one person, who is elected to enjoy them for four years with the title of *President.* A *Regent* is a person appointed by competent authority to exercise the kingly office during the minority or the mental incapacity of the real king: this definition at least is true of a regent of the British empire.

A personage in whom such extraordinary powers have been vested must of necessity have had very much to do with the progress and welfare of particular nations, and with the progress of human society at large. When held by a person of a tyrannical turn, they might be made use of to repress all that was great and generous in the masses who were governed, and to introduce among them all the miseries of slavery. Possessed by a person of an ambitious spirit, they might introduce unnecessary quarrelling among nations to open the way for conquest, so that whole nations might suffer for the gratification of the personal ambition of one. The lover of peace and truth, and human improvement and security, may have found in the possession of kingly power the means of benefiting a people to an extent that might satisfy the most benevolent heart. But the long experience of mankind has proved that for the king himself and for his people it is best that there should be strong checks in the frame of society on the will of kings, in the forms of courts of justice, councils, parliaments, and other bodies or single persons whose concurrence must be obtained before anything is undertaken in which the interests of the community are extensively involved. In constitutional kingdoms, as in England, there are controlling powers, and even in countries in which the executive and legislative power are nominally in some one person absolutely, the acts of that person are virtually controlled by the opinion of the people, a power constantly increasing as the facilities of communication and the knowledge of a people advance.

Nothing can be more various than the constitutional checks in different states on the kingly power, or, as it is more usually called in England, the royal *prerogative.* Such a subject must be passed over in an article of confined limits such as this must be, else in speaking of the kingly dignity it might have been proper to exhibit how diversely power is distributed in different states, each having at its head a king. But the subject must not be dismissed without a few observations on the kingly office (now by hereditary descent discharged by a queen) as it exists in the British empire.

The English kingly power is traced to the establishment of Egbert, at the close of the eighth century, as king of the English. His family is illustrated by the talents and virtues of Alfred, and the peacefulness and piety of Edward. On his death there ensued a struggle for the succession between the representative of the Danish kings, who for a while had usurped upon the posterity of Egbert, and William, then duke of Normandy. It ended with the success of William at the battle of Hastings, A.D. 1066.

This is generally regarded as a new beginning of the race of English kings, for William was but remotely allied to the Saxon kings. In his descendants the kingly office has ever since continued; but though the English throne is hereditary, it is not hereditary in a sense perfectly absolute, nor does it seem to have been ever so considered. When Henry I. was dead, leaving only a daughter, named Maud, she did not succeed to the throne; and when Stephen died, his son did not succeed, but the crown passed to the son of Maud. Again, on the death of Richard I. a younger brother succeeded, to the exclusion of the son and daughter of an elder brother deceased. Then ensued

a long series of regular and undisputed successions; but when Richard II. was deposed, the crown passed to his cousin Henry of Lancaster, son of John of Gaunt, son of Edward III., though there were descendants living of Lionel, duke of Clarence, who was older than John among the children of Edward III. When the rule of Henry VI. became weak, the issue of Lionel advanced their claim. The struggle was long and bloody. It ended in a kind of compromise, the chief of the Lancastrian party taking to wife the heiress of the Yorkists From that marriage have sprung all the later kings, and the principle of hereditary succession remained undisturbed till the reign of King William III., who was called to the throne on the abdication of James II., when an act was passed excluding the male issue of James, the issue of his sister the duchess of Orleans, and the issue of his aunt the queen of Bohemia, with the exception of her youngest daughter the Princess Sophia and her issue, who were Protestants. On the death of Queen Anne this law of succession took effect in favour of King George I., son of the Princess Sophia.

Now the heir succeeds to the throne immediately on the decease of his predecessor, so that the king, as the phrase is, never dies. The course of descent is to the sons and their issue, according to seniority; and if there is failure of male issue, the crown descends to a female. The person who succeeds by descent to the crown of England, succeeds also to the kingly office in Scotland and Ireland and in all the possessions of the British empire.

At the coronation of the king he makes oath to three things:—that he will govern according to law; that he will cause justice to be administered; and that he will maintain the Protestant church. [CORONATION.]

His person is sacred. He cannot by any process of law be called to account for any of his acts. His concurrence is necessary to every legislative enactment. He sends embassies, makes treaties, and even enters into wars without any previous consultation with parliament. He nominates the judges and the other high officers of state, the officers of the army and navy, the governors of colonies and dependencies, the bishops, deans, and some other dignitaries of the church. He calls parliament together, and can at his pleasure prorogue or dissolve it. He is the fountain of honour: all hereditary titles are derived from his grant. He can also grant privileges of an inferior kind, such as markets and fairs.

This is a very slight sketch of the powers that belong to the kings of England; but the exercise of any or all of these powers is practically limited. The king cannot act politically without an agent, and this agent is not protected by that irresponsibility which belongs to the king himself, but may be brought to account for his acts if he transgress the law. The agents by whom the king acts are his ministers, whom the king selects and dismisses at his pleasure; but practically he cannot keep a ministry which cannot command a majority in the House of Commons; and virtually, all the powers of the crown, which make so formidable an array on paper, are exercised by the chief minister, or prime minister, for the time. [CABINET.] The king now does not even attend the cabinet councils; and the power which in theory belongs to his kingly office, and in fact in earlier periods was exercised by him, is now become purely formal. But though the king of England has lost his real power, he has obtained in place of it perfect security for his person, and for the transmission to his descendants of all the honour and respect due to the head of the most extensive and powerful empire on the globe.

KINGDOM. [KING.]

KING'S BENCH, COURT OF. [COURTS.]

KING'S LETTER. [BRIEF.]

KNIGHT, KNIGHTHOOD. During the feudal system the military strength of the nation was measured by the number and efficiency of the knights whom the king was able to summon to the field. By distress [DISTRESS] the king could compel those who held knight's fees [KNIGHT'S FEES] to take upon themselves the order of knighthood, or to prove by their reception into that order that they had received the training, and possessed the arms and accoutrements, and

were, as to other requisites, qualified to take the field as knights. The statute, or rather the grant of 1 Edward II., enrolled in parliament, called 'Statutum de Militibus,' appears to have been made, partly as an indulgence upon the commencement of a new reign, and partly for the purpose of removing some doubts which existed as to the persons liable to be called upon to receive knighthood. The king thereby, in the first place, granted a respite until the following Christmas to all those who ought to have become, but were not, knights, and were then distrained ad arma militaria suscipienda. Further, it directed that if any complained in chancery that he was distrained, and had not land to the value of forty pounds in fee, or for term of his life, and was ready to verify that by the country (*i.e.* by the decision of a jury), then some discreet and lawful knights of the county should be written to, in order to make inquisition of the matter, and if they found it to be so, he was to have redress, and the distress was to cease. Again, where a person was impleaded for the whole of his land, or for so much of it that the remainder was not of the value of forty pounds, and he could verify the fact, then also the distress was to cease till that plea was determined. Again, where a person was bound in certain debts atterminated in the exchequer at a certain sum to be received thereof annually (*i.e.* respited, subject to payment by instalments), and the remainder of his land was not worth forty pounds per annum, the distress was to cease till the debt was paid. No one was to be distrained ad arma militaria suscipienda till the age of twenty-one, or on account of land which he held in manors of the antient demesne of the crown as a sokeman, inasmuch as those lands were liable to pay a tallage when the king's lands were tallaged. With respect to those who held land in socage of other manors, and who performed no servitium forinsecum, or service due upon the tenure, though not expressed in the grant, the rolls of chancery in the times of the king's predecessors were to be searched, and it was to be ordered according to the former custom; the same of clerks in holy orders holding any lay fee, who would, if laymen, have been liable to become knights. No one was to be distrained in respect of property of burgage tenure. Persons under obligation to become knights, who had held their land only a short time, were extremely old, or had an infirmity in their limbs, or had some incurable disease, or the impediment of children, or law-suits, or other necessary excuses, were to appear and make fine before two commissioners named in the act, who were to take discretionary fines from such disabled persons by way of composition. Under this regulation those who were distrained upon as holding land of the value of 40*l.* per annum either received knighthood or made fine to the king. The alteration in the nominal value of money occasioned by the increased quantity of the precious metals, and still more by successive fraudulent degradations of the standard, gradually widened the circle within which estates were subjected to this burthen; and in the sixteenth and seventeenth centuries lands which, in the reign of Edward II., were not perhaps worth 4*l.* per annum, had risen in nominal value to 40*l.*, and were often held by persons belonging to a totally different class from those who were designated by 1 Edward II. stat. 1, as persons having 40 libratas terræ.

That power of compelling those who refused to take upon themselves the order of knighthood, or rather of distraining them till they received knighthood, or compounded with the king by way of fine, which originally was a means of enforcing the performance of a duty to the crown, by persons holding a certain property in the country, was perverted into a process for extorting money from those who would have been exempt at common law, which regulated the amount of a knight's fee by the sufficiency of the land to support a knight, and not by its fluctuating nominal value in a debased currency. This oppressive, dishonest proceeding, which was occasionally resorted to in the reigns of Edward VI. and Elizabeth, was reduced into a system by the advisers of Charles I., and was adopted by him as one of the modes of raising money without resorting to a parliament.

The manner in which this antient prerogative was abused led to its total abolition. By 16 & 17 Car. I. c. 20, it is enacted that none shall be compelled, by writ or otherwise, to take upon him the order of knighthood, and that all proceedings concerning the same shall be void.

Persons have been required to take upon themselves the order of knighthood as a qualification for the performance of honourable services at coronations, in respect of the lands which they held by grand serjeanty.

Knighthood in England is now conferred by the king (or queen when the throne is filled by a female) by simple verbal declaration, attended with a slight form, without any patent or other written instrument. Sometimes, but rarely, knighthood is conferred on persons who do not come into the presence of royalty. This is occasionally done to governors of colonies, and other persons in prominent stations abroad. The lord-lieutenant of Ireland has a delegated authority of conferring this honour, which is very sparingly exercised.

Knighthood gives to the party precedence over esquires and other untitled gentlemen. "Sir" is prefixed to the baptismal name of knights and baronets, and their wives have the legal designation of "Dame," which is ordinarily converted into "Lady."

A rank correspondent to our rank of knighthood has existed in all Christian countries. The eleventh and twelfth centuries have been named as the period to which the order of knighthood as now existing may be traced. But in such an inquiry there are two difficulties: first, to state with sufficient precision what is the thing to be proved; and, secondly, to obtain evidence of the commencement of an institution which probably grew, almost insensibly, out of a state of society common to the whole of civilized Europe. It was a military institution, but there appears to have been something of a religious character belonging to it, and the order of knighthood, like the orders of the clergy, could be conferred only by persons who were themselves members of the order.

In early times some knights undertook the protection of pilgrims; others were vowed to the defence or recovery of the Holy Sepulchre. Some, knights-errant, roved about "seeking adventures," a phrase not confined to books of romance, of which there are many on this subject, but found in serious and authentic documents.

Besides those who are simply knights, there are knights who are members of particular orders or classes. These orders exist in most of the kingdoms of Europe, and have had generally for their founder a sovereign prince. Such are the order of the Golden Fleece, instituted by Philip duke of Burgundy; the order of the Holy Ghost, instituted by Henry the Third of France; the order of St. Michael, instituted by Louis the Eleventh of France. Of the foreign orders, which are very numerous, a full account may be found in a work in two volumes octavo, entitled 'An Accurate Historical Account of all the Orders of Knighthood at present existing in Europe,' a work printed abroad, the author of which was Sir Levet Hanson, an Englishman. Each of these orders has its peculiar badge, ribbons, and other decorations of the person. The three great British orders, the Garter, the Thistle, and Saint Patrick, belong to this class. [GARTER, ORDER OF.]

The order of the Thistle was instituted in 1540 by James the Fifth, king of Scotland; but it fell into decay, till in the reign of Queen Anne, 1703, it was revived. The number of knights was limited to thirteen, but in 1827 the number was increased to sixteen, all of whom are nobility of Scotland.

The order of St. Patrick was instituted in 1783. The knights were fifteen, increased in 1833 to twenty-two, who are peers of Ireland.

The order of the Bath differs in some respects from those just spoken of. [BATH, ORDER OF.]

There are also knights of the Guelphic order, and knights of the Ionian order of Saint Michael and Saint George.

KNIGHT OF SHIRE is the designation given to the representative in parliament of English counties at large, as distinguished from such cities and towns

as are counties of themselves (which are seldom, if ever, called shires), and the representatives of which, as well as the members for other cities and towns, are denominated citizens or burgesses. Though the knights of the shire always sat with the citizens and burgesses as jointly representing the third estate of the realm, as well during the time that the three estates, the spiritualty, the lords temporal, and the commons, sat together, as since, we find that grants were occasionally made by the knights to be levied on the counties, whilst separate grants were made by the citizens and burgesses to be levied upon the cities and boroughs. (*Rot. Parl.*) The wages payable to knights of the shire for their attendance in parliament, including a reasonable time for their going up and coming down, were four shillings a day, or double what was received by citizens and burgesses. At the close of every session of parliament the course was for the king, in dismissing them to their homes, to inform them that they might sue out writs for their wages, upon which each knight separately obtained a writ out of Chancery directed to the sheriff, mentioning the number of days and the sum to be paid, and commanding the sheriff to levy the amount. Upon this the sheriff, in a public county court, divided the burthen among the different hundreds and townships, and issued process to levy the amount, which, to the extent of the money levied, he paid over to the knight. The lands of the clergy, as well regular as secular, were exempted from contributing towards these expenses, because the clergy formed a distinct estate, and were represented in parliament by their prelates and the procuratores cleri, although the latter were, as Lord Coke expresses it, voiceless assistants only. All lay fees within the county were liable to contribute, except lands belonging to the lords and their men. The lords insisted that this exemption extended to every freeholder who held land within their baronies, seigniories, or manors, alleging that they served in parliament at their own expense for themselves and their tenants. And such was undoubtedly the practice; as by the Parliament Roll it appears that the commons frequently petitioned that the exemption should be confined to such lands as the lords kept in their own hands and occupied by their farmers or by their bond-tenants, or villeins. These requests however were met either by a simple refusal or by a statement by the king that he did not mean to lessen the liberties of the lords. If however a lord purchased land which had previously been contributory to the knight's wages, the liability continued. Freehold lands, held either by knight's service or in common socage, were liable to this burthen, but customary tenures in ancient demesne and tenures in burgage were exempt. In the county of Kent no socage land was contributable, the whole burthen being thrown upon those who held knight's fees, an anomaly against which the commons preferred many ineffectual petitions. Knights of the shire, and also their electors, were formerly required to be persons either resident or having a household in the county. This regulation, though confirmed by several statutes, had fallen into neglect, and was formally repealed in both its branches by 14 George III. c. 58. The removal of the latter part of the restriction has greatly added to the expense of county elections; and though the Reform Act, 2 Will. IV. c. 45, disfranchises out-voters in boroughs, it does not restore the old law as to non-resident county electors. (*Rot. Parl.*, vol. ii. 258, 287; iii. 25, 44, 53, 64, 212; iv. 352.)

KNIGHT'S FEE was land of sufficient extent and value to support the dignity of a knight, granted by the king, or some inferior lord, upon the condition that the grantee and his heirs should either perform the service of a knight to the grantor and his heirs, or find some other person to do such service. The quantity of land capable of supporting a knight naturally varied according to its quality and situation; and even the amount of income sufficient to meet the charges of a knight would fluctuate according to time and place. It is not therefore surprising that we find a knight's fee sometimes described as consisting of 800 acres, sometimes of 680; some-

times estimated at 15*l.*, sometimes at 20*l.*, and in later times at 40*l.* per annum. If the owner of a knight's fee deprived himself of the possession of part of his land by subinfeudation he remained liable to the feudal burthen attached to the tenure of the whole.

KNIGHT'S SERVICE, TENURE BY, otherwise called tenure in chivalry, or per service de chivaler, per servitium militare, was, from the times immediately succeeding the Norman Conquest in the eleventh century to the period of the civil war in the seventeenth, considered the first and the most important, as it was also the most general, mode of holding land and other immoveable property in England. The land held by this species of tenure was said to consist of so many knight's fees, feoda militis, *i. e.* so many portions of land capable of supporting the dignity of a knight. [KNIGHT'S FEE.] He who held an entire knight's fee was bound by his tenure, when called upon so to do, to follow his lord to the wars (under certain restrictions as to the place at which the service was to be performed), and to remain with him forty days in every year, or to send some other knight duly qualified to perform the services. From the owner of half a knight's fee twenty days' attendance only could be required; and the obligation attaching to the quarter of a knight's fee was satisfied by the performance of ten days' service. On the other hand, a person holding several knight's fees, whether forming one or several estates, was bound to furnish a knight in respect of each.

"Escuage," says Littleton, § 95, "is called in Latin *Scutagium*, that is, service of the shield; and that tenant which holdeth his land by escuage, holdeth by knight's service." The nature of the service has been already explained. This personal service was expressed by the parliament at a certain sum, which the tenant who did not render the service in person was bound to pay. On the subject of Escuage see Littleton, on 'Tenure by knight's service,' § 103, &c., which he defines as consisting in Homage, Fealty, and Escuage.

Besides this permanent liability to military service, the tenant was subject to other occasional burdens. The principal of these are the following incidental services:—First, *Aids* [AIDS]. Secondly, *Reliefs*, being a payment made by the heir in the nature of a composition for leave to enter upon land descending to him after he had attained his full age. Thirdly, *Primer Seisin*, or the right of the crown, where the lands were held of the king, to a year's profit of land descending to an heir who was of full age at the time of the death of his ancestor. Fourthly, *Wardship*, or the right to the custody of the body and lands of an heir to whom the land had descended during his minority, the king or other lord in such cases taking the profits of the land during the minority to his own use, or selling the wardship to a stranger if he thought proper. Fifthly, *Marriage*, or a right in the lord, where the land descended to an heir within age, to tender to him or her a wife or a husband; and if the heir refused a match without disparagement, *i. e.* without disparity of rank, crime, or bodily infirmity, the lord became entitled to hold the land as a security for payment by the heir of the amount for which the lord had sold or which he might have obtained for the marriage. Sixthly, *Fines upon Alienation.*

This system fell to the ground during the existence of the Commonwealth; and the abolition of this species of tenure was confirmed upon the Restoration, as it would have been absurd and dangerous to attempt a renewal of such oppressive burdens. Accordingly the 12th Car. II., c. 24, takes away tenure by knight's service, whether the lands are held of the crown or of a subject, together with all its oppressive fruits and peculiar consequences, and converts every such tenure into free and common socage. [SOCAGE.] Nothing can be more comprehensive than the terms of this act; besides generally abolishing tenure by knight's service, and its consequences, it descends into particulars, with a redundancy of words, which appear to indicate an extreme anxiety to extirpate completely all traces of knight's service. The statute, after taking away the court of wards and liveries,

enumerates wardships, liveries, primer seisins or ousterlemains, values and forfeitures of marriages, and fines, seisures, and pardons for alieration, and sweeps away the whole. But rents certain, heriots [HERIOT], suit of court and other services incident to common socage and fealty [DISTRESS], and also fines for alienation due by the customs of particular manors, are preserved. Reliefs for lands of which the tenure is converted into common socage, are saved in cases where a quit-rent is also payable.

L.

LABOUR. [WAGES; WEALTH.]

LADING, BILL OF. [BILL OF LADING.]

LAITY, persons not clergy; that is, the whole population except those who are in holy orders. All the lexicographers, we believe, agree in deriving it from the Greek word *laos* (λαός), the people. A *layman* is one of the laity. [CLERGY.]

LANCASTER, COUNTY PALATINE OF. [PALATINE COUNTIES.]

LANCASTER, DUCHY OF. [CIVIL LIST, p. 516.]

LAND, in English law, in its most restricted signification is confined to arable ground. In this sense the term is construed in original writs, and in this sense it is used in all correct and formal pleadings.

By the statute of Wills, 1 Victoria, c. 26, s. 26, a devise of the Land of the testator generally, or of the land of the testator in any place or in the occupation of any person mentioned in the will, is to be construed to include customary, copyhold, and leasehold estates to which the description will extend, as well as freehold estates, unless a contrary intention appear by the will. In its more wide legal signification land includes meadow, pasture, woods, moors, waters, &c.; but in this wider sense the word generally used is lands: the term land or lands is taken in this larger sense in conveyances and contracts.

In conveying the land, houses and other buildings erected thereon, as well as minerals under it, will pass with it, unless specially excepted. A grant of the vesture of certain land transfers merely a particular or limited right in such land, and the houses, timber, trees, mines, and other real things, which are considered as part or parcel of the inheritance, are not conveyed, but only such things as corn, grass, and underwood. Other limited rights, as fishing and cutting turf, may be granted, which confer no interest in the land itself, or, as it is called, the realty, but only the benefit of such particular privileges. But a grant of the fruits and profits of the land conveys also the land itself. Absolute ownership of land carries with it the right to the possession downwards of the minerals, waters, &c., and also upwards, agreeably to the maxim, "cujus est solum, ejus est usque ad cœlum." He who carries the workings of his mine from out of his own land into the land of his neighbour is guilty of trespass as much as if he disturbed the surface of his neighbour's land.

Land held in absolute ownership is expressed by the term *real* property, in contradistinction to *personal* property, which consists in money, goods, and other moveables. Land held for a number of years or other determinate time, is a chattel interest, but it is distinguished from other chattels by the name of Chattels Real. [CHATTELS.]

In some parts of England the word "land" is frequently used to denote the fee simple as distinguished from a less estate, without reference to the nature of the property. Thus it is usual to say, A has a lease of such an estate or such a house, but B has the land, *i. e.* the reversion or remainder in fee.

Land is legally considered as enclosed from neighbouring land, though it lie in the middle of an open field, and it may therefore be called a *close;* and the owner may subdivide this ideal close into as many ideal parcels as he pleases, and may, in legal proceedings, describe each of these parcels, however minute, as his close. An illegal entry into the land of another is called, in law, breaking and entering his close, and the remedy is by the action of trespass 'Quare clausum fregit;' it

having been necessary, when writs were framed in Latin and all common law proceedings were entered on the rolls of the court in that language, to insert the words 'Quare clausum fregit' in the king's writ, or the party's plaint, by which the action was commenced, and also in the declaration wherein the nature of the injury was more circumstantially detailed.

Land Derelict, or left dry by the sudden receding of the sea, or of the water of a navigable river, belongs to the king by his prerogative. Land formed by Alluvion, that is, by gradual imperceptible receding of any water, or by a gradual deposit on the shore, accrues to the owner of the adjoining land. The rules of English law as to Alluvion as stated in Bracton (fol. 9), are chiefly copied from the 'Digest' (41 tit. i. s. 7).

(*Doctor and Student;* Co. *Litt.;* Comyn's *Dig.*)

The definition of Alluvio by Gaius (ii. 70) is as follows—"that may be considered as added by Alluvio, which a river adds to our land so gradually, that we cannot calculate how much is added in each small interval of time; or, according to the common expression, what is added in such small portions as to escape our eyes." The English rule of law is the same. Land formed on the coast by the deposition of matter from the sea, is Alluvio, when the increase is so slow that it cannot be observed, though there may be a visible increase at the end of each year, and in the course of years a large piece of land may be thus formed (Rex *v.* Lord Yarborough, 2 B. & C. 91). Gaius proceeds to add—"but if a river carries off any part of your farm and brings it to mine, this part continues to be yours. If an island rise in the middle of a river, it is the common property of all those who on each side of the river possess farms near the bank; but if it is not in the middle of the river, it belongs to those who have farms beside the bank on that side which is nearest." (Compare Aggenus Urbicus, *Comment.* in Frontinum, *Pars Prior.*)

LANDING-WAITER, an officer of the customs whose duties consist in taking an accurate account of the number, weight, measure, or quality of the various descriptions of merchandise landed from foreign countries or colonial possessions. Landing-waiters likewise attend to the shipment of all goods in respect of which bounties or drawbacks are claimed. These officers are likewise called searchers.

LAND-TAX. [TAXATION.]

LAND-TAX, ROMAN. [TAXATION.]

LAPSE. [ADVOWSON; BENEFICE.]

LAW. In treating of the word *law*, we will first explain its etymology, and the etymology of the equivalent words in the principal languages of the civilized world; we will next determine the strict and primary meaning of law, together with its various secondary meanings; we will afterwards state the most important species of law, in the strict sense of the word; and finally, we will make a few remarks on the origin and end of law.

1. *Etymology of Law, and the equivalent words in other languages.*—In the Greek language the most antient word for law is *thémis* (θέμις, which contains the same root as τίθημι), meaning 'that which is established or laid down.' In Homer θέμις signifies a rule established by custom, as well as by a civil government: it also signifies a judicial decision or decree, a legal right, and a legal duty. (*Iliad*, i. 238; *Od.* xiv. 56; *Od.* xvi. 403; *Il.* xi. 770; *Il.* ix. 156, 298; and see Passow in v.) Θεσμὸς and τεθμὸς are two very antient Greek words, having the same origin and meaning as Θέμις. The common Greek word for law, after the Homeric period, is νόμος, which first occurs in the 'Works and Days' of Hesiod (v. 274-386, Gaisford), and contains the same root as νέμω, to *allot* or *distribute*. The only word which the Greek language possessed to signify a *legal right* was δίκαιον, or δικαίωμα. (Hugo, *Geschichte des Römischen Rechts*, p. 962, ed. xi.)

Jurisprudence was never cultivated as a science by the Greeks before the loss of their independence. Many causes concurred to prevent the Greeks from adding jurisprudence to the numerous subjects which they first subjected to a scientific treatment. The chief of these causes was perhaps the generally *arbitrary* character of the Greek tribunals, both in the demo-

cratic and oligarchical states. The Lacedæmonians had no written laws (Aristotle's account of the jurisdiction of the Ephors, in *Polit.* ii. 9; compare Müller's *Dorians*, b. iii. ch. 6, s. 2; ch. 11, s. 2; and Justinian's *Institutes*, lib. i. tit. 2, s. 10), and they were besides too great contemners of learning and science to cultivate law in a systematic manner. The Athenians possessed a considerable body of written laws, and, with their extraordinary talent both for speculation and action, they would probably have contributed something towards reducing law to a science, if the large numbers of the judges (δικασταί) in their courts had not led to a popular and rhetorical treatment of the questions which came before them, and, by diminishing the sense of personal responsibility, facilitated arbitrary decisions. (Xen., *Mem.* iv. 4. 4.)

For the first scientific cultivation of law the world is indebted to the Romans. 'How far our ancestors,' says Cicero, 'excelled other nations in wisdom, will be easily perceived on comparing our laws with the works of their Lycurgus, Draco, and Solon; for it is incredible how rude and almost ridiculous every system of law is, except that of Rome.' ('Incredibile est enim, quam sit omne jus civile, præter hoc nostrum, inconditum ac pœne ridiculum.' *De Orat.*, i. 44.) Apart from the general ability of the Romans in the business of civil and military government, the systematic cultivation of law in Rome is perhaps owing chiefly to the fact that the Roman tribunals were composed of a single judge, or magistratus. (Hugo, *Ibid.*, p. 345.) The persons filling the offices of *prætor urbanus* and *prætor peregrinus* (the magistrates who ultimately exercised the chief civil jurisdiction) were changed annually; and it was found convenient that every new prætor should, on his accession to his office, publish an authentic statement of the rules which he intended to observe in administering justice. In process of time these rules, known by the name of the *prætor's edict*, were handed down, with little alteration, from one prætor to another; and they furnished a text for the commentaries of the Roman lawyers, many of whose expository writings were drawn up in the form of treatises *ad edictum*. [EQUITY, p. 844.]

The scientific cultivation of law among the Romans naturally led to the formation of a technical legal vocabulary in their language. The Latin is accordingly very rich in legal terms, many or most of which have been retained in the modern languages of western Europe, especially in those countries whose legal systems are founded on the Roman law. The only terms however with which we are at present concerned are those which denote the most general notions belonging to the subject of jurisprudence. *Lex*, which has the same etymological relation to *lego* that *rex* has to *rego*, meant properly a measure proposed by a magistrate in the *comitia*, or assembly of the people. A *lex* was not necessarily a rule, and might relate to a special case (Hugo, *Ibid.* p. 327); but as most of the *leges* proposed by the magistrates were general, the word came to signify a written law. *Jus* denoted law generally, whether written or unwritten: it also denoted a legal right or faculty. *Lex* signified "*a* law;" *jus* "law" generally. (Austin, *Province of Jurisprudence*, p. 307.)

The Romance languages have retained the word *lex* in the Latin acceptation (*legge* Italian, *ley* Spanish, *loi* French). They have however lost the word *jus* (though they retain many of its derivatives), and have substituted for it words formed from the passive participle of *dirigo* (*diritto* Italian, *derecho* Spanish, *droit* French), probably after the analogy of the German *recht*.

Nearly all the Teutonic languages (including the Anglo-Saxon) possess some form of the word *recht*, with a double sense equivalent to the Latin *jus*, namely, *law* and *faculty*. The modern English uses *right* in the sense of *faculty* alone. The High German has *gesetz* (from *setzen*, "to place," like θεσμὸς and θέμις), for a written law equivalent to *lex*. The Low German languages have, instead of *gesetz*, a word formed from *legen*, to lay down, which in Anglo-Saxon is *laga* or *lag*, in modern English *law*. The word *law* however, in modern English, has not the limited sense of *gesetz*, but is coextensive with the Latin *jus*, when the latter does

not signify *faculty*. We do not wish to dwell unnecessarily on these etymologies, but we will shortly notice that, besides *regt*, the Dutch language has the word *wet* in the sense of *law*. This word is derived from the antient *withan*, Gothic, "to bind," and is equivalent etymologically to the Latin *obligatio*. The English verb to *wed* is the same word. *Ehe*, which signifies *marriage* in modern German, originally meant *law* or *ordinance* (*Nibelungen Lied*, v. 139, 5061); so that the Dutch *wet* and the English *wed* stand to one another in the same relation as the antient and modern senses of *ehe*.

2. *Proper and improper Meanings of the word Law.*—A *law*, in the strict sense of the word, is a general command of an intelligent being to another intelligent being.* Laws established by the sovereign government of an independent civil society are styled *positive*, as existing by *positio*. [SOVEREIGNTY.] When law is spoken of simply and absolutely, *positive* law is always understood. Thus in such phrases as "a lawyer," "a student of law," "legal," "legality," "legislation," "legislator," &c., positive law is meant. Positive law is the subject-matter of the science of jurisprudence. [JURISPRUDENCE.] Every general command of a sovereign government to its subjects, however conveyed, falls under the head of positive laws. The general commands of God to man (whether revealed or unrevealed) are called the laws of God, or the Divine law: they are sometimes also known by the name of "natural law," or "law of nature." The Divine law (according to the phraseology just explained) is the standard to which all human laws ought to conform. On the mode of determining this standard some remarks will be made lower down.

Besides positive law, which is known to be a command enforced by a sanction,* and the Divine law, which is presumed to be so, there are some classes of laws which are not commands, though they bear an analogy more or less remote to laws properly so called. Thus by the term "law of nations," or "international law," are signified those maxims or rules which independent political societies observe, or ought to observe, in their conduct towards one another. An independent political society is a society which is not in the habit of rendering obedience to a political superior; consequently, an independent political society cannot receive a command or be subject to a law properly so called. But inasmuch as the maxims of international morality are general, and determine men's wills by the fear of provoking the hostility of other independent societies against their own country, there is a close analogy between the so-called "law of nations" and positive law. We may here remark that the term "jus gentium," as used by the Roman lawyers, has a different meaning from "law of nations," as used in modern times. According to their phraseology, *jus civile* consists of those rules of law which are peculiar to any independent state; *jus gentium* consists of those rules of law which are common to all nations. ("Quod quisque populus ipse sibi jus constituit, id ipsum civitatis est, vocaturque *jus civile*, quasi proprium jus ipsius civitatis. Quod vero natura vel ratio inter omnes homines constituit, id apud omnes peræque custoditur, vocaturque *jus gentium*, quasi quo jure omnes gentes utuntur." *Inst.*, lib. i. t. 2, s. 1, and Gaius, i. 1.) In the language of the Roman jurists, *jus naturale* is commonly equivalent to *jus gentium*. (See *e.g. Inst.*, lib. i. t. 2, s. 11.) In some of the Roman historians Jus gentium has a meaning which at least approaches to the 'law of nations.' (Liv. ii. 4, vi. 1.) Concerning a peculiar meaning attributed to *jus naturale* in a passage of Ulpian (*Dig.*, lib. i. tit. 1, fr. 1, s. 3; *Inst.*, lib. i. tit. 2, *ad. init.*), see the remarks of Mr. Austin, in

* 'Lex nil aliud quam *regula imperans*,' says Bacon, *De Augm. Scient.* lib. viii. aph. 83. The word *regula*, or *rule*, is ambiguous: it sometimes signifies a *norma*, maxim, or canon simply: it sometimes signifies a *norma*, maxim, or canon, accompanied with a command. Moreover, it is a metaphor to say that the rule or *norma* itself commands. Bacon's definition would therefore be more precise if expressed as follows: "Lex est norma summi imperantis."

* A sanction is the evil with which any one is visited in consequence of disobedience to a command.

his 'Province of Jurisprudence,' p. 108. Other classes of laws not imperative, but having as close an analogy to laws proper as the maxims composing international law, are the "law of honour" and the "law of fashion;" the laws of certain sports and games, such as the laws of the turf, the laws of whist, cricket, chess, &c., also stand in a similar predicament.

The term *law* is also employed in certain cases where the analogy to laws properly so called is much more remote. Instances of this usage are such expressions as the "laws of motion," the "law of attraction or gravitation," the "law of mortality" in a given country, the "law of population," the "laws of human thought," the "law of a mathematical series." In laws of this class (which may be styled "metaphorical laws") there is no command and no intelligence to work upon; nothing more is signified than that there is a certain uniformity of phenomena, analogous to the uniformity of conduct produced in men by the operation of a law properly so called.

3. *Species of Positive Law.*—The positive laws of any country, considered as a system, may be divided with reference to their *sources* (or the modes by which they become laws) into *written* and *unwritten*. This division of laws is of great antiquity; the expression *unwritten laws* occurs in Xenophon's 'Memorabilia,' in a conversation attributed to Socrates (iv. 4, 19), in the 'Antigone' of Sophocles (v. 450-7; comp. Aristot. *Rhet.* i. 13, 2), in the 'Republic and Laws of Plato' (v. 563 and 793, ed. Steph.), and in Demosthenes (*Aristocrat.*, p. 639, ed. Reiske). In these passages it appears to signify those rules of law or morality which (being founded on obvious dictates of utility) are nearly common to all countries. Unwritten law, in this sense, nearly corresponds with the *jus naturale* of the Roman lawyers. In the language of the Digests and the Institutes, the terms *written* and *unwritten law* ("jus quod constat ex scripto aut ex non scripto") are used in a more precise manner, to signify those laws which had been promulgated by the Roman legislature in writing, and those rules of law which had been tacitly adopted by the same legislature from usage.* For (as it is stated in a passage of the Digests) "since the laws derive their binding force from nothing but the decision of the people, it is fitting that those rules which the people have approved of without reducing them into writing should be equally obligatory. For what difference is there whether the people declares its will by vote or by its conduct?" ("Quum ipsæ leges nulla alia ex causa nos teneant quam quod judicio populi receptæ sunt, merito et ea quæ sine scripto populus probavit, tenebunt omnes; nam quid interest, suffragio populus voluntatem suam declaret, an rebus ipsis et factis?" *Dig.*, lib. i., t. 3, fr. 32.)

Sir William Blackstone divides the law of England into the "*lex non scripta*, the unwritten or common law, and the *lex scripta*, the written or statute law." "The *lex non scripta*, or unwritten law (he further says), includes not only general customs, or the common law properly so called, but also the particular customs of certain parts of the kingdom; and likewise those particular laws that are by custom observed only in certain courts and jurisdictions." "When I call these parts of our law *leges non scriptæ* (he proceeds to say), I would not be understood as if all those laws were at present merely *oral*, or communicated from the former ages to the present solely by word of mouth. It is true indeed that, in the profound ignorance of letters which formerly overspread the whole Western world, all laws were entirely traditional, for this plain reason, because the nations among which they prevailed had little idea of writing....But with us, at present, the monuments and evidences of our legal customs are contained in the records of the several courts of justice, in books of reports and judicial decisions, and in treatises of learned sages of the profession, pre-

* The distinction of law into written and unwritten does not seem to have been regularly made by the Roman jurists; for it does not occur in Gaius, from whose Commentaries the substance of the second title of the first book of the Institutes is borrowed. The distinction in question is introduced, both in the Digests and the Institutes (i. tit. 2), with a reference to the Greek writers, doubtless philosophers.

served and handed down to us from the times of highest antiquity. However, I therefore style these parts of our law *leges non scriptæ*, because their *original* institution and authority are not set down in writing." (1 *Com.*, p. 63.) In this passage Blackstone clearly explains that unwritten law is so called, not because it does not exist in writing, but because it was not promulgated by the legislature in a written form. His statement of the sorts of laws severally comprehended by the classes of written and unwritten law in England is erroneous. Written law comprehends not only the statutes made by the parliament or supreme legislature, but also the written regulations issued by subordinate legislatures, as orders in council, and rules of court made by the judges. Unwritten law, moreover, comprehends not only the common law which is administered by the courts styled "courts of common law," but also the greatest part of the law styled "equity," which is administered by the courts styled "courts of equity."

Unwritten law has been called by Mr. Bentham *judge-made law*; a name which correctly denotes the mode by which it becomes law.

It may be remarked that a written law is called a law, but that a rule of unwritten law is never called *a* law. This phraseology corresponds to the distinction between *lex* and *jus*, and *gesetz* and *recht*, which was explained above.

Positive laws are also divided, according to their *source*, into laws made by *supreme*, and laws made by *subordinate* legislatures. In other words, laws may be issued by the sovereign legislature, or by functionaries who derive their authority from the sovereign legislature.

The *sources* of law are not unfrequently confounded with its *causes*; in other words, with the facts which induce the sovereign to invest certain maxims with the legal sanction. Thus it is fancied that a rule of customary or consuetudinary law exists as law, by virtue of custom or usage, and not by virtue of the authority of the sovereign or his representative, who has imparted to it a binding force. This subject is clearly explained in Mr. Austin's 'Outline of a Course of Lectures on General Jurisprudence,' pp. 10, 11.

The laws of a state, considered as a system, may be divided, with reference to their *subject-matter*, into *public* and *private*. The division of *jus* into *jus publicum* and *jus privatum* originated with the Roman jurists, and occupies a conspicuous station at the beginning of the Digests and Institutes. No trace of this division exists, as far as we are aware, in any Greek author. *Jus publicum* is defined to be "quod ad statum rei Romanæ spectat," "quod in sacris, in sacerdotibus, in magistratibus consistit." *Jus privatum* is that "quod ad singulorum utilitatem pertinet." The institutional treatises of the Roman lawyers appear to have been confined to *jus privatum*. The Institutes of Justinian do not touch upon *jus publicum*, except in the final chapter *De Publicis Judiciis*, and this chapter is wanting in the Commentaries of Gaius, on which the Institutes of Justinian are mainly founded. Hence it appears that the Roman lawyers included under *jus publicum* not only the powers of the sovereign, and the rights and duties of persons in public conditions, but also criminal law. Their definition of *jus publicum*, however, does not properly include criminal law, and the term, as used by later writers, has not in general this extension. *Publicus* is the adjective of *populus*, and signifies that which belonged to the sovereign body of citizens; hence *jus publicum* signified that law which concerned the government of Rome, and its magistrates and other functionaries. *Privatus* seems to have meant originally that which was *separated* or *set apart* from any common stock; hence it came to signify that which did not concern directly the *public* or state.

The formal division of law into public and private is not to be found in the institutional treatises of English Law. It is however used by Lord Bacon, in his treatise 'De Augmentis,' lib. viii. Aph. 80; where he advises that, after the model of the Roman jurists, *jus publicum* should be excluded from institutional treatises.

Sir W. Blackstone, in the first book of his 'Commentaries,' treats of the rights

and duties of persons, in their public and private relations to each other (pp. 146, 422). The former branch of this division, which occupies chapters 2 to 13, comprehends *jus publicum*, in its limited sense, which nearly corresponds to the English term "constitutional law." The *droit politique* or *constitutionnel* of Mr. Bentham, in his 'Traités de Legislation' (tom. i. p. 147, 325-6, ed. 1802), is also equivalent to *jus publicum*, in its strict sense. (Austin's *Outline*, p. lxvii.)

Positive law is further divided, with reference to its subject, into the *law of persons* and the *law of things*. The Roman jurists, who were the authors of this division, arranged these two classes under the head of *jus privatum*, together with a third, viz. the *law of actions*, or of judicial procedure. A full explanation of this important division is not consistent with the purpose of the present article: we extract a brief and lucid statement of it from Mr. Austin's 'Outline' already cited. "There are certain rights and duties, with certain capacities and incapacities to take rights and incur duties, by which persons, as subjects of law, are variously determined to certain classes. The rights, duties, capacities, or incapacities, which determine a given person to any of these classes, constitute a *condition*, or *status*, which the person occupies, or with which the person is invested. The right, duties, capacities, and incapacities, whereof *conditions* or *status* are respectively constituted or composed, are the appropriate matter of the department of law which commonly is named the *law of persons: jus quod ad personas pertinet*. The department, then, of law which is styled the law of persons is conversant about *status* or *conditions*; or (expressing the same thing in another form) it is conversant about persons (meaning *men*) as bearing or invested with *persons* (meaning *status* or *conditions*). The department of law which is opposed to the law of persons is commonly named the *law of things*; *jus quod ad res pertinet*. The law of things is conversant about matter, which may be described briefly in the following manner: it is conversant about rights and duties, capacities and incapacities, in so far as they are *not* constituent or component parts of *status* or conditions. It is also conversant about persons, in so far as they are invested with, or in so far as they are subject to, the rights and duties, capacities and incapacities, with which it is occupied or concerned" (pp. xvi., xvii.). The most important conditions or *status*, composing the law of persons, are *public* or *political*, and *private*. The former species includes all persons sharing the sovereign power and all public functionaries; the latter includes the conditions of husband and wife, parent and child, master and servant, guardian and ward, &c. The term *jus publicum*, when used in a precise sense, is equivalent to the former of these species. It may be remarked, that the erection of certain aggregates of rights and duties into a *status* is more or less arbitrary; and that the jurist must be guided by considerations of method and convenience, concerning which no very precise rules can be laid down. For example, in a country where a large sum of money was expended by the government in the relief of the poor, and where a large part of the working classes consisted of *paupers* (or persons receiving legal relief), it might be expedient to make the rights and duties of a pauper a condition, or *status*, in the law of persons. In a country where the legal relief of the poor was insignificant in amount, the rights and duties of a pauper would be more conveniently introduced in the law of things. Sir W. Blackstone, misled by the ambiguity of the Latin word *jus*, has rendered *jus personarum* and *jus rerum* by "*rights* of persons," and "*rights* of things." The origin of this portentous blunder is explained in Mr. Austin's 'Outline,' p. lxiii.

Positive law is also divided, with reference to the legal consequences of a breach of legal duty, into *civil* and *criminal*.

Civil law is that department of law in which every breach of a duty may be made the subject of a legal proceeding, for the purpose of conferring on the person wronged a right from the enjoyment of which he is excluded by the defendant, or of obtaining from the defendant compensation for a right violated by him.

Criminal law is that department of law in which every breach of duty may be made the subject of a legal proceeding instituted by the sovereign or his representatives, for the purpose of inflicting punishment on the person charged with the breach of duty. The scope of a civil action is the redress of the plaintiff, by conferring on him the right, or compensation for the violation of a right, which he claims from the defendant. The scope of a criminal action is to inflict punishment on the defendant for the breach of a legal duty which is imputed to him. *Penal* law is not identical with *criminal* law; for an act or omission may be liable to legal punishment in consequence of an action instituted by a *private person*. The action in English law termed a *qui tam* action is partly a civil and partly a penal, but is in no respect a criminal action. It has been already stated that the term *jus civile* originally signified the peculiar law of Rome. In modern times it has acquired, in many or most civilized countries, the limited sense which has just been explained. The term *crimen* was used by the Roman jurists as equivalent to *delictum publicum*, that is, a delict which was the subject of a *judicium publicum* (Hugo, *Ib.* pp. 368, 959). (On the contents of the French *Code civil* see CODES, LES CINQ.) *Civil* and *Criminal* delicts or injuries are terms which, in strictness, are unknown to the English law. A criminal proceeding is, in the language of the English law, styled a *plea of the crown*, as being a penal action instituted by the crown. The court recently created by statute in London is however styled the Central *Criminal* Court. By the *civil law*, in England, is commonly understood the Roman law generally, or that portion of it which is received in the ecclesiastical courts.

Law is sometimes opposed to *equity*. *Equity*, in this sense, implies an arbitrary or discretionary power in the tribunal to decide, not according to prescribed rules of law, but according to its own conceptions of moral justice. In the language of the English law, *common law* is opposed to *equity*, concerning which opposition see EQUITY. *Common law* is so denominated as being founded on usages common to the whole nation, and not peculiar to a certain district. (1 Blackst. *Comm.*, p. 67-8.) In like manner, "the Book of *Common* Prayer" is so designated in order to distinguish it from forms of prayer intended for *private* devotion. It may be remarked, that, in the language of the Roman law, *jus civile* is opposed to *jus prætorium* (the law made by the judicial legislation of the prætors), in the same manner that, in the language of the English law, *common law* is opposed to *equity*.

A *law* is likewise opposed to a *privilegium*. *Privilegium* is an ancient term of the Roman law, inasmuch as it occured in the Twelve Tables. (Cicero, *Leg.*, iii. 19.) It signified, according to its etymology, a measure directed at a single person (*hominem privum*), as distinguished from a law which applies to *classes* of persons; for as it is stated in a fragment of Ulpian preserved in the Digests, "jura non in singulas personas, sed generaliter constituuntur." (Lib. i. tit. 3, fr. 8.) The latter part of the word *privilegium* is connected with *lex;* but we have already stated that *lex* originally did not necessarily signify a rule. More properly, however, a *privilegium* signifies a special command of the sovereign, not founded on an existing general command or law. Such a *privilegium* may either be beneficial to the person or persons affected by it, as an exemption from all personal actions which the king of England can (or could) grant by his *writ of protection* (Blackst. 3 *Com.*, p. 289); or it may deprive him of some of his rights, or inflict some punishment upon him. The difference between a law and a *privilegium* is explained by Sir W. Blackstone as follows: "Municipal (*i.e.* positive) law is a *rule;* not a transient sudden order from a superior to or concerning a particular person, but something permanent, uniform, and universal. Therefore a particular act of the legislature to confiscate the goods of Titius, or to attaint him of high treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law. But an act to

declare the crime of which Titius is accused shall be deemed high treason; this has permanency, uniformity, and universality, and therefore is properly a rule" (or law). (1 *Com.*, p. 44.) The distinction here adverted to is that meant by the Greek writers when they speak of governments administered according to law, and governments administered not according to law. (See particularly Aristotle, *Polit.*, iv. 4, 5.) In the latter class of states, the acts of the government were a succession of *privilegia* (generally styled by the Greeks ψηφίσματα, although ψηφίσματα were often *laws*, strictly so called). Montesquieu's distinction between monarchy and despotism is founded upon the same principle (*Esprit des Lois*, ii. 1). Government by *privilegia* is properly called *arbitrary* government, the government being administered not according to rules, but according to the *arbitrium* of the sovereign one or many.

Concerning the difference between the making of laws and the execution of them, or (as they are termed) the *legislative* and *executive* functions of government, see LEGISLATION.

Law is sometimes opposed to *fact;* that is to say, the rule of law is distinguished from the facts or events to which it is applied in practice. In this sense it is said that every one is presumed to know the law; whereas ignorance of the fact is an excuse. (For the doctrines of the Roman law on this subject, see *Dig.*, lib. xxii. t. 6.) The distinction between law and fact is important in our system of jurisprudence, with reference to trial by jury; for, according to the theory of our law, the judge decides concerning the law, and the jury concerning the fact. This maxim is however little more than theory; for in practice the jury, by its power of returning a general verdict, is judge both of the law and the fact. [JURY.] On certain questions which necessarily arise in the administration of justice, and which are questions neither of law nor of fact (such as "due diligence," "reasonable notice," "probable cause," &c.) see an article in the *Law Magazine*, vol. xii. pp. 53-74.

Laws, considered singly, have been divided into numerous species, as declaratory, remedial, penal, repealing, &c. laws. Concerning these see Austin's *Province of Jurisprudence*, p. 22, and Dwarris *On Statutes*, c. 10.

4. *Origin and End of Positive Law.*—It has been above stated that all positive laws are commands, direct or indirect, of the person or persons exercising supreme political power in an independent society. Consequently the notion that positive laws are derived from a compact between sovereign and subjects (styled the *original* or *social contract*) is a delusion.

The proper end of positive law is the promotion of the temporal happiness, or well being, of the community over which the law extends. Thus Aristotle, in his 'Politics,' says that "political society was formed in order to enable men to live, and it continues to exist in order that they may live happily" (1. 2.). "Finis et scopus (says Lord Bacon) quem leges intueri atque ad quem jussiones et sanctiones suas dirigere debent, non alius est quam ut *cives feliciter degant.*" (*De Augm.*, lib. viii. Aph. 5.) The meaning of Aristotle and Bacon, in the passages just cited, was no other than that expressed by Mr. Bentham in his well-known formula, that the end of political government is "the greatest happiness of the greatest number."

We have stated that the proper end of positive law is the promotion of the *temporal* happiness of the community. The end of the political union is the promotion of the happiness of its members in the present state of existence; that is to say, in the existence which is comprehended between birth and death. The promotion of men's happiness in the existence which commences after death is the end of the religious or ecclesiastical union. (See Warburton's *Divine Legation*, b. 1, s. 2, vol. i. p. 215, 8vo. ed.)

From the benevolence of the Deity, it is presumed that those rules which tend the most to produce the happiness of his creatures are most agreeable to him; and consequently the term "Divine law" (also called natural law) is used to signify those maxims to which human law ought to conform. In the vast countries where the Mohammedan and Brahminical religions prevail, a great proportion of

the positive law is supposed to be derived from the direct revelation of a supernatural being; and therefore the Divine law and the positive laws of the state in great measure coincide. The Christian dispensation however does not (like the Jewish) contain any system of rules out of which a body of positive law can be formed, or which can be enforced by a civil government. Consequently, in Christian countries a very small part of positive law is founded upon precepts derived from immediate revelation: the far greater part of positive law is or ought to be fashioned upon rules of Divine law, which are only discoverable by a process of inference from the phenomena of human society.

LAW, CRIMINAL. The object of the English as of every other system of Criminal Law is the prevention of injuries by the terror of punishment; but it is not every injury the commission of which the law thinks fit to prevent by such means; in most cases it is satisfied with the redress of injuries after they have been committed, by either restoring the party injured to his right, where that is possible, or by giving him compensation in damages. In law, an injury is any violation of a legal right or omission of a legal duty: a crime, then, may be defined to be such a violation of a legal right or omission of a legal duty as subjects the person guilty of it to punishment. Such acts or omissions for which the law affords redress only have, in England, been usually denominated civil injuries as contradistinguished from crimes. It is to be observed however, that, in strictness, every crime includes an injury, in respect of which some individual or the public may be entitled to redress. In felony, indeed, such injury is said to be merged in the crime; but this doctrine appears to have originated in the circumstance of all felonies having, with one or two exceptions, been originally punishable with death and having worked a forfeiture of all the offender's property, and so rendered redress impossible.

Crimes, according to the English law, are divisible into two great classes, which depend upon the mode of proceeding peculiar to each, viz. into

1st. Such as are punishable on indictment or information (the common law methods of proceeding).

2dly. Such as are punishable on summary conviction before a justice or justices of the peace or other authorized persons, without the intervention of a jury (a mode of proceeding derived entirely from special statutory enactments).

It is proposed, in the first place, to treat of offences punishable on indictment or information, and afterwards to shortly refer to those punishable on summary conviction.

Offences punishable on Indictment or Information.

Indictable offences are distributable into four classes or divisions, viz.: Treasons, Præmunires, Felonies, and Misdemeanors. Persons who commit the offences which constitute the last-mentioned division may also be prosecuted by criminal information instead of being indicted.

The distinction between these classes is, for the most part, a merely arbitrary one, without any apparent reference to rule or principle, the consequence of which is that offences in their nature wholly undistinguishable are, in many instances, separated and subjected to punishments widely disproportionate, and to forms of procedure widely dissimilar. In fact, the only real distinguishing feature between one class of crimes and another, at the present day, is to be found in certain peculiarities of punishment and procedure incident to each. Formerly, however, the classes of crimes were marked by distinctive characteristics; but they have subsequently, either by artificial constructions of the courts or by legislative enactment, been made to embrace offences of a very different nature from those originally included within them. For instance, the crime of treason, whether high or petit, implied a violation of the allegiance due from an inferior to a superior. In the case of high treason, so called "by way of eminent distinction," it was the violation of the allegiance due from a subject to his liege lord and sovereign; and in case of petit treason, which was limited to the murder

of a husband by his wife, a master by his servant, or an ecclesiastic by his inferior who owed him faith and obedience, it was the breach of the allegiance of private and domestic faith.*

The characteristic above pointed out can no longer be traced in many of the various constructive treasons which have been from time to time created by the courts. It will be sufficient here to give a single illustration of the mode in which the law of treason has been stretched to reach cases totally inconsistent with its original design. By one of the clauses of the statute of treasons (25 Edw. III. c. 2) it is declared to be treason *to levy war against the king*. A riotous assembly attempting by force to redress a public grievance, as, for example, to pull down *all* inclosures or to burn *all* meeting-houses, has been held to be *a levying of war* within the meaning of this clause, although there has been no direct intention or design whatever against either the state or the person of the king. This construction is said to depend upon the *generality* of the design. If the intention be to pull down *particular* inclosures or meeting-houses only, the offence is a mere riot, and in quality a simple misdemeanor. Although the generality of the design may be a reason for awarding a higher punishment in the former than in the latter case, there appears to be no foundation in reason or principle for construing an offence, which but for such generality would be a misdemeanor only, to amount to the crime of treason in levying war against the king. The Criminal Law Commissioners (4th, 5th, and 6th Reports) have recommended that this offence should no longer be considered to fall within the statute of treasons. They propose that the only assemblings or risings of the people which should amount to a levying of war against the king should be such as are against the person of the king, or against any army or force appointed by him in opposition to his authority, or with intent to do him bodily harm, or impose any restraint upon his person, or to depose him, or to dispossess or deprive him of any portion of his dominions or regal authority, or with intent by force or constraint to compel him to change his measures or counsels, or to put any force or constraint upon or to intimidate or overawe both houses or either house of parliament; and that no assembling or rising of the people should by reason of any illegality or generality of purpose be deemed to be a levying of war against the king, unless it be with one or other of the several intentions before mentioned. Such riotous and tumultuous meetings as have no such intention in view they recommend should be denominated felonies or misdemeanors merely, according to the circumstances by which they are attended.

Again, the term "Præmunire" was originally applied to offences which consisted in the introduction of any foreign jurisdiction, more especially the authority of the See of Rome, into the kingdom; but has subsequently, to use the language of Mr. Serjeant Hawkins (*Pleas of the Crown*, b. 1, c. 19), "been applied to other heinous crimes, for the most part having relation to the offences originally coming under the notion of præmunire, but in some instances none at all." The Habeas Corpus Act (31 Car. II. c. 12) contains an instance of the latter mode of application. By the 12th section of that act it is made a Præmunire to send any inhabitant of England, Wales, or the town of Berwick-upon-Tweed, a prisoner beyond the seas in defiance of its provisions to the contrary.

The term "Præmunire" was adopted from the first word of the original writ on which the subsequent proceedings were founded: "*Præmunire* (for *præmoneri*) *facias* A. B. quod sit coram nobis," &c. [PRÆMUNIRE.] The Criminal Law Commissioners propose to abolish præmunires as a class of crimes. (Seventh Report.)

The crime of felony had its origin in very remote times, and was founded upon feudal principles. Its incidents were not formerly, as they are now, of a merely

* Petit Treason was abolished by the 9 Geo. IV. c. 31, s. 2, and the offences constituting it declared to be murder only.

arbitrary nature, peremptorily annexed to certain criminal acts without reference to rule or principle. The crime originally consisted in a violation of the feudal contract by the misconduct of the lord or of the tenant; and where committed by the tenant, occasioned as a consequence the forfeiture of his feud to the lord. (4 Black. *Comm.*, p. 96; 4th and 7th *Repts. of Crim. Law Commrs.*)

Those crimes, therefore, which induced such forfeiture, and, by a small deflection from the original sense, those which induced the forfeiture of goods also, were denominated felonies; and afterwards by long use the term *felony* came to signify the actual crime itself, and not the penal consequence. "So that, upon the whole," to use the words of Mr. Justice Blackstone (4 *Comm.*, p. 95), "the only adequate definition of felony seems to be that which is before laid down, viz. an offence which occasions a total forfeiture of either lands or goods, or both, at the common law; and to which capital or other punishment may be superadded according to the degree of guilt." Where the punishment is less than capital, the offender loses his goods only; where capital, his lands as well as his goods. The crimes which occasioned such forfeiture were originally, with one or two exceptions, capital; but at the present day there are offences for which no greater punishment can be inflicted than imprisonment for a term not exceeding three years, which are felonies, and consequently occasion the forfeiture of all the offender's goods and chattels; whilst other crimes, for which the punishment may be as high as transportation for fourteen years, and in one instance *must be* for life, are misdemeanors only, and work no forfeiture. It is apparent from this that the present law is very defective, and that the amount of punishment is no longer the test of distinction between a felony and misdemeanor. It is proposed by the Criminal Law Commissioners (Seventh Rep. p. 16) to remedy this by making the liability to transportation the test of distinction, *i. e.* that all offences liable to a less punishment than transportation should be misdemeanors only.

The term "Misdemeanor" is used in the English system of Criminal Law to denote such indictable offences as are of a lower degree than felony.

We shall now point out the peculiarities of punishment which distinguish one class of crimes from another at the present day. In order to this, the penal consequences incident to the whole body of offences constituting each class will be first stated, and then in what respects those consequences differ from each other. The classes will be taken in the same order as above.

1st. *Treasons.*—Treasons, with one exception mentioned below, are capital; but whether capital or not, the offender, *upon conviction*, forfeits to the crown the personal estate of every description, whether in action or possession, or settled by way of trust, which the offender has otherwise than as an executor (Cro. Car. 566), or a trustee, or a mortgagee (4 & 5 Wm. IV. c. 23, s. 3) at the time of conviction; and in the case of capital treasons, *upon attainder by judgment of death or outlawry*, the blood of the offender is corrupted, but not so as to obstruct descents to such offender's posterity, when they are obliged to derive a title through such offender to a remoter ancestor (3 & 4 Wm. IV. c. 106, s. 10), and all the freehold lands and tenements of inheritance in fee-simple or fee-tail, and all other hereditaments (except copyholds), whether in possession, reversion, or remainder; and all the rights of entry on freehold lands and tenements which the offender has (otherwise than as a trustee or mortgagee, 4 & 5 Wm. IV. c. 23, s. 3) at the time of the offence committed or at any time afterwards, and also the profits of all freehold lands and tenements which the offender has in his or her own right for life, so long as such interest shall subsist, and, if the offender be a male, his wife's dower, are forfeited to the crown (4 Black. *Comm.*, 381; 26 Hen. VIII. c. 13, s. 5; 33 Hen. VIII. c. 20, s. 2; and 5 & 6 Edw. VI. c. 11, ss. 9 and 13); and all the copyhold estates belonging to the offender at the time of the offence committed are forfeited to the lord of the manor (Com. Dig. Copyhold (M) 1.). The above penal consequences are general to all capital treasons, unless, as is sometimes the case, the act which creates the

particular treason expressly exempts from some of them. The before-mentioned non-capital treason renders the party guilty of it liable to those only of the above consequences which accrue upon conviction, since the others follow only upon the party's being attainted, that is, sentenced to death or outlawed, which latter, in the case of capital treasons and felonies, is of the same effect as being sentenced to death. The existence of this non-capital treason would appear to be the result of inadvertence. By the Forgery Consolidation Act (11 Geo. IV. & 1 Wm. IV. c. 66), it was declared to be treason and punishable with death to forge the great and other royal seals and the sign manual. By the 2 & 3 Wm. IV. c. 123, the punishment of death was repealed for forgery in all but the two cases of wills and powers of attorney to transfer stock (it has been since taken away in these cases also by the 7 Wm. IV. & 1 Vict. c. 84); but the *quality* of the offences enumerated in the Forgery Consolidation Act was left without alteration; so that to forge the royal seals, &c. would appear to be still treason, though no longer a capital offence.

The judgment of death in the case of treason is that the offender, if a male, be drawn on a hurdle to the place of execution, and be there hanged by the neck until dead; and that afterwards the head be severed from the body of such offender, and the body be divided into four quarters, to be disposed of as her majesty shall think fit (54 Geo. III. c. 146); and, if a female, that the offender be drawn to the place of execution and be there hanged by the neck until dead (30 Geo. III. c. 48, s. 1). The queen, however, may, by warrant under her sign manual, countersigned by a principal secretary of state, direct, where the offender is a male, that he shall not be drawn, but taken in such manner as in the warrant shall be expressed to the place of execution, and that he shall not be hanged, but be beheaded, whilst alive, instead (54 Geo. III. c. 146, s. 2).

2. *Præmunires.*—The penalties of præmunire, as shortly summed up by Sir Edward Coke (1 Inst. 130 a.), are, "that from the conviction the defendant shall be out of the king's protection, and his lands and tenements" (*i. e.* in fee-simple or for life, but not in tail, beyond his life interest therein), "goods and chattels, forfeited to the king; and that his body shall remain in prison at the king's pleasure, or, as other authorities have it, during life." These penalties were first imposed by the stat. 16 Rich. II. c. 5 (commonly called the Statute of Præmunire); and it is by reference to that statute that all subsequent præmunires have been made punishable. It was formerly supposed that a person convicted of præmunire, being put out of the king's protection, might be killed with impunity as being the king's enemy; but by the 5 Eliz. c. 1, ss. 21 and 22, it was enacted that it should not be lawful to kill any person attainted in a præmunire, saving such pains of death or other hurt or punishment as theretofore might, without danger of law, be done upon persons sending or bringing into the realm, &c. any process, &c. from the See of Rome. Præmunires, although they occasion a forfeiture of the offender's lands and goods, are not felonies. To constitute a felony the offence must have worked a forfeiture at the common law; but in the case of præmunire the forfeiture is made a part of the punishment by statute merely, which is not sufficient. (4 Black. *Comm.*, pp. 94 and 118.)

3. *Felonies.*—All felonies, as stated above, were originally, with one or two exceptions, punishable with death; but the offender, unless the felony was excluded from the benefit of clergy, was entitled, for a first offence, to be discharged from the capital punishment upon praying that benefit. [BENEFIT OF CLERGY.] But now, since the passing of the 7 & 8 Geo. IV. c. 28, no felony is punishable with death unless it was excluded from the benefit of clergy before or on the 14th Nov., 1826, or has been or shall be made punishable with death by some statute passed since that day. Where not capital, felonies are punishable either in the manner prescribed by the statute or statutes specially relating to such felonies, or, where no punishment has been or may hereafter be specially provided, with transportation for seven years, or imprisonment for any term not exceeding two

years, with the addition, if the court shall think fit, of whipping, where the offender is a male, hard labour and solitary confinement, or any of them. (7 & 8 Geo. IV. c. 28, ss. 7 and 8.) Such confinement must not however be for a longer period than one month at a time, or three months in a year. (7 Will. IV. & 1 Vict. c. 90, s. 5.) In the case of *all* felonies, whether capital or not, the offender immediately *on conviction* forfeits to the crown all the personal estate of every description, whether in action or possession, or settled by way of trust, which he has otherwise than as an executor (Cro. Car. 566), or a trustee or mortgagee (4 & 5 Will. IV. c. 23, s. 3), at the time of conviction (Bac. *Abrid.*, 'Forfeiture' (B); Co.-Litt. 391 a); and in the case of all capital felonies, *upon attainder by judgment of death or outlawry*, forfeits to the crown the profits of all estates of freehold (4 Black. *Comm.*, 385), and of things not lying in tenure (Bac. *Abrid.* 'Forfeiture' (A)), and to the lord of the manor the profits of all estates of copyhold (Hawk. *P.C.* b. 2, c. 49, s. 7; Lord Cornwall's case, 2 Vent. 38-9), which the offender has, otherwise than as a trustee or mortgagee (4 & 5 Will. IV. c. 23, s. 3), at the time of the offence committed, during his life; and his blood is corrupted (but not so as to obstruct descents to the posterity of such offender where they are obliged to derive a title through him to a remoter ancestor (3 & 4 Will. IV. c. 106, s. 10), and after his death his copyholds which he holds in fee-simple are forfeited to the lord of the manor. (Scriven *On Copyholds*, 523, note (d).) And also in the case of murder, all his freehold lands and tenements in fee-simple escheat (subject to what is called the crown's year, day and waste) to the lord of the fee. (54 Geo. III. c. 145; Co.-Litt. 391 a; 4 Black. *Comm.* 385.)

The judgment of death in the case of all capital felonies, except murder, is that the offender be hanged by the neck until dead (2 Hale's *P.C.* 411); and, in the case of murder, it is the same, with the addition that the offender's body shall be buried within the precincts of the prison in which he shall have been confined after conviction. (2 & 3 Will. IV. c. 75, s. 16; 4 & 5 Will. IV. c. 26.) The court however is empowered, if it shall think that the offender is a fit subject to be recommended to the royal mercy, to abstain from pronouncing judgment of death upon him, and to order such judgment to be entered of record instead; and the judgment so recorded has the same effect as if pronounced and the party were reprieved. (4 Geo. IV. c. 48, ss. 1 and 2; 6 & 7 Will. IV. c. 30, s. 2.)*

4. *Misdemeanors.*—The punishment in the case of misdemeanors, where none is specially provided by statute, is generally fine and imprisonment.

From what has been stated, it will be seen that the circumstance, so far as punishment is concerned, which distinguishes misdemeanors from all the other classes of offences, is the absence of forfeiture as a necessary consequence of conviction. The distinction between præmunires and felonies (which term, it should be remarked, in its largest sense, includes treasons, on account of the forfeiture which that class of crimes occasions) is, that the forfeiture which ensues upon a conviction of the former is, as before observed, in pursuance of statutable provisions; whereas in the latter case it is a common law consequence of the offence, and follows as a matter of course whenever a crime is declared to be a felony. There appears to be no distinction as regards punishment, independently of special statutable enactment, between non-capital felonies (the term is used here in its ordinary restricted sense) and the non-capital treason above described; but the difference between felonies and treasons when punishable with death is very considerable. In the case of felonies the offender upon attainder *forfeits* to the crown the profits only of such freehold and copyhold lands as he had at the time of committing the offence, during his life, and after his death, his

* See R. *v.* Hogg, 2 M. & Ro. 381, where it was held that since the passing of the 6 & 7 Will. IV. c. 30, death may be recorded in the case of murder as well as other capital felonies, notwithstanding the exception contained in the 4 Geo. IV. c. 48.

copyholds in fee-simple are forfeited to the lord of the manor; and even where attainted of murder, though his freehold estates in fee-simple fail after his death, it is not as a consequence of the law of forfeiture, but because they escheat for want of heirs capable of succeeding to them, owing to his blood being corrupted by the attainder; and it is on account of such estates escheating and not being forfeited that they go to the lord of the fee (that is, subject to the crown's year, day and waste), and not to the crown, unless there appears to be no intermediate lord between the offender and the crown, in which event the crown takes as ultimate lord of the fee. In the case of treason, however, the offender upon attainder, instead of forfeiting to the crown the profits merely of such freehold lands as he had at the time of committing the offence, during his life, forfeits all freehold estates of inheritance, as well those in fee-tail as those in fee-simple, and not only such as he had at the time of the commission of the offence, but those also which he may acquire at any time afterwards; and instead of forfeiting to the crown the profits of his copyholds during his life, and to the lord of the manor his copyholds in fee-simple only, he forfeits at once to the lord of the manor *all* the copyholds belonging to him at the time the offence was committed. Where the offender is a male, his wife's dower is also forfeited to the crown, which is not the case in felony. It is to be observed that the crown is now empowered (see 59 Geo. III. c. 94) to restore the whole or any part of any lands or hereditaments to which it becomes entitled by escheat or forfeiture to the family of the offender, a provision which has greatly mitigated the harshness of the law of forfeiture. The Criminal Law Commissioners however recommend the entire abolition of the confiscation of property as a necessary incident to convictions for treason or felony. (*Seventh Report on Criminal Law.*) The difference between the judgment of death for treason and that for felony requires no comment.

Besides the above peculiarities of punishment, these different classes of offences are distinguished by particular forms of procedure; but it will be more convenient to refer to these when describing our general system of criminal procedure.

Having pointed out the leading characteristics of the various classes into which indictable crimes are divisible by the law of England, it is now proposed to state shortly what are the different offences comprised under each of those classes. In this view the offences belonging to each class are arranged under their several punishments. The classes are taken in the same order as before. It will be proper, however, in the first instance, to show what persons are capable of committing crimes, to notice one or two provisions of general application, for the purpose of preventing repetition, and to make a few explanatory observations.

According to the law of England, all persons above the age of seven years, except such as by reason of unripeness, weakness, unsoundness, disease, or delusion of mind, are incapable of discerning, at the time they do an act, that the act is contrary either to the law of God or the law of the land, are criminally responsible for such act; but temporary incapacity wilfully incurred by intoxication or other means is no excuse. An infant of the age of seven and under fourteen years, however, is to be presumed to be incapable of committing a crime until the contrary be proved. Duress, also, inducing a well-grounded fear of death or grievous bodily harm, will excuse a person acting under such duress in all cases except treason and murder; and a married woman committing any offence, except those last-mentioned, if her husband be present at the time, shall be presumed to have acted under his coercion, and be entitled to an acquittal, unless it appear that she did not so act. A married woman also shall not be liable to conviction for receiving her husband or any other person in his presence and by his authority.

The following provisions are of general application. By the stat. 7 Will. IV. & 1 Vict. c. 90, s. 5, it is enacted that no court shall direct any offender to be kept in solitary confinement for any longer period than one month at a time or than three months in the space of one year. Whenever, therefore, in the following

statement solitary confinement is mentioned as part of the punishment for any offence, the periods during which it may be inflicted are to be understood as regulated by the above provision.

By the statute 7 Will. IV. & 1 Vict. c. 85, s. 11, power is given to the jury on the trial of any person for any felony whatever, where the crime charged shall include an assault against the person, to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding; and thereupon the court may imprison the person so found guilty of an assault for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

By the stat. 1 Geo. IV. c. 57, s. 3, it is provided that where the punishment of whipping on *female* offenders formed, before the passing of that act, the whole or part of the sentence to be pronounced, the court may pass sentence of confinement to hard labour for any time not exceeding six months nor less than one month, or of solitary confinement, in lieu of the sentence of being whipped. In all cases, therefore, where whipping is mentioned to be part of the punishment, without its being restricted to males, the above provision operates.

By the 3 & 4 Vict. c. 111, made perpetual by 5 & 6 Vict. c. 85, members of joint-stock or other banking companies, consisting of more than six persons, committing offences against or with intent to injure or defraud such co-partnerships, are made liable to the same punishments as if they had not been or were not members of such co-partnerships.

In the following statement the general description only is given of any particular offence. It is to be observed, however, that where a crime is defined by statute, the enactment in most cases comprises, in fact, many other offences distinct from the general one, though in nature connected with it. For the details of such enactments, reference must be made to the statutes cited at the end of each offence. With respect to these statutes, those which define the crime, as well as those which declare the punishment, are referred to wherever the statutes are distinct, and these are arranged as regards any particular crime in the order of date; and generally, but not universally, where statutes of both descriptions are referred to, those by which the crime is defined stand the first in order. The following statement contains no offence contained in any merely temporary act, or in any local or private act, of a date subsequent to the period since which such acts have been printed separately from the public general acts.

I. Treasons.—(*Capital.*)

The following treasons are punishable with death,* viz.:—

1. Compassing the death of the king (which term includes a queen regnant) or of his queen, or their eldest son and heir; violating the king's companion, (*i. e.* his wife) during the coverture, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; levying war against the king in his realm, or being adherent to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere, and being thereof attainted of open deed; or slaying the chancellor, treasurer, or the king's justices of the one bench or the other; justices in eyre or justices of assize, or any other justices assigned to hear and determine, being in their places doing their offices.† (25 Edw. III. st. 5, c. 2.)

2. Endeavouring to prevent the person next in succession to the crown, according to the Acts of Settlement, from succeeding thereto. (1 Anne, st. 2, c. 17, s. 3.)

3. Affirming, by writing or printing, that any other person has a right to the crown otherwise than according to the Acts of Settlement and the Acts for the Union of England and Scotland; or that

* To conceal or keep secret any treason committed or intended to be committed is termed misprision of treason, and is punishable with loss of the profits of lands during life, forfeiture of goods, and imprisonment for life. (See 1 & 2 Phil. and Mary, c. 10, s. 8.)

† By the 11 Hen. VII. c. 1, it is enacted that no person who attends upon *the king for the time being*, in his person, and does him true and faithful service of allegiance, or is in other places by his commandment, in his wars, in this land or without, shall for such deed and true allegiance be convicted or attainted of treason.

the crown, with the authority of parliament, is unable to limit the descent of the crown. (6 Anne, c. 7, s. 1.)

4. Compassing or intending the death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the king; or to deprive or depose him from the crown; or to levy war against him, within the realm, in order to compel him to change his measures or counsels, or in order to overawe the parliament; or to move any foreigner to invade any of the British dominions; such compassing or intention being expressed by publishing some printing or writing, or by some overt act or deed. (36 Geo. III. c. 7, s. 1, made perpetual by 57 Geo. III. c. 6.)

5. Being married to, or being concerned in procuring the marriage of any issue of her present majesty whilst such issue are under eighteen (in case the crown shall have descended to any such before that age), without the consent in writing of the regent and the assent of both Houses of Parliament. (3 & 4 Vict. c. 52, s. 4.)

6. Knowing any person to have committed any of the before-mentioned capital treasons, receiving, relieving, comforting, or assisting him, or aiding his escape from custody.

7. Bringing into the realm papal bulls or other writings or instruments from the See of Rome; or publishing or putting in use any such bulls, writings, or instruments.* (13 Eliz. c. 2, ss. 2 and 3.)

Besides the last-mentioned offence, there also existed till quite recently several other capital treasons relating to the See of Rome; but these were repealed by the 7 & 8 Vict. c. 102.

Treason—(*Non-Capital.*)

The following treason (the one already alluded to) is punishable with transportation for life or not less than seven years, or with imprisonment for any term not exceeding four nor less than two years, with or without hard labour or solitary confinement, or with both, viz.:—

1. Forgery of the great seal, her majesty's privy seal, any privy signet of her majesty, the royal sign manual, the seals appointed to be used in Scotland, and the great and privy seals of Ireland. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 2; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3.)

II. Præmunires.

The following are the offences coming under this denomination still in force:—

1. Derogating from the queen's courts (27 Edw. III. stat. 1, c. 1, s. 1).

2. Deans and chapters omitting to elect a bishop; and archbishops or bishops to consecrate the person so elected, after receiving the queen's congé d'élire. (25 Hen. VIII. c. 20, s. 7; repealed by 1 & 2 Philip and Mary, c. 8, and revived by 1 Eliz. c. 7.)

3. Molesting the possessors of abbey lands contrary to the provisions of 1 & 2 Philip and Mary, c. 8. (1 & 2 Phil. and Mary, c. 8, s. 40.)

4. Obtaining any stay of proceedings, other than by arrest of judgment or writ of error, in suits for monopolies. (21 Jac. I. c. 3, s. 4.)

5. Procuring any stay of proceedings, other than by the authority of the court, in actions brought against persons for making provision or purveyance for the crown. (12 Car. II. c. 24, s. 14.)

6. Asserting maliciously and advisedly, by speaking or writing, that both or either House of Parliament has a legislative authority without the crown. (13 Car. II. c. 1, s. 3.)

7. Sending any subject of the realm a prisoner beyond the seas in defiance of the Habeas Corpus Act. (31 Car. II. c. 2, s. 12.)

8. Asserting, maliciously and directly, by preaching, teaching, or advised speaking, that any person, other than according to the Acts of Settlement and Union, has any right to the throne of these kingdoms, or that the queen and parliament cannot make laws to limit the descent of the crown. (6 Anne, c. 7, s. 2.)

9. Knowingly and wilfully solemnizing,

* The repeal of this offence is recommended by the Commissioners for revising and consolidating the Criminal Law. See their Report on Penalties and Disabilities in regard to Religious Opinions, dated the 30th May, 1845.

assisting, or being present at any marriage forbidden by the Royal Marriage Act. (12 Geo. III. c. 11, s. 3.)

10. Aiding, comforting, or maintaining persons who bring into the realm papal bulls or other writings or instruments from the See of Rome to the intent to uphold the jurisdiction or authority of the pope.* (13 Eliz. c. 2, s. 4.)

III. Felonies.—(*Capital.*)

The following felonies are punishable with *death*, viz.:—

1. Destroying ships of war or her majesty's arsenals, dock-yards, naval, military or victualling stores, or other ammunition of war, &c. (12 Geo. III. c. 24, s. 1.)

2. Murder. (9 Geo. IV. c. 31, s. 3.)

3. Unnatural offences. (9 Geo. IV. c. 31, s. 15.)

4. Attempts to murder by administering poison, or by wounding, or by any other means where bodily injury dangerous to life is caused. (7 Wm. IV. & 1 Vict. c. 85, s. 2.)

5. Burglary, aggravated by striking an inmate. (7 Wm. IV. & 1 Vict. c. 86, s. 2.)

6. Robbery, aggravated by wounding the person robbed. (7 Wm. IV. & 1 Vict. c. 87, s. 2.)

7. Piracy, aggravated by endangering the life of any person on board of the vessel in respect of which the piracy is committed. (7 Wm. IV. & 1 Vict. c. 88, s. 4.)

8. Setting fire to a dwelling-house, any person being therein. (7 Wm. IV. & 1 Vict. c. 89, s. 2.)

9. Destroying vessels with intent to murder, or whereby human life is endangered. (7 Wm. IV. & 1 Vict. c. 89, s. 4.)

10. Exhibiting false lights, &c. with intent to bring ships into danger, or unlawfully doing anything tending to the destruction of ships in distress. (7 Wm. IV. & 1 Vict. c. 89, s. 5.)

Besides the above offences, that of wilfully and without lawful excuse having or being possessed of any forged stamp used in pursuance of any act relating to any duties on gold or silver plate made or wrought in Great Britain, for the purpose of marking or stamping such plate, appears to be still punishable with death.

That offence is contained in 55 Geo. III. c. 185, s. 7, by virtue of which enactment it was formerly also a capital crime to forge or utter the stamps provided for marking any such plate, or to fraudulently remove such stamps from one piece of such plate to another, or privately and secretly to use such stamps with intent to defraud the king. The punishment of death for these last-mentioned offences was repealed, however, by 11 Geo. IV. & 1 Wm. IV. c. 66. s. 1 (as to the forging and uttering), and by 4 & 5 Vict. c. 56, s. 1 (as to the removing and fraudulently using); but by some inadvertence (for it is clear that it can never have been intended) the offence of being possessed, without lawful excuse, of forged stamps for marking gold or silver plate (the least criminal of all the acts specified in 55 Geo. III. c. 185, s. 7) is still left capital.

(*Non-Capital.*)

Non-capital felonies are punishable as follows, viz., with

I. *Transportation for life*, and previously thereto imprisonment, with or without hard labour, for any term not exceeding four years.

1. Offenders transported from Great Britain being found at large, without some lawful excuse, before the expiration of their term of transportation. (5 Geo. IV. c. 84, s. 22; 4 & 5 Wm. IV. c. 67.)

II. *Transportation for life.*

1. Rape. (9 Geo. IV. c. 31, s. 16; 4 & 5 Vict. c. 56, s. 3.)

2. Carnally knowing and abusing girls under ten years of age. (9 Geo. IV. c. 31, s. 17; 4 & 5 Vict. c. 56, s. 3.)

3. Forgery of the name or handwriting of the Receiver-General of Customs, or of the Comptroller-General of Customs, &c., to any draft &c. on the Bank. (8 & 9 Vict. c. 85, s. 26.)

III. *Transportation for life* or not less than fifteen years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Piracy. (28 Hen. VIII. c. 15; 11 &

* The repeal of this offence is recommended by the Commissioners for Revising and Consolidating the Criminal Law.

12 Wm. III. c. 7, ss. 8, 9, and 10; 4 Geo. I. c. 11, s. 7; 6 Geo. I. c. 19; 8 Geo. I. c. 24, ss. 1 and 3; 2 Geo. II. c. 28, s. 7; 18 Geo. II. c. 30; 7 Wm. IV. & 1 Vict. c. 88, ss. 3 and 5.)

2. Offences against the Riot Act.* (1 Geo. I. stat. 2, c. 5, ss. 1 and 5; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

3. Rescuing a murderer out of prison, or whilst going to or during execution. (25 Geo. II. c. 37, s. 9; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

4. Seducing soldiers or sailors from their allegiance, or inciting them to mutiny. (37 Geo. III. c. 70, s. 1; 57 Geo. III. c. 7; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

5. Administering oaths binding any person to commit treason or any capital felony. (52 Geo. III. c. 104, s. 1; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

6. Any subject of her majesty, or any person residing in any of the queen's dominions or in any place under the government of the East India Company, or upon the high seas, or within the Admiralty jurisdiction, carrying away, &c. persons to make slaves of them. (5 Geo. IV. c. 113, s. 9; 3 & 4 Wm. IV. c. 73; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.†)

7. Assembling armed, to the number of three or more, for the purposes of smuggling. (7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2; 8 & 9 Vict. c. 87, s. 63.)

8. Shooting at vessels belonging to the navy or in the revenue service, within 100 leagues of the coast; or shooting at revenue officers and others duly employed for the prevention of smuggling. (7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2; 8 & 9 Vict. c. 87, s. 64.)

9. Attempts to murder, by attempting to administer poison, or by shooting at or attempting to drown, suffocate, or strangle any person, although no bodily injury be effected. (7 Wm. IV. & 1 Vict. c. 85, ss. 3 and 8.)

10. Shooting at or attempting to discharge any kind of loaded arms at or wounding any person, with intent to do grievous bodily harm to such person, or to prevent lawful apprehension or detainer. (7 Wm. IV. & 1 Vict. c. 85, ss. 4 and 8.)

11. Sending explosive substances, &c. to any person, or throwing any corrosive fluid or other destructive matter upon any person, with intent to do grievous bodily harm, and whereby grievous bodily harm is done to any person. (7 Wm. IV. & 1 Vict. c. 85, ss. 5 and 8.)

12. Attempting to procure the miscarriage of women. (7 Wm. IV. & 1 Vict. c. 85, ss. 6 and 8.)

13. Robbery, aggravated by the offender being armed, by numbers, or by the use of personal violence to the person robbed. (7 Wm. IV. & 1 Vict. c. 87, ss. 3 & 10.)

14. Extorting property by threatening to accuse of unnatural crimes. (7 Wm. IV. & 1 Vict. c. 87, ss. 4 and 10.)

15. Setting fire to places of worship or houses, or to buildings or erections used for the purposes of trade, with intent to injure or defraud any person. (7 Wm. IV. & 1 Vict. c. 89, ss. 3 and 12.)

16. Setting fire to or otherwise destroying vessels, with intent to prejudice any person interested therein or in the goods on board the same, as an owner, part owner, or underwriter. (7 Wm. IV. & 1 Vict. c. 89, ss. 6 and 12.)

17. Forcibly preventing a person endeavouring to save his life from a vessel in distress or wrecked. (7 Wm. IV. & 1 Vict. c. 89, ss. 7 and 12.)

18. Setting fire to coal-mines. (7 Wm. IV. & 1 Vict. c. 89. ss. 9 and 12.)

19. Setting fire to stacks of corn, grain, coal or wood, &c., or to any steer of wood. (7 Wm. IV. & 1 Vict. c. 89, ss. 10 and 12.)

IV. *Transportation for life* or not less than fifteen years, or imprisonment for any term not exceeding three years.

1. Setting fire to farm buildings or to buildings or erections used in farming land; or, for the purpose of setting fire to such farm-buildings, setting fire to farm produce or implements being therein, with intent in any such case to injure or defraud any person.* (7 & 8 Vict. c. 62, ss. 1 and 2.)

* See also 17 Rich. II. c. 8; 13 Hen. IV. c. 7; 2 Hen. V. stat. 1, c. 8. Also 33 Geo. III. c. 67, s. 1; 41 Geo. III. (U. K.) c. 19, s. 4, as to riots by keelsmen.

† See also 3 & 4 Vict. c. 111.

* Offenders, if males under eighteen years of age, may also be whipped in addition to any other punishment. (See s. 3.)

V. *Transportation for life* or not less than ten years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Burglary. (7 Wm. IV. & 1 Vict. c. 86, ss. 3 and 7.)

VI. *Transportation for life* or not less than seven years.

1. Personating soldiers or other persons entitled to prize-money, &c. on account of military services, or their representatives; or,

2. Forging the name or handwriting of any person so entitled, or of any officer or servant of Chelsea Hospital, &c., or any writing concerning the payment of any such prize-money, &c. (2 Wm. IV. c. 53, s. 49.)

VII. *Transportation for life* or for any term of years.

1. Taking oath (not being compelled thereto) binding the person taking the same to commit treason or any capital felony. (52 Geo. III. c. 104, s. 1.)

2. Personating soldiers or other persons entitled to pensions, &c. on account of military services, or their representatives; or,

3. Forging the name or handwriting of any person so entitled, or of any officer or servant of Chelsea Hospital, &c. or any writing concerning the payment of any such pensions, &c. (7 Geo. IV. c. 16, s. 38.)

VIII. *Transportation for life* or for fourteen or seven years.

1. Aiding the escape of prisoners of war from prison or from the queen's dominions, if at large upon parole. (52 Geo. III. c. 156, s. 1.)

2. Subjects of her majesty aiding, upon the high seas, the escape of prisoners of war after they have quitted the coast. (52 Geo. III. c. 156, s. 3.)

IX. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding seven years, with or without hard labour.

1. Stealing or embezzling her majesty's ammunition, naval or military stores. (4 Geo. IV. c. 53; 7 & 8 Geo. IV. c. 27.)

2. Sending letters threatening to kill any person, or to burn his house, stacks, &c.; or rescuing a person in custody for any such offence. (4 Geo. IV. c. 54, s. 3; 7 & 8 Geo. IV. c. 27.)

3. Bankrupt not surrendering, or not discovering all his estate, or embezzling or concealing any part thereof to the amount of 10*l.* or upwards, &c. (5 & 6 Vict. c. 122, ss. 32 and 93.)

X. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four nor less than two years, with or without hard labour or solitary confinement, or with both.

1. Forgery of the seal or bonds of the South Sea Company (6 Geo. I. c. 4, s. 56; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of receipts or warrants of the South Sea Company (6 Geo. I. c. 11, s. 50; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of seals, policies, &c. of the London and Royal Exchange Assurance Companies (6 Geo. I. c. 18, s. 13; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certain Annuity Orders made forth in pursuance of 6 Geo. I. cc. 11 and 17, 7 Geo. I. st. 1, c. 30, 8 Geo. I. c. 20, or 9 Geo. I. c. 12, or of any authority to transfer the same (9 Geo. I. c. 12, s. 4; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the Accountant-General, Registrar, or Clerk of the Report Office (of the Court of Chancery), or of any cashier of the Bank, to any instrument relating to the suitors' money or effects (12 Geo. I. c. 32, s. 9; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1, 26, and 31); of Mediterranean Passes (4 Geo. II. c. 18, s. 1; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the common seal, bonds, &c. of the English Linen Company (4 Geo. III. c. 37, s. 15; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates, &c. of the Commissioners for the Reduction of the National Debt (32 Geo. III. c. 55, s. 9; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of the seal, policies, &c. of the Globe Insurance Company (39 Geo. III. c. 83, s. 22; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the Treasurer of the Ord-

nance, &c., to any draft, &c. on the Bank (46 Geo. III. c. 45, s. 9; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of the name or handwriting of the Receiver-General of Stamps and Taxes, or of his clerk, or of the Commissioners of Stamps and Taxes, to any draft, &c. on the Bank (46 Geo. III. c. 76, s. 9; 11 Geo. IV. & 1 Wm. IV. c, 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 4 & 5 Wm. IV. c. 60; 5 & 6 Wm. IV. c. 20; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of contracts, certificates, &c. relating to the redemption of the land-tax (52 Geo. III. c. 143, s. 6; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of stamps on vellum, parchment, or paper * (52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of debentures or certificates for the payment or return of money required by any act relating to the Customs or Excise (52 Geo. III. c. 143, s. 10;† 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of stamps on gold or silver plate (55 Geo. III. c. 185, s. 7; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates of Commissioners for the issue of Exchequer-bills for carrying on public works and fisheries in the United Kingdom (57 Geo. III. c. 34, s. 63; 3 Geo. IV. c. 86, s. 54;‡ 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the Accountant-General, Barons, or Clerk of the Reports (of the Court of Exchequer), or of any cashier of the Bank, to any instrument relating to the suitors' money or effects (1 Geo. IV. c. 35, s. 27; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates or appointments relating to public salaries, pensions, and allowances (3 Geo. IV. c. 113, s. 23; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of orders for payments in connection with public salaries, pensions, and allowances (3 Geo. IV. c. 113, s. 23; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of certificates of certain stock, transferable at the Banks of England and Ireland respectively (5 Geo. IV. c. 53, s. 22; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the receiver-general of Excise, or Excise comptroller of cash, &c. to any draft, &c. upon the Bank (7 & 8 Geo. IV. c. 53, s. 56; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of stamps upon or relating to cards or dice (9 Geo. IV. c. 18, s. 35; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates, &c. as to annuities grantable by the commissioners for the reduction of the national debt, or of instruments made by them relating thereto (10 Geo. IV. c. 24, s. 41; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26; 2 & 3 Wm. IV. c. 59, s. 19; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of certificates and other documents in order to obtain pay or prize-money, due in respect of services performed by any person in the navy (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 83 and 88; 2 Wm. IV. c. 40, s. 35); of Exchequer-bills,* Exchequer debentures, East-

* As to the forgery of stamps on newspapers, the 6 & 7 Wm. IV. c. 76, s. 1, appears to make that offence punishable under 55 Geo. III. c. 184, s. 7, *i. e.* in the same manner as the forgery of stamps on vellum, parchment, or paper. See Lonsdale's 'Statute Criminal Law,' p. 81, note (c.); the language of the Act, however, is very obscure.

† The 52 Geo. III. c. 143, s. 10, appears to be repealed, so far as relates to the Customs, by 6 Geo. IV. c. 105, s. 297; at all events is so by 3 & 4 Wm. IV. c. 50, s. 3. Also, as to certificates relating to the duties of Excise, see 41 Geo. III. [U. K.] c. 91, s. 5.

‡ See also 57 Geo. III. c. 124; 1 Geo. IV. cc. 60 and 81; 1 & 2 Geo. IV. c. 111; 4 Geo. IV. c. 63; 5 Geo. IV. cc. 36 and 77; 6 Geo. IV. c. 35; 7 Geo. IV. c. 30; 7 & 8 Geo. IV. cc. 12 and 47; 1 & 2 Wm. IV. c. 24; 4 & 5 Wm IV. c. 72; 7 Wm IV. & 1 Vict. c. 51; 1 & 2 Vict c. 88; 3 & 4 Vict. c. 10; and 5 & 6 Vict. c. 9, s. 14.

* It is doubtful whether the forgery of Exchequer-bills, made out in pursuance of the annual Appropriation Acts, be not still punishable with death, notwithstanding the repeal of that punishment in case of the forgery of other Exchequer-bills. In those acts a clause continues to be inserted, notwithstanding the repeal by 11 Geo. IV. & 1 Wm. IV. c. 66, so far as relates to any forgery, of the 48 Geo. III. c. 1 (which made the forgery of Exchequer-bills directed to be issued under that Act, a capital offence), that all and every the clauses, provisions, powers, privileges, advantages, penalties, forfeitures, and disabilities,

India bonds, bank-notes, bills of exchange, promissory notes and warrants or orders for the payment of money (11 Geo. IV. & 1 Wm. IV. c. 66, s. 3; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of transfers of any public stock transferable at the Bank or South Sea House, or of the capital stock of any body corporate, &c. established by charter or act of parliament (11 Geo. IV. & 1 Wm. IV. c. 66, s. 6 in part; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of deeds, bonds, court-rolls, receipts for money or goods, or accountable receipts, or orders for the delivery of goods (11 Geo. IV. & 1 Wm. IV. c. 66, s. 10); of entries in registers of marriages heretofore kept, or in registers of baptisms or burials heretofore or hereafter to be kept by the officiating minister of the parish, &c., or of marriage licences (11 Geo. IV. & 1 Wm. IV. c. 66, s. 20 in part; 6 & 7 Wm. IV. c. 86, ss. 43 and 49); of wills and other testamentary writings, and of powers of attorney to transfer any public stock transferable at the Banks of England or Ireland or the South-Sea House, or to receive any dividend in respect of any such stock (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 3 and 6; 2 & 3 Wm. IV. c. 123, s. 2; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of certificates, &c. of the commissioners for granting relief to Trinidad, British Guiana, St. Lucie, and the island of Dominica (2 & 3 Wm. IV. c. 125, s. 65; 5 & 6 Wm. IV. c. 51; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of receipts or certificates of the Slave-Compensation Commissioners (5 & 6 Wm. IV. c. 45, s. 12; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of receipts for subscriptions towards the sum of four millions for funding Exchequer-bills (2 & 3 Vict. c. 97, s. 32).

contained in the 48 Geo. III. c. 1, shall be applied and extended to the Exchequer-bills to be made out in pursuance of such Appropriation Acts, as fully and effectually, to all intents and purposes, as if the said several clauses or provisoes had been particularly repeated and re-enacted in the body of those acts. (See Lonsdale's 'Statute Criminal Law,' p. 99, in note.)

2. Offending a third time* in uttering counterfeit gold or silver foreign coin not permitted to be current within this realm. (37 Geo. III. c. 126, s. 4; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26.)

3. Personating seamen, marines, or other persons entitled to any allowance from the Compassionate Fund of the navy, in order to receive their pay or prize-money, or allowance from the Compassionate Fund. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 84 and 88.)

4. Taking false oath in order to obtain probate of the will or administration of the effects of deceased seamen or marines, or demanding their pay or prize-money by virtue of such will or administration, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 85 and 88.)

5. Making false entries in the books of the Bank, or of the South Sea Company, or making transfers of stock transferable at either of those places, in the names of persons not being the true owners thereof. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 5; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3.)

6. Personating the owner of any such last-mentioned stock, or of the capital stock of any corporate body, &c. established by charter or act of parliament, or of any dividend payable in respect of such stock, and thereby transferring or endeavouring to transfer such stock, or receiving or endeavouring to receive such dividend. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 6 in part, and 7; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3.)

7. Acknowledging any recognizance or bail, cognovit actionem, judgment or deed to be enrolled, in the name of any person not privy thereto. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 11.)

8. Destroying or injuring registers of

* The punishment for offending a second time is imprisonment for two years, and the offender to find sureties for good behaviour for two years more, to be computed from the end of the first two years; and for offending a first time is imprisonment for six months, and the offender to find sureties for good behaviour for six months more, to be computed from the end of the first six months: 37 Geo. III. c. 126, s. 4.)

marriages heretofore kept, or registers of baptisms or burials heretofore or hereafter to be kept by the officiating minister of the parish, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 20 in part; 6 & 7 Wm. IV. c. 86, ss. 43 and 49.)

9. Officers of the Bank or South Sea Company secreting, embezzling, or running away with securities or effects. (15 Geo. II. c. 13, s. 12; 24 Geo. II. c. 11, s. 3; 35 Geo. III. c. 66, s. 6; 37 Geo. III. c. 46, s. 6; 4 & 5 Vict. c. 56, s. 1.)

10. Privately or secretly using stamps provided in pursuance of any Stamp Act, with intent to defraud her Majesty of any duties granted by such act. (52 Geo. III. c. 184, s. 7; 55 Geo. III. c. 185, s. 7; 9 Geo. IV. c. 18, s. 35; 4 & 5 Vict. c. 56, ss. 1 and 4.)

11. Fraudulently tearing off or removing stamps from vellum, parchment, paper, gold or silver plate, &c., with intent to use them again. (55 Geo. III. c. 184, s. 7; c. 185, s. 7; 4 & 5 Vict. c. 56, ss. 1 and 4.)

12. Offenders transported from St. Helena coming into England before the expiration of their term of transportation. (6 Geo. IV. c. 85, s. 18; 4 & 5 Vict. c. 56, ss. 1 and 4.)

13. Riotously destroying places of worship or houses, or buildings connected with trade or the business of mines. (7 & 8 Geo. IV. c. 30, s. 8; 4 & 5 Vict. c. 56, ss. 1 and 4; 6 & 7 Vict. c. 10.)

XI. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four nor less than two years.

1. Being possessed, without lawful excuse, of forged dies &c., or of any vellum, parchment or paper having thereon the impression of any forged die &c., or fraudently using any stamp which shall have been removed from any other vellum &c.; or getting out of or from any vellum &c. any matter or thing thereon expressed, with intent to use the stamp then being thereon, for any instrument or thing liable to stamp duty, &c. (3 & 4 Wm. IV. c. 97, ss. 11 and 12; 4 & 5 Wm. IV. c. 60.)

2. Forgery of postage stamps; or privately or fraudulently using such stamps, or, without lawful excuse, being possessed of any paper or other material so privately or fraudulently stamped. (3 & 4 Vict. c. 96, s. 22.)

XII. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Sending threatening letters with intent to extort money, &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 8.)

2. Corruptly taking any reward for helping to property which has been stolen, &c. (unless the person so taking such reward, cause the offender to be apprehended and tried for the same. (7 & 8 Geo. IV. c. 29, ss. 4 and 58.)

3. Destroying or damaging goods of silk, woollen, linen or cotton, &c. whilst in progress of manufacture, or any machine or implement used therein, or forcibly entering any place to commit any of those offences. (7 & 8 Geo. IV. c. 30, ss. 3 and 27.)

4. Breaking down sea-banks &c., whereby any land shall be in danger of being overflowed or damaged; or destroying works on navigable rivers or canals. (7 & 8 Geo. IV. c. 30, ss. 12 and 27.)

5. Destroying &c. public bridges. (7 & 8 Geo. IV. c. 30, ss. 13 and 27.)

XIII. *Transportation for life* or not less than seven years, or imprisonment not exceeding four years, with or without hard labour or solitary confinement, or with both.

1. Counterfeiting the queen's current gold or silver coin. (2 Wm. IV. c. 34, ss. 3 and 19.)

2. Gilding, or silvering or colouring counterfeit coin or any pieces of metal, with intent to make them pass for the queen's current gold or silver coin; or colouring or altering genuine coin, with intent to make it pass for a higher coin. (2 Wm. IV. c. 34, ss. 4 and 19.)

3. Buying &c. or putting off &c. at a lower value than the same by its denomination imports, or importing into the kingdom, counterfeit coin intended to pass for the queen's current gold or silver

coin, knowing the same to be counterfeit. (2 Wm. IV. c. 34, ss. 6 and 19.)

4. Having been convicted of uttering counterfeit coin intended to pass for the queen's current gold or silver coin,* or having been convicted of uttering such coin and being possessed at the time of such uttering of more such coin, or having, on the same day or within ten days afterwards, uttered more such coin,† afterwards committing any of such offences. (2 Wm. IV. c. 34, ss. 7 and 19.)

5. Having been convicted of having in possession three or more pieces of counterfeit coin intended to pass for the queen's current gold or silver coin, with intent to utter the same,‡ afterwards committing the like offence. (2 Wm. IV. c. 34, ss. 8 in part and 19.)

6. Without lawful authority, making, buying or selling, or having in possession, &c. any instrument adapted for counterfeiting the queen's current gold or silver coin. (2 Wm. IV. c. 34, ss. 10 and 19.)

7. Without lawful authority, conveying out of the Mint instruments of coining, or any coin, bullion, &c. (2 Wm. IV. c. 34, ss. 11 and 19.)

8. Persons employed under the Post Office stealing, embezzling, secreting, or destroying post letters containing money, &c. (7 Wm. IV. & 1 Vict. c. 36, ss. 26, 41, 42.)

9. Stealing money, &c. out of post letters. (7 Wm. IV. & 1 Vict. c. 36, ss. 27, 41, 42.)

10. Stealing post letter-bags, or post letters from post letter-bags or from post-offices, or from the officers of the post-office, or from mails; or stopping mails with intent to rob or search them. (7 Wm. IV. & 1 Vict. c. 36, ss. 28, 41, 42.)

11. Receiving letters or other property the stealing, &c. whereof is felony under the Post-office Acts, knowing the same to have been stolen, &c. (7 Wm. IV. & 1 Vict. c. 36, ss. 30, 41, 42.)

12. Forgery of the name or handwriting of the Receiver-General of the General Post-office, &c. to any draft &c. on the Bank. (7 Wm. IV. & 1 Vict. c. 36, ss. 33, 41, 42.)

XIV. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years, with or without hard labour.

1. Taking away or detaining, from motives of lucre, an heiress &c. against her will, with intent to marry or defile her, &c. (9 Geo. IV. c. 31, s. 19.)

XV. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years, with or without hard labour; or such fine as the court shall award.

1. Manslaughter. (9 Geo. IV. c. 31, s. 9.)

XVI. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years.

1. Persons employed in the Public Record Office certifying as true false copies of records in the custody of the Master of the Rolls. (1 & 2 Vict. c. 94, s. 19 in part.)

2. Forgery of the signature of any Assistant Record Keeper, for the purpose of counterfeiting a certified copy of a record, or of the Seal of the Public Record Office. (1 & 2 Vict. c. 94, s. 19 in part.)

XVII. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Breaking, entering and stealing in churches or chapels, or, having stolen therein, breaking out of the same. (7 & 8 Geo. IV. c. 29, s. 10; 5 & 6 Wm. IV. c. 81; 6 & 7 Wm. IV. c. 4.)

XVIII. *Transportation* for any term not exceeding *fifteen* nor less than ten years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Stealing in a dwelling-house* to the

* The punishment for uttering, in respect of a first offence, is imprisonment for any term nor exceeding one year, with or without hard labour or solitary confinement, or with both.

† The punishment for uttering, accompanied by the aggravation above specified, is, for a first offence, imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, or with both.

‡ See the punishment for a first offence, p. 213.

* For the purposes of this and the next offence

value of 5*l.* or more. (7 & 8 Geo. IV. c. 29, s. 12; 2 & 3 Wm. IV. c. 62; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 90, ss. 1 and 3.)

2. Breaking, entering and stealing in a dwelling-house to any value. (7 & 8 Geo. IV. c. 29, s. 12; 3 & 4 Wm. IV. c. 44, s. 2; 7 Wm. IV. & 1 Vict. c. 90, ss. 1 and 3.)

3. Cattle-stealing or killing cattle, with intent to steal the carcass or skin or any part of the cattle so killed. (7 & 8 Geo. IV. c. 29, s. 25; 2 & 3 Wm. IV. c. 62; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 90, ss. 1 and 3.)

4. Breaking, entering and stealing in buildings within the curtilage of a dwelling-house, but having no communication with the dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other. (7 & 8 Geo. IV. c. 29, ss. 13 and 14; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

5. Breaking, entering and stealing in shops, warehouses or counting-houses. (7 & 8 Geo. IV. c. 29, s. 15; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

6. Stealing to the value of 10*s.* goods of silk, woollen, linen or cotton, &c., whilst exposed in any place during any stage of manufacture. (7 & 8 Geo. IV. c. 29, s. 16; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

7. Stealing goods from vessels &c. in ports or upon navigable rivers or canals &c., or from docks or quays &c. adjacent thereto. (7 & 8 Geo. IV. c. 29, s. 17; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

8. Maliciously killing, maiming or wounding cattle. (7 & 8 Geo. IV. c. 30, s. 16; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

9. Maliciously destroying hop-binds growing on poles in hop plantations. (7 & 8 Geo. IV. c. 30, s. 18; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

10. Stealing in a dwelling-house,* and by threats or menaces putting any inmate in bodily fear. (7 Wm. IV. & 1 Vict. c. 86, ss. 5 and 7.)

11. Robbery or stealing from the person. (7 Wm. IV. & 1 Vict. c. 87, ss. 5 and 10.)

12. Plundering vessels in distress, or wrecked, stranded or cast on shore, or anything belonging to any such vessel. (7 Wm. IV. & 1 Vict. c. 87, ss. 8 and 10.)

13. Maliciously destroying any part of a vessel in distress, or wrecked, stranded or cast on shore, or anything belonging to such vessel. (7 Wm. IV. & 1 Vict. c. 89, ss. 8 and 12.)

XIX. *Transportation* for *fourteen* years.

1. Solemnizing matrimony at any other time than that prescribed by law, or without banns, unless by licence or under the provisions of the 6 & 7 Wm. IV. c. 85 (which allows marriages to take place before the Registrar of the district);† or pretending to be in holy orders, and solemnizing matrimony according to the rites of the Church of England. (4 Geo. IV. c. 76, s. 21.)

2. Being possessed &c., without lawful excuse, of forged bank-notes, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 12 and 28.)

3. Without the authority of the Bank, making or being possessed of instruments for making, &c. paper used by the Bank for bank-notes, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 13.)

4. Without the authority of the Bank, engraving, making or being possessed of instruments for making, &c. bank-notes, &c., or any character or ornament resembling any part of a bank-note, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 15 and 16.)

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no building, although within the curtilage of a dwelling-house, shall be deemed to be part of such dwelling-house, which would not be deemed to be so for the purpose of burglary; that is, no building between which and the dwelling-house there is not a communication, either immediate or by means of a covered and inclosed passage leading from the one to the other. See the 7 & 8 Geo. IV. c.29, s. 13.

* See the 7 & 8 Geo. IV. c. 29, s. 13, referred to in note * p. 195; it is doubtful, however, if the definition of the term "dwelling-house" there contained, apply to the above offence; though in all probability it would be held to do so, the above offence being contained in the one (see 7 & 8 Geo. IV. c. 29, s. 12) to which that definition was intended to apply.

† See below, the punishment for solemnizing marriages contrary to the provisions of 6 & 7 Wm. IV. c. 85.

XX. *Transportation* for any term not exceeding *fourteen* years.

1. Aiding prisoners to escape, or in attempting to escape from prison, whether an actual escape be made or not. (4 Geo. IV. c. 64, s. 43.)

2. Rescuing offenders sentenced to be transported or banished. (5 Geo. IV. c. 84, s. 22.)

3. Forging certificates given under the Income Tax Act. (5 & 6 Vict. c. 35, s. 181, continued by 8 & 9 Vict. c. 4.)

XXI. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years nor less than one year, with or without hard labour or solitary confinement, or with both.

1. Forgery of memorials or certificates of registry, &c. of lands in Yorkshire or Middlesex (2 & 3 Anne, c. 4, s. 19; 5 Anne, c. 18, s. 8; 6 Anne, c. 35, s. 26; 7 Anne, c. 20, s. 15; 8 Geo. II. c. 6, s. 31; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 23 and 26); or of extracts from registers of marriage, baptism or burial, in order to sustain any claim to any allowance from the Compassionate Fund of the Navy, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 87 in part and 88.)

2. Subscribing false petitions to the secretary of the Admiralty, or personating the representatives of deceased seamen or marines, in order to procure a certificate from the Inspector of Royal Marines, &c., thereby to obtain, without probate or letters of administration, any allowance from the Compassionate Fund of the Navy, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 86 and 88; 2 Wm. IV. c. 40.)

3. Making false affidavits, &c. in order to procure any person to be admitted a pensioner as the widow of an officer of the royal navy, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 87 in part and 88.)

4. Without authority, making or being possessed of instruments for making, &c. paper used by any other bank than the Bank of England. (11 Geo. IV. & 1 Wm. IV c. 66, ss. 17 and 26.)

5. Without authority, engraving, making or being possessed of instruments for making, &c. the notes, &c. of any other bank than the Bank of England. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 18 and 26.)

6. Without authority, making or being possessed of instruments for making, &c. foreign bills, notes, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 19 and 26.)

XXII. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years nor less than one year.

1. Subscribing or publishing, &c. false petitions to the Inspector of seamen's wills, in order to obtain a cheque or certificate in lieu of probate or letters of administration, in cases where deceased's assets do not exceed 32*l.* and 20*l.* respectively. (2 Wm. IV. c. 40, s. 33.)

XXIII. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Stealing by clerks or servants. (7 & 8 Geo. IV. c. 29, ss. 4 and 46.)

2. Embezzlement by clerks or servants. (7 & 8 Geo. IV. c. 29, ss. 4 and 47.)

3. Receiving property, the stealing or taking whereof is felony, knowing the same to have been stolen, &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 54.)

4. Boatmen and others concealing &c., and not reporting according to law, or obliterating the marks &c. on, anchors or other articles found by them on the coast, &c. (provided the stealing of such articles on shore would amount to felony). (1 & 2 Geo. IV. c. 75, s. 1; and c. 76.)

XXIV. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Impairing or lightening the queen's current gold or silver coin, with intent to make the same, when so impaired &c., pass for the queen's current gold or silver coin. (2 Wm. IV. c. 34, ss. 5 and 19.)

2. Stealing post letter-bags from Post-office packets, or unlawfully taking letters out of or opening such bags. (7 Wm. IV. & 1 Vict. c. 36, ss. 29, 41 and 42.)

XXV. *Transportation* for any term not

exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years, with or without hard labour.

1. Embezzlement by public officers. (2 Wm. IV. c. 4, c. 1.)

2. Forgery &c. of assay marks on gold or silver wares; or fradulently using genuine dies provided for marking such wares. (7 & 8 Vict. c. 22, s. 2.)

XXVI. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding two years, with or without hard labour or solitary confinement, or with both.

1. Officer of the court certifying as true, &c. any false copy of a previous conviction &c. of any offence relating to the coin, where a person shall be subsequently indicted for any such offence. (2 Wm. IV. c. 34, ss. 9 and 19.)

XXVII. *Transportation* for any term not exceeding *fourteen* years, or confinement not exceeding five nor less than three years, with hard labour.

1. Trading in slaves either directly or indirectly, or entering into contracts in connexion therewith; or forging certificates of valuation, sentences or decrees of condemnation or restitution, &c. (5 Geo. IV. c. 113, s. 10; 3 & 4 Wm. IV. c. 73.*)

XXVIII. *Transportation* for the term of *fourteen* years, or, in mitigation or commutation of such punishment, the offender to be publicly whipped, fined or imprisoned, or all or any one or more of them.

1. Obliterating &c. the marks denoting her Majesty's property, in any warlike or naval, ordnance or victualling, or other public stores, for the purpose of concealing her Majesty's property in such stores. (9 & 10 Wm. III. c. 41; 39 & 40 Geo. III. c. 89, ss. 4 and 7; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138.)

XXIX. *Transportation* for *seven* years.

1. Obstructing the execution of process, &c. within the hamlet of Wapping, Stepney, or any other place within the limits of the weekly bills of mortality, wherein persons shall unlawfully assemble and associate for the sheltering themselves from their debtors, of which complaint shall have been made by a presentment of the grand jury at a general or quarter sessions of the proper county. (11 Geo. I. c. 22, ss. 1 and 2.)

2. Aiding the escape from officers of justice of prisoners in their custody for the purpose of being carried to gaol by virtue of a warrant of commitment for treason or felony, or the escape of felons on their way for transportation. (16 Geo. II. c. 31, s. 3.*)

3. Riotously assembling, to the number of five or more, to rescue offenders against the Acts relating to spirituous liquors; or assaulting persons who have given &c. evidence &c. against such offenders, &c. (24 Geo. II. c. 40, s. 28.)

4. Prisoners for debt not delivering in under the Lords' Act a true account of all their estate and effects, &c.† (32 Geo. II. c. 28, s. 17; 33 Geo. III. c. 5; 39 Geo. III. c. 50.)

5. Damaging, &c. buoys &c. fixed to the anchors or moorings of vessels in the Thames, with intent to steal the same. (2 Geo. III. c. 28, s. 13.)

6. Being convicted a second time‡ of unlawfully stopping or attempting to stop or of otherwise preventing the conveyance of grain to or from any city, market-town or place in the kingdom. (11 Geo. II. c. 22; 36 Geo. III. c. 9, ss. 2 and 6.)

7. With intent to prevent the removal of grain, pulling down or otherwise destroying granaries, &c. (36 Geo. III. c. 9, s. 2.)

* See also 3 & 4 Vict. c. 111.

* See also 1 & 2 Geo. IV. c. 88, s. 1, which, under certain circumstances, inflicts transportation for seven years, or imprisonment not exceeding three years nor less than one year, upon persons rescuing or aiding in rescuing prisoners apprehended for felony, whilst in the personal custody of a constable or other person. The statute regards the offender in such case as an accessory after the fact, and therefore guilty of felony.

† This offence appears to be incidentally repealed by 1 & 2 Vict. c. 110, s. 119, which enacts that after the passing of that act, no prisoner for debt shall petition any court for his discharge under the provisions of 32 Geo. II. c. 28, nor shall any creditor of any prisoner petition any court for the exercise of the compulsory power given against debtors under the provisions of that act.

‡ The first offence is punishable, on summary conviction, with imprisonment and hard labour for any term not exceeding three months nor less than one month.

8. Forgery of declarations of the return of premiums on policies or contracts of insurance. (54 Geo. III. c. 133, s. 10; 54 Geo. III. c. 144, s. 11.)

9. Forcibly rescuing offenders or goods seized under 6 Geo. IV. c. 80 (for repealing the duties on spirits distilled in England, &c.), or otherwise forcibly opposing the execution of the powers of that Act. (6 Geo. IV. c. 80, s. 143.)

10. Being found in company with more than four persons with smuggled goods, or in company with only one person, within five miles of the coast, &c. with such goods, and armed or disguised. (8 & 9 Vict. c. 87, s. 65.)

11. Forgery of the superscription of a post letter, with intent to avoid the payment of postage.* (7 Wm. IV. & 1 Vict. c. 36, s. 34.)

XXX. *Transportation* for any term not exceeding *seven* years.

1. Forgery of the seal, &c. of the British Society for extending the Fisheries and improving the Sea-Coasts of the Kingdom. (26 Geo. III. c. 103, s. 26.)

2. Administering oaths intended to bind the person taking the same to engage in any seditious purpose, &c., or to be of any association or confederacy formed for any such purpose, &c. (37 Geo. III. c. 123, s. 1.)

3. Counterfeiting foreign gold or silver coin, not permitted to be current within the realm. (37 Geo. III. c. 126, s. 2.)

4. Bringing any such coin into the realm with intent to utter the same. (37 Geo. III. c. 126, s. 3.)

5. Boatmen &c. conveying anchors &c. which they know to have been swept for or otherwise taken possession of without being reported according to law, to any foreign port &c., and there disposing of the same. (1 & 2 Geo. IV. c. 75, s. 15.)

XXXI. *Transportation* for *seven* years, or imprisonment for any period not less than two years.

1. Without lawful excuse, making or being possessed of any instrument for making the paper used for permits by the Commissioners of Excise, or being possessed of any such paper, or engraving &c. any plate &c. for making or printing the paper used for permits, &c. (2 Wm. IV. c. 16, s. 3.)

2. Without lawful excuse, making or being possessed of instruments for making the paper to be used for postage covers, or being possessed of any such paper, or by any means imitating or causing to appear in any paper the marks or threads, &c. to be used in postage covers. (3 & 4 Vict. c. 96, s. 29.)

XXXII. *Transportation* for *seven* years, or imprisonment not exceeding four years.

1. Forgery of certificates or bills of exchange mentioned in 2 & 3 Wm. IV. c. 106 (An Act for enabling Officers, &c. in the Army to draw for their Half-Pay and Allowances). (2 & 3 Wm. IV. c. 106, s. 3.)

XXXIII. *Transportation* for *seven* years, or imprisonment for any term not exceeding three years nor less than one year, with hard labour.

1. Forgery of the seals, stamps or signatures of such certificates, official or public documents, proceedings of corporations, or joint stock or other companies, or certified copies of such documents or proceeding, as are receivable in evidence in Parliament or in any judicial proceedings, or tendering in evidence such certificates, &c. with false or counterfeit seals &c. thereto; or

2. Forgery of the signature of any equity or common law judge of the Superior Courts at Westminster, to any judicial or official document, or tendering in evidence any such document with a false, &c. signature of any such judge thereto; or

3. Printing copies of private acts or of the journals of either House of Parliament, which copies shall falsely purport to have been printed by the printers to the Crown or either House of Parliament, or tendering in evidence any such copy, knowing that the same was not printed by the persons by whom it so purports to have been printed. (8 & 9 Vict. c. 113, s. 4.)

XXXIV. *Transportation* for *seven* years, or imprisonment for any term not exceeding three years, with or without

* There are still some cases to which this enactment is applicable.

hard labour or solitary confinement, or with both.

1. Persons employed under the Post-Office stealing, embezzling, secreting or destroying post-letters. (7 Wm. IV. & 1 Vict. c. 36, ss. 26 and 42.)

XXXV. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years nor less than one year, with or without hard labour or solitary confinement, or with both.

1. Forgery of the name or handwriting of witnesses attesting the execution of powers of attorney to transfer any public stock transferable at the Bank or South Sea House, or any capital stock of any body corporate &c. established by charter or act of parliament, or to receive any dividend in respect thereof (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 8 and 26.); or of copies of registers of baptisms, marriages,* or burials, directed by law to be transmitted to the registrar of the diocese; or making false entries in such copies, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 22 and 26.)

2. Clerks &c. of the Bank or South Sea House, with intent to defraud any person, making out dividend warrants for a greater or less amount than the persons on whose behalf they are made out are entitled to. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 9 and 26.)

XXXVI. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Forgery of the stamps or seals on hides or skins (9 Anne, c. 11; 10 Anne, c. 99; 5 Geo. I. c. 2, s. 9; 52 Geo. III. c. 143, s. 1; 7 & 8 Geo. IV. c. 28, ss. 8 and 1); of the stamps or seals used for stamping or sealing cambrics or lawns, in pursuance of 4 Geo. III. c. 37, An Act for the better establishing a manufactory of Cambrics and Lawns at Winchelsea, in the County of Sussex, &c. (4 Geo. III. c. 37, s. 26; 52 Geo. III. c. 143, s. 1; 7 & 8 Geo. IV. c. 28, ss. 8 and 9); of the stamps or seals on silk (13 Geo. III. c. 56, s. 5; 52 Geo. III. c. 143, s. 1; 7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 Wm. IV. c. 17, s. 1); of the name or handwriting of the registrar of the Court of Admiralty or High Court of Appeals of Prizes, &c., to any instruments relating to the money or effects of the suitors of those courts (53 Geo. III. c. 151, s. 12; 7 & 8 Geo. IV. c. 28, ss. 8 and 9); of quarantine certificates (6 Geo. IV. c. 78, s. 25; 7 & 8 Geo. IV. c. 28, ss. 8 and 9); of the name or handwriting of Her Majesty's Commissioners of Woods, Forests, Land Revenues, Works and Buildings, to any draft &c. for any money in the Bank &c. on account of such commissioners, &c. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 10 Geo. IV. c. 50, s. 124; 2 & 3 Wm. IV. c. 1, s. 1); or of the process of inferior courts for the recovery of debts and damages in personal actions (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 7 & 8 Vict. c. 19, s. 5 in part).

2. Obstructing the execution of process, &c. within Suffolk Place or the Mint, in the parish of St. George, in the county of Surrey. (9 Geo. I. c. 28, ss. 1 and 2; 7 & 8 Geo. IV. c. 28, ss. 8 and 9.)

3. Persons having preserved merchandise &c. belonging to vessels wrecked &c. within the jurisdiction of the Cinque Ports, selling or otherwise making away with the same, or in any manner altering the same with intent to prevent the discovery or identity thereof by the owners. (1 & 2 Geo. IV. c. 76, s. 8; 7 & 8 Geo. IV. c. 28, ss. 8 and 9.)

4. Quarantine officers deserting from their duty or permitting persons &c. to depart from lazarets &c., unless by permission under an order in council, &c.; or giving false certificates of vessels having duly performed quarantine. (6 Geo. IV. c. 78, s. 21; 7 & 8 Geo. IV. c. 28, ss. 8 and 9.)

5. Solemnizing marriages (except in the case of Quakers or Jews, or by special licence) in any other place than a

* As regards copies of registers of marriages, it would appear that this offence can now, since the passing of 6 & 7 Wm. IV. c. 86 (for registering births, deaths, and marriages, in England), be committed with respect to such copies only as were transmitted before that Act came into operation. It is still in full force, however, as regards registers of baptisms or burials. (See the 49th sect. of 6 & 7 Wm. IV. c. 86.)

church, chapel or registered office, or doing so in any such office in the absence of the registrar of the district, &c. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 6 & 7 Wm. IV. c. 85, s. 39.)

6. Superintendent registrars issuing certificates for marriage, or registering marriages, contrary to law; or registrars or superintendent registrars issuing licences for marriage, or solemnizing marriages, contrary to law. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 6 & 7 Wm. IV. c. 85, s. 40; 7 Wm. IV. & 1 Vict. c. 22, s. 3.)

7. Destroying, counterfeiting or inserting false entries in, the register-books directed to be provided by the Act for registering births, deaths, and marriages in England; or forging the seal of the register-office. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 6 & 7 Wm. IV. c. 86, s. 43.)

8. Officer of the court uttering false certificates of indictments and convictions of a previous felony; or any other person signing &c. such certificates as such officer, &c. (7 & 8 Geo. IV. c. 28, ss. 9 and 11.)

9. Simple larceny. (7 & 8 Geo. IV. c. 29, ss. 3 and 4.)

10. Deer-stealing, &c. where the deer are kept in enclosed lands. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 26.)

11. Deer-stealing, &c. where the deer are kept in unenclosed lands (for a second offence*); or offending a second time in committing any other offence relating to deer for which a pecuniary penalty only is imposed, whether such second offence be of the same description as the first or not. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 26.)

12. Deer-stealers &c. beating or wounding deer-keepers. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 29.)

13. Stealing oysters &c. from oyster-beds &c. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 36.)

14. Stealing or severing with intent to steal, ore, coal &c. from mines, &c. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 37.)

15. Stealing, or damaging with intent to steal, or maliciously destroying &c. trees &c. growing in parks &c. or grounds belonging to dwelling-houses, if the value of the article stolen or the amount of injury done exceeds 1*l.*, or growing elsewhere, if such value or amount exceeds 5*l.* (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 38; and c. 30, ss. 19 and 27.)

16. Stealing, or damaging with intent to steal, or maliciously destroying &c. trees &c., wherever growing, if the stealing thereof or the injury done is to the amount of a shilling at the least, and if the offender has been twice previously convicted.* (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 39; and c. 30, ss. 20 and 27.)

17. Stealing, or damaging with intent to steal, or maliciously destroying &c. plants, vegetable productions &c. growing in gardens, conservatories &c., if the offender has been previously convicted of any of such offences.† (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 42; and c. 30, ss. 21 and 27.)

18. Stealing, or breaking &c. with intent to steal, glass, fixtures &c. from buildings, or metal fences &c., belonging to dwelling-houses or fixed in any place dedicated to public use or ornament. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 44.)

19. Tenants or lodgers stealing chattels or fixtures let to be used with any house or lodging. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 45.)

20. Destroying &c. threshing-machines, or engines used in any other manufacture than those of silk, woollen, linen, or cotton goods, or of framework-knitted pieces, stockings, hose or lace. (7 & 8 Geo. IV. c. 30, ss. 4 and 27.)

21. Drowning mines, or obstructing airways, shafts &c. belonging to mines, with intent to damage or delay the work-

* The first offence is punishable on summary conviction only, by fine not exceeding 50*l.* (See 7 & 8 Geo. IV. c. 29, s. 26.)

* The first two offences are punishable on summary conviction only; the first by fine not exceeding 5*l.* over and above the value of the trees, &c., or amount of injury done, and the second by imprisonment and hard labour not exceeding twelve calendar months. (See 7 & 8 Geo. IV. c. 29, s. 39; and c. 30, s. 20.)

† The first offence is punishable on summary conviction only, by imprisonment not exceeding six calendar months, with or without hard labour, or by fine not exceeding 20*l.* over and above the value of the plants &c., or the injury done. (See 7 & 8 Geo. IV. c. 29, s. 42; and c. 30, s. 21.)

ing of them. (7 & 8 Geo. IV. c. 30, ss. 6 and 27.)

22. Destroying or damaging engines for working mines, or any buildings or erections used in conducting the business of mines. (7 & 8 Geo. IV. c. 30, ss. 7 and 27.)

23. Damaging vessels otherwise than by fire, with intent to render them useless. (7 & 8 Geo. IV. c. 30, ss. 10 and 27.)

24. Damaging sea-banks or the banks of rivers, canals or marshes, or injuring navigable rivers or canals, with intent and so as thereby to obstruct the navigation thereof. (7 & 8 Geo. IV. c. 30, ss. 12 and 27.)

25. Maliciously setting fire to crops of grain or pulse, plantations of trees, heath, fern &c. (7 & 8 Geo. IV. c. 30, ss. 17 and 27.)

26. Offenders ordered to be confined in Parkhurst prison escaping or breaking prison, &c., after they have been already punished* for escaping therefrom, &c., or whilst in the custody of the person under whose charge they are confined. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 12.)

27. Rescuing offenders ordered to be confined in Parkhurst prison during their conveyance there or whilst in the custody of the person under whose charge they are confined. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 13.)

28. Persons having the custody of such offenders, allowing them to escape. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 13.)

29. Aiding in the escape of such offenders, or attempting to rescue them, although no rescue be made. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 13.)

30. Destroying, counterfeiting or making false entries in non-parochial registers of births, deaths, marriages, &c. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 3 & 4 Vict. c. 92, s. 8.)

31. Convicts confined in the Pentonville and Millbank prisons, being a second time* convicted of breaking prison or escaping during their conveyance to such prisons. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 5 & 6 Vict. c. 29, s. 24 in part; 6 & 7 Vict. c. 26, s. 22 in part.)

32. Rescuing or aiding in rescuing convicts during their conveyance to the Pentonville and Millbank prisons or during their imprisonment therein. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 5 & 6 Vict. c. 29, s. 25 in part; 6 & 7 Vict. c. 26, s. 23 in part.)

33. Persons having the custody of convicts in the Pentonville and Millbank prisons wilfully allowing them to escape; or any person aiding such convicts to escape, although no escape be made, or attempting to rescue such convicts, or aiding in any such attempt, though no rescue be made. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 5 & 6 Vict. c. 29, s. 25 in part; 6 & 7 Vict. c. 26, s. 23 in part.)

34. Acting as a bailiff of any inferior court for the recovery of debts or damages in personal actions, without lawful authority (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 7 & 8 Vict. c. 19, s. 5 in part).

35. Workmen in mines in Cornwall removing or concealing ore with intent to defraud the proprietors of such mines. (2 & 3 Vict. c. 58, s. 10.)

XXXVII. *Transportation* for *seven* years, or imprisonment for any term not

* That is to say, by an addition, not exceeding two years, to the term of imprisonment for which they were subject to be confined at the time of their escape &c.; or, if under sentence of transportation, in such manner as such persons escaping &c. are liable to be punished. (See sect. 12.) By the same section attempts to break prison or escape from Parkhurst prison are made punishable with imprisonment not exceeding twelve calendar months in addition to the punishment of which the offender was subject at the time to any such attempt.

* The punishment for a first escape or breach of prison is by an addition, not exceeding three years, to the term of their imprisonment. (5 & 6 Vict. c. 29, s. 24 in part; 6 & 7 Vict. c. 26, s. 22 in part.) By the same sections of those Acts attempts to break out of the Pentonville and Millbank prisons or to escape therefrom, are punishable by an addition, not exceeding twelve calendar months, to the terms of the offenders' imprisonment. Also by sect. 21 of 5 & 6 Vict. c. 29, and sect. 19 of 6 & 7 Vict. c. 26, convicts in the Pentonville and Millbank prisons assaulting the governors or any of the officers or servants employed therein, are liable, upon conviction, to be imprisoned for any term not exceeding two years in addition to the term for which at the time of committing that offence they were subject to be confined, and, if males, may be ordered corporal punishment.

exceeding two years, with or without hard labour; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Child-stealing. (9 Geo. IV. c. 31, s. 21.)

XXXVIII. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years, with or without hard labour.

1. Bigamy. (9 Geo. IV. c. 31, s. 22.)

XXXIX. *Transportation* for any term not exceeding *seven* years, or imprisonment for any number of years.

1. Cutting away or in any way injuring or concealing buoys &c. belonging to vessels or attached to the anchors or cables of vessels, whether in distress or otherwise.* (1 & 2 Geo. IV. c. 75, s. 11.)

XL. *Transportation* for any term not exceeding *seven* years, or imprisonment not exceeding two years, with or without hard labour or solitary confinement, or with both.

1. Counterfeiting the queen's current copper coin; or, without lawful authority, making or being possessed of instruments for counterfeiting such coin; or buying or selling such coin at a lower value than it by its denomination imports. (2 Wm. IV. c. 34, ss. 12 and 19.)

XLI. *Transportation* for any term not exceeding *seven* years, or fine, imprisonment, and such corporal punishment by public or private whipping, as the court shall direct.

1. Slaughtering or flaying horses or other cattle without taking out the licence and giving the notice required by the Act for regulating slaughtering-houses, or doing so at any other time than within the hours limited by the Act, or not delaying to do so, when prohibited by the inspector. (26 Geo. III. c. 71, s. 8.)

IV. Misdemeanors.

Misdemeanors are punishable as follows, viz.: with

I. *Transportation* for *life*.

1. Being at large within the United Kingdom [after being sentenced to be banished under the provisions of the Roman Catholic Relief Act (10 Geo. IV. c. 7),] without some lawful excuse, after three calendar months from such sentence. (10 Geo. IV. c. 7, s. 36.)

II. *Banishment* for *life*.

1. Jesuits or members of Religious Orders or Societies of the Church of Rome, bound by monastic or religious vows, coming into the kingdom (10 Geo. IV. c. 7, s. 29);* or

2. Having obtained the Secretary of State's licence to come, not departing within twenty days after the expiration of the time mentioned in such licence, &c. (10 Geo. IV. c. 7, s. 31.)

3. Within any part of the kingdom, becoming a Jesuit or member of any Society of the Church of Rome bound by monastic or religious vows. (10 Geo. IV. c. 7, s. 34.)

III. *Transportation* for the term of *fourteen* years, or, in mitigation or commutation of such punishment, the offender to be publicly whipped, fined or imprisoned, or all or any one or more of them.

1. Not being a contractor with the Commissioners of the Navy, Ordnance or Victualling Office for her Majesty's use, selling, receiving or being possessed of any warlike or naval, ordnance, victualling or other public stores, without being able to produce a certificate from the Commissioners of the Navy &c., expressing the occasion &c. of such stores being so in possession.† (9 & 10 Wm. III.

* The 1 & 2 Geo. IV. c. 76, s. 6, contains a similar provision as regards buoys &c. within the jurisdiction of the Cinque Ports, but subjects the offender to transportation not exceeding fourteen years.

* This and the next two offences do not apply to members of Female Societies. (10 Geo. IV. c. 7, s. 37.)

† The mode in which the 39 & 40 Geo. III. c. 89, s. 1, imposes the above penalties in respect of these offences, is by enacting that persons who commit them shall be deemed *receivers of stolen goods*, knowing them to have been stolen, and shall, on being convicted thereof in due form of law, be transported beyond the seas, for the term of fourteen years, *in manner as other receivers of stolen goods are directed to be transported by the laws and statutes of this realm*; and then by sec. 7 empowers the court to mitigate or commute the punishment as above mentioned: the punishment of receivers has, however, been since altered by the 7 & 8 Geo. IV. c. 29, ss. 54 and 55. It, therefore, becomes a question how far such alteration has modified the above punishment.

c. 41; 9 Geo. I. c. 8, s. 3; 39 & 40 Geo. III. c. 89, ss. 1 and 7; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

2. Being a second time convicted (not being a contractor with the Commissioners of the Navy &c.) of being possessed of &c. certain of her Majesty's or other public stores, the being possessed &c. of which would not otherwise, as the first offence, subject a person to transportation. (9 & 10 Wm. III. c. 41; 39 & 40 Geo. III. c. 89, ss. 5 and 7; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

IV. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or fine or imprisonment, or both, such imprisonment to be with or without hard labour or solitary confinement, or with both.

1. Bankers, merchants &c. converting to their own use money or securities intrusted to them to be applied for a specified purpose. (7 & 8 Geo. IV. c. 29, ss. 4 and 49.)

2. Bankers, merchants &c. converting to their own use chattels, securities &c. intrusted to them for a special purpose, but without authority to sell or negotiate &c. the same. (7 & 8 Geo. IV. c. 29, ss. 4 and 49.)

3. Factors or agents pledging goods or merchandise intrusted to them for sale, as a security for money &c. borrowed &c. by them. (7 & 8 Geo. IV. c. 29, ss. 4 and 51.)

V. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or fine or imprisonment, or both.

1. Agents intrusted with goods making consignments &c. thereof, without the authority of their principals. (5 & 6 Vict. c. 39, s. 6.)

VI. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment, with hard labour, for any term not exceeding three years.

1. Being in any land, by night, to the number of three or more (any of them being armed), for the purpose of taking or destroying game* or rabbits. (9 Geo. IV. c. 69, s. 9.)

* For the purposes of 9 Geo. IV. c. 69, the word "game" includes hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. (See sec. 13.)

VII. *Transportation* for *seven* years.

1. Counterfeiting foreign copper or other coin of a less value than silver coin, not permitted to be current in this kingdom (for the second offence).* (43 Geo. III. c. 139, s. 3.)

VIII. *Transportation* for *seven* years, or fine or imprisonment, or both, such imprisonment to be with or without hard labour or solitary confinement, or with both.

1. Stealing, obliterating or destroying records or original documents belonging to Courts of Record, &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 21.)

2. Stealing, destroying or concealing wills or other testamentary instruments, either during the life of the testator or after his death. (7 & 8 Geo. IV. c. 29, ss. 4 and 22.)

3. Stealing title-deeds. (7 & 8 Geo. IV. c. 29, ss. 4 and 23.)

4. Obtaining property by false pretences.† (7 & 8 Geo. IV. c. 29, ss. 4 and 53.)

IX. *Transportation* for *seven* years, or fine and imprisonment.

1. Forgery of permits, or knowingly accepting or receiving forged permits. (2 Wm. IV. c. 16, s. 4.)

X. *Transportation* for *seven* years, or the like punishment as for a misdemeanor at common law.‡

1. Purchasing or receiving anchors &c. which have been swept for or otherwise taken possession of, whether the same have belonged to vessels in distress or otherwise, if such anchors &c. have not been reported &c. according to law. (1 & 2 Geo. IV. c. 75, s. 12; and c. 76, s. 10.)

XI. *Transportation* for *seven* years, or imprisonment with or without hard labour.

1. Assaulting officers on account of the exercise of their duty in the pre-

* The punishment for a first offence is imprisonment not exceeding one year.

† See the 8 & 9 Vict. c. 109, s. 17, which declares that persons winning money, &c. by cheating at cards or other games, shall be guilty of obtaining such money, &c. by false pretences, and shall be punished accordingly.

‡ The punishment for a misdemeanor at common law is fine and imprisonment.

servation of vessels in distress, &c. (9 Geo. IV. c. 31, s. 24.)

XII. *Fine of* 40*l.*, or if the offender have not goods or chattels, lands or tenements to the value of 40*l.*, then imprisonment by the space of one half-year;* and, besides the before-mentioned punishment, the offender may be imprisoned with hard labour for a term not exceeding seven years, or *transported* for a term not exceeding *seven* years; and, in addition to or in lieu of the before-mentioned punishments, may be imprisoned with hard labour for any term not exceeding the term for which he may be imprisoned as aforesaid; and the offender on conviction cannot thenceforth be received as a witness in any court of record, unless the judgment given against him be reversed.

1. Subornation of perjury in any of the Queen's Courts of Chancery or Courts of Record, or in any Leet, View of Frankpledge, or Law-day, Ancient Demesne Court, Hundred Court, Court Baron, or in the Court or Courts of the Stannary in the counties of Devon and Cornwall; or suborning witnesses sworn to testify *in perpetuam rei memoriam.*† (5 Eliz. c. 9, ss. 3, 4, and 5; 29 Eliz. c. 5; 21 Jac. I. c. 28, s. 8; 2 Geo. II. c. 25, s. 2; 3 Geo. IV. c. 114; 7 Wm. IV. & 1 Vict. c. 23.)

XIII. *Fine of* 20*l.* and imprisonment for six months;‡ and besides the before-mentioned punishment the offender may be imprisoned with hard labour for a term not exceeding seven years, or *transported* for a term not exceeding *seven* years; and, in addition to or in lieu of the before-mentioned punishments, may be imprisoned with hard labour for any term not exceeding the term for which he may be imprisoned as aforesaid; and the offender on conviction cannot thenceforth be received as a witness in any Court of Record, unless the judgment given against him be reversed.

1. Perjury in any of the Courts mentioned above in the case of subornation of perjury, or by any person examined *ad perpetuam rei memoriam.* (5 Eliz. c. 9, ss. 6 and 7; 29 Eliz. c. 5; 21 Jac. I, c. 28, s. 8; 2 Geo. II. c. 25, s. 2; 3 Geo. IV. c. 114; 7 Wm. IV. & 1 Vict. c. 23.*)

2. Seamen or marines attempting to obtain their pay by means of forged certificates of their discharge from the queen's ships, or from hospitals or sick-quarters. (11 Geo. IV. & 1 Wm. IV. c. 20, s. 89; 7 Wm. IV. & 1 Vict. c. 23.†)

3. Forgery of certificates of the Commissioners for executing the office of Lord High Admiral, of the purchase or sale of any naval or victualling stores. (2 Wm. IV. c. 40, s. 32; 7 Wm. IV. & 1 Vict. c. 23.)

4. Making false declarations or signing false notices for the purpose of procuring marriages; or

5. Forbidding the issue of any superintendent registrar's certificate, by falsely representing oneself to be a person whose consent to such marriage is required by law. (6 & 7 Wm. IV. c. 85, s. 38; 7 Wm. IV. & 1 Vict. c. 23; 3 & 4 Vict. c. 72, s. 4.)

6. Making false statements for the purpose of their being inserted in registers of births, deaths, or marriages. (6 & 7 Wm. IV. c. 86, s. 41; 7 Wm. IV. & 1 Vict. c. 23.)

XIV. *Transportation* for *seven* years, or imprisonment with hard labour for any term not exceeding three years.

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* It is only when the offender is prosecuted under 5 Eliz. c. 9, that he is liable to this portion of these penalties. If prosecuted at common law he is punishable with fine and imprisonment; but may be sentenced to the other penalties stated above. The common-law offence extends also to subornation of perjury in *any* judicial proceeding.

† See also 12 Geo. I. c. 29, s. 4 (made perpetual by 21 Geo. II. c. 3), as to subornation of perjury and perjury, &c. by attorneys &c., for which the court may cause them, after an examination in a *summary way*, to be transported for seven years. The offence does not appear to be indictable.

‡ It is only when the offender is prosecuted under 5 Eliz. c. 9, that he is liable to this portion of these penalties. The punishment for the common-law offence is the same as for subornation of perjury; and perjury at common law may be in *any* judicial proceeding. Prosecutions are usually carried on for the offence as at common law, and not under the statute.

* There is a great number of public Acts, besides those mentioned above, by which cases of false swearing are declared to be perjury, or to be punishable as perjury; but it would have occupied too much space to have inserted them here.

† This and the next four offences subject the persons committing them to the penalties of perjury.

1. Assaulting or obstructing persons duly employed for the prevention of smuggling. (8 & 9 Vict. c. 87, s. 66.)

XV. *Transportation* for *seven* years, or imprisonment with or without hard labour for any period not exceeding three years; and during such imprisonment the offender may be publicly or privately whipped* as often and in such manner and form as the Court shall direct, not exceeding thrice.

1. Discharging or aiming fire or other arms, or discharging or attempting to discharge any explosive substance, at or near the person of the queen, or striking or attempting to strike at the person of the queen, or in any other manner throwing or attempting to throw anything at or upon her person, with intent to injure or alarm the queen or break the public peace, or whereby the public peace may be endangered; or having fire or other arms, or any explosive or dangerous matter or thing near the queen's person, with intent to use the same to injure or alarm her. (5 & 6 Vict. c. 51, s. 2.)

XVI. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Receiving property the stealing, taking &c. whereof is made an indictable misdemeanor by 7 & 8 Geo. IV. c. 29, knowing the same to have been unlawfully stolen, taken &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 55.)

2. Boatmen and others concealing &c. and not reporting according to law, or obliterating the marks &c. on, articles found by them on the coast (provided the stealing of such articles on shore would be an indictable misdemeanor). (1 & 2 Geo. IV. c. 75, s. 1; and c. 76.)

3. Maliciously destroying the dams of fish-ponds or mill-ponds, or poisoning fish-ponds. (7 & 8 Geo. IV. c. 30, ss. 15 and 27.)

XVII. *Transportation for seven* years, or imprisonment with hard labour for any term not exceeding two years.

1. Taking or destroying game* or rabbits by night, in any land or on any public road, path &c., or at the openings, gates &c. from such land into such public road &c., or entering any such land, by night, with any instrument for that purpose (for the third offence).† (9 Geo. IV. c. 69, s. 1; 7 & 8 Vict. c. 29, s. 1.)

2. Assaults on gamekeepers by persons found committing any of the last-mentioned offences. (9 Geo. IV. c. 69, s. 2; 7 & 8 Vict. c. 29, s. 1.)

XVIII. *Transportation* for any term not exceeding *seven* years, or imprisonment not exceeding two years.

1. Being guilty of an unlawful combination or confederacy. (37 Geo. III. c. 123, s. 1; 39 Geo. III. c. 79, ss. 2 and 8; 52 Geo. III. c. 104, s. 1; 57 Geo. III. c. 19, s. 25.)

2. Being present at meetings for the purpose of drilling persons to the use of arms &c., such meetings being unauthorized by her Majesty or the lieutenant or two justices of the peace of the county or riding, by commission or otherwise; or drilling persons to the use of arms, &c. (60 Geo. III. & 1 Geo. IV. c. 1, s. 1.)

XIX. *Imprisonment for life*, loss of the offender's right hand, and forfeiture of his goods and chattels, and of the profits of his lands during life.

1. Assaulting any judge of the queen's courts of law or equity, or any justice of assize, oyer and terminer, or general gaol delivery, whilst acting in his official capacity; or striking any person in the presence of any such judge or justice.‡ (Hawk. *P.C.* b. i. c. 21, s. 3; *Seventh Report of the Criminal Law Commissioners*, pp. 49 and 160.)

XX. *Imprisonment for life* and forfeit-

* It may be a question whether the 5 & 6 Vict. c. 51, s. 2, notwithstanding the provision of 1 Geo. IV. c. 57, quoted above (p. 187), has not extended the punishment of whipping to the case of female offenders. (See *Seventh Report of Criminal Law Commissioners*, p. 46.) The above offence is a high misdemeanor.

* For the definition of game, see p. 204, note *.

† The two first offences are punishable on summary conviction.

‡ This and the next offence are punishable at common law.

ure of the offender's goods and profits of his lands.

1. Rescuing prisoners being in the presence of any such judge whilst acting in his official capacity. (Hawk. *P.C.* b. i. c. 21, s. 5; *Seventh Report of the Criminal Law Commissioners*, pp. 49 and 160.)

XXI. *Imprisonment for life*, and forfeiture* of all goods and chattels real and personal.

1. Being a second time† convicted of publishing fond, fantastical or false prophecies, to the intent thereby to make any rebellion or other disturbance &c. within the queen's dominions.‡ (5 Eliz. c. 15, s. 3.)

XXII. *Imprisonment for life.*

1. Hearing and being present at any other form of common prayer &c. than is mentioned and set forth in the Book of Common Prayer, having been twice§ previously convicted of the same. (5 & 6 Edw. VI. c. 1, s. 6; 13 & 14 Car. II. c. 4, s. 24.)

2. Clergymen of the Established Church using any other form of common prayer &c. than is set forth in the Book of Common Prayer, or speaking in derogation thereof, having been twice‖ previously convicted of any such offence.¶ (1 Eliz. c. 2, s. 6; 13 & 14 Car. II. c. 4, s. 24.)

3. Persons not having any spiritual promotion committing any such last-mentioned offence, after their first conviction.** (1 Eliz. c. 2, s. 8; 13 & 14 Car. II. c. 4, s. 24.)

4. In interludes, plays &c. declaring or speaking anything in derogation &c. of the Book of Common Prayer, or compelling or causing any parson or other minister to use any other form of common prayer &c. than is mentioned in the said book; or interrupting any parson or other minister in saying common prayer &c. in the form mentioned in the said book, having been twice* previously convicted of any such offence.† (1 Eliz. c. 2, s. 11; 13 & 14 Car. II. c, 4, s. 24.)

XXIII. *Imprisonment* for any term not exceeding *twelve* nor less than six months, and the offender to be liable to such other punishment as may by law be inflicted in cases of high misdemeanors.‡

1. Publishing in English newspapers anything tending to excite hatred of the queen, &c., as having been previously printed in some foreign paper which has not been so printed. (38 Geo. III. c. 78, s. 24.)

XXIV. *Fine* and *imprisonment*, with or without hard labour or solitary confinement, or with both.

1. Refusing to deliver up &c. post-letters which ought to have been delivered to any other person, or post-letters which shall have been found by the person so refusing or any other person, &c. (7 Wm. IV. & 1 Vict. c. 36, ss. 31 and 42.)

XXV. *Fine* and *imprisonment*, and such corporal punishment by public or private whipping as the court shall direct.

1. Persons who keep or use slaughter-houses or places, throwing into lime-pits &c., or destroying or burying, the hides of cattle slaughtered &c. by them; or,

* This forfeiture being by statute only, does not, as observed above, constitute the offence a felony.

† The punishment for the first offence is fine of 10*l.* and imprisonment for one year. (5 Eliz. c. 15, s. 2.)

‡ This offence may be considered to be virtually obsolete.

§ The punishment for the first offence is imprisonment for six months, and for the second is one year.

‖ The punishment for the first offence is imprisonment for six months, and for the second one year. (1 Eliz. c. 2, ss. 4 and 5.)

¶ Besides being imprisoned, the offender for the first offence forfeits the profits of all his spiritual benefices or promotions coming or arising in one whole year next after his conviction; and for his second and third offences, is to be deprived *ipso facto* of all his spiritual promotions. (1 Eliz. c. 2, ss. 4, 5, and 6.)

** The punishment for the first offence is imprisonment for one year. (1 Eliz. c. 2, s. 7.)

* The punishment for the first offence is forfeiture of 100 marks, or, if the offender do not pay the same within six weeks after his conviction, six months' imprisonment instead; and for the second offence is forfeiture of 400 marks, or, if the offender do not pay the same within six weeks after his conviction, twelve months' imprisonment instead. (1 Eliz. c. 2, ss. 9, 10, 12, and 13.)

† Besides being imprisoned for life, the person committing any of the above offences for the third time, forfeits all his goods and chattels; but this forfeiture being by statute only, does not, as above observed, constitute the offence a felony.

‡ The punishment for high misdemeanors at common law was fine, imprisonment and infamous corporal punishment; but the punishment of the pillory has been wholly abolished.

2. Persons, generally, being guilty of any offence against the Act for regulating slaughtering-houses for which no punishment is expressly provided. (26 Geo. III. c. 71, s. 9.)

XXVI. *Fine, imprisonment,* or other corporal punishment.

1. Procuring or soliciting infants to grant annuities, &c. (53 Geo. III. c. 141, s. 8.)

XXVII. *Imprisonment* and *fine* and ransom* to the queen.

1. Being sufficient to travel, not being assistant to the justices, when warned to ride with them, in aid to resist riots, &c. (2 Hen. V. st. 1, c. 8.)

2. Contemning, despising or reviling the sacrament of the Lord's Supper. (1 Edw. VI. c. 1, s. 1; 1 Eliz. c. 1, s. 14.)

XXVIII. *Imprisonment* and *ransom* at the queen's will.†

1. Forcible entry into lands and tenements. (5 Rich. II. st. 1, c. 8; 15 Rich. II. c. 2.‡)

XXIX. *Imprisonment* and *fine* at the queen's will.§

1. Any of the clergy enacting or promulgating &c. any constitutions or ordinances, provincial or synodal, or any other canons, without the royal assent and licence. (25 Hen. VIII. c. 19, s. 1; 1 Eliz. c. 1, s. 6.)

XXX. *Fine* and *imprisonment.*

1. Not assisting the justices to arrest persons holding lands &c. forcibly, after forcible entry made. (15 Rich. II. c. 2.)

2. Frauds by collectors or other officers intrusted with the receipt, custody or management of any part of the public revenues|| (50 Geo. III. c. 59, s. 2);—of any part of the revenue of Excise. (7 & 8 Geo. IV. c. 53, s. 44.)

3. Persons concerned in the transmitting or delivery of writs for the election of members of parliament, wilfully neglecting or delaying to transmit or deliver any such writ &c. (53 Geo. III. c. 89, s. 6.)

4. Gaolers exacting fees from prisoners for or on account of the entrance, commitment or discharge of such prisoners, or detaining prisoners for non-payment of fees.* (55 Geo. III. c. 50, s. 13.)

5. Furious driving, &c. by persons having charge of stage-coaches or public carriages, not being hackney-coaches drawn by two horses only, and not plying for hire as stage-coaches, whereby any person is injured. (1 Geo. IV. c. 4.)

6. Buying or selling offices, or keeping any place of business in any manner relating to the sale or purchase thereof.† (5 & 6 Edw. VI. c. 16; 49 Geo. III. c. 126, s. 3; 6 Geo. IV. c. 105, s. 10.)

7. Officers exacting fees from prisoners against whom no bill of indictment is found by the grand jury, or who are acquitted on their trial or discharged by proclamation for want of prosecution.‡ (55 Geo. III. c. 50, ss. 4 and 9.)

8. Officers of Customs or Excise by

* It would appear that where a person is to make fine and ransom, he is not to pay two different sums (Co.-Litt., 127 a); but, according to Dyer, p. 232, pl. 5, the ransom must be treble the fine at least.

† That is, the will of the queen as declared by her representatives, the judges, in her courts of justice.

‡ See also 4 Hen. IV. c. 8; 8 Hen. VI. c. 9; 31 Eliz. c. 11; 21 Jac. I. c. 15.

§ That is, as declared by the judges.

|| The offender is also, on conviction, rendered for ever incapable of holding or enjoying any office under the crown.

* They are also, upon conviction, rendered incapable of holding their offices. The 55 Geo. III. c. 50, s. 13, did not extend to the Queen's Bench prison, the Fleet, or the Marshalsea and Palace Courts. But now, by 5 & 6 Vict. c. 22, s. 11, which consolidates the Queen's Bench, Fleet, and Marshalsea Prisons, and enacts that the Queen's Bench Prison shall, after the passing of that act, be called the Queen's Prison, all fees and gratuities payable by prisoners on their entrance or discharge &c. from the Queen's Prison (except such as shall be sanctioned by the Lords of the Treasury, for work and labour actually performed for such prisoners) are abolished, and any officer who exacts any such fees or gratuities, or detains any prisoner on account of the non-payment thereof, is rendered incapable of holding his office, and is guilty of a misdemeanor punishable by fine and imprisonment. See also the 8 & 9 Vict. c. 114, which explains and amends the 55 Geo. III. c. 50.

† The punishment for this and the next twenty-five offences (6 to 31 inclusive), is not assigned them by the statutes creating them: they are merely misdemeanors by the statutes, but as such the common law punishment of fine and imprisonment attaches.

‡ The offender, on conviction, is also rendered incapable of holding his office. See the 8 & 9 Vict. c. 114, which explains and amends the 55 Geo. III. c. 50.

their misconduct causing waste, &c. in merchandise warehoused in warehouses under the Act for permitting goods imported to be secured in warehouses without payment of duty on first entry. (4 Geo. IV. c. 24, s. 72.)

9. By false certificates or representations endeavouring to obtain from Chelsea Hospital any pension, privilege or advantage.* (7 Geo. IV. c. 16, s. 25.)

10. Setting spring-guns or man-traps, except within a dwelling-house for the protection thereof. (7 & 8 Geo. IV. c. 18, ss. 1 and 4.)

11. Jesuits, or members of any religious order or society of the Church of Rome, bound by monastic or religious vows, within the United Kingdom, admitting any person to become a member of any such order or society.† (10 Geo. IV. c. 7, s. 23.)

12. Parish officers refusing to call meetings, &c. according to the provisions of the Act for the better Regulation of Vestries. (1 & 2 Wm. IV. c. 60, s. 11.)

13. Making false answers to any of the questions directed by the Reform Act to be put by the returning officer at elections of members of parliament, if required by any candidate, to any voter at the time of his tendering his vote. (2 & 3 Wm. IV. c. 45, s. 58.)

14. Refusing to attend, &c. the Poor Law Commissioners (4 & 5 Wm. IV. c. 76, s. 13); the Tithe Commissioners (6 & 7 Wm. IV. c. 71, s. 93); or the Copyhold Commissioners (4 & 5 Vict. c. 35, s. 94).

15. Forgery, &c. of protections from service in the navy. (5 & 6 Wm. IV. c. 24, s. 3.)

16. Making false declarations in cases where declarations are substituted for oaths by the Act for abolishing unnecessary Oaths. (5 & 6 Wm. IV. c. 62, s. 21.)

17. Executing &c. renewed ecclesiastical leases, knowing the recital required by law contained therein to be false. (6 & 7 Wm. IV. c. 20, s. 3.)

18. Making false statements in declarations required to be delivered to the Commissioners of Stamps and Taxes before being allowed to print and publish newspapers. (6 & 7 Wm. IV. c. 76, s. 6.)

19. Making, &c. false declaration of being qualified to be elected a member of the House of Commons. (1 & 2 Vict. c. 48, s. 7.)

20. Frauds in assignments of pensions for service in her Majesty's navy, royal marines or ordnance. (2 & 3 Vict. c. 51, s. 8.)

21. Making false declarations touching any of the matters contained in the Act for procuring Returns relative to Highways and Turnpikes. (2 & 3 Vict. c. 40, s. 9.)

22. Officers of railways making false returns, under the Act for regulating railways, to the committee of the Privy Council for Trade. (3 & 4 Vict. c. 97, s. 4.)

23. Making false returns of corn, under the Act regulating the importation of corn. (5 & 6 Vict. c. 14, s. 42.)

24. Making false entries in the Register Book of Copyrights. (5 & 6 Vict. c. 45, s. 12.)

25. Voters making false answers to returning officer at elections of members of of parliament. (6 & 7 Vict. c. 18, s. 81.)

26. Actuaries or other persons holding appointments in savings' banks, receiving deposits and not paying the same over to the managers of such banks, &c. (7 & 8 Vict. c. 83, s. 4.)

27. The registrar of joint-stock companies or any person employed under him, demanding or receiving any gratuity or reward beyond the fees allowed by law. (7 & 8 Vict. c. 110, s. 22.)

28. Directors of joint-stock companies by whom certificates of shares are issued, making false statements on such certificates as to the date of the first complete registration of such companies. (7 & 8 Vict. c. 110, s. 26 in part.)

29. Persons knowing dogs or skins of dogs found in their possession, by virtue of a search warrant, to be stolen dogs, or the skins of stolen dogs (for the second offence*). (8 & 9 Vict. c. 47, s. 3 in part.)

* The offender also forfeits all claim to pension or emolument on account of service, wounds or disability.

† This offence does not apply to female societies. (10 Geo. IV. c. 7, s. 37.)

* The first offence is punishable on summary conviction before two or more justices by payment of such sum, not exceeding 20*l.*, as to the justices shall seem meet.

30. Corruptly taking any reward for aiding persons to recover stolen &c. dogs. (8 & 9 Vict. c. 47, s. 6.)

31. Offences against the provisions of the 8 & 9 Vict. c. 100 (An Act for the regulation of the care and treatment of Lunatics), and the 8 & 9 Vict. c. 126 (An Act to amend the laws for the provision and regulation of Lunatic Asylums for counties and boroughs, and for the maintenance and care of Pauper Lunatics in England), declared by those Acts to be misdemeanors.

32. Using contemptuous words or gestures of or against the queen.*

33. Unlawful assemblies.

34. Routs.

35. Riots.

36. Affrays.

37. Conspiracy.

38. Bribery.†

39. Blasphemy.

40. Blasphemous or seditious libels.‡

41. Unlawfully refusing to serve public offices.

42. Executing official duties before taking oath of office and giving security, where the same are required by law.

43. Wilfully disobeying any statute, by doing what it prohibits or omitting what it commands, whereby the public are or may be injured.

44. Wilfully disobeying any lawful warrant, order or command of her Majesty, or any court or person acting in a public capacity and duly authorized in that behalf, where no other penalty or mode of proceeding is expressly provided.

45. Obstructing officers in the execution of any public office or duty.

46. Excess or abuse of authority by public officers.

47. Extortion by public officers.

48. Fraudulent misapplication by public officers of property under their control as such officers.

49. Unlawfully, and contrary to oath of office, disclosing matter the knowledge of which has been acquired in an official capacity.

50. Assaulting &c. persons on account of anything done by them in connexion with any judicial proceeding.

51. Contempts of courts of justice or magistrates, by uttering insulting, opprobrious, or menacing words, or by acts or gestures expressed or done in the face of such courts or in the presence of such magistrates.

52. By force, or by violent or outrageous conduct, interrupting the proceedings of courts of justice.

53. The wilful omission by judicial officers to do their duty.

54. Oppression by judicial officers.

55. Judicial officers taking bribes.

56. Bribing or otherwise corruptly influencing judicial officers.

57. Persons procuring themselves to be returned as jurors, with intent to obtain a verdict or any undue advantage for any person interested in a trial.

58. Unlawfully preventing persons from serving as jurors.

59. Jurors determining their verdict by any mode of chance.

60. Witnesses refusing to be sworn or to give evidence in judicial proceedings.

61. Unlawfully preventing witnesses from giving evidence in judicial proceedings.

62. Endeavouring to procure the commission of perjury.

63. Publishing statements, pending suits or prosecutions, with intent to excite prejudice for or against any party to such suits or prosecutions.

64. Fabricating false evidence.

65. By disposing of dead bodies, without giving notice to the coroner, in cases where inquests ought to be taken, obstructing the taking of such inquests.

66. Gaolers and others, contrary to their duty, allowing dead bodies to remain unburied and to putrefy, without giving notice to the coroner, in cases where inquests ought to be taken.

67. Challenging or provoking to fight, or to commit a breach of the peace.

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* This and the following fifty-two offences (29 to 84 inclusive) are misdemeanors at common law, and as such, punishable with fine and imprisonment. (See the Seventh Report of the Criminal Law Commissioners, and the authorities there cited.)

† See 5 & 6 Vict. c. 102, s. 20.

‡ These offences, when committed for a second time, were made punishable as high misdemeanors or by banishment, by 60 Geo. III. & 1 Geo. IV. c. 8; but 11 Geo. IV. & 1 Wm. IV. c. 73, repealed the latter portion of the punishment.

68. Open indecency in places of public resort or in view thereof.

69. Keeping gaming or other disorderly houses.*

70. Arresting or otherwise obstructing the burial of dead bodies.

71. Unlawfully disinterring dead bodies.

72. Buying or selling wives.

73. Selling unwholesome provisions.

74. Maliciously exposing persons labouring under contagious diseases in places of public resort.

75. Common nuisances.†

76. Corrupting wells or springs used by the public.

77. Innkeepers refusing to receive travellers, their inns not being fully occupied at the time, and a reasonable sum being tendered for accommodation.

78. Battery.

79. False imprisonment.

80. Assaults.

81. Persons maiming themselves, with intent to evade the discharge of any public duty.

82. Cheats.

83. Forgery, in cases where no punishment is provided by statute.

84. Concealing treasure-trove.

XXXI. *Forfeiture, fine* not exceeding 200*l.* and costs of suit, and also such further fine, and whipping and imprisonment, or any of them, in such manner and for such space of time as to the court shall seem meet.

1. Being possessed (not being a contractor with the Commissioners of the Navy, Ordnance or Victualling Office for her Majesty's use) of any of her Majesty's stores called canvass, or bewper otherwise called buntin, or of any cordage wrought with one or more worsted threads, or of any other public stores, the same not being charged to be new or not more than one-third worn. (39 & 40 Geo. III. c. 89, s. 2; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

2. Making, being possessed of or concealing (not being a contractor as last mentioned) any warlike or naval stores with the marks used to her Majesty's warlike, naval, or ordnance stores, or any other public stores. (9 & 10 Wm. III. c. 41; 9 Geo. I. c. 8; 17 Geo II. c. 40; 39 & 40 Geo. III. c. 89, s. 2; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

XXXII. *Fine* not exceeding 500*l.*, or imprisonment for any term not exceeding two years, or both.

1. Aiding the escape of convicts from New South Wales or Van Diemen's Land. (9 Geo. IV. c. 83, s. 34.)

XXXIII. *Imprisonment*, with or without hard labour, for such term as the court shall award.

1. Unlawfully and carnally knowing girls above the age of ten and under the age of twelve years. (9 Geo. IV. c. 31, s. 17.)

XXXIV. *Fine* or *imprisonment*, or both, such imprisonment to be with or without hard labour or solitary confinement, or with both.

1. Unlawfully taking or killing hares or conies, in the night time, in warrens. (7 & 8 Geo. IV. c. 29, ss. 4 and 30.)

2. Unlawfully taking or destroying fish in waters running through or in lands adjoining or belonging to dwelling-houses.* (7 & 8 Geo. IV. c. 29, ss. 4 and 34.)

3. Unlawfully destroying turnpike or toll gates or houses, &c. (7 & 8 Geo. IV. c. 30, ss. 14 and 27.)

4. Officers of the Post-Office opening or detaining post letters† (7 Wm. IV. &

* The court may order hard labour for these offences. (3 Geo. IV. c. 114.) See 21 Geo. III. c. 49, s. 1, by which persons keeping places opened or used for public entertainment or amusement, or for public debating on Sundays, and to which persons are admitted by payment of money or tickets sold for money, are made punishable as in cases of disorderly houses, and incur the penalty of 200*l.* for every Sunday that such places are kept opened, recoverable by action of debt, &c.

† See 9 & 10 Wm. III. c. 7, s. 1, which makes the manufacture of squibs or fireworks (except by order of the Board of Ordnance or by the Artillery Company), or the fireing thereof in any public street, &c., a common nuisance.

* This offence does not extend to angling in the day-time; but persons doing so unlawfully are liable, on summary conviction, to forfeit any sum not exceeding 5*l.*

† This offence does not extend to (amongst other exceptions contained in the Act) the opening or detaining of letters in obedience to an express warrant in writing under the hand of one of the principal secretaries of state.

1 Vict. c. 36, ss. 25 and 42); or stealing, embezzling or destroying printed votes or proceedings in parliament, or newspapers, or other printed papers sent by the post, without covers or in covers, open at the sides. (7 Wm. IV. & 1 Vict. c. 36, ss. 32 & 42.)

XXXV. *Fine* or *imprisonment*, or both, such imprisonment to be with or without hard labour.

1. Forgery of hackney-carriage plates (1 & 2 Wm. IV. c. 22, s. 25); of stage-carriage plates (2 & 3 Wm. IV. c. 120, s. 32); or of the licences or tickets of drivers of hackney-carriages, drivers or conductors of stage-carriages, or watermen (1 & 2 Vict. c. 79, s. 12).

2. Frauds in applying for hackney-carriage or stage-carriage licences. (1 & 2 Wm. IV. c. 22, s. 33; 2 & 3 Wm. IV. c. 120, s. 10.)

XXXVI. *Fine* or *imprisonment*, or both.

1. Compounding offences,* or otherwise offending against the provisions of the 18 Eliz. c. 5 (An Act to redress disorders in common informers). (18 Eliz. c. 5, s. 4; 27 Eliz. c. 10; 56 Geo. III. c. 138, s. 2.)

2. Resisting the execution of any legal process, execution or extent, taken out by persons having debts owing to them from persons residing within the Whitefriars, Savoy, Salisbury Court, Ram Alley, Mitre Court, Fuller's Rents, Baldwin's Gardens, Montague Close, or the Minories, Mint, Clink, or Deadman's Place. (8 & 9 Wm. III. c. 27, s. 15; 56 Geo. III. c. 138, s. 2.)

3. Illegal brokerage. (53 Geo. III. c. 141, s. 9.)

4. Persons having the custody of offenders ordered to be confined in Parkhurst Prison, or Pentonville or Millbank Prison, carelessly allowing such offenders to escape. (1 & 2 Vict. c. 82, s. 13; 5 & 6 Vict. c. 29, s. 25 in part; 6 & 7 Vict. c. 26, s. 23 in part.)

5. Offences against the Foreign Enlistment Act. (59 Geo. III. c. 69, s. 2.)

6. Unlawfully taking unmarried girls under the age of 16 years out of the possession of those who have the lawful charge of them. (9 Geo. IV. c. 31, s. 20.)

7. Arresting clergymen on civil process while employed about the performance of divine service. (9 Geo. IV. c. 31, s. 23.)

8. Frauds by Excise officers in the granting of permits, or in the performance of their duties in relation to the same.* (2 Wm. IV. c. 16, s. 15.)

9. Altering, destroying, counterfeiting or trafficking in the register-tickets with which merchant seamen are required to provide themselves. (7 & 8 Vict. c. 112, s. 21.)

10. Making false answers to questions by the registrar of seamen, &c., with reference to the granting of such tickets. (7 & 8 Vict. c. 112, s. 22.)

11. Masters of merchant ships, without the sanction of the consul, &c., discharging or abandoning abroad persons belonging to their ships or crews, or, in case any such person should desert abroad, neglecting to notify the same in writing to such consul, &c. (7 & 8 Vict. c. 112, s. 46.)

12. Masters, mates or other officers of merchant ships, wrongfully forcing on shore, or leaving behind on shore or at sea, persons belonging to their ships or crews, before the completion of the voyage for which such persons were engaged, or the return of their ships to the United Kingdom.† (7 & 8 Vict. c. 112, s. 47.)

13. Masters of merchant ships omitting, when required by the consul, &c., on the complaint of three or more of their crew, to provide proper provisions, water or medicines, or the requisite quantity thereof, or using any provisions, &c. which the consul, &c. shall have signified to be unfit for use or inappropriate. (7 & 8 Vict. c. 112, s. 57.)

* Besides the above punishment, the offender, upon conviction, is for ever disabled to pursue or be plaintiff or informer in any suit or information upon any statute, popular or penal, and also forfeits 10*l.*, recoverable by action of debt or information.

* The offender, on conviction, is also rendered incapable of holding any office or place in or relating to any of the revenues of the United Kingdom.

† See also 9 Geo. IV. c. 31, s. 30, which makes it a misdemeanor, punishable with imprisonment for such term as the court shall award, for masters of merchant ships to force on shore or refuse to bring home all such of the men whom they carried out as are in a condition to return.

XXXVII. *Imprisonment* for three years, and fine at the queen's pleasure.*

1. Champerty. (3 Edw. I. c. 25; 13 Edw. I. st. 1, c. 49; 28 Edw. I. st. 3, c. 11; 33 Edw. I. st. 2; 33 Edw. I. st. 3; 4 Edw. III. c. 11; 20 Edw. III. c. 4 and c. 5; 7 Rich. II. c. 15; 32 Hen. VIII. c. 9.)

2. Maintenance. (3 Edw. I. c. 28 and c. 33; 33 Edw. I. st. 3; 1 Edw. III. st. 2, c. 14; 4 Edw. III. c. 11; 20 Edw. III. c. 4 and c. 5; 1 Rich. II. c. 4 and c. 7; 7 Rich. II. c. 15; 32 Hen. VIII. c. 9.)

XXXVIII. *Great forfeiture.*

1. Disturbing any to make free election. (3 Edw. I. c. 5.)

XXXIX. *To be adjudged* incapable and disabled in law to have or enjoy any office or employment, ecclesiastical, civil or military, or any part in them, or any profit or advantage appertaining to them; and if the offender at the time of being convicted enjoy or possess any office, place or employment, the same is made void.

1. Having been educated in or professed Christianity within this realm, asserting that there are more Gods than one, or denying the Christian religion to be true or the Scriptures to be of Divine authority.† (9 & 10 Wm. III. c. 32, s. 1; 55 Geo. III. c. 160, s. 2.)

XL. *Imprisonment* and hard labour for any period not exceeding three years.

1. Insolvent debtors or petitioners for protection from process, omitting in their schedules any property, or retaining or excepting out of such schedules, as necessaries, property of greater value than 20*l.* with intent to defraud their creditors. (1 & 2 Vict. c. 110, ss. 99 and 121; 7 & 8 Vict. c. 96, s. 39.)

XLI. *Imprisonment* for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Being possessed of three or more pieces of counterfeit coin intended to pass for the queen's current gold or silver coin, knowing the same to be counterfeit and with intent to utter the same. (2 Wm. IV. c. 34, ss. 8 in part and 19.)

XLII. *Imprisonment* with hard labour for any term not exceeding three years, either in addition to or in lieu of any other punishment or penalty which may be inflicted upon the offender.

1. Being armed, assaulting Excise officers whilst searching for or seizing commodities forfeited under any Act relating to the Excise or Customs, or whilst endeavouring to arrest offenders. (7 & 8 Geo. IV. c. 53, ss. 40 and 43.)

XLIII. *Imprisonment* for any term not exceeding three years, with or without hard labour.

1. Bankrupts or members of incorporated commercial or trading companies which shall be adjudged bankrupt, falsifying or destroying their books, &c., with intent to defraud their creditors. (5 & 6 Vict. c. 122, s. 34; 7 & 8 Vict. c. 111, s. 30.)

2. Publishing or threatening to publish libels, &c. with intent to extort money, &c. (6 & 7 Vict. c. 96, s. 3.)

XLIV. *Imprisonment* for one year and grievous fine at the queen's pleasure; or if the offender have not whereof, imprisonment for three years.

1. Misprision of felony by sheriffs, coroners, or other bailiffs. (3 Edw. I. c. 9.)

XLV. *Imprisonment* for one year and grievous fine; or if the offender have not whereof, imprisonment for two years.

1. Bailiffs not being ready, on the hue and cry, to arrest felons. (3 Edw. I. c. 9.)

XLVI. *Imprisonment* with or without hard labour for any term not exceeding two years, and fine, if the court shall think fit; and the offender may be required to find sureties for keeping the peace.

* That is, as declared by the judges. This punishment is taken from 33 Edw. I. st. 3 (Statute of Champerty); but see the other Acts referred to. The repeal of the offences of Champerty and Maintenance is recommended by the Criminal Law Commissioners. (See their Fifth Report.)

† For a first offence the above penalties may be relieved against by renunciation of such erroneous opinions in the same Court where the offender was convicted, within four months after such conviction. (s. 3.)

If a person be a second time convicted of any of the above offences, he is to be imprisoned for three years, and to be disabled to sue, &c. in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefice ecclesiastical, for ever within the realm. (s. 1.)

1. Assaults with intent to commit felony, or on any peace or revenue officer, or with intent to resist the lawful apprehension or detainer of any person, or in pursuance of any conspiracy to raise the rate of wages (9 Geo. IV. c. 31, s. 25); or on special constables* (9 Geo. IV. c. 31, s. 25; 1 & 2 Wm. IV. c. 41, s. 11).

XLVII. *Fine* and imprisonment not exceeding two years.

1. Being present at meetings unauthorised by her Majesty &c., for the purpose of being drilled to the use of arms, or, at any such meetings, being so drilled. (60 Geo. III. & 1 Geo. IV. c. 1, s. 1.)

2. Maliciously publishing defamatory libels, knowing them to be false. (6 & 7 Vict. c. 96, s. 4.)

XLVIII. *Imprisonment* for any term not exceeding two years, with or without hard labour or solitary confinement, or with both.

1. Soliciting the commission of any felony or misdemeanor punishable by the Post-Office Acts. (7 Wm. IV. & 1 Vict. c. 36, ss. 36 and 42.)

XLIX. *Imprisonment* with hard labour for any term not exceeding two years.

1. Personating voters at elections of members of Parliament. (6 & 7 Vict. c. 18, s. 83.)

L. *Imprisonment* with or without hard labour for any term not exceeding two years.

1. Women, by secret burying &c., endeavouring to conceal the birth of children of which they have been delivered. (9 Geo. IV. c. 31, s. 14.)

2. Bankrupt, within three months next preceding his bankruptcy, obtaining goods on credit under the false pretence of dealing in the ordinary course of trade. (5 & 6 Vict. c. 122, s. 35.)

3. Drunkenness or other misconduct of servants of railway companies.† (3 & 4 Vict. c. 97, s. 13.)

* Assaults on special constables may also be punished on summary conviction before two justices. (See 1 & 2 Wm. IV. c. 41.)

† This offence may be punished on summary conviction, with imprisonment not exceeding two calendar months or fine not exceeding 10*l.*, if the justice before whom complaint is made shall think fit to decide upon it, instead of sending the offender for trial at the Quarter-Sessions.

LI. *Imprisonment* for a term not exceeding two years.

1. Embarking on board slavers in the capacity of petty officers, seamen, &c. (5 Geo. IV. c. 113, s. 11; 3 & 4 Wm. IV. c. 73.)

2. Doing anything to obstruct carriages on railways or to endanger the safety of persons conveyed upon the same. (3 & 4 Vict. c. 97, s. 15.)

LII. *Imprisonment* for one year, and such further punishment by fine or imprisonment, or both, as to the court shall seem most proper, and the offender to give sureties for good behaviour and to be further imprisoned until they be given.

1. Witchcraft, fortune-telling &c., or pretending to discover where property supposed to be stolen or lost may be found. (9 Geo. II. c. 5, s. 4; 56 Geo. III. c. 138, s. 2.)

LIII. *Fine*, or *Imprisonment* not exceeding eighteen months, or both, with or without hard labour.

1. Dog-stealing (for the second offence*). (8 & 9 Vict. c. 47, s. 2 in part.)

LIV. *Forfeiture* of goods and chattels, real and personal,† and if the offender have not goods and chattels to the value of 20*l.*, then, in addition, imprisonment for one year.

1. Maintaining the authority, spiritual or ecclesiastical, of any foreign prince or state claimed within this realm or any of the dominions under the queen's obeisance before the passing of the 1 Eliz. c. 1.‡ (1 Eliz. c. 1, ss. 27 and 28; 7 & 8 Vict. c. 102.)

LV. *Imprisonment* for any term not exceeding one year, with or without hard labour or solitary confinement, or with both.

* The first offence is punishable on summary conviction before two or more justices with imprisonment not exceeding six calendar months, with or without hard labour, or with forfeiture not exceeding 20*l.* over and above the value of the dog, as to the justices shall seem meet.

† This forfeiture, being by statute, does not, as above observed, constitute the offence a felony.

‡ The repeal of this offence is recommended by the Commissioners for revising and consolidating the Criminal Law. (See their Report on penalties and disabilities in regard to religious opinions, dated 30th May, 1845.)

1. Uttering counterfeit coin intended to pass for the queen's current copper coin, or being possessed of three or more pieces of such coin with intent to utter the same. (2 Wm. IV. c. 34, ss. 12 and 19.)

LVI. *Imprisonment* for any term not exceeding one year, or fine, or both.

1. Maliciously publishing defamatory libels. (6 & 7 Vict. c. 96, s. 5.)

LVII. *Solitary imprisonment* for a space not exceeding twelve nor less than three calendar months.*

1. Persons having hired stocking-frames, unlawfully disposing of them without the consent of the owners. (28 Geo. III. c. 55, s. 2.)

2. Knowingly receiving or purchasing such stocking-frames so unlawfully disposed of. (28 Geo. III. c. 55, s. 3.)

LVIII. *Fine* of 100*l.* or imprisonment with hard labour for any term not exceeding one year, at the discretion of the court.

1. Making signals between sunset and sunrise from the 21st of September to the 1st of April, and between 8 p.m. and 6 a.m. at any other time of the year, for the purpose of giving any notice to persons on board smuggling vessels, whether such persons be or be not within distance to notice such signals. (8 & 9 Vict. c. 87, s. 60.)

LIX. *Fine* of 500*l.*, and the offender to be rendered incapable of holding any office or place under the crown.

1. Judges and other officers or persons demanding or taking any money or other thing of value for anything done or pretended to be done under any Act relating to bankrupts, beyond what is allowed by such Acts. (1 & 2 Wm. IV. c. 56, s. 58.)

2. Masters in Chancery, or persons holding offices in the Court of Chancery, or under any of the officers thereof, demanding or taking any emolument or other thing of value, other than is allowed to be taken for anything done or pretended to be done relating to their offices or employments.* (3 & 4 Wm. IV. c. 94, s. 41.)

LX. *Imprisonment* for six months.

1. Mayors, bailiffs, or other chief officers of towns corporate, designedly hindering the election of other mayors, &c. in the same towns corporate.† (11 Geo. I. c. 4, s. 6.)

2. Brokers, not being trading goldsmiths or refiners of silver, buying or selling bullion or molten silver. (6 & 7 Wm. III. c. 17, s. 7.)

3. Persons suspected of buying or selling unlawful bullion, in whose possession such bullion shall be found, not proving upon their trial for melting the current coin of the realm, by one witness at the least, that the same was lawful silver and not current coin, nor clippings thereof. (6 & 7 Wm. III. c. 17, s. 8 in part.)

LXI. *Half a year's* imprisonment, and ransom at the queen's will‡.

1. Marshals of the Queen's Bench suffering prisoners indicted for felony who have removed the same indictment before the queen to wander out of prison by bail or without. (5 Edw. III. c. 8.)

LXII. *Imprisonment* for any period not exceeding six months, and the offender, if a male, may be put to hard labour, or be once, twice or thrice privately whipped, in such manner as the court shall direct.

1. Maliciously damaging any thing kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum or other repository, which is at all times or from time to time open to the public or any considerable number of persons, either by permission of the proprietor or by payment of money, or any picture, statue, monument or painted glass in any place of public worship, or any statue or monument exposed to public view. (8 & 9 Vict. c. 44, s. 1.)

LXIII. *Imprisonment* for any time not exceeding six calendar months.

1. Making false declarations under the provisions of the Act for regulating the

* But see 7 Wm. IV. & 1 Vict. c. 90, s. 5, which limits the time for which the court may order solitary confinement to a period not longer than one month at a time, or three months in a year. It may be a question whether the above punishment is affected by that enactment, being expressly directed by act of parliament, and the court having no discretion.

* In the case of officers of the Court of Chancery, the statute also provides that they are to be removed from their offices or employments.

† Such offenders are also disabled to hold any office belonging to the same corporations.

‡ For the meaning of ransom and queen's will, see above, p. 208, notes * †.

manner of making surcharges of the duties of assessed taxes.* (50 Geo. III. c. 105, s. 9.)

LXIV. *Fine* not exceeding 100*l.* and three months' imprisonment.

1. Procuring the consent of more than twenty persons to any petition or other address to the queen or either house of parliament, for alteration of matters established by law in church or state, without the previous order of three or more justices, or the majority of the grand jury of the county, where the matter arises at the assizes or quarter-sessions, or, if arising in London, of the lord mayor, aldermen, and commons, in common council assembled; or, upon pretence of presenting any petition or other address, being accompanied with excessive number of people, or at any one time with above ten persons.† (13 Car. II. c. 5, s. 2.)

LXV. *Fine* not exceeding 20*l.*, or imprisonment with or without hard labour or solitary confinement, or with both, for any term not exceeding three calendar months, or both.

1. Unlawfully dredging for oysters. (7 & 8 Geo. IV. c. 29, ss. 4 and 36.)

LXVI. *Imprisonment* for any term not exceeding three months, or fine not exceeding 50*l.*

1. Offending against the provisions of the Act for regulating schools of anatomy. (2 & 3 Wm. IV. c. 75, s. 18.)

LXVII. *Fine* not less than 20*l.*, and imprisonment with or without hard labour.

1. Neglecting or disobeying the orders of the Poor Law Commissioners or assistant commissioners, having been twice previously convicted of so doing.‡ (4 & 5 Wm. IV. c. 76, s. 98.)

LXVIII. *Imprisonment* until the offender brings into court him which was the first author of the tale, and, if he cannot find him, such punishment as the council shall advise.

1. Scandalum magnatum. (3 Edw. I. c. 34; 2 Rich. II. st. 1, c. 5; 12 Rich. II. c. 11.)

LXIX. *Forfeiture* of 100*l.*

1. Members of incorporated commercial or trading companies against which a fiat in bankruptcy has issued (not being the persons ordered to prepare the balance sheet), or any other person, wilfully concealing the estate of such companies.* (7 & 8 Vict. c. 111, s. 17.)

LXX. *Fine* of 40*l.*

1. Disturbing any religious assembly allowed by law. (1 Wm. & Mary, c. 18, s. 18; 31 Geo. III. c. 32, s. 10;† 52 Geo. III. c. 155, s. 12.)

LXXI. *Fine* or imprisonment.

1. Embracery. (6 Geo. IV. c. 50, s. 61.)

LXXII. *Fine* according to the trespass.

1. Illegal distresses. (52 Henry III. cc. 1, 2, 3, 4; 3 Edw. I. c. 16.)

LXXIII. *Fine* and ransom at the queen's will and pleasure.‡

1. Judges or clerks rasing rolls, changing verdicts, &c. whereby ensueth disherison of any of the parties.§ (8 Rich. II. c. 4.)

2. Frauds by persons holding commissions to compound for the payment of first-fruits.‖ (26 Hen. VIII. c. 3, s. 4; 1 Eliz. c. 4, s. 24.)

LXXIV. *Grievous fine* to the queen.

1. Not being ready and apparelled at the summons of sheriffs and the cry of the country, to arrest felons, when need is, as well within franchise as without.¶ (3 Edw. I. c. 9.)

* Besides the above punishment, the offender is also to be fined any sum not exceeding treble the amount of duty for which he shall have been charged, as the court shall order. (sec. 9.)

† Lord Mansfield declared it to be the unanimous opinion of the court, that neither the Bill of Rights (1 Wm. & Mary, sess. 2, c. 2) nor any other Act had repealed 13 Car. II. c. 5, and that it was in full force.—R. *v* Lord G. Gordon, Dougl., 571.

‡ The first and second offences are punishable on summary conviction only.

* Such offenders also forfeit double the value of the estate concealed.

† The punishment by 1 Wm. & Mary, c. 18, s. 18 (the Dissenters' Toleration Act), and 31 Geo. III. c. 32, s. 10 (the R. Catholic Toleration Act), was 20*l* only. As regards the former there is no doubt that 52 Geo. III. c. 155, which was passed for the relief of Protestant Dissenters, has superseded it; but it may be a question whether, notwithstanding the generality of its terms, it has superseded the provision of 31 Geo. III. c. 32, s. 10.

‡ For the meaning of ransom and queen's will and pleasure, see p. 208, notes * †.

§ The offender must also satisfy the party.

‖ The offender also forfeits his office of deputation.

¶ If default be found in the lord of the franchise, the queen may seize his franchise.

LXXV. *Grievous punishment.*

1. Justices' marshals taking money wrongfully from successful suitors or jurors, prisoners or others attached upon pleas of the crown.* (3 Edw. I. c. 30.)

LXXVI. *Punishment* at the queen's will.†

1. Extortion by sheriffs and other queen's officers. (3 Edw. I. c. 26; 1 Hen. IV. c. 11.)

LXXVII. *Fine* not exceeding 100*l.*, at the discretion of the court.

1. Offences against the act for abolishing the truck system in certain trades. (1 & 2 Wm. IV. c. 37, s. 9.)

LXXVIII. *To be* at the queen's will of body, lands, and goods, thereof to be done as shall please her.

1. Justices being found in default in any of the points contained in the oath required to be taken by them. (18 Edw. III. st. 4; 20 Edw. III. c. 1.)

LXXIX. *Forfeiture* of twenty shillings for every offence.

1. Drovers, horse-coursers, waggoners, butchers, higglers or their servants, travelling or coming into their inns or lodgings upon the Lord's Day.‡ (29 Car. II. c. 7, s. 2.)

LXXX. *Forfeiture* of 5*s.*

1. Persons of the age of fourteen or upwards, doing or exercising any worldly labour, business or work of their ordinary calling on the Lord's Day (works of necessity and charity only excepted).§ (29 Car. II. c. 7, s. 1.)‖

Besides the misdemeanors above enumerated, there are several offences against the Established Church which are indictable, but the penalties for which may be relieved against by complying with the provisions of what are commonly called the Toleration Acts. These offences consist of

1. The forbearing to resort to one's parish church on Sundays or other holy days, without some lawful or reasonable excuse for being absent, which constitutes the offender on conviction a recusant convict, and renders him liable to forfeit 12*d.* for every such offence, to the use of the poor of the parish where the offence is committed (1 Eliz. c. 2, s. 14), and, in addition thereto, to pay into the Exchequer after the rate of 20*l.* for every month which shall be contained in the indictment upon which he is convicted; and also, having been once convicted, to forfeit without further indictment or conviction 20*l.* to the queen for every month of so forbearing (29 Eliz. c. 6, s. 4; 3 Jac. I. c. 4, s. 8). He also, previously to the passing of the 7 & 8 Vict. c. 102, which repealed the Acts imposing them, became liable to numerous disabilities, amounting, in effect, to outlawry. A Roman Catholic who so forbore to resort to his parish church became on conviction a Popish recusant convict, and liable to additional penalties and disabilities beyond those which attached to recusants convict. The offence has, however, been repealed by the before-mentioned Act of the 7 & 8 Vict. c. 102, as regards Roman Catholics.

2. The relieving, harbouring or keeping recusants in the house, the penalty for every month of doing which is 10*l.* (3 Jac. I. c. 4, ss. 32 and 33.) The 7 & 8 Vict. c. 102, also repealed this offence so far as it related to Popish recusants.

3. Schoolmasters teaching in private families without licence from their archbishop, &c., and before subscribing a declaration of their conformity to the Liturgy; for doing which they are liable, for the first offence, to suffer three months' imprisonment, and for every second and other offence the like imprisonment, and to forfeit 5*l.* to the queen. (13 & 14 Car. II. c. 4, ss. 11 and 12; 1 Wm. & Mary, sess. 1, c. 8, s. 11.)

* Such offenders are also to pay to the complainants treble the value of what they so receive.

† For the meaning of queen's will, see note †, p. 208.

‡ The above offence does not apply to the drivers of fish-carriages or of horses returning from drawing fish-carriages, used for the conveyance of fish under the provisions of 2 Geo. III. c. 15, an Act for the better supplying the cities of London and Westminster with fish. (See section 7 of that Act.)

Persons committing this and the next offence may be proceeded against either by indictment or in a summary way before a magistrate.

§ As to other exceptions see 29 Car. II. c. 7, s. 3; 10 & 11 Wm. III. c. 24, s. 14; 3 Geo. IV. c. 106, s. 16; 6 & 7 Wm. IV. c. 37, s. 14; 7 & 8 Geo. IV. c. 75, ss. 42-50; 1 & 2 Wm. IV. c. 22, s. 37.

‖ By the same section of 29 Car. II. c. 7, persons also who publicly cry or expose to sale any wares or chattels on the Lord's Day, are to forfeit the same.

4. Popish bishops, priests, or Jesuits, saying mass or exercising any other of their functions within the queen's dominions, or Papists keeping school or educating youth within the same, whereby, upon conviction, they become liable to perpetual imprisonment. (11 & 12 Wm. III. c. 4, s. 3.) Roman Catholics were also liable to many other severe penalties for promoting or exercising their religion, until these were repealed by the 7 & 8 Vict. c. 102. It will be seen that the two former of the above offences no longer apply to Roman Catholics. The two latter are, however, still in force with respect to them as well as all other classes of the queen's subjects.

The offence of forbearing to resort to church is repealed by the Protestant Dissenters' Toleration Acts (1 Wm. & Mary, sess. 1, c. 18, ss. 13 and 16; and 52 Geo. III. c. 155, ss. 4 and 14) in favour of Dissenters who go to some congregation for religious worship of Protestants allowed by law. Quakers, however, must also, in addition, make the declaration of fidelity, as it is called, and subscribe a profession of their Christian belief. By the provisions of the same Acts, the offence of relieving, harbouring or keeping recusants is repealed in favour of Quakers who make the declaration and subscribe the profession before alluded to, and of all other Protestant Dissenters who resort to some congregation for religious worship of Protestants allowed by law, or take the oaths of allegiance and supremacy, or (since the passing of the 3 & 4 Wm. IV. cc. 49 and 82, in case such Dissenters be Moravians, or Separatists) make an affirmation to the effect of such oaths. The penalties imposed upon schoolmasters teaching without licence from the archbishop, &c. are repealed in favour of Protestant Dissenters who take the oaths of allegiance and supremacy (or, if Moravians, or Separatists, make a declaration to the effect thereof, or, if Quakers, make the declaration of fidelity and profession of their Christian belief before alluded to), and make a declaration that they are Protestants, and that they believe in the Scriptures as received among Protestant churches. (1 Wm. and Mary, sess. 1, c. 18, s. 13; 8 Geo. I. c. 6; 19 Geo. III. c. 44, s. 2; 10 Geo. IV. c. 7, s. 1; 3 & 4 Wm. IV. cc. 49 and 82.) Popish bishops &c. saying mass &c., and Papists keeping school or educating youth, are relieved from the penalties for so doing, provided they take the oath appointed by the Roman Catholic Relief Act (10 Geo. IV. c. 7). See the 31 Geo. III. c. 32, ss. 3, 4 and 13; and 10 Geo. IV. c. 7, ss. 2 and 23.

Persons committing any of the beforementioned offences against the Established Church, may also, in general, prevent the consequences of the commission of such offences by conforming themselves to the Church. Members of the Established Church are not within the Toleration Acts, and the only mode therefore in which they can escape the penalties for those offences is by conforming to the law. Neither do those Acts apply to Jews.

There are also two offences, having, however, much more of a political than of a religious character, which subject the persons committing them to be adjudged Popish recusants convict, and as such to forfeit and be proceeded against. These are, refusing to take the oaths of allegiance and abjuration, or to make the affirmations or declarations allowed by law in lieu thereof, when tendered by two justices of the peace or other authorized persons (1 Geo. I. st. 2, c. 13, s. 10; 8 Geo. I. c. 6; 6 Geo. III. c. 53; 3 & 4 Wm. IV. cc. 49 and 82; 1 & 2 Vict. c. 77); and peers or members of either House of Parliament, sitting or voting therein, or coming into the queen's presence, before they have taken the oaths of allegiance and supremacy, or taken or made the oath, affirmations or declarations allowed by law in lieu thereof. (30 Chas. II. st. 2, ss. 2, 5, and 6; 8 Geo. I. c. 6; 31 Geo. III. c. 32, s. 20; 10 Geo. IV. c. 7, ss. 2, 4 and 23; 3 & 4 Wm. IV. cc. 49 and 82; 1 & 2 Vict. c. 77.) Peers and Members of Parliament are also liable in respect of the latter offence to many disabilities, and to a fine of 500*l.* in addition to the penalties consequent on being adjudged Popish recusants convict. The repeal of the four first-mentioned offences relating to the Established Church, is recommended by the Commissioners for revising and consolidating the

criminal law. (See their Report on penalties and disabilities in regard to religious opinions, dated 30th of May, 1845.) The Commissioners also recommend that persons committing the two last-mentioned offences should no longer be adjudged and suffer as Popish recusants convict, but should be punished in a more direct manner; and that one form of an oath, and one of an affirmation, should be substituted for the numerous forms of the oaths of allegiance, supremacy and abjuration, and the modifications thereof now existing, to be so framed that the same may be taken by all classes of her Majesty's subjects without objection on religious grounds.

The whole of the law, written as well as unwritten, relating to the definition and punishment of the above offences, that is, the whole Criminal Law of England as regards indictable crimes and their punishments, has been collected and reduced into one body by the Criminal Law Commissioners (see their 7th Report), and is thus for the first time rendered accessible to the public at large. Before this reduction the Criminal Law had to be sought for in an immense mass of statutes, reported decisions, records, ancient and modern, and text-books; and, on that account, could be known but to the few, and those principally engaged in the practice or administration of the law. The digest so prepared by the Commissioners, and called by them 'The Act of Crimes and Punishments,' is comprised in twenty-four chapters, under the following heads:—

1. Preliminary Declarations and Enactments.
2. Treason and other Offences against the State.
3. Offences against Religion and the Established Church.
4. Offences against the Executive Power, generally.
5. Offences against the Administration of Justice.
6. Offences against the Public Peace.
7. Offences relating to the Coin, and to Bullion, and Gold and Silver Plate.
8. Offences relating to the Public Property, Revenue and Funds.
9. Offences against the Law of Marriage.
10. Offences relating to Public Records and Registers.
11. Offences against Public Morals and Decency.
12. Offences against Public Health.
13. Common Nuisances.
14. Offences relating to Trade, Commerce, and Public Communication.
15. Homicide and other offences against the person.
16. Libel.
17. Offences against the Habitation.
18. Fraudulent Appropriations.
19. Piracy and Offences connected with the Slave Trade.
20. Malicious Injuries to Property.
21. Forgery and other offences connected therewith.
22. Illegal Solicitations, Conspiracies, Attempts and Repetitions of Offences.
23. Definitions of Terms and Explanations.
24. Chapter of Penalties.

Upon the subject of punishments, the Commissioners recommend the abolition of forfeiture as an incident to convictions for treason or felony; are inclined to reject whipping as a mode of punishment, except in the case of discharging or aiming fire-arms, &c. at the queen (5 & 6 Vict. c. 51, s. 2), in which it has lately been imposed by the legislature as constituting a signal mark of ignominy; propose that three, or at the utmost four, years should be the longest term of imprisonment to be inflicted for any offence, whether treason, felony, or misdemeanor, in cases where imprisonment forms the whole or part of the punishment; and suggest a scale of penalties, consisting of forty-five classes, to be substituted for the numerous punishments contained in the above statement.—This scale might be much further reduced but for the special nature of some offences, and if the recommendations of the Commissioners should be adopted. At present it is extremely difficult in some instances to determine what punishment an offence is liable to.

It may be expected that at no distant period the 'Act of Crimes and Punishments,' subject to such omissions as are recommended by the Commissioners, will

become the law of the land. A bill embodying its provisions was introduced last year in the House of Lords by Lord Brougham, was read a second time, and went into committee *pro formâ;* but was ultimately withdrawn at the instance of the Lord Chancellor, who undertook to issue a commission for the purpose of revising it, that duty being too laborious for any government to grapple with, and if their report should be favourable to its adoption, to found one or more government measures upon it, as should be thought most expedient. A commission (the one whose Report on penalties and disabilities in regard to religious opinions has been several times alluded to in the foregoing statement) was accordingly appointed for this, amongst other purposes, on the 22nd of February of the present year (1845). Since then, the members of the old commission (who also form part of the new one) have made a Report containing a digest of the law of procedure as regards indictable offences, (a most difficult and laborious undertaking,) and this also is to be revised by the new commission, and if passed into a law would be a work of inestimable value.

Besides the 'Act of Crimes and Punishments' and the Digest of the Law of Procedure, several other most important Reports emanated from the original Criminal Law Commission. It was upon their recommendation that the Acts of the 1st year of her present Majesty's reign, repealing the punishment of death in the case of between thirty and forty crimes, were founded. It was a Report of theirs which mainly contributed to the alteration of that harsh and inconsistent rule of our law which denied a prisoner his full defence by counsel upon a charge of felony. They also made a very elaborate and valuable Report upon the Consolidation of the General Statute Law, and a Report upon the subject of Juvenile Offenders—in all, the number of Reports which issued from the Commission between the period of its first appointment in 1823 and its termination in the present year (1845), was Eight.

Procedure.

Where any of the before-mentioned crimes has been or is suspected to have been committed, the ordinary mode of bringing the accused to justice is as follows:—Unless he surrender himself, he is, in the first place, to be summoned by some magistrate, having jurisdiction, to appear before him, or, as is more generally the case, a warrant for his apprehension is to be procured from some such magistrate. In order to the issuing of a summons or warrant there must be an information laid on oath: the former may be directed either to the accused himself, or to some other person who is to summon him to appear; the latter to any constable or other person whom the magistrate pleases, and must signify the party to be arrested and the offence which is the cause of his arrest. After a summons duly issued and served upon the accused, he is to appear according to its directions, or in default the magistrate may issue his warrant to apprehend him. After a warrant duly granted, whether a summons has been previously issued or not, the person to whom it is directed is to proceed to arrest the accused (and if for treason, felony, or breach of the peace, may do so on any day, and at any time of the day or night), and to take him to gaol or before some magistrate having jurisdiction, according to the import of the warrant, and that without any unnecessary delay. It is also lawful for a constable or private person who sees a felony committed, or attempted to be committed, or a dangerous wound given, to arrest the offender, without warrant; also any person whom he reasonably suspects of having committed a felony which has actually been committed, and persons found committing thefts or malicious injuries to property and some other offences. A constable may also, without warrant, arrest on a reasonable charge made of a felony committed or dangerous wound given, although it afterwards appear that none such had been actually committed or given; also for a breach of the peace committed in his view; but (except in the case of one of the metropolitan police, who may under certain circumstances do so upon a charge made of an aggravated assault (see 2 & 3 Vict. c. 47), not for

one committed out of his view. Justices of the peace, sheriffs, coroners, and all other peace officers, have, it would appear, the like power to arrest as constables. Where a party is arrested without warrant, he must be taken before a magistrate within a reasonable time.

On surrendering himself, or appearing in obedience to a summons, or being brought before a justice of the peace under a warrant, the justice is to proceed to take the examination of the accused and the information on oath of those who know the facts and circumstances of the case, and is to put so much thereof as is material into writing. If a *primâ facie* case be made out, the justice is to commit him to prison (unless he be entitled to be discharged on bail). If it appear that no crime has been committed, or that, if committed, the accused is innocent, he is to discharge him. Unless it be prohibited by act of parliament, the accused ought to be admitted to bail in the case of all misdemeanors. Where the charge is one of felony, and the accused is brought before a single justice of the peace, if the evidence be neither sufficient to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, the accused is to be detained until the case be taken before two justices at the least, who in such case may admit him to bail (7 Geo. IV. c. 64, s. 1), and, if one of them has signed the warrant of commitment, may admit him to bail, although he confess the matter laid to his charge, or such charge do not appear to be groundless, or the circumstances be such as to raise a presumption of guilt (5 & 6 Wm. IV. c. 33, s. 3). If the accused be brought before two justices in the first instance, they have the like power to bail him. Where a party is committed or bailed for any offence, the justice may bind by recognizance all persons who know or declare anything material touching it, to appear and prosecute, or give evidence against him. When held to bail or committed to prison, the accused is entitled to have delivered to him, on demand, copies of the examinations of the witnesses upon whose depositions he is so bailed or committed, on payment of a reasonable sum not exceeding 1½*d.* for each folio of 90 words. If, however, such demand be not made before the day appointed for the commencement of the assizes or sessions at which the accused is to be tried, he is not entitled to such copies unless the court be of opinion that the same may be delivered without delay or inconvenience to the trial (6 & 7 Wm. IV. c. 114, s. 3).

Before a prisoner can be put upon his trial for any treason or felony, it is necessary that a bill of indictment should be found against him by a grand jury duly returned before some court which has jurisdiction to try parties for crimes by means of a petty jury; or in the case of murder or manslaughter, he may be tried upon the coroner's inquisition. Where the offence with which he is charged is a misdemeanor, he may be tried either upon a bill of indictment found, as in the case of treason or felony, or upon a criminal information filed against him in the name of the queen. For a præmunire, he is to be first indicted as in other cases, or may be proceeded against in the peculiar manner pointed out by 16 Rich. II. c. 5, commonly called the Statute of Præmunire. This latter mode may, however, be regarded as obsolete.

A bill of indictment is an accusation at the suit of the Crown, and being for the public benefit and security, may generally be preferred by any person; but it is not usual for parties to interfere unless they are individually aggrieved by the offence, or fill some office which renders it peculiarly incumbent on them to bring the offender to justice. [INDICTMENT.] So soon as the grand jury have presented the bill of indictment in court, indorsed "a true bill," the indictment is complete. If the grand jury find no true bill, the accused, where in custody, is to be at once set at large, without the payment of any fees on account of such discharge (14 Geo. III. c. 20; 55 Geo. III. c. 50; 8 & 9 Vict. c. 114). An indictment may also be framed upon the presentment by a grand jury, of their own knowledge that an offence has been committed; but this mode of prosecution is seldom adopted. For further particulars relating to Grand Juries see JURY.

A criminal information in the name of the Queen is a suggestion filed on record

by the attorney-general or by the queen's coroner or master of the Crown Office, in the court of Queen's Bench, that a misdemeanor has been committed by an alleged offender. The attorney-general, or, during vacancy in that office, the solicitor-general, may at his discretion file a criminal information. In all other cases it is in the discretion of the court of Queen's Bench to grant or refuse leave to file such informations, and such leave will only be granted on motion made, grounded on proper affidavits, and in respect of misdemeanors of such magnitude or under such circumstances as in the opinion of the court call for its interference. After an information is filed, all the subsequent proceedings are in general the same as after an indictment found for a misdemeanor.

Persons committed for treason or felony who move in open court the first week of the term, or first day of the sessions of oyer and terminer or gaol delivery, to be brought to trial, may, if not indicted some time in the next term or session after their commitment, be bailed by the judges of the Queen's Bench or justices of oyer and terminer or gaol delivery, unless it appear that the witnesses for the Crown could not be produced the same term or sessions; and if not indicted and tried the second term or sessions after their commitment, or if acquitted upon their trial, shall be discharged from imprisonment (31 Car. II. c. 2, s. 7). [HABEAS CORPUS ACT.]

When the indictment is found, in cases of felony, the accused is bound to plead and try *instanter*, and, if in custody, is to be brought to the bar and arraigned (which is the legal term for calling on a prisoner to answer to a charge of an indictable offence) as soon as convenient after such indictment is found; but in all cases of treason, except where the overt act is the assassination of the queen, the endangering of her life or person, or any attempt to injure her person (39 & 40 Geo. III. c. 93; 5 & 6 Vict. c. 51), and except the forgery of the great and other royal seals (7 & 8 Wm. III. c. 3. s. 13), the accused is to have a true copy of the indictment delivered to him ten days at the least before he is arraigned, and, *at the same time*, a list of the witnesses to be produced against him, and if indicted in any other court than the Queen's Bench, a list of the petit jury; but if indicted in the Queen's Bench, the list of the petit jury may be delivered to him at any time after his arraignment, so as it be delivered ten days before the day of trial (7 & 8 Wm. III. c. 3, s. 1; 7 Anne, c. 21, s. 11; 6 Geo. IV. c. 50, s. 21). If the accused plead, however, without claiming or having had delivered to him such copy or lists, he will be considered to have waived any objection on account of such non-delivery. In cases of misdemeanor, the accused is not bound to plead and try at the session at which the indictment is found, unless he has been in custody or out on bail to appear to answer for the offence with which he is charged, twenty days, at the least, before such session (60 Geo. III. & 1 Geo. IV. c. 4, s. 3), but may traverse the indictment, that is, postpone its determination to the next session. He must usually, however, before he will be allowed to do so, appear personally in court (except in the Queen's Bench, where he may appear by attorney) and plead. A party indicted for a misdemeanor, not having been in custody nor out on bail, twenty days before the session at which he is so indicted, may also, at the subsequent session, traverse to the one following, unless he has been in custody or out on bail or has received notice of such indictment, twenty days before such subsequent session (60 Geo. III. & 1 Geo. IV. c. 4, s. 5). If the accused, whether in case of felony or misdemeanor, be not in custody nor on bail when the indictment is found, or, being on bail, make default, his appearance may be compelled by process or by a bench warrant; and he may be prosecuted to outlawry. [OUTLAWRY.] No fee is to be demanded or taken from persons charged with or indicted for felony or misdemeanor, or as an accessory to felony, for their appearance to the indictment or information, or for allowing them to plead, or for recording their appearance or plea, or for discharging any recognizance taken from such persons, or any sureties for them (8 & 9 Vict. c. 114, s. 1.)

In cases of treason, the accused is en-

titled, on application to the court, to have two counsel assigned him, who may have free access to him at all seasonable hours (7 & 8 Wm. III. c. 3, s. 1). The court may also, if it think fit, upon the accused's making affidavit that he is not worth 5*l.* beyond his wearing apparel, allow him to defend *in formâ pauperis;* in which case neither the officers of the court, nor those who are assigned to conduct his cause, may take any fees.

The prisoner, upon being arraigned or charged with the indictment, in cases of felony or misdemeanor, may either confess the charge to be true, in which event such confession is to be recorded and judgment awarded according to law, or may plead to the indictment or demur. By pleading, he puts in issue the facts of the charge; by demurring, he admits the facts, but contends that they amount to no offence indictable by law; as if a man were indicted for feloniously stealing game, without alleging that it was tame or confined; in which case, upon demurrer, he must be discharged. After demurrer, in cases of felony, decided against the prisoner, he is at liberty to plead over "not guilty;" but, in cases of misdemeanor, the judgment for the Crown is final, for it operates as if the prisoner had been convicted by a jury. In either case, if the demurrer be decided for the prisoner, the judgment is that he be dismissed and discharged.

The pleas which may be pleaded by a prisoner are either to the jurisdiction of the court, and these must be pleaded before any other plea, or in abatement (for the omission of his addition under the statute of additions, or for misnaming him) or in bar; and pleas in bar are either special pleas or the general issue. Special pleas may allege a previous acquittal, conviction or attainder of the same offence, or a pardon [PARDON]; and, in the case of prosecutions for the non-repair of highways or bridges, the liability, if denied by the defendant, of the party who is liable for the repair of the same.

The general issue, or "Not Guilty," which is the plea employed in the infinitely greatest number of cases, puts in issue the whole question of the accused's guilt or innocence of the charge in all its bearings; and not only casts on the prosecutor the burden of making out every part of his charge, but entitles the accused to give in evidence every possible ground of justification or excuse which can form an answer to the indictment.

No advantage can now be obtained by a plea in abatement, as by the 7 Geo. IV. c. 64, s. 19, the court may, upon such plea, immediately cause the indictment to be amended, and call upon the party to plead to it so amended, as if no such plea had been pleaded. In cases of felony, if a special plea be found for the Crown, the prisoner may plead over "Not Guilty;" but, in cases of misdemeanor, the judgment for the Crown is final. In either case, if it be found for the prisoner, he is to be dismissed.

If, instead of pleading, the prisoner stand mute of malice, or will not answer directly to the indictment, the court may order a plea of "Not guilty" to be entered on his behalf, and such plea will have the same effect as if it had been actually pleaded by him (7 & 8 Geo. IV. c. 28, s. 2). But if a doubt arise whether he be mute of malice or dumb, a jury is to be impannelled to try the fact, and, if the latter be found, the court will use means to make the prisoner understand what is required of him; but if this be impossible, will direct a plea of "Not guilty" to be entered and the trial to proceed. Should he upon arraignment be found to be insane by a jury impannelled for the purpose, under the provisions of the 39 & 40 Geo. III. c. 94, so that he cannot be tried, the court may order such finding to be recorded and the prisoner to be kept in strict custody until her Majesty's pleasure be known.

When, however, the plea of "Not guilty" has been pleaded, the trial is to be had before some court having jurisdiction, by twelve jurors, generally of the county where the fact is alleged in the indictment to have been committed, called a petit jury, by way of distinction from the grand jury. The ordinary courts having jurisdiction to try indictable offences are the Queen's Bench, Courts of Oyer and Terminer, Gaol Delivery, and Quarter-Sessions, Borough Courts and the superior Criminal Courts of the Counties

Palatine; but Courts of Quarter-Sessions and Borough Courts have no jurisdiction with respect to treason or any felony punishable with death or transportation for life, and several other offences (see 5 & 6 Vict. c. 38, s. 1). The trial is generally to be had in the county or district in which the offence was committed.

Upon the trial being called on, the jurors are to be sworn as they appear, to the number of twelve, unless they be challenged. As to challenges, whether on the part of the Crown or the prisoner, and as to petit jurors generally, see JURY. It may here be observed, however, that the right of peremptory challenge, *i. e.* of challenging at mere pleasure, without showing any cause, which exists in cases of treason and felony, is one of the peculiarities before alluded to, which distinguish those classes of crimes from misdemeanors; and that the power to challenge peremptorily to the number of thirty-five jurors in cases of treason, and to the number of twenty only in cases of felony, is a distinguishing feature between treasons and felonies. When twelve jurors are procured free from exception, and have been sworn, or, if Quakers, Moravians, or Separatists, or persons who have been Quakers or Moravians, have made their solemn affirmation, in case of treason or felony, well and truly to try and true deliverance make between the queen and the prisoner whom they have in charge, and in cases of misdemeanor well and truly to try the issues joined between the queen and the defendant, the case, where counsel is retained for the prosecution, is to be opened by him, or if two or more counsel are retained, by the leading one, according to his instructions, unless the case is so plain as not to require any statement. The counsel for the prosecution ought, however, to confine himself so far as possible to a simple statement of the facts which he expects to prove, and to abstain from any appeal to the passions of the jury, more particularly in cases where the prisoner has no counsel. After the opening, or where no counsel is engaged for the prosecution, immediately after the swearing of the jury, the examination of the witnesses on behalf of the Crown commences. Before being examined an oath or affirmation is administered to each witness "that he will true answer make to such questions as the court shall demand of him, and will tell the truth, the whole truth, and nothing but the truth." Where there is counsel he examines the witnesses; where there is none that duty devolves on the court. In criminal cases a single witness, swearing to the actual offence or to such facts as necessarily lead to the inference that it has been committed, if believed by the jury, is generally sufficient to substantiate the charge. In treason, perjury, and the offences of tumultuously petitioning, affirming that parliament has a legislative authority without the Crown, or that any person is entitled to the crown contrary to the Act of Settlement, and Blasphemy under the provisions of 9 & 10 Wm. III. c. 32, however, there must be two witnesses. In all cases, also, the prisoner's confession, if made in consequence of a charge against him, and in a direct and positive manner, voluntarily and without promise or threat operating on his mind at the time of making it, is sufficient, even if there be no other proof that the crime with which he is charged has been committed, for the jury to convict upon, if they believe it to be true. And the single unsupported testimony of an accomplice is sufficient (except where two witnesses are required), if the jury believe his story; but it is usual in such cases for the court to direct the acquittal of the prisoner. If, however, the accomplice be corroborated by unsuspicious evidence as to such parts of his testimony as show that his story has not been fabricated, the court will not interfere.

There are four kinds of proof by which criminal charges may be sustained: 1st, *positive*, as by the direct testimony of a witness who saw the fact; 2ndly, *circumstantial*, when a number of facts are presented which are inconsistent with any other hypothesis than that of the prisoner's guilt; 3rdly, *presumptive*, as when the possession of a stolen article casts on the prisoner the burden of showing how he obtained it; 4thly, *confessional*, where the prisoner makes a

voluntary admission of his guilt as already mentioned. The general rules of evidence in criminal proceedings are the same as those which are applicable in civil cases. [EVIDENCE.] A husband or wife, however, may be a witness for and against each other upon a charge of criminal violence done by either to the person of the other, contrary to the rule in civil cases, which excludes the testimony of husband and wife for or against each other. The prosecutor also, notwithstanding his connexion with the proceedings against the prisoner, is a competent witness in support of the charge, for such proceedings are carried on in the name of the crown, and the prosecutor has, according to legal construction, no direct interest in the result.

After the examination of each witness, he may be cross-examined on behalf of the prisoner, who is entitled at the time of the trial to inspect, without fee or reward, all depositions, or copies thereof, which have been taken against him and returned into court. (6 & 7 Wm. IV. c. 114, s. 4.) When the cross-examination is finished, the counsel by whom the witness was called is entitled to re-examine him for the purpose of explaining any matters touched upon or referred to in the cross-examination, into which confusion may have been introduced by the questions on the prisoner's behalf. The court may also put any questions it thinks proper to the witnesses, and for this purpose may recall a witness at any stage of the inquiry.

When the case for the prosecution is closed, the prisoner or his counsel (who has, since the passing of the 6 & 7 Wm. IV. c. 114, the same right to address the jury on the merits of the case in felony as he previously had in treason and misdemeanor) is entitled to address the jury, and in so doing to comment on the entire case for the prosecution; and if he intends to adduce evidence, may open that evidence with any particulars he may think proper. After the prisoner or his counsel has finished his address, the witnesses for the defence are to be sworn, and their evidence gone into. The accused is always allowed to call witnesses to speak to his *general* character, as being inconsistent with the imputed offence, and it is for the jury to estimate the value of such evidence.

When the prisoner's evidence is closed, witnesses may be called on behalf of the prosecution to give specific contradictions to the denials by the prisoner's witnesses on cross-examination, and generally to give any evidence in reply which is strictly applicable to the defence and which could form no part of the original case. Where such evidence is given, the prisoner or his counsel has a right to address the jury on it before the general reply for the prosecution.

When the defence is ended, the counsel for the prosecution, in all cases where witnesses have been called on behalf of the accused, is entitled to reply on the entire case and on all the observations made by the other side during its progress. After the case on both sides is closed, the court sums up the evidence, and in so doing directs the attention of the jury to the precise issue they have to try, and applies the evidence to that issue. Upon the trial of a person for a non-capital felony committed after a previous conviction for felony, the jury is not to be charged to inquire concerning such previous conviction, until they have inquired concerning such subsequent felony and have found such person guilty of the same; and where such previous conviction is stated in the indictment, the reading of such conviction to the jury is to be deferred until after such finding. Where, however, such person gives evidence of good character, the prosecutor may in answer thereto give evidence of such previous conviction, before such finding, and the jury may inquire concerning such previous conviction at the same time that they inquire concerning the subsequent felony. (6 & 7 Wm. IV. c. 111.) The summing up being concluded, the jury proceed to consider of their verdict. If, on consultation in the jury-box, they are not able to agree within a convenient time, they retire, and a bailiff is sworn to keep them together without meat, drink, fire, or candle till they are agreed. This rule, however, has been relaxed in modern times. In cases of misdemeanor, where the trial lasts more

than one day, the court will generally allow the jurors to return to their homes, the jury engaging to allow no one to speak to them on the subject of the trial. But in cases of treason or felony, the course has been to permit them to retire in a body to some tavern, where accommodation is provided for them by the sheriff and his officers, who are sworn to keep them together, and neither to speak to them themselves nor to suffer any other person to speak to them touching any matter relating to the trial.

When the jury have agreed upon their verdict, they signify that they are ready to deliver it; and on returning into court for that purpose, their names must be called over, and all twelve must be within hearing when it is given. The foreman of the jury is the person who is to deliver the verdict; and in cases of treason or felony, it can only be received in open court and in the presence of the prisoner: in cases of misdemeanor it may be otherwise. The verdict may be either "guilty" or "not guilty," or may be a special one; and may be "guilty" upon one count of an indictment, and "not guilty" upon others; or may be "guilty" as to part of a count, and "not guilty" as to the remainder, where an offence is charged which includes a lesser crime of the same degree, and the latter only is proved; as where murder is charged, and the proof is of manslaughter: and since the passing of 7 Wm. IV. & 1 Vict. c. 85, s. 11, before referred to, the jury may find guilty of an assault, where one is included in the felony charged, and acquit of the felony, although an assault is a misdemeanor only. A special verdict is the finding of all the facts specially, where the jury doubt whether they constitute the offence in the indictment, and leaves the court to give judgment according to the legal effect of the facts so found.

Where upon the trial evidence is given of insanity at the time of committing the offence charged, and the jury acquit, they are required to find specially whether the accused was insane at the time of the commission of the offence, and whether he was acquitted on that account; and if they find in the affirmative, the court is to order him to be detained till the queen's pleasure be known; and she may give such order for his safe custody during her pleasure as she may think fit. (39 & 40 Geo. III. c. 94, s. 1; 3 & 4 Vict. c. 54, s. 3.) On a verdict of acquittal, or where he is discharged by proclamation for want of prosecution, the prisoner is to be immediately set at large in open court, without the payment of any fees in respect of such discharge. (14 Geo. III. c. 20; 55 Geo. III. c. 50; 8 & 9 Vict. c. 114.)

When a verdict of guilty has been returned against a prisoner, the court, except in the case of prosecutions pending in the Queen's Bench, may proceed at once to pass sentence upon him, unless he allege some matter or thing sufficient in law to arrest or bar judgment. In prosecutions pending in the Queen's Bench, however, the prisoner is allowed four days for moving in arrest of judgment; or, in cases of misdemeanor, for a new trial or writ of *venire facias de novo.* Also where the trial at any sittings or assizes is upon a record of the Queen's Bench, the judge before whom the verdict is taken may, under 11 Geo. IV. & 1 Wm. IV. c. 70, s. 9 (except where the prosecution is by information filed by leave of the Queen's Bench, or such cases of information filed by the attorney-general wherein he prays that judgment may be postponed), pass sentence at once; but such sentence is not to have the force and effect of a judgment of that court until after the expiration of six days after the commencement of the ensuing term, during which period the prisoner may move for a new trial, or to have the judgment amended. Except in the last-mentioned case of a trial at the sittings or assizes upon a record of the Queen's Bench, or where the offence of which the prisoner is convicted is a misdemeanor punishable by a simple fine, or where the Queen's Bench, after conviction for misdemeanor, thinks proper to dispense with his attendance, sentence cannot be pronounced against a prisoner unless he be present in court at the time.

Judgment may be arrested where the offender has received a pardon since his arraignment or after conviction becomes

insane, or, having been out of custody since his conviction, denies that he is the person convicted (in which last case a jury is to be impannelled to try the fact), or for some defect apparent in any part of the record, as regards either the jurisdiction of the court, the statement of the offence or any of the proceedings thereon, but not for any of the mere technical defects specified in 7 Geo. IV. c. 64, ss. 20 and 21. If the judgment be arrested, all the proceedings againt him are to be set aside, and judgment of acquittal is to be pronounced in his favour; but he may be prosecuted again for the offence of which he is so acquitted.

A new trial may be had on the application of the defendant in all cases of misdemeanor pending in the Queen's Bench, where it appears to the court that the awarding one is essential to justice; as, for instance, where the verdict is contrary to evidence or the directions of the judge, or evidence has been improperly received or rejected at the trial. The court of Queen's Bench will also in its discretion, where a party is acquitted of a misdemeanor on a prosecution pending in that court, allow a new trial, on the application of the prosecutor, if such acquittal has been obtained by any fraudulent means or practice, as where the party acquitted has kept back any of the prosecutor's witnesses, or neglected to give due notice of trial.

A writ of *venire facias de novo*, the effect of which is the same as granting a new trial, may be awarded where, by reason of misconduct on the part of the jury, or of some uncertainty or ambiguity or other imperfection in their verdict, or of any other irregularity or defect in the proceedings or trial, appearing on the record, the proper effect of the first *venire* has been frustrated, or the verdict has become void in law.

Neither new trials nor writs of *venire facias de novo* are grantable in cases of treason or felony.

Where a new trial or writ of *venire facias de novo* is awarded, the parties stand in the state in which they were immediately before the first trial: the whole case is to be re-heard, and the first verdict cannot be used upon the new trial, or as evidence of any matter found by such verdict or in argument.

After sentence pronounced against an offender, the judgment of the court may be falsified or reversed, either by plea without writ of error or by writ of error: by the former, for some matter not apparent upon the face of the record, as want of authority in the court by whom the judgment was pronounced; by the latter, for the same matters as are sufficient to arrest a judgment, and also for any material defect in the judgment itself. Where the judgment has been pronounced by a court of oyer and terminer, gaol delivery, or quarter-sessions of the peace or of a county palatine, the writ of error is to be brought in the court of Queen's Bench, and for that purpose the indictment and other proceedings thereon must be removed into that court by writ of *certiorari* [CERTIORARI]: where it has been pronounced in the Queen's Bench, it is to be brought in the Exchequer Chamber, before the justices of the Common Pleas and barons of the Exchequer, from whose judgment a writ of error lies to the House of Lords. In cases of treason and felony it is in the discretion of the crown to grant or refuse a writ of error: in all other cases the fiat of the attorney-general must be first obtained, and this he ought to grant upon probable cause of error shown. When issued, the writ of error stays the execution of the judgment, where it has not been carried into effect during the time that such writ is pending, except that in cases of treason, or felony, the offender is not entitled to be liberated on bail. In cases of misdemeanor, however, where he is imprisoned under execution, or any fine has been levied, either in whole or in part in pursuance of the judgment, he is entitled to be discharged from imprisonment and to receive back any money levied on account of such fine, until the final determination of the Writ of Error (8 & 9 Vict. c. 68, s. 1). If the judgment be falsified or reversed, such judgment and the execution thereupon, and all former proceedings, become thereby absolutely null and void; and the person the judgment against whom is so falsified or reversed, if living, and, if dead, his heir

or executor, is restored to all things which such person may have lost by such judgment and other proceedings, and stands in every respect as if such person had never been charged with the offence in respect of which such judgment was pronounced against him. If, however, the execution only be erroneous, that only will be reversed; and if the judgment be reversed for some technical error merely, in the indictment or subsequent process, the party may be prosecuted again. If the judgment be confirmed, the prisoner is to be remanded to undergo the remainder of his sentence.

Where there is nothing to arrest or bar a judgment, the execution of it may be prevented by a pardon received after sentence pronounced; but, without express words of restitution, no property which the offender forfeited on his conviction or attainder, is thereby revested in him; nor, unless where the pardon is by act of parliament, is the corruption of his blood removed, except as regards those of his blood born after the granting of such pardon, nor are any of the consequences of such previous corruption prevented.

In capital cases the execution of a judgment may also be suspended by a reprieve, either at the discretion of the Crown, or, where substantial justice requires it, of the court. There are two instances however in which the court is bound to grant a reprieve, viz.: 1, where the offender, if a female, is pregnant; 2, where the offender becomes insane after judgment. If the offender allege that she is pregnant or the court have reason to suppose that she is so, a jury of twelve matrons is to be impannelled with all possible dispatch to try whether or not she be quick with child. In case they find in the affirmative, the court respites the offender from time to time until she be delivered of a child or it is no longer possible in the course of nature that she should be so. After her delivery or where such delivery is no longer possible as before mentioned, or if the jury find that she is not quick with child, the court at the expiration of the period for which it has respited her, proceeds to award execution against her.

Where insanity is alleged, the court will reprieve the prisoner, if found to be insane by means of an *ex officio* inquiry, or if his insanity otherwise sufficiently appear.

Should the execution of a judgment be neither prevented nor suspended, or having been suspended, should have ceased to be so, such judgment is to be executed according to law by the sheriff or other authorised person or his deputy. In capital cases, if the offender, after hanging, be taken down before he be dead, he is to be hanged again until he be dead.

As regards the manner in which the various judgments which may be pronounced against offenders are to be executed, the subject is too extensive to be further treated of in an article like the present.

With respect to the expenses of prosecutions for indictable offences, the general provisions on the subject are contained in 7 Geo. IV. c. 64. According to these the court before which any person is prosecuted for felony or the following misdemeanors, viz., assaults with intent to commit felony; attempts to commit felony; riots; receiving stolen property; assaults upon peace officers in the execution of their duty, or upon persons acting in their aid; neglect or breach of duty by peace officers; assaults in pursuance of conspiracies to raise the rate of wages; obtaining property by false pretences; indecent exposure of the person; perjury and subornation of perjury, may, at the request of the prosecutor or any other person appearing on recognizance or subpœna to prosecute or give evidence, order payment of the costs and expenses incurred by the prosecutor in preferring the indictment, and also the reasonable expenses of the prosecutor and witnesses for the prosecution in attending before the grand jury and otherwise carrying on the prosecution; and also, whether a bill of indictment be preferred or not, may order the reasonable expenses incurred by any person by reason of attending on any such recognizance or subpœna, (such attendance, where no indictment is preferred, appearing to be in *bonâ fide* obedience to the recognizance or subpœna,)

and, except in cases of misdemeanor, by reason of attending before the examining magistrate, and also, except in respect of attendance before such magistrate in cases of misdemeanor, compensation for trouble and loss of time. Such payments are in general to be made out of the county rate.

It is difficult to discover upon what principle the selection of the cases of misdemeanor in respect of which the court is empowered to award costs has been made. Other cases might with justice be included; and it may be a question whether, under certain limitations, the power ought not even to be extended to the expenses of the prisoner's witesses.

Offences punishable on Summary Conviction.

It would be inconsistent with the limits of the present article to give a detailed account of the various offences punishable on summary conviction, in number far exceeding those which are indictable. They relate, however, principally to ale and beer houses, apprentices, petty assaults, the Customs and Excise, distresses, drunkenness, friendly societies, game, hawkers and pedlars, highways, turnpike roads, petty thefts not amounting to larceny, malicious injuries to property, pawnbrokers, railways, stage and hackney carriages, servants, vagrants, weights and measures, and the numerous offences punishable under the Metropolitan Police Acts.

Summary proceedings, except in the case of contempts of the superior courts of justice (which those Courts have been immemorially used to punish by attachment), were wholly unknown to the common law. Their institution appears to have originated partly in the necessity for relieving the ordinary tribunals from the immense increase of labour which would otherwise have been cast upon them, owing to the multiplicity of new offences of a trivial kind which were yearly created for the protection of society as it advanced in population and civilization, and partly in the desire to do more speedy justice in the case of such trifling offences than would have been possible had they been made indictable. In the case of indictable offences a party cannot in general, as before observed, be put upon his trial until a true bill has been found against him by a grand jury, and cannot be convicted except by the verdict of a petit jury: to have made all these minute offences indictable would therefore have entailed upon the class of persons qualified to serve as jurors a frequency of attendance which would have been found to be most troublesome and harassing. Accordingly numerous acts of parliament have from time to time vested in one or more justices of the peace or other persons the power to try parties accused of trifling offences without the intervention of a jury. The extension, however, of this mode of proceeding, has been always regarded with extreme jealousy.

Where an offence punishable on summary conviction before a justice of the peace has been committed, or is suspected to have been committed, the general course of proceeding is as follows:—An information (but which need not be in writing unless directed to be so by the statute which creates the offence) is to be laid before the justice authorized to take such information, who thereupon issues a summons to the party complained of, containing the substance of the charge, and giving him notice that at a certain time and place the hearing of the complaint against him will be proceeded with. If the party attend at the appointed time and place, and confess that he has committed the offence, the justice proceeds at once to convict him and to impose the penalty assigned by the Act which creates the particular offence. If he attend, but deny that he has committed the offence, or if he fail to attend, evidence is to be gone into for the purpose of showing that he has committed it. In the latter case, however, it must be first ascertained that he has been duly summoned. It appears that the examination of witnesses in summary proceedings must in all cases be upon oath, notwithstanding the Act creating the offence may authorize conviction *on the examination of witnesses*, without stating that the same is to be upon oath. So also such examination must be in the presence of the party com-

plained of, where he appears; and, generally, all rules applicable to the trial of indictable crimes may be considered as applying to the trial of offences punishable on summary conviction, so far as such rules are compatible with that mode of proceeding. If, after hearing the evidence, the justice is of opinion that the charge is not substantiated, the party accused is to be acquitted. If, on the other hand, he thinks that it is, he is to convict the offender and to impose upon him the assigned penalty. Upon conviction the justice usually issues his warrant to apprehend the offender, in cases where corporal punishment is to be inflicted upon him, or else to levy the penalty incurred, by distress and sale of his goods. This is the general mode of proceeding, as well where the conviction is required to be before two or more justices, as where it may be before a single justice of the peace; but for particulars recourse must be had to the several statutes creating the offences or inflicting the punishment. In some cases a power of appealing to the quarter-sessions is given to the party convicted. [JUSTICE OF THE PEACE.]

For the method of proceeding with respect to offences punishable on summary conviction before the Commissioners of Excise or persons other than justices of the peace, reference must be made to the statutes on the subject.

The principal authorities besides the statutes of the realm which have been consulted in the preparation of this article, are Hawkins's *Pleas of the Crown;* Blackstone's *Commentaries;* Russell, *On Crimes and Misdemeanors;* Chitty's *Criminal Law;* Starkie's Treatises *On the Law of Evidence* and *On Criminal Pleading;* Dickenson's *Guide to the Quarter-Sessions*, by Talfourd; the 4th, 5th, 6th, 7th, and 8th Reports of the Criminal Law Commissioners; the Report of the Commissioners for revising and consolidating the Criminal Law, on the subject of Penalties and Disabilities in regard to Religious Opinions; and Hulton, *On the Law of Convictions.*)

LAW MERCHANT. [LEX MERCATORIA.]

LEAGUE, ANTI-CORN LAW, an association the object of which is to obtain by constitutional means the abolition of the duty on the importation of foreign corn.

The Anti-Corn Law League originated at a public dinner given to Dr. Bowring, at Manchester, 18th September, 1838, when it was proposed that the company present, between fifty and sixty in number, should form themselves into an association for promoting the principles of free trade. On the 24th of September, seven persons met to settle preliminary arrangements, and on the 4th of October about a hundred persons were enrolled as members of the Manchester Anti-Corn Law Association. On the 25th of the same month Mr. Paulton delivered, at Manchester, the first lecture on the corn laws, and on the 26th of November he lectured at Birmingham. In December, the Manchester Chamber of Commerce, after an adjourned debate, declared by a majority of six to one that "the great and peaceful principle of free trade on the broadest scale is the only security for our manufacturing prosperity, and the welfare of every portion of the community." Manchester now became the centre of a great movement in favour of free trade, and measures were at once adopted for giving to this movement a national character. On the 8th of December, 1838, the Manchester Association issued an address which was extensively circulated throughout the United Kingdom, recommending the establishment of similar associations and a complete organization of all who held views favourable to free trade. Early in 1839, the question of the corn laws and protective duties generally was agitated in most of the large towns. The operations contemplated by the Manchester Association were—the circulation of tracts and pamphlets, the employment of paid lecturers, and petitions to parliament. On the 10th of January, 1839, the sum of 2000*l.* was subscribed at Manchester to defray expenses, and by the end of the month the fund raised amounted to nearly 6000*l.* On the 22nd of January the Manchester Association convened a meeting of persons who were opposed to the corn laws, and a public dinner took place which was at-

tended by nearly eight hundred persons, many of whom were delegates from the large towns in England and Scotland; and about a dozen members of Parliament were present. A few days later, on the opening of the session of parliament, three hundred delegates from nearly all the large towns assembled in London for the purpose of discussing the operation of the corn laws and bringing the subject more immediately under the notice of the legislature. At this convention the name of the League was first adopted as a more correct designation of a body which comprehended members living in every part of the United Kingdom. A weekly periodical, entitled the 'Anti-Bread Tax Circular,' was commenced at Manchester under the auspices of the League. A more numerous staff of lecturers was engaged, and greater activity took place in the circulation of tracts and pamphlets. These labours were continued in 1839, 1840, and 1841, and great progress was made in enlightening and maturing public opinion. The distress which prevailed at this time in all the great branches of commercial and manufacturing industry exposed the policy of protective duties to a severe scrutiny. The lecturers employed by the League were everywhere, and the attention of the public was aroused even in quarters where it was most difficult to excite an interest in economical questions. Conventions, and conferences, and great public meetings were held in the large towns, and pamphlets and tracts were circulated in villages and hamlets. The press, whether favourable or not to the principles of the League, was compelled to discuss them. In May, 1841, Lord John Russell brought forward the government plan of a fixed duty, which was at once repudiated by the League as unsatisfactory. An appeal was made to the country, and in the new parliament a large majority of members was returned who were adverse to the commercial principles advocated by the League. The League prepared to meet this state of things by greater boldness and activity in all their operations. No more petitions were sent to parliament. In 1842-43 funds were raised to the amount of 50,290*l.*, and in the course of the twelve months nearly 10,000,000 tracts, weighing above 100 tons, were placed in the hands of 496,226 electors (237,000 in twenty-four counties, and 259,226 in one hundred and eighty-seven boroughs). Deputations from the League visited between twenty and thirty counties, and addressed the agricultural classes at great meetings. Weekly meetings were held at Covent Garden Theatre, at which the most able members of the League were the speakers. These meetings were always well attended, and produced an effect which it is very difficult to produce in the metropolis—the concentration of public opinion. The 'Anti-Bread Tax Circular,' published at Manchester, was discontinued, and a new paper with the title of the 'League' was commenced in London, which soon obtained a weekly circulation of twenty thousand copies. London instead of Manchester now became the centre of operations. This gave to the League, as a body, a more decidedly national character; but its opponents for a short time continued to represent its metropolitan advent as the intrusion of "strangers from Manchester." A few months afterwards, notwithstanding the strenuous opposition of many of the wealthy city houses, the election of one of the members for the city of London was carried by the enthusiasm which the League had created. In 1843 the Council of the League proposed to raise funds to the amount of 100,000*l.* A bazaar on a large scale, which was held at Covent Garden, in June, 1845, and realized 30,678*l.*, raised the fund proposed to 116,687*l.* Two years before a bazaar had been held at Manchester, which realized 10,000*l.*

With the progress which has been made in the commercial principles advocated by the League, it has not been requisite to continue the labours which it undertook at the commencement of its existence. The mass of the people have been made familiar with the question of the corn laws, and of free trade generally. The League is no longer a local association believed to be merely the representative of the interests of the manufacturers. An administration which was carried into of-

fice on the strength of its supposed opposition to the principles of free trade, has taken some important steps in carrying them into effect. In consequence of the exertions of the League, the question of free trade, and especially the abolition of duties on foreign corn, has become the most prominent of all the questions which agitate the public mind, and whenever a general election takes place, it is probable that this question will decide the character of the next parliament. The practical success of the principles of the League now depends upon the constituencies, and to the electoral body has the League latterly directed its attention, and it has fought as far as possible the battle of free trade in the registration courts. Several of the more conspicuous members of the League have obtained seats in parliament. Candidates supported by the League have successfully contested the parliamentary representation of various boroughs. In others they have not been successful; but when defeated, the discussion of the principles for which the League exists has been carried on with an activity which is of itself a gain. The result of having exhausted the mere facts connected with the influence of the corn laws has had its effect in directing controversy to the social condition of the country generally—the state of the agricultural labourers and of the operatives in the manufacturing districts—the state of the tenant farmers—improved tenures of land—and all subjects connected with the improvement of agriculture. These are questions to which the activity of the League has given life, and brought to a state which admits only of one course, that of advancement and improvement.

On the 17th of February, 1844, a meeting was held at the Duke of Richmond's house, London, which was attended by several noblemen, and nearly fifty members of the House of Commons who were opposed to the principles of the Anti-Corn Law League. At this meeting the 'Agricultural Protection Society of Great Britain' was formed. The opponents of the Anti-Corn Law League had frequently represented that association as an illegal body, and now that they were about to form an association precisely similar in constitution, they consulted Mr. Platt, Q.C., (now one of the barons of the Exchequer) on the following points: whether there is anything illegal in affiliating local societies on the proposed central society, and in forming corresponding societies. The opinion of Mr. Platt was in favour of the legality of such societies. Large sums have been collected by the County Protection Societies and by the Central Society, probably not less than 100,000*l.*, but little or nothing has been done to bring the views which they advocate before the public. The vigour, energy, and activity displayed by the League in appealing to public opinion, and boldly inviting public scrutiny of their principles, have not been imitated by the Central Protection Society. There is always more spirit in a party which assaults a position than in one which has simply to hold its ground; and this situation of the two parties who are contending about the corn laws will go far to account for the difference in their respective movements.

LEASE. A lease, or letting, is sometimes called a Demise (demissio). It is sometimes said that Lease is from the Latin 'locatio;' but as the verb which corresponds to the noun Lease is Let, it seems that the word Lease is the noun which corresponds to the verb Let. The verb Let is akin to the French 'laisser' and the German 'lassen.'

He who lets land is called the Lessor, and he to whom land is let is called the Lessee.

There are various legal definitions of a lease. A lease has been defined to be a conveyance of lands or tenements from lessor to lessee for life, for years, or at will, generally in consideration of a rent or other annual recompense to be paid by the lessee to the lessor. The reservation of a rent is not essential in a lease; but payment of rent is now the chief condition on which lands are let.

To constitute a lease, it is necessary that the lands must be let for a less time than the period for which the lessor has an interest in the lands demised. If a man parts with all his interest in the lands or tenements, the conveyance is an assignment [ASSIGNMENT], and not a

lease. The relation that is created by a lease between the lessor and lessee is usually expressed by the phrase landlord and tenant. The lessor has a reversion in the lands which are demised, that is, after the expiration of the lease the land reverts to him. The lessor, by virtue of this reversion, seignory, or lord's title, has the power of distraining on the land for the rent which is agreed on, and for the services which may be due by the terms of the lease; and fealty is always due to the lessor. [FEALTY.] The ordinary lease is that for a term of years, by which lease a rent, generally payable in money, at stated times, is reserved to the lessor. These stated times are usually quarterly periods.

The words used in a lease for the purpose of conveying that interest in the lands which constitutes a term of years are 'demise, grant, and to farm let.' These words are derived from the law-Latin expressions 'demisi, concessi et ad firmam tradidi.' The word 'firma,' farm, is said to signify originally 'provisions,' and 'to farm let' does not properly signify to let to be farmed, in the modern sense of the term, but to let on the condition of a certain rent being paid in farm, that is, in provisions. If this explanation is correct, a 'farmer' is one who had the use of lands on condition of paying a 'farm' or rent in provisions, such as corn and beasts. But the word 'farm' now signifies the lands which a man hires to cultivate upon the payment of a rent.

The interest which a man acquires in land by a lease for years is a term of years, or an estate for years. [ESTATE.] The word lease is used in common language also to signify the estate or interest which the lessee acquires by the lease; but the word lease signifies properly the contract or conveyance by which the lessee acquires the interest in the lands.

The words 'demise,' &c. above mentioned, are the proper words to constitute a lease for years: but any words are sufficient, which clearly show "the intent of the parties that the one shall divest himself of the possession (of the land), and the other come into it for a determinate time." When the written contract is not intended to be a lease, but an agreement for a future lease, it is often difficult to determine whether the contract is not so expressed as to make it a lease.

At common law, it was necessary for the lessor to enter on the lands in order to make the lease complete, and no writing was necessary. But the Statute of Frauds (29 Ch. II. c. 3, § 1) enacted, that all leases, estates, interests, of freehold or terms of years, created by livery and seisin [FEOFMENT] only, or by parol, and not put in writing and signed by the parties so making the same or their agents thereunto, lawfully authorized by writing, shall have the force and effect of leases or estates at will only, except leases not exceeding the term of three years from the making thereof, upon which the rent reserved to the landlord during such term shall amount to two-thirds at the least of the full and improved value of the thing demised. A deed is not necessary to constitute the writing a lease, unless the tenement is an incorporeal hereditament or a reversion or remainder. But leases are generally made by deed, because covenants can be made only by deed. [DEED.]

The word 'lands,' which refers to the subject matter of a lease, comprehends what is upon the lands, as houses and other buildings, though houses and buildings are generally mentioned specifically in the lease.

The law of leases comprehends a great number of rules, which may be conveniently reduced to the following general heads:

1. The things which may be subjects of leases.

2. The persons who may grant leases, and their powers to grant.

3. The form of leases, and the legal construction of the agreements contained in them.

The examination of these subjects belongs to treatises on Law. The article Leases and Terms of Years in Bacon's 'Abridgment' is generally referred to as a good compendium of the law. A lease may contain any agreements that are lawful. The object of the present article is to consider what agreements farming-leases should contain or should not contain, in order that the lease may be most

beneficial to the landlord and the tenant, and by consequence to the public generally.

The chief subjects of leases are houses and buildings of all kinds, cultivable lands, and mines. Many persons who have not the complete ownership of houses and lands, are enabled to grant leases under particular powers; and there are many statutes under which particular classes of persons are enabled or restrained as to the granting of leases, such as Bishops, Deans and Chapters, and others. [BENEFICE, p. 346.]

The kind of leases of which we shall treat here are farming leases, which are granted by persons who have full power to grant them on such terms as they please. The particular form of such leases, as already intimated, is a matter that belongs to the subject of public ecomony, and it is almost beyond the province of direct legislation.

At present a great part of the land in England and Wales is held by large proprietors, and the number of landowners who cultivate their own estates is comparatively small. In many parts of the kingdom the number of small landowners who cultivate their own farms has certainly been decreasing for some centuries, and they are probably fewer now than at any former period of our history. In England the great subdivision of land has been prevented by the form of government and the habits and feelings of those who have had the chief political power: and the great increase of wealth that has arisen out of the manufacturing and commercial industry of the country has tended to prevent the subdivision of land and not to increase it. Those who acquire great wealth in England by manufactures and commerce generally lay out a large part of it in the purchase of land; for the ownership of land is that which enables a man to found a family and to perpetuate it, to obtain social respect and consideration, and also political weight in the administration of public affairs. It facilitates his election to the House of Commons, and if he plays his part well, it may introduce him in due time to the House of Lords and place him among the nobility of England.

Those who cannot acquire land enough to give them political weight, are still anxious to acquire land as a means of social distinction, and as a permanent investment which must continually rise in value. Thus there is a constant competition among the rich for the acquisition of land, which raises its price above its simple commercial value; and a man of moderate means does not find it easy to purchase land in small quantities and on such terms as will enable him to obtain a proper remuneration for the cultivation of it.

The great mass of the cultivators in England are now tenant farmers, who hold their land either by leases for years or by such agreements as amount to a tenancy from year to year only; and there is the like kind of competition among them to obtain land upon lease, that there is among the wealthy to obtain land by purchase. The consequence is that more rent is often paid for land than it is worth: a consequence of the limited amount of land and of the number of competitors for it. This circumstance, however, combined with others, enables the landlord to impose conditions which are unfavourable to the tenant and to agriculture, and finally to himself.

Several things are essential to the good cultivation of land, whether it is held by lease or is the property of the cultivator. These essentials are, a knowledge of the best modes of husbandry, adequate capital, and a market in which the farmer may freely buy and sell all that he wants. Now, in the present state of agriculture in this country, not one of these three conditions exists in the degree which is necessary to ensure good cultivation. The greater part of the land in England, as already observed, is cultivated under leases or a tenancy from year to year; and the covenants in the leases are often such as to be an insuperable obstacle to good agriculture. The condition then of the tenant farmer, as determined by his lease, is that which we have to consider.

Many landholders have several objects in view in letting their lands besides the getting of rent. One of these objects is to maintain their political weight by commanding the votes of their tenantry;

and this is mainly effected by not granting them leases of their lands for determinate periods, such as seven, fourteen, or twenty-one years; but by making them very nearly tenants at will, or liable to quit at six months' notice. He who depends for his subsistence on having a piece of land to cultivate, out of which he may be turned on a short notice, will not be an independent voter. Nor can the landlord expect to have a good tenant who will improve his land, and a political tool at the same time. The uncertainty of the tenure will prevent a man of skill and capital from investing his money upon so uncertain a return. There may be many cases in which the personal character of the landlord is a sufficient guarantee to the tenant that he will not be disturbed in the possession of the land, even where he has no proper lease, so long as he cultivates it fairly and pays his rent. But the most intelligent landlords themselves admit that the only proper tenure of the tenant is that of a lease for a determinate period; and it is on this condition alone as a general rule, that a landlord can get men of capital and skill to cultivate his land. It has been maintained by arguments that are unanswerable, that if lands were let to farmer tenants on leases for a determinate number of years, and on conditions which should not interfere with the land being cultivated in the best mode, there would be a great amount of fresh capital applied to the cultivation of the land, with all the improvements of modern husbandry. It is contrary to experience and to all reason to suppose that a good farmer will apply his skill and capital to improvement of another man's property, unless he has the security that he will be remunerated.

The improvements which would follow from a good system of leasing would be the abolition of the evils which now exist in consequence of uncertain tenure and of bad leases. It is affirmed by the best authorities that the amount of capital which is now applied to the cultivation of the land in England is very inadequate, that a large part of the farmers have not sufficient capital to improve their lands, nor the necessary skill and enterprise; and it is maintained that these evils are mainly owing to the want of a sufficient security of tenure or the want of a lease, or, where there is a lease, to the absurd restrictions with which many of them abound.

It has been said, and truly enough, that there is no advantage to the landlord in granting a lease to bad cultivators, and that there are many such. Such a lease would not indeed be any advantage to the farmer himself or the community in general; but he who has land to let, and will let it on terms that are mutually profitable to the landlord and the tenant, will be much more likely to get a tenant of competent skill and capital than he who gives the farmer an uncertain tenure or binds him in the fetters of a bad lease.

The preservation of the game and the enjoyment of the pleasures of the chase, or of the profits derived from the wild animals, is another object which some landlords secure by their lease with as much minuteness and strictness as they do their rent. [GAME LAWS.] Thus, in addition to getting a rent from his land, the landlord often wishes to command the votes of his tenant and secure his game. With reference to these objects and certain other imaginary advantages which he purposes to secure by directing the mode of cultivation, he has a lease drawn up with conditions, restrictions, penalties, and feudal services, which no care on the part of the farmer can prevent him from breaking in some particular, and which no man of capital, skill, and independent feeling would consent to sign. Specimens of such leases have been printed and circulated. One of them appeared in the 'Leicester Chronicle' for June 28, 1845. This lease prescribes a mode of cultivation which is absolutely inconsistent with good farming. The landlord in such a lease directs the tenant how he must cultivate the land. If the directions which the landlord gives, comprehended the best modes of cultivation, they would be unnecessary if he had a good tenant, and they would not be observed by a bad one. A good tenant with sufficient capital will farm the land according to the system best adapted for the land, and he will be ready to avail himself of all improvements. A bad tenant, whether he has

capital or not, will not farm well simply because he is prevented from doing some things and bound to do others; for farming, like other matters, consists not only in doing a thing, but in doing it well. These conditions and restrictions, if enforced at all, can only be enforced by constant supervision, and must be an endless source of trouble and dispute.

But these farming leases are often copies of old leases, made in other days, and are unsuited to the present state of agriculture. The things which they require not to be done and those which they require to be done, are often inconsistent with good agriculture, or, in other words, they prevent the land from yielding that amount of produce which it would yield under the best system, not only without thereby being impoverished, but with the certainty of permanent improvement. Ignorance on the side of the landlord of his true interest is one of the reasons why many of these absurd leases still exist.

There can be no principle in the letting of land, if the object is simply to secure the best rent to the landlord and the permanent improvement of the land, which makes it different from the letting of any other piece of property. The good farmer hires land to cultivate, with the hope of deriving profit from the application of his skill and capital. He does not want the advice and direction of another man: he trusts to himself. The first object of the landlord is to get as much rent as his land is worth, and to secure it against deterioration during the tenant's occupation. The terms of the lease, then, should simply be, the payment of the rent agreed on, and the observance of such conditions as are found by experience and known to practical agriculturists to be necessary to secure the permanent value of the landlord's land. It is admitted by all reasonable people that the landlord should have ample security by the lease for his land being given up to him at the end of the lease in as good condition as he gave it to the tenant. The tenant wants no directions from the landlord, and no conditions in his favour, beyond the simple condition of being allowed to cultivate the land in the best way that he can for his own profit during a period sufficiently long to secure him a return for his outlay; and he acknowledges that he must submit to all conditions in favour of the landlord which are not inconsistent with his free cultivation, and which shall secure the permanent value of the landlord's property. Perhaps many landlords who now grant hard leases would admit this general principle: but when they came to details, they would insist on many conditions as necessary to secure their permanent interest, which a good farmer would object to as not necessary for that purpose, and also as inconsistent with his profitable cultivation.

The framing of such a lease as we have described in general terms, must be the joint work of intelligent, liberal landlords, and good tenant farmers. It may require some time, some more experience, and suggestions from many quarters before such a lease is got into the best form. But it is an object worth the consideration of all persons interested in the cultivation of the land, and the attempt has been made already. We have received a copy of such a lease from the Vale of Evesham Agricultural Association, which has been circulated for the purpose of obtaining the suggestions of competent persons.

It has been said that some farmers do not care for having long leases: they are willing to go on as they have done. But can it be shown that there is a number of intelligent farmers with capital, who prefer a yearly tenure to a lease of reasonable length? Besides, some of these agreements for a tenancy from year to year, contain restrictions almost as numerous and absurd as those in leases for a term of years. If there are farmers who prefer dependence to the independence which is the result of a fair contract between farmer and landlord, these are not the men to improve our agriculture; these are the men with little capital, and less skill, who have no hopes of improving their condition, who rely on the easy temper or good-nature of an indulgent landlord, and are taught that they and their labour must be protected from foreign competition. The intelligent farmer with capital seeks no protection against the

foreigner, and wants no indulgence from his landlord. He is ready to give, and he would be compelled by competition to give, to the landlord the full value for the use of his land, and he would ask for no more than the liberty of cultivating it in the best way.

Before, however, a good farmer could enter on the land with full confidence, he would have one favour to ask of his landlord; and that would be, not to protect him. If he wanted beans or oats to feed his cattle with, to increase his manure and so increase his crop of corn, he would ask the favour of buying them where he could get them cheapest, in order that he might have a greater return for his outlay and so better pay his rent, or even an increased rent. Under the protective system [CORN LAWS] a man who is protected, as it is termed, in one thing, is taxed in another; he may be protected in what he has to sell, but he must pay for that protection by being taxed in what he has to buy. The farmer in one part of the kingdom wants something that he does not produce; but it is produced in another part of the kingdom. Both parts are protected in what they produce, that each may be compelled to buy of the other; and each is taxed in what he buys in order that the other may be protected. Thus the legislature interfere with the prices of things. They do not impose a tax on foreign produce that comes into the kingdom simply with the view of getting revenue from it; they profess to interfere in order to keep up the prices of certain commodities that are produced in the kingdom. They profess to regulate within certain limits the prices for which the farmer must buy and sell his agricultural produce: they profess to do it; but everybody who knows the history of the corn laws knows that they cannot do it, and never have succeeded in the attempt. But they have succeeded in breeding up a race of farmers, and of landlords too, who believe that their true interests are best consulted by the government attempting to raise the prices of all agricultural produce, both that which a farmer buys and that which he sells. As matters stand now, it is thus:—We have a landlord who by his lease directs his tenant how to cultivate, and at the same time reserves the power of walking over his ground when he pleases to kill the game which the farmer must not kill, but which he must feed; a tenant with deficient capital and insufficient skill, and the shackles of a restrictive lease, or an agreement for a lease which constitutes a tenancy from year to year; and a legislature which interferes with prices and shuts out the farmer as well as others from buying in the cheapest market whatever agricultural produce he does not raise himself. Then there is a cry of agricultural distress, and when the ablest man in the House of Commons asks for a committee of inquiry into the cause of this distress, those who complain of the distress will not have the inquiry.

It has been shown [AGRICULTURE] that all duties levied on agricultural produce that is brought into these kingdoms, are protective duties, however small they may be. He who disputes this proposition is inaccessible to the cogent power of reason. He who admits it, and contends for the system, must contend that on the whole it does more good than harm. But the system continues, and we still hear of agricultural distress, so that the system at least does not prevent agricultural distress. Those who have handled the subject best attempt to prove, and we believe that they have proved, that the system causes agricultural distress, and that it is the chief obstacle to improved cultivation of land, the granting of good leases, the employment of fresh capital in the cultivation of land, and the employment of agricultural labour. All these subjects were urged by Mr. Cobden, in the House of Commons (1845), in a speech, when he moved for a select committee to inquire into the extent and cause of the alleged existing agricultural distress, and into the effects of legislative protection upon the interests of landowners, farmers, and farm-labourers—a speech unequalled for perspicuity of statement, practical knowledge of the subject, clearness of expression, and sound argumentation; a speech which would place Mr. Cobden, if he had not already earned that distinction, among the very few men who have views at once comprehensive and sound enough

to entitle them to the honour of directing the affairs of an industrious people.

The covenants contained in a lease, however few they may be, often occasion difficulty and dispute upon the expiration of the tenancy. The landlord may often claim more than his due, and the tenant may be disposed to do less. These difficulties are not peculiar to farm tenancies; they occur continually in the case of dwelling-houses let for a term of years upon the condition of keeping them in good repair. If such disputes cannot be settled amicably, or by reference to arbitration, the only way is by legal proceedings. It has been suggested that in the case of dwelling-houses in large towns like London, some easy mode of finally settling such disputes might be established. In such cases, the evidence of surveyors is the evidence on which a jury must give their verdict in case of legal proceedings; and it would be quite as satisfactory to all parties, if the evidence that is submitted to a jury, for their judgment, were submitted to a few competent persons to be chosen in some uniform manner, and whose decision should be final.

In 1845 an act was passed (8 & 9 Vict. c. 124) entitled 'An Act to facilitate the granting of certain Leases.' Its object is to substitute abbreviated forms for those now in use, and it is provided that in taxing any bill for preparing and executing any deed under the act, the taxing officer, in estimating the proper sum to be charged, is to consider "not the length of such deed, but only the skill and labour employed, and the responsibility incurred in the preparation thereof." It is enacted in section 4, "That any deed or part of a deed which shall fail to take effect by virtue of this act shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this act had not been made." There are schedules to the act, one of which gives, in column 1, short forms of expression which may be used in place of the ordinary expressions in leases, which are contained in column 2; and it is enacted by section 1, "That whenever any party to any deed made according to the forms set forth in the first schedule of this act, or to any other deed which shall be expressed to be made in pursuance of this act, shall employ in such deed respectively any of the forms of words contained in column 1 of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same schedule, and distinguished by the same number as is annexed to the form of words employed by such party; but it shall not be necessary in any such deed to insert any such number." This act does not extend to Scotland. The amount of words saved by this act is not sufficient to compensate for the difficulties that may arise from persons using the abbreviated forms in cases where they may not intend them to have the full meaning which this act gives to them. He who wishes to guard himself either as landlord or tenant by suitable covenants will do better to express his meaning at full length, without availing himself of the abbreviated forms which this act invites him to use.

Leases in general require either an ad valorem stamp or the common deed stamp, without which the instrument cannot be given in evidence. Leases for a term determinable on a life or lives not exceeding three, and the leases of all ecclesiastical corporations, whether aggregate or sole, for any term not exceeding twenty-one years, are exempted from the duty. There is also a stamp duty on agreements for leases. This is one of the many modes of taxation.

LEET is the district subject to the jurisdiction of a court-leet. Sometimes the term is used to denote the court itself, the full style of which is "Court-Leet and view of Frank-pledge." Each of these titles is frequently used alone; but the omission does not affect the character or the jurisdiction of the court. The court-leet is also called a law-day, as being the ordinary tribunal.

One of the least improbable derivations of the word "leet" is that which deduces lath and leet from the Anglo-Saxon "lathian," or "gelathian," to assemble, both lath and leet indicating a district

within which the free male resiants (residents) assembled at stated times for preparation for military defence, and for purposes of police and criminal jurisdiction. Of the first of these objects scarcely any trace exists in the modern leet. The title of the court as a "view of Frank-pledge" points to its former importance, under the system of police introduced or perfected by King Alfred, which required that all freemen above twelve years of age should be received into a decenna, dizein, decennary, or tithing, sometimes called a visne, or neighhourhood, and in Yorkshire and other parts of the north, ten-men-tale (a number, tale, or *tally* of ten men), and forming a society of not less than ten friborgs, or freeborrows, freemen, each of whom was to be *borhoe*, that is, pledge or security for the good conduct of the others.

When a person was accused of a crime, his tithing was to produce him within thirty-one days, or pay the legal mulct for the offence, unless they proved on oath that no others of the tithing were implicated in the crime, and engaged to produce him as soon as he could be found. For great crimes the offender was expelled from the tithing, upon which he became an outlaw.

The duty of inspecting a decennary or tithing was called a View of Frank-pledge, the freeborrows having received from their Norman conquerors the designation well known in Normandy of frank-pledges. The principal or eldest of these freeborrows, and as such the person first sworn, who was denominated sometimes the tithing-man or tithing-head, sometimes the headborough or chief-pledge, sometimes the borsholder or borsalder (borhes-alder, or senior or ruler of the pledges), and sometimes the reeve, was especially responsible for the good conduct of each of his co-pledges, and appears to have had an authority analogous to that still exercised by the constable, an officer elected by the resiants for the preservation of the peace within the district that constitutes the leet, tithing, or constablewick. This officer is in many places called the headborough, which designation, as well as those of borsholder and tithing-man, is frequently used by the legislature as synonymous with that of constable. It is probable that all the frank-pledges were numbered according to rank or seniority, as in places where more than two constables are required the third officer is called the thirdborough. Blackstone, misled by the sound, supposes headborough to be the chief person or head of a town or borough. The true derivation will remind the readers of 'Hudibras' of the "wooden bastile" (stocks), which

> "None are able to break thorough,
> Until they're freed by *head of borough*."

The Holkham MS. of the Anglo-Saxon customary law says:—"A tithing (there called decimatio) contains, according to local usage, ten, seventy, or eighty men, who are all bound (debent) to be pledges (fidejussores) for each other. So that if any of them be accused (calumpniam patitur), the rest must produce him in court, and if he deny the offence, he is to have lawful purgation by the tithing (*i.e.* by their swearing to their belief of his innocence). A tithing is in some places called a *ward*, as forming one society, subject to observation or inspection within a town or hundred. In some places it is called 'borch,' that is, pledges, for the reasons above stated. In others it is called tithing (in the original decimatio), because it ought to contain ten persons at the least."

Leets are either public or private. The Public Leet is an assembly held in each of the larger divisions of the county, called a hundred, at which all freemen who are resiants within the hundred are bound to attend in person or by their representatives. These representatives were the reeves or chiefs of their respective tithings, whether designated by that or by any of the other appellations, each of whom was accompanied by four good and lawful men of, and elected by, the tithing which deputed them. This public court-leet was held formerly by the royal governor of the county, the ealdorman of the Saxons, the earl of the Danes, the comes or count of the Normans. This great functionary was accompanied by the shire-reeve, an officer elected by the county to collect the king's

rents and the other branches of the royal revenue, who, in the absence of the ealdorman, presided in the court, and governed the county as his deputy, whence he is called by the Normans a vice-comes or vicount, though in English he retained the name of shire-reeve or sheriff, the designation connected with his original and more humble duties. This public court, which was originally called the folkmote, being held successively in each hundred in the course of a circuit performed by the sheriff, acquired the name of the sheriff's *tourn*, by which name, though itself a court-leet, it is now distinguished from inferior private leets. The court-leets appear to have been created by grants from the crown, obtained by the owners of extensive domains (which afterwards became manors), and most frequently by religious houses, for the purpose of relieving their tenants and those who resided upon their lands from the obligation of attending the tourn or leet of the hundred, by providing a domestic tribunal, before which the resiants might take the oath of allegiance and the frank-pledges might be inspected, without the trouble of attending the tourn, and to which, as an apparently necessary consequence, the criminal jurisdiction of the precinct or district was immediately transferred. In these private leets the grantee, called the lord of the leet, performed the duties which, in the public leet or tourn, after the ealdorman or earl had permanently absented himself, fell upon the sheriff. Their duties he might perform either personally or by his steward. As a compensation for this, and his trouble in obtaining the franchise, it appears to have been the practice of the great landowner, who by his money and his influence had procured the grant of a private leet, to claim from resiants a certain small annual payment by the name of certum letæ. The tenants within the precincts of a private leet, whether in boroughs, towns, or manors, formed a body politic wholly independent of the tourn or leet of the hundred; whilst such upland or unprivileged towns as had not been formed into or included within any private leet, still appeared, each by its tithing-man and reeve, and four men of the tithing, and formed part of the body politic of the hundred. Each of these communities appears to have exercised most of those rights which it has of late years been supposed could not exist without a royal incorporation. In many cities and boroughs the ancient authority of the court-leet was in later times superseded by charter of incorporation, in some of which the popular election of magistrates was preserved entire; whilst in the great majority of cases, the right, though continued in name, was fettered, if not rendered altogether nugatory, by restrictions of various characters and degrees, which are still to be seen in incorporated boroughs not regulated by the Municipal Corporations Act. In other respects, the course prescribed by these charters was adapted to the changes which had taken place in the habits of the people since the institution of the court-leet. Many of the functions of the magistrates in the new incorporations were borrowed from the then comparatively recent institution of justices of the peace.

The court leet is a court of record, which has jurisdiction of such crimes as subject the offenders to punishment at common law. As criminal jurisdiction belongs exclusively to the kingly office, all criminal prosecutions are called pleas of the crown, and the courts in which such pleas are held are the king's courts, although granted to a subject; for such grant operates merely as an authority to the grantee to preside judicially by himself or his steward, and to take the profits of the court to his own use. The authority so exercised under the king's grant is called a lordship, and the grantee is said to be the lord of the leet. It may be claimed either by a modern grant or by prescription, that is, long established user, from which an ancient grant is presumed. The lord of the leet is commonly the lord of a manor, and the leet is usually coextensive either with the actual limits of the manor or with its boundary at some former period. There may, however, be several leets in one manor, and a leet may be appendant to a town or to a single house. It is not necessary that the lord of the leet should have a manor, or in-

deed that he should have any interest in the land or houses over which the leet jurisdiction extends. The crown may grant to A a leet over the lands of B, and the grantee of a leet in his own land may convey the land and retain the leet. The lord may be required by writ of mandamus to hold the court. Upon non-user of a leet, the grant is liable to be seised into the hands of the crown, either absolutely as for a forfeiture, or *quousque*, that is, until the defect be amended: the same consequence ensues upon neglect to appoint an able steward and other necessary officers, or to provide instruments of punishment.

Private leets are commonly held, as public leets *must* be, twice in the year, within a month after Easter, and within a month after Michaelmas, and even the former cannot, unless warranted by ancient usage, be held at any other time except by adjournment. The court appears to have been formerly held in the open air. It should be held at its accustomed place, though, if sufficient notice be given, it may be held anywhere within the district. All persons above the age of twelve years and under sixty (except peers and clergymen, who are exempted by statute, and women and aliens), resiant within the precinct for a year and a day, whether masters or servants, owe suit to (*i.e.* personal attendance at) this court, and here they ought to take the oath of allegiance. The suit to the court-leet is said to be real (*i.e.* regal or due to the king), because every one bound to do suit to such court as a resiant, is also bound to take the oath of allegiance, unless he has taken it before. But where a non-resiant is bound by tenure to join with the resiants in making presentments at the court-leet, the duty is not suit-real, for he shall not be sworn to his allegiance, &c. at this leet. It is merely suit-service, *i.e.* a suit forming one of the services due from the tenant to his lord in respect of the tenure. For the non-performance of such suit the remedy is by distress, as in case of other suits-service or rents-service. A man who has a house and family in two leets, so as in law to be conversant or commorant in both, must do his suit to the leet where his person is commorant, that is, where his bed lies, but if he occasionally reside in both, he is bound to do suit to each.

The Anglo-Saxon Hundred Court appears to have had jurisdiction in all causes, civil, criminal, and ecclesiastical; and also to have had the cognizance and oversight of all the communities of frankpledges within the hundred the members of these communities being bound for that purpose to attend at the Hundred Court by themselves or their elected representatives. The jurisdiction of the Hundred Court in ecclesiastical matters was taken away by an ordinance of William the Conqueror, which forbade the attendance of the bishop.

It was the province of the court-leet, as well the public leet of the hundred as the private leet, to repress all offences against the public peace, and to enforce the removal of all public nuisances. The leet jury may make by-laws. The leet jury elect their chief magistrates, the reeve or constable, &c. of the private leet, and, as it would seem, the high constable (sometimes called the alderman) of the hundred.

Before the Norman conquest, and probably for some time after, this court of the leet was, if not the sole, at least the ordinary tribunal for the administration of criminal justice in the kingdom. Until the reign of Henry I., when, with respect to certain heinous offences, the punishment of death was substituted for pecuniary compositions, no crime appears to have been punished by death except that called in the laws of that prince "Openthifte," a theft where the offender was taken with the thing stolen upon him. Of this crime, as requiring no trial or presentment, the leet had no cognizance. Other offences, of however serious a nature, subjected the party to a mulct, or pecuniary fine, the amount of which was in many cases determinate and fixed.

Offences to be merely inquired of in leets are arson, burglary, escape, larceny, manslaughter, murder, rape, rescue, sacrilege, and treason, and every offence which was felony at common law. These offences being presented by the leet jury as indictors, and the indictment being

certified to the justices of gaol delivery, the indictees may be arraigned; but they cannot be arraigned upon the mere production of the court-roll containing the presentments. Formerly all offences inquirable in leets were also punishable there by amercement; but the power of adjudicating finally upon crimes in courts leet, whether public or private, is now limited to such minor offences as are still left under the old system of pecuniary compensation. No matters are cognizable in the leet unless they have arisen or have had continuance since the last preceding court.

An amercement is a pecuniary punishment which follows upon every presentment of a default or of any offence committed out of court by private persons. Amercements are to be mitigated in open court by affeerers (afferratores, from afferrare or afforare, *afferer*, to tax, or fix a price, hence the term afferege, used in the old French law to denote the judicial fixing of a price upon property to be sold). The affeerers by their oaths affirm the reasonableness of the sum at which they have assessed the amercement. This course is confirmed by Magna Charta, which directs that amercements shall be assessed by the peers of the offender, *i.e.* the pares curiæ, or suitors of the same court. The amercements, being affeered, are estreated (extracted) from the court-roll by the steward, and levied by the bailiff under a special warrant from the lord or steward for that purpose, by distress and sale of the goods of the party, which may be taken at any place within the district; or the lord may maintain an action of debt for such amercement. For a nuisance, the jury may amerce the offender, and at the same time order that he be distrained to amend it.

The steward of a leet is a judge of record, and may take recognizances of the peace; and he may impose a fine for a contempt or other offence committed in court, as where a party obstructs the jury in the execution of their duties, or by public officers in the discharge of their duties out of court. The amount of the fine is at once fixed by the steward, and therefore, though sometimes loosely called an amercement, it is not to be affeered. When a suitor present in court refuses to be sworn, it is a contempt for which a reasonable fine may be imposed; so if the jury, or any of them, refuse to make a presentment, or depart without making it, or make it before all are agreed. But the fine must be set upon each person individually. For the fine so imposed the lord may distrain or bring an action of debt. In all matters within the cognizance of a court-leet the lord or steward has the same power as the judges in the superior courts. He has indeed no power to award imprisonment as a punishment for offences presented in the leet, such offences being the subject of amercement only; but he may imprison persons indicted or accused of felony before him, and persons guilty of a contempt in face of the court.

If a nuisance within the jurisdiction of a leet be not presented at the court-leet, the sheriff cannot inquire of it in his tourn, for that which is within the precinct of the leet is exempt from the jurisdiction of the tourn; which has merely the same jurisdiction as private leets in such parts of the hundred as are not included within any private leet.

Of common right the constable is to be chosen by the jury in the leet; and if the party chosen be present, he ought to take the oath in the leet; if absent, before justices of the peace. If he refuse to accept the office, or to be sworn, the steward may fine him. If the party chosen be absent and refuses, the jury may present his refusal at the next court, and then he is amerced. But a person chosen constable in his absence ought to have notice of his election. A mandamus lies to the steward of a leet to swear in a constable chosen by the jury. By 13 & 14 Car. II. cap. 12, when a constable dies or goes out of the parish, any two justices may make and swear a new one until the lord shall hold a court-leet; and if any officer continue above a year in his office, the justices in their quarter-sessions may discharge him, and put another in his place until the lord shall hold a court. But the justices at sessions cannot discharge a constable appointed at the leet; and though they can appoint constables until the lord shall hold a

court, they cannot appoint for a year, or till others be chosen. A person chosen constable who is deficient in honesty, knowledge, or ability, may be discharged by the leet or by the Court of King's Bench as unfit. The steward may set a reasonable fine on a constable or tithingman who refuses to make presentments.

Though the leet has long ceased to be the principal and ordinary court of criminal jurisdiction, its power has been enlarged by several statutes, which give it cognizances over offences newly created, and it does not appear to have been at any time directly abridged by legislative interference. The business of the court has chiefly been affected by the creation of concurrent jurisdictions, particularly that of justices of the peace [JUSTICES OF THE PEACE], who have cognizance of the same matters, as well as of many others over which the court-leet has no jurisdiction. Justices of the peace are always accessible, whereas the court-leet is open only at distant intervals, and for a short period, unless it be continued by adjournment, which can only take place for the despatch of existing business. Another cause of the declension of these tribunals is that except in a very few cases the jurisdiction of the leet is confined to offences punishable at common law. In statutes which provide for the repression of new offences, the leet is commonly passed over in favour of justices of the peace. Blackstone reckons "the almost entire disuse and contempt of the court-leet and sheriff's tourn, the king's ancient courts of common law formerly much revered and respected, among the mischievous effects of the change in the administration of justice by summary proceedings before justices of the peace." It was not however left to the learned commentator to make this discovery. In the course of the very reign which witnessed the introduction of the modern system of justices of the peace, we find the Commons remonstrating against the violation of the Saxon principle of self-government and domestic administration of justice, resulting from the encroachments made upon the ancient jurisdiction of the leet by giving to the new tribunal of the justices of the peace a concurrent jurisdiction in matters usually brought before the court-leet, and an exclusive jurisdiction in other important matters. In the last year of Edward III. (1377), the Commons by their petition in parliament prayed the king that no justice of the peace should inquire of anything cognizable in the courts of lords who had view of frankpledge, or of anything cognizable in any city or borough within their district, and should attend only to the keeping of the peace and the enforcing of the statute of labourers. To this petition the king returned the following unsatisfactory answer:—"The statutes heretofore made cannot be kept if the petition be granted." At this time, and until the passing of 27 Hen. VIII. c. 24, offences in leets were alleged to be against the lord's peace, not the king's.

The common notice of holding the court is said to be three or four days; but it is now usual to give fifteen days' notice.

The functions of the steward of a court-leet are mostly, if not wholly, judicial. Ministerial acts are performed by an inferior officer called the bedel or bailiff, who of common right is appointed by the lord or steward, though by custom he may be chosen by the jury, and sworn with the other officers chosen at the leet; and where, in a leet appendant to a borough, the bailiff so chosen has a discretionary power in impannelling the jury, this important function is a sufficient ground for issuing a Quo warranto to inquire into the title of the party who exercises it. The steward, at the customary or at a reasonable time before the holding of the court, issues a precept under his seal, addressed to the bailiff of the leet, commanding him to warn the resiants to appear at the time and place appointed for holding the court, and to summon a jury. The notice may be given in the church or market, according to the usage of the particular place; but it is said that if it be not an ancient leet, personal notice is necessary. According to the course most usually pursued, the steward opens the court by directing the court to be proclaimed; and this being the king's court, it is necessary that three proclamations should be made. This is

done by the bailiffs crying "Oyes" (hear) three times, and then saying once, "All manner of persons who are resiant or deciners, and do owe suit royal to this leet, come in and do your suit and answer to your names, upon pain and peril which shall ensue." The bailiff then delivers to the steward a list of persons summoned as jurymen, together with the suit or resiant roll. The suit-roll is then called over, and those resiants who are absent are marked to be amerced. The bailiff then makes three other proclamations, by crying "Oyes" three times, and then saying, "If any man will be essoigned, come in, and you shall be heard." The steward having called for the essoigns (excuses) enters them. The essoigns should regularly be adjourned to the next court for examination in the court roll or book.

Suit-real must be done in person; it cannot be done by attorney; and probably it cannot be released by the lord. But the suitor may be essoigned or excused for the particular occasion, which is done generally upon the payment of an essoign penny.

The constables are next examined as to their compliance with the orders received by them at the previous court. After this the leet jury is formed. This jury is chosen from the body of the suitors, and consists of not less than twelve, nor more than twenty-three. In some leets the jury continues in office for a whole year; in others the jurors are elected and discharged in the course of the day. A custom for the steward to nominate to the bailiff the persons to be summoned on the jury is valid. If a sufficient number of resiants to form a jury cannot be found, the steward has power to compel a stranger to serve, even though he be merely travelling through the district; but a woman, though a resiant, cannot be sworn.

After the jury is chosen a foreman is named, who is sworn as follows:—"You shall well and truly inquire, and true presentment make, of all such articles, matters, and things as shall be given you in charge; the king's counsel, your companions', and your own, you shall keep secret and undisclosed. You shall present no man for envy, hatred, or malice; nor spare any man for fear, favour, or affection, or any hope of reward; but according to the best of your knowledge, and the information you shall receive, you shall present the truth and nothing but the truth." As soon as the foreman is sworn, and the rest of the jury, they receive a charge from the steward, pointing out the nature of their duties, and of the matters which ought to be presented. The jury make their presentments to the steward, who, in cases of treason or felony, must return the presentments (in these cases called indictments) to the justices of gaol delivery if the offenders be in custody; if they be at large, the indictments must be removed into the King's Bench by certiorari, in order that process may issue thereon. In all other cases the steward of the leet has power, upon the complaint of any party grieved by the presentment, or, on the other hand, upon any suspicion entertained as to the concealment of any offence, by non-presentment, to cause an immediate inquiry into the truth of the matter by another jury, though in the former case the more usual course now is by certiorari or traverse.

A court-leet may be adjourned if the business of the particular court require it.

It is not necessary that notice should be given of an order made by the leet for abating a nuisance; the party being within the jurisdiction, must take notice of it at his peril. For the same reason he is also bound to take notice of a by-law.

The ordinary profits of a court-leet are the fines, amercements, and essoign pence, and belong, in the case of a public leet or tourn, to the king; in the case of a private leet, to the grantee or lord of the leet. In a private leet also, the lord, as above mentioned, is entitled to a further payment, in the nature of a poll-tax, capitagium, or chevage, by the name of certum letæ, sometimes called cert-silver, certainty-money, cert-money, and head-silver. When this payment is to be made on the day of the leet, the defaulters may be presented and amerced. For such amercement the lord may distrain; but he cannot distrain for the cert-money it-

self, without a prescription to warrant such distress. In the absence of both amercement and prescription, the lord's remedy is by action of debt.

Though the court-leet may now be considered as an antiquated institution in many respects, it is one of our old institutions that is characterized by many valuable features. But the court-leet is not inefficient in all places. It is stated in a valuable pamphlet by J. Ross Coulthart, Esq. 'On the sanatory condition of the town of Ashton-under-Lyne' (1844), "That as the power and authority of the surveyor or inspector of nuisances is limited to *common* nuisances, it is necessary in all cases of *private* nuisance to call in the aid of Lord Stamford's Court-leet Jury. This court, which has fallen into disuse in many towns, holds its sittings here (in Ashton-under-Lyne) regularly every six months; and the numerous amerciaments which are from time to time made upon the owners of property in respect of dangerous tenements, defective sewerage, and filthy nuisances, contribute in no small degree to correct abuses and to punish a class of careless and avaricious landlords, that neither the local acts nor common law could effectually reach." The author of this pamphlet has given at length the form of proceedings in the court-leet at Ashton, and the examples of the kinds of presentments and amerciaments. The author says at the end of the note, "In conclusion I would remark, that the prescriptive manorial powers exercised within the manor of Ashton-under-Lyne are not found to be in any respect oppressive; but on the other hand are found to be invaluable adjuncts to the effective working of our various local acts of parliament. Indeed I know of my own knowledge that the commissioners appointed under our police, gas, market, and water acts, frequently derive much valuable assistance from the presentments of the Court-leet Jury; and that if it were not for such excellent auxiliaries, several of the provisions of these acts would be altogether inoperative. In all these local acts of parliament a provision is introduced, reserving unimpaired the privileges of the manor to Lord Stamford."

LEGACY (Legátum), a bequest or gift of goods and chattels by will or testament. The person to whom it is given is termed the legatee (legatárius).

The bequest in no case confers more than an inchoate property on the legatee, which does not become complete till the assent of the executor or administrator with the will annexed, as the case may be, has been given. [EXECUTOR.] But, before such assent, the bequest is transmissible to the personal representatives of the legatee, and will pass by his will. The assent of the executor or administrator, however, cannot be refused except so far as this, that he is not bound to admit that there is any property due to the legatee till the debts of the deceased are paid.

Legacies are of two kinds, general and specific. A legacy is general when it is so given as not to amount to a bequest of a particular thing, or a particular fund of the testator; a specific legacy is a bequest of a specified thing, or a specific part of the testator's estate. The whole of the estate of a person deceased being liable for the payment of his debts, legacies of both kinds are of course subject to debts: but in case of a deficiency of the estate for the payment of the legacies, the general legatees can only be paid in equal proportion; and they must, as it is technically termed, *abate*. A specific legatee is not compelled to abate, or allow any thing by way of abatement, but his legacy may be taken for the payment of debts if the general legacies have all been applied to pay them and there is still a deficiency. Specific legatees may however be compelled to abate as against one another. If the part of the testator's estate which is specifically given has been disposed of by the testator in his life-time, or at the time of his death has ceased to exist in such form as described in his will, the general rule is, that the specific legatee loses his legacy, and is not entitled to any satisfaction out of the general estate; in such case the legacy is said to be adeemed, a term which has been derived from the Roman law, though the word "adimere" is not there used exactly in this sense (Dig. 34, tit. 4). There is also a third description of legacy, partaking somewhat of the nature of both kinds already men-

tioned, as a gift of so much money, with reference to a particular fund for payment. This is called a *demonstrative* legacy, but so far differs from one properly specific, that if the fund pointed out fails on any account, the legatee will be paid out of the general assets; yet it is so far specific that it is not liable to abate in case of a deficiency of the general assets.

Legacies may be given either absolutely (purè, as the Roman jurists termed it), or upon condition (sub conditione) or upon the happening of any contingency: provided it must happen, if at all, within the duration of a life or lives in being at the time of the decease of the testator and twenty-one years afterwards, allowing in addition the period of gestation where the contingency depends upon the birth of a child. Legacies may also be given in such a way that though no condition is expressed in distinct terms, it may be clearly inferred that the testator did not intend his gift to take effect till a definite time had arrived or a definite event had taken place. When a legatee has obtained such an interest in the legacy as to be fully entitled to the property in it, the legacy is said to be *vested*, and this property may be acquired long before the right to the possession of the legacy accrues. A vested legacy partakes of the incidents of property so far as to be transmissible to the personal representatives of the party entitled to it, or to pass by his will; a legacy which is contingent or not vested is no property at all with respect to the legatee. This distinction of legacies, vested and not vested, seems derived from the Roman law, which expresses the fact of vesting by the words "dies legati cedit."

Formerly, in all cases when a legatee died before the testator, the legacy lapsed or failed, and went to the person appointed residuary legatee by the testator, or if there was none such, to the next of kin; and lapse might also take place (as already observed with respect to a legacy given to a legatee at a particular time, or upon condition, or the happening of a contingency) if the legatee died before the appointed time arrived, or if the condition was not performed, or the contingency did not happen. The statute 1 Vict. c. 26, § 33, has modified the old rule, and directs that when legacies are bequeathed to a child or other issue of a testator, who shall die in his life-time, leaving issue, and such issue shall be living at the testator's death, the legacies shall not lapse unless a contrary intention appears upon the face of the will, but shall take effect as if the legatee had died immediately after the testator.

The rules by which gifts of legacies are construed are derived from the Roman law, or rather are a part of that law, which prevails in the ecclesiastical courts: for although the court of chancery has concurrent jurisdiction over legacies with the ecclesiastical courts, yet to prevent confusion it follows the same general rules. If however a legacy be charged upon or made payable out of real estate, then, as the ecclesiastical court has no concurrent jurisdiction, courts of equity are not bound to follow the same rules as to the construction of such gifts as in the case of personal estate.

The questions involved in the law relating to legacies are very numerous, and belong to treatises on that branch of the law.

Generally speaking, an executor cannot be compelled to pay legacies until after the expiration of twelve months from the decease of the testator, and not even then unless the assets should be realized and the debts paid or provided for; but as the rule is only for the general convenience of executors, if it should appear that all the debts of the testator are paid, the executor may be compelled to pay the legacy before the twelve months have expired. It may be stated however as a general rule, that legacies are payable twelve months after the death of a testator, and with interest from that time at 4 per cent., unless the testator has made some special provision as to time of payment and interest. The rule as to the twelve months is taken from the Roman law. When a specific legacy consists of some determinate chattel, whether real, as a lease for years, or personal, as a particular horse, the legatee, after assent by the executor to the legacy, may take possession of it, or sue

for it by action at law; but where the specific legacy consists of money, &c., and in all cases of general and of demonstrative legacies, no action at law lies unless the executor has, for some new consideration beneficial to himself, expressly promised payment. As a general rule therefore it may be stated that the remedies by legatees against executors are afforded by the courts of equity. (Roper *On Legacies;* Williams *On Executors and Administrators.*)

On the subject of legacies (legata) under the Roman law, Gaius (ii. 192-255) and the Digest, lib. xxx., xxxi., xxxii., 'De Legatis et Fidei commissis,' are the chief authorities. This is one of the subjects on which the Roman jurisconsults have most successfully exercised their sagacity and diligence, and in which the decisions of our English courts have adopted many of the principles of Roman law.

Legacies pay a tax, which is generally to be paid by the executor or administrator, and the stamp which denotes the payment of a legacy is to be affixed to a receipt which is given to the executor or administrator by the person who receives the legacy. There are also stamp duties on probates of wills and on letters of administration. These modes of taxing the transfer of personal property by will or in consequence of intestacy may be conveniently explained under PROBATE.

LEGATE (from the Latin Legátus, which is a participle from Légo, and signifies one who is sent with a certain commission). This word had various significations among the Romans. The legates (legati) were the chief assistants of the proconsuls and proprætors in the administration of the provinces. The number of legates differed according to the quality of the governor whom they accompanied; their duties consisted in hearing inferior causes and managing the smaller affairs of administration. They appear to have been chosen and appointed by the governor, though at the first institution of the office they were probably selected by the senate, as advisers to the governor, from the most prudent of their own body. The word legatus also signified a military officer who was next in rank to the general or commander-in-chief in any expedition or undertaking, and in his absence had the chief command. (Cæsar, *De Bell. Civ.*, ii. 17; iii. 51.) The word legatus is also often used to denote a person sent by the Roman state to some other state or sovereign power on matters that concerned the public interest: in this sense the word corresponds pretty nearly to our ambassador or envoy, except that the motives for sending a legatus, or legate, seem to have been occasional only, and the legates do not appear ever to have been permanent resident functionaries in a foreign community. Under the emperors those who were sent by them to administer the provinces of which the government was reserved to the emperors, were called legates (legati Cæsaris).

Under the republic the senators who had occasion to visit the provinces on their own business used to obtain what was called a "legatio libera," that is, the title and consideration of a legatus, or public functionary, with the sole object of thereby furthering their private interests. These legationes are said to have been called liberæ, or free, because those who held them had full liberty to enter or leave the city, whereas all other public functionaries whose duties were exercised beyond the limits of the city could not enter Rome till they had laid aside their functions; or because a senator could not go beyond a certain distance from Rome unless he obtained permission in the form of a legatio. Cicero, who on one occasion inveighs vehemently against the legatio libera, could defend it when it suited his purpose, and in a letter to Atticus (i. 1) he expresses his intention to visit Cisalpine Gaul in this capacity for the purpose of furthering his election as consul.

At the present day a legate signifies an ambassador, or nuncio, of the pope.

There are several kinds of papal legates; *legatus a latere, legatus natus,* &c. Legates a latere are sent on the highest missions to the principal foreign courts, and as governors of provinces within the Roman territory which are called legations (legazioni), when they are go-

verned by a cardinal. Legatus natus is a person who holds the office of legate as incident and annexed to some other office, and is, as we should say, a legate *ex officio*. As this office or title exempted the holder from the authority of the legates a latere, it was earnestly sought after by the bishops. The archbishop of Canterbury was formerly a legatus natus. Legates of a lower rank than cardinals are called nuncii apostolici (apostolic messengers).

LEGATEE. [LEGACY.]

LEGISLATION. In treating of legislation, we will explain, 1st, the meaning and etymology of the word; 2nd, the distinction between the legislative and executive powers of government; and 3rd, the difference between jurisprudential and legislative science—under which head we will make some remarks respecting the most convenient form for the composition of laws.

1. *Meaning and etymology of the word Legislation.*—A magistrate who proposed a law in Rome for the adoption of the assembly of citizens was said *legem ferre* (as we say, to *bring* a bill into parliament); and the law, if carried, was said to be *perlata*, or simply *lata*. Hence the term *legum lator*, or *legislator*, was used, as synonymous with the Greek νομοθέτης, in the sense of a lawgiver. From *legislator* have been formed *legislation*, *legislative*, and *legislature* (the last word signifying a person or body of persons exercising legislative power).

Legislation means the making of positive law. Positive law, as explained in the article [LAW], is made by the person or persons exercising the sovereign power in a community. The end of positive law, as explained in the same article, is the temporal happiness of the community.

2. *Distinction between the legislative and executive powers of government.*—A general command, or law, issued by a sovereign government would be nugatory, if it was not applied in practice to the cases falling within its scope, and if the pains denounced for the violation of it were not inflicted on transgressors. The execution of the general commands, or laws, of a sovereign government is therefore an essential part of the business of a government. Accordingly the ordinary functions of a government may be divided into the two classes of *legislative* and *executive*.

An *executive* command, or act, of a sovereign government, is a special command issued, or act done, in the execution of a law previously established by the government. Executive commands or acts are of two sorts, viz. *administrative* and *judicial*. The distinction between these two sorts of executive commands or acts may (in conformity with modern phraseology) be stated as follows. A judicial proceeding is a declaration, by a competent authority, that a person has (or has not) brought himself within the terms of a certain penal provision, or that he has (or has not) a certain legal right or obligation which another disputes with him. An administrative proceeding is for the sake of carrying a rule of law into effect, where there is no question about the legal culpability, or dispute about a legal right or obligation of a person. In an administrative proceeding the government functionary acts, or may act, spontaneously and from his own information; in a judicial proceeding he does not act until he is set in motion by others; and he can only take notice of the facts which the litigant parties bring before him. A judge cannot act until his court is (to use the French phrase) *seized*, or *saisi*, with the question; or (to use the language of our ecclesiastical courts) it is necessary "to promote (or set in motion) the office of judge." (Dégerando, *Institutes du Droit administratif Français*, Paris, 1829.)

It should be observed, that the division of the functions of government into legislative and executive is not exhaustive, inasmuch as neither class comprehends acts or special commands not founded on a previous general command or law, in other words, *privilegia*, concerning which see the article LAW; as well as treaties and other compacts of a sovereign government; as to which see SOVEREIGNTY.

The distinction between the making of laws and their execution is too obvious to have been overlooked by the ancient writers on government. The latter sub-

ject was treated by them under the head of *magistrates*. (See for example, Aristot., *Pol.*, vi. 8.) The distinction has however attracted peculiar attention from both speculative and practical politicians since the beginning of the last century, in consequence of the great importance attributed by Locke and Montesquieu to the separation of the legislative, administrative, and judicial powers of government; *i.e.* the exercise of the administrative and judicial functions by officers distinct from the supreme legislative body, and from each other. (*Essay on Civil Government*, Part ii. § 143-4; *Esprit des Lois*, xi. 6.) The importance of the separation in question has however been overrated by these and other writers; and it has never existed, and indeed can scarcely exist, to the extent which they suppose. The legislative functions of a government can be distinguished, logically, from its executive functions; but these functions cannot, in every case, be severally vested in different persons. In every free government (or government of more than one) the legislative bodies exercise some executive functions: thus, in England, the House of Lords is an appellate court in civil cases, and the House of Commons decides in cases of contested elections of its own members. In every form of government the public functionaries, whose primary business is the execution of the laws, exercise a considerable portion of (delegated) legislative power. It is scarcely possible to conceive a body of law so complete as not to require subsidiary laws for carrying the principal laws into execution; and a power of making these subsidiary laws must, to a greater or less extent, be vested in the executive functionaries. In the article LAW we have distinguished laws made by supreme from laws made by subordinate legislatures. The latter class of laws usually emanate from executive functionaries, especially judges. (See this subject further examined in the Preliminary Inquiry to Mr. Lewis's *Essay on Dependencies*, p. 37.)

3. *Difference between jurisprudential and legislative science.*—Positive law may be viewed from the two following aspects. First, it may be considered as an organic system, consisting of coherent rules, expressed in a technical vocabulary. Secondly, its rules may be considered singly, with reference to their tendency to promote the happiness of the community; in other words, their expediency or utility. Law viewed from the former aspect is properly the subject of the science of jurisprudence. [JURISPRUDENCE.] Law viewed from the latter aspect is the subject of a department of political science which is generally termed *legislative science*. (Legislation, in strictness, is concerned about the technical form, as well as the utility, of a law; but the term legislative science, as just defined, is sufficiently accurate for our present purpose.)

It is important to bear in mind the distinction, just pointed out, between the scientific or technical excellency of a system of law, and the expediency or utility of the rules of which it is composed. The distinction, however manifest, has been frequently overlooked, even by lawyers. For example, the excellence of a system of law, considered in a scientific point of view, has no connexion with the goodness of the government by which the laws were established. Law may be, and has been, cultivated as a science with admirable success under very bad governments. The scientific cultivation of law in Rome scarcely began until the Empire; and the great legal writers of France lived in times of political anarchy or despotism. A system of law of which the practical tendency may be most pernicious, may have the highest scientific or technical excellence. A code of laws establishing slavery, and defining the respective rights and duties of master and slave, might be constructed with the utmost juristical skill; but might, on that very account, be the more mischievous as a work of legislation. On the other hand, a system of law may be composed of rules having a generally beneficial tendency, but may want the coherency and precision which constitute technical excellence. The English system of law affords an example of the latter case. Owing to the popular character of the legislature by which its rules were enacted or sanctioned, it has a generally bene-

ficial tendency; but considered in a scientific point of view, it deserves little commendation. The writings of Mr. Bentham, in like manner, are far more valuable contributions to legislative than to jurisprudential science. The remains of the writings of the Roman lawyers, on the other hand, are of little assistance to the modern legislator, but they abound with instruction to the jurist.

The distinction between the technical excellence of a law and its expediency, or (in other words) between its form and its substance, is also important with reference to the question of *codification, i.e.* the making of a code of laws.

The making of a code of laws may involve any one of the three following processes:—1. The formation of a new system or body of laws. 2. The digestion of written laws, issued at various times, and without regard to system. 3. The digestion of unwritten law, contained in judicial decisions and authoritative legal treatises. The ancient codes of law were for the most part works of new legislation; such were, for example, the codes of Solon and Draco, the Twelve Tables, the code of Diocles of Syracuse, and others. The *codices* of Theodosius and Justinian afford examples of the digestion of written laws. [CONSTITUTIONS, ROMAN.] The Digest or Pandects of Justinian afford an example of the digestion of unwritten law. The French codes were not digests of the existing law of France, either written or unwritten; but they were in great measure founded on the existing law. The same may be said of the Prussian Landrecht. The statutes for consolidating various branches of the criminal law, the bankruptcy laws, the customs laws, the distillery laws, &c., are instances of the digestion of the written law of England. The Criminal Law Commissioners have furnished a specimen of a digest of the English common (or unwritten) law relating to theft. (*First Report*, 1835.) The digestion of existing law, whether written or unwritten, requires merely juristical ability; the making of new laws requires, in addition to the knowledge and skill of the jurist, that ability which we have termed legislative. In other words, the making of new laws requires both attention to their utility or expediency, and technical skill in the composition or drawing of them. Popular forms of government secure a tolerably careful examination of laws, with reference to their expediency; but they do not secure attention to the technical or scientific department of legislation. Indeed nearly all the principal codes of laws have emanated from despotic governments, viz. the Roman, Prussian, Austrian, and French codes. The difficulty of passing an extensive measure through a popular legislature has, in free governments, discouraged attempts at systematic digestion of the law. The digest of the law of real property in the state of New York however affords an example of such digest passed by a popular legislature.

The most convenient form for the composition of laws is a subject which has exercised many minds, but on which we cannot, consistently with the plan of this work, make more than a few remarks.

The inconveniences arising from too great prolixity or too great conciseness in the phraseology of laws are stated by Lord Bacon, in the 66th and 67th aphorisms of his eighth book *De Augmentis*. If an attempt be made by an enumeration of species, to avoid the obscurity which arises from the use of large generic terms, doubts are created as to the comprehensiveness of the law; for, as Lord Bacon well observes, "Ut exceptio firmat vim legis in casibus non exceptis, ita enumeratio infirmat eam in casibus non enumeratis." (*Ib.*, aph. 17.) On the other hand, vague and extensive terms, if unexplained, are obscure and frequently ambiguous. The best mode of producing a law which shall at once be comprehensive, perspicuous, and precise, probably is, to draw the text of the law in abstract and concise language, and to illustrate the text with a commentary, in which the scope, grounds, and meaning of the several parts of the law are explained. A commentary such as we now speak of was suggested by Mr. Bentham (*Traités de Législation*, tom. iii. p. 284; *De la Codification*, s. 4), and the penal code recently prepared for India has been drawn according to this plan. Doubts

will arise in practice respecting the interpretation of the most skilfully drawn laws; and the best guide to the interpretation of a law is an authentic declaration, made or sanctioned by the legislature which enacted it, of its scope or purpose. The want of such a commentary frequently causes the scope of a law to be unknown; and hence the tribunals often hesitate about enforcing laws which may be beneficial. (*Dig.*, lib. i. t. 3, fr. 21, 22.)

It seems scarcely necessary to say that laws ought, where it is possible, to be composed in the language most intelligible to the persons whose conduct they are to regulate. In countries where the great majority of the people speak the same language (as in England or France), no doubt about the choice of the language for the composition of the laws can exist. In countries however where the people speak different languages, or where the language of the governing body differs from that of the people, or where the bulk of the people speak a language which has never received any literary cultivation, a difficulty arises as to the language in which the laws shall be written. Where the people speak different languages, authentic translations of the original text of the laws should be published. Where the language of the governing body differs from that of the people (which is generally the case in newly conquered countries), the laws ought to be issued in the language of the people. It is comparatively easy for a small number of educated persons to learn a foreign language; whereas it is impossible for the people at large speedily to unlearn their own, or to learn a new tongue. Thus the Austrian government in Lombardy uses the Italian language in all public documents. When the language of the bulk of the community has not received a literary cultivation, the language used by educated persons for literary purposes must be employed for the composition of the laws. Thus in Wales, the Highlands of Scotland, and the west of Ireland, the language of the laws and the government is not Celtic, but English; and in Malta, where the bulk of the people speak a dialect of Arabic, the laws are published and administered in Italian, which is the literary language of the island.

An able analysis of the logical structure of a legal sentence, and an explanation of the most perspicuous and convenient manner of arranging its several parts (consisting of antecedent or subsequent conditions, limitations, exceptions, &c.) will be found in a paper by Mr. Coode, appended to the Report of the Poor Law Commissioners upon Local Taxation (3 vols. folio, 1843).

LEGITIMACY. [BASTARD.]

LEGITIMATION. [BASTARD.]

LETTER or POWER OF ATTORNEY is an instrument by which one person authorises another to do some act for him: it may be used in any lawful transaction, as to execute a deed, to collect rents or debts, to sell estates, and other like matters. The authority must be strictly followed, for the principal is only bound by the acts of his agent to the extent to which the letter of attorney authorises him, and if the agent goes beyond his authority he is personally liable to the party with whom he contracts. The power which authorises an attorney or agent to do some particular act impliedly includes an authority to do whatever is incident to that act; for instance, a power to demand and recover a debt authorises the arrest of the debtor in all cases where it is permitted by law. But a power to receive money and to give releases, or even to transact all business, does not authorise the attorney to negotiate bills received in payment. In fact all written powers, such as letters of attorney or letters of instruction, receive a strict interpretation; the authority is never extended beyond that which is given in terms, or is absolutely necessary for carrying the authority into effect. An attorney, unless power be specially given him for that purpose, cannot delegate his authority or appoint a substitute, and, generally speaking, the words of general authority usually inserted in letters of attorney, after giving the particular authority, do not enlarge it.

The authority must be executed during the life of the person who gives it, for the act which is done by the attorney is

considered to be the act of him who gives the authority.

Powers of attorney are generally executed under hand and seal, that is, by deed, and where they contain an authority to bind the principal by deed, it is essential that they should be so executed. When the agent signs any instrument which is to bind his principal, he must sign it in the name of the principal, and not in his own name.

A power of attorney, unless it be given as a security, is revocable either by the personal interference of the principal or by his granting a new power to another person. But if the power has been given as a security, it has been decided that it is not revocable by the principal.

A letter of attorney is also in general revoked by the bankruptcy of the principal, unless it is coupled with an interest. (Paley's *Principal and Agent*, and the various treatises on mercantile law.)

LETTERS OF CREDENCE. [AMBASSADOR.]

LETTER OF CREDIT. [CREDIT, LETTER OF.]

LETTER OF MARQUE. [PRIVATEER.]

LETTERS PATENT, the king's letters, sealed with the great seal. These grants, says Blackstone (*Comment.* b. ii. ch. 21), whether of lands, honours, liberties, franchises, or anything else that can be granted, are contained in charters or letters patent, that is, open letters, literæ patentes. They are so called because they are not sealed up, but open to view, with the great seal pendant at the bottom, and are usually directed or addressed by the king to all his subjects at large. Letters patent, in the time of Queen Elizabeth, as well as in several preceding reigns, were not unusually obtained for purposes of mere monopoly. They are now frequently granted under the royal authority as the reward of ingenuity, and are in some cases the only means by which a man can secure any compensation for a discovery, or for the labour and expense which he may have employed in perfecting an invention. The consideration of the legal rights of patentees, and of the modes in which they may be acquired and secured, properly belongs to the head of Patents. At present it may be sufficient to refer the reader to Collier, 'Essay on the Law of Patents for New Inventions; to which are prefixed two chapters on the General History of Monopolies, and on their Introduction and Progress in England to the time of the Interregnum,' 8vo. Lond. 1803; to Hand, 'Law and Practice of Patents for Inventions,' 8vo. Lond. 1808; Godson, 'Practical Treatise on the Law of Patents,' 8vo. Lond. 1823; with the 'Supplement,' 8vo. Lond. 1832; and Rankin, 'Analysis of the Law of Patents,' 8vo. Lond. 1824. Many letters patent have been granted by the king to the founders of schools and other charitable endowments, empowering the donor to make rules and ordinances for the government of his charity, and constituting into a body corporate those persons and their successors whom the founder should choose or nominate.

LETTERS, THREATENING. [CRIMINAL LAW.]

LEVANT COMPANY. [JOINT-STOCK COMPANIES.]

LEVARI FACIAS. [BENEFICE, p. 347.]

LEX. [LAW.]

LEX MERCATORIA, or LAW-MERCHANT, in a general sense, denotes the usages and customs of merchants, which, having been adopted as part of the law of most countries, and particularly of maritime states, for the protection and encouragement of trade, have been termed a branch of the law of Nations. (Blackstone's *Commentaries*, vol. iv. p. 67.) In this general signification of the term, the law-merchant is at the present day extremely indefinite, as different countries have adopted different portions of it, and the mercantile usages and customs common to all are few in number. Some centuries ago, however, when the transactions of commerce were less complicated, and the rules by which they were governed were consequently simple, the provisions of the Lex Mercatoria appear to have been better understood and ascertained. Thus we find the law-merchant frequently referred to in general terms by our earlier English statutes and charters as a well-known system,

and distinguished from the ordinary law; as, for instance, in the stat. 27 Edw. III., 1353, it is declared "that all merchants coming to the Staple shall be ordered according to the law-merchant, and not according to the common law of the land;" and the Charta Mercatoria, 31 Edw. I., 1304, directs the king's bailiffs, ministers, &c. "to do speedy justice to merchants, *secundum legem Mercatoriam.*"

Coke mentions the law-merchant as one of the great divisions of which the law of England is composed (Co. Litt., 11, b.), and the custom of merchants is said to be part of the law of England of which the courts are to take judicial notice. (*Vanheath* v. *Turner*, Winch's *Reports*, p. 24.) This, however, must be understood to apply only to general customs, as the rule does not comprehend particular or local usages which do not form part of any general system. The generality of the expression has caused much misunderstanding, and merchants in England have been often led to infer, that when practices or rules of trade have become established among them so as to become "customs" in the common meaning of the term, they form part of the law of the land. This misconception has frequently led to improper verdicts of juries in mercantile trials. It is clear, however, that the Lex Mercatoria, when used with reference to English law, like the Lex et Consuetudo Parliamenti, merely describes a general head or division of the system. What customs or rules are comprehended under that division must always be matter of law for the consideration of the judges; and it is said by Chief-Justice Hobart, in the case of *Vanheath* v. *Turner* above cited, that if they doubt about it, they may "send for the merchants to know their custom, as they may send for the civilians to know their law." The principle seems to be as alluded to by Lord Hale in a case in Hardres's *Reports*, p. 486, that the courts are bound to take notice of the general law of merchants; but that, as they cannot know all the customs which form part of that law, they may inform themselves by directing an issue or making inquiry in some less formal manner. The latter mode has not unfrequently been adopted in modern times, and evidence of mercantile customs has sometimes been given before juries. When the custom is ascertained, the court may declare it to be legal or not according to their judgment; for the expression, that the court is bound to take notice of the general law of merchants, does not mean, or should not mean, that the custom, simply as such, must be recognised as law by the judges. The recognition of the custom by the judges makes it law. However, when the judges do recognise a general custom of trade, people are apt to consider that the custom which the judges recognise as applicable to the particular case, is itself the law, instead of considering, as they ought to do, that the judges, finding the custom to be general and a good custom, declare it to be legal. When once the custom has been thus recognised, it is law, and not before. (1 Douglas's *Reports*, p. 654; 1 Bingham's *Reports*, p. 61.)

LIBEL (from the Latin 'libellus,' a little book) is a malicious defamation, expressed either in writing, or by signs, pictures, &c., tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt, or ridicule. (Hawkins, *P. C.*)

This species of Defamation is usually termed *written scandal*, and from the considerations that the offence is committed upon greater deliberation than the mere utterance of words, which are frequently employed hastily and without thought, and that the effect of a writing continues longer and is propagated farther and wider than verbal defamation, it is generally treated as a more serious mode of defamation than Slander. [SLANDER.]

Whatever written words tend to render a man ridiculous or to lower him in the estimation of the world amount to a libel; although the very same expressions, if spoken, would not have been slander or defamation in the legal sense of those words. To complete the offence, publication is necessary, that is, the communication of the libel to some person, either the person himself who is libelled or any other. The mere writing of defamatory matter without publication is not an offence punishable by law; but if a libel in

a man's handwriting is found, the proof is thrown upon him to show that he did not also publish it.

There are two modes in which libellers may be punished, by indictment or criminal information and by action.

Indictment or criminal information is for the public offence (as it is termed), for every libel has a tendency to a breach of the peace by provoking the person libelled; the civil action, which is on the case, is to recover damages by the party for the injury caused to him by the libel.

On the criminal prosecution it was till recently wholly immaterial whether the libel were true or false, inasmuch as it equally tended to a breach of the peace, and the provocation, not the falsehood, was the thing to be punished; and therefore the defendant on an indictment for publishing a libel was not allowed to allege the truth of it by way of justification. But in a civil action the libel must appear to be false as well as scandalous, for the defendant may justify the truth of the facts, and show that the plaintiff has received no injury. It is true that in one sense the person may have received great injury, that is, loss of character and profit, by the publication of the libel; and therefore the word injury must here be taken in the proper sense of injury, as explained in DAMAGE.

But although the truth of a libel was no justification in a criminal prosecution, yet it was so far considered an extenuation of the offence, that the Court of King's Bench would not grant a criminal information unless the prosecutor by affidavit distinctly and clearly denied the truth of the matters imputed to him, except in those cases where the prosecutor resided abroad, or where the imputations were so general and indefinite that they could not be expressly contradicted, or where the libel was a charge against the prosecutor for language held by him in parliament.

A fair report of judicial proceedings does not amount to a libel, but a publication of ex-parte proceedings before a magistrate may be punished as such.

A petition, containing scandalous matter, presented to parliament or to a committee of either House, and legal proceedings of any kind, however scandalous the words used may be, do not amount to a libel. But if the petition were delivered to any one not being a member of parliament, or the legal proceedings were commenced in a court not having jurisdiction of the cause, they would not be privileged. Confidential communication reasonably called for by the occasion, as charges made by a master in giving the character of his servant to a party inquiring after it, or a warning by a person to another with whom he is connected in business as to the credit or character of a third party about to deal with him, are considered as privileged communications, and are not deemed to be libels unless malice be proved, or the circumstances be such that malice may be inferred by the jury.

It was long a disputed question whether the jury, in a criminal prosecution for libel, should deliver their verdict only with reference to the facts of the publication of the libel and of the matter of it, or should also found their verdict on their opinion of the matter being libellous or not. It was contended by the judges and most of the lawyers that the judge should determine whether the matter was a libel or not, and charge the jury accordingly. But it was settled by an act of parliament that the jury must find not only the fact of publishing, but whether the matter in question be a libel or not (32 Geo. III. c. 60, extended to Ireland by 33 Geo. III. c. 43). In a civil action the question whether the publication is or is not a libel is decided by the judge or court.

The punishment in a criminal prosecution may be fine and imprisonment; and upon a second conviction for publishing a blasphemous and seditious libel, the court might sentence the offender to banishment for any term it might think fit. (1 Geo. IV. c. 8.) But this was repealed by 11 Geo. IV. & 1 Wm. IV. c. 73.

The printer of a libel is liable to prosecution as well as the writer, and so is the person who sells it, even though he is ignorant of its contents.

By the 28th section of 38 Geo. III. c. 78, a bill of discovery may be supported against the editor of a newspaper or other person concerned in the publication or interested in the property thereof, to com-

pel a disclosure of the name of the author of the libel, or of the name of any person connected with the publication against whom the party libelled may think proper to bring an action; and such a bill may also be maintained against any person suspected of being the author, which would compel him to discover on oath whether he did or did not write the libel in question. (Blackstone, *Com.*; Starkie and Holt, *On Libel*; Selw., *N. P.*; Bac., *Abr.*, tit. "Libel;" LAW, CRIMINAL.)

The act of 6 & 7 Vict. c. 96, entitled 'An act to amend the law respecting defamatory words and libel,' has made some alterations in the law of defamation and libel. The act commences with the preamble, "For the better protection of private character, and for more effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty, be it enacted," &c. The act enacts—§ 1, That in any action for defamation it shall be lawful for the defendant, subject to a certain notice in writing therein described, to give in evidence in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation at such time as in the said section is more particularly described.

§ 2 enacts, That in an action for a libel contained in any public newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted without actual malice and without gross negligence, and that at such time as the section mentions he inserted in such newspaper or other periodical publication a full apology for the said libel, or made such other apology as in the said section is more particularly described.

§ 3 enacts, That if any person shall publish any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing of any matter or thing touching any other person, with intent to extort any money or security for money or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, such offender on conviction may be imprisoned for any term not exceeding three years. This enactment does not in any way affect any law as to the sending or delivery of threatening letters or writings.

§ 4 enacts, That if any person shall maliciously publish any defamatory libel, knowing the same to be false, on conviction he shall be liable to two years' imprisonment, and to pay such fine as the court shall award.

§ 5 enacts, That if any person shall maliciously publish any defamatory libel, on conviction he shall be liable to fine or imprisonment, as the court may award, but the imprisonment is not to exceed one year.

§ 6 makes an important change. It enacts, That on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as in this section is afterwards mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published. The defendant must in his plea to such indictment or information allege the truth of the matters charged in the manner that is required in pleading a justification to an action for defamation.

§ 7 enacts, That when on the trial of any indictment or information for the publication of a libel, under the plea of Not Guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to the defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

§ 8 enacts, That in the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment be given for the defendant, he shall be entitled to recover from the prosecutor the costs that he has sustained by reason of such indictment or information; and that upon

a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by him by reason of such plea.

This act does not extend to Scotland, § 10. As it was doubted whether or not it did extend to Ireland, this act was extended to Ireland by 8 & 9 Vict. c. 75.

Defamation and libel were punished among the Romans. The oldest extant rule about defamation and libel is contained in the fragments of the 'Twelve Tables,' which punished both slanderous words and libellous writings. (Cicero, *De Repub.*, iv. 10.) The penalty was capital (in the Roman sense of that term), and it appears to have been death. Libellous writings were generally denominated "famosa carmina" and "mala carmina." In course of time the Praetorian Edict modified the old law, or probably it fell into disuse. The praetor allowed an action for slander which was against "boni mores" (*Dig.* 47, tit. 10, s. 15); and against "boni mores" means, that which was disapproved of by the positive morality of the community and tended to bring infamy or odium on the person against whom it was directed. The technical word for this kind of "slander" was Convicium, which properly meant something said to a man's face that was injurious; but the commentators on the Edict laid it down that there might be Convicium even if the person against whom it was directed was not present. Convicium in fact was personal abuse which tended to damage a man and was said with circumstances of great publicity. But the Praetor's Edict extended to other cases, and allowed an action wherever a man had done or said anything which injured a person's character. This general clause included libellous writings, and many other things, such as certain modes of soliciting women's chastity, and addressing them in obscene language. The penalty in all these was a sum of money assessed by Recuperatores as damages.

Under the imperial government the term "liber famosus," often occurs: it signifies any writing in prose or verse which tended to injure a man's character (ad infamiam alicujus). The offence consisted in writing the libel, spreading it about or selling it, or in causing these things to be done maliciously (dolo malo); it made no difference whether the libel was anonymous or had a false name to it. The penalty was (according to some law, the name of which is not known) that the libeller, if convicted, became "intestabilis," that is, he could not make a will or be a witness to a will. (*Dig.* 28, tit. 1, s. 18.) A senatusconsultum extended the penalties of this lex to cases where there was no writing, but only marks which were of a like tendency; this must mean drawings and caricatures, such as are now published in London. Everything therefore which tended to the "infamia" of a person, writings in prose or verse, and drawings, whether a man was mentioned or not mentioned, provided the person intended was clearly pointed at by such writings or drawings, were punishable offences; and writer, draftsman, and all concerned were liable to the legal penalty.

This legislation seems to belong to the Imperial period, though it was not intended to protect the emperor only. Augustus commenced this legislation (Sueton. *Octavian.*, 55), and probably his chief object was to protect himself. The Roman Cæsars, like other high personages in modern times, were the objects of pasquinades and various kinds of compositions which were intended to satirize them and make them ridiculous. The penalty of the law of Augustus is not certain; but in later times various Senatus consulta increased the penalty to Deportation or perhaps only relegation. If the author of a liber famosus had been punished in a criminal prosecution (judicium publicum), the injured person might still have his action, if he was mentioned by name in the libel. (*Dig.* 47, tit. 10, s. 6.) But if a man libelled a guilty person (nocens), it was considered equitable that he should not be subject to any legal penalty, "because the bad deeds of evil-doers ought to be known, and it was expedient that they should be known." Compare the 6 & 7 Vict. c. 96, § 6.

The "libri famosi," or "libelli famosi," of the Imperial period, signified anony-

mous writings, which contained a charge against some person, and were either sent to the Cæsar or to some magistrate, or put in some place where they might be found, for the purpose of causing injury to the person accused. This is the only signification of the expression "libelli famosi," in the Theodosian and Justinian codes. Constantine the Great declared that such charges should not prejudice any person who was mentioned in them, and that such writing should be burnt when the author was unknown. If the author was discovered, he was punishable even if he could prove the truth of the matter contained in the writing. Other constitutions on the same subject were made after the time of Constantine.

(Rein, *Das Criminalrecht der Römer.*)

LIBERTI'NUS. [SLAVE.]

LIBERTY. This word is the Latin *libertas.* The corresponding Teutonic word is *freiheit*, or, as it appears in English, *freedom.*

Liberty and freedom are familiar words with indefinite meanings. 'Liber,' the adjective which corresponds to the noun 'libertas,' is properly opposed to 'servus,' or 'slave;' and libertas is the status of a freeman, as opposed to servitus, or the status of a slave. This division of freemen (liberi) and slaves (servi) was the fundamental division of persons in the Roman law (Gaius, i. 9). This word Liberty, then, in its origin indicates merely the personal status of a man as contrasted with the condition of servitude. In Greek the like opposition is expressed by two other words (δεσπότης, δοῦλος). But the word Libertas had also a political meaning among the Romans. When the Romans had ejected their last king they considered that they had obtained their Liberty (Livy, ii. 1). The political meaning of libertas (liberty) was derived from the contrast of liberty and servitude in the person of individuals; and if the mass of a nation were subjected to the arbitrary rule of one man, that was considered a kind of servitude, and the deliverance from it was called libertas, a term which in this sense is clearly derived from the notion of liberty as obtained by him who was once a slave.

In the Greek writers the words (δεσπότης and δοῦλος) which respectively signify master and slave were also applied in a political sense to signify monarch and subjects. The Persian king was master (δεσπότης), and his subjects were slaves (δοῦλοι).

The political sense then of liberty and freedom, if traced to its source, is founded on the notions of personal liberty as contrasted with personal servitude. He who became free from being a slave in a republic became a member of the state, in which he formerly had no political existence. It is implied by the circumstance of his becoming free that he became a citizen, though positive law, as among the Romans, might limit the degree in which he thereby obtained citizenship. [CITIZEN.] Slavery may and did exist in many states of antiquity which were under monarchical or tyrannical rule; but he who was the slave of an individual in any such state, and obtained his freedom, did not thereby become a citizen, but was merely released from the duty that he owed to his master: he still owed together with others the duty of perfect obedience to an individual monarch or tyrant.

The words liberty and freedom, as political terms, have always been used to express a condition of a people in which they are to some degree at least secured against the arbitrary rule of an individual or of a small number of persons; and the word slavery, in its political sense, is applied to nations in which the mass of the people have not reasonable security for their lives and property against the capricious rule of one man or of a number of persons who form a small minority of the whole.

That which is really meant by political freedom and liberty is nothing more than a form of government which shall in some degree at least secure to the people the enjoyment of life and of their property against the tyranny of one man or of a few. Freedom and liberty then are terms which can only be applied to constitutional governments [CONSTITUTION], and to republics, in the proper sense of that term. There is no political liberty or freedom under any other form

of government, though under a monarchy, when the administration is good, there may be in many respects more personal freedom than there is in a pure democracy. But the essential quality by which political liberty or freedom is distinguished is simply this: the sovereign power is not in the hands of one or of a small minority, but it is either distributed among the whole community or a considerable part of it.

Political liberty does not exist in some civilized nations in Europe, in Prussia for instance. Political liberty does not exist in Russia. In some countries where it does not exist, it is the general opinion that its existence would be a benefit to the whole nation. In other countries the mass of the people are still in such a condition that political liberty could not exist. for political liberty, as already stated, means that the sovereign power must be in the hands of a large number, and they must possess intelligence enough to enable them to exercise and keep the power; but there are nations where the mass of the people are too ignorant to exercise or keep any political power.

The highest degree of political liberty is in a Democracy [DEMOCRACY]; for it is that form of government which is furthest removed from a monarchy. The relationship of monarch and subject is the like relationship to master and slave.

A nation which strives for its liberty strives for a popular form of government, whether it be a constitutional kingly form or a democracy. But Liberty is a specious word, often ill understood; and many who have cried out for liberty have either not considered exactly what it is they want, or they have supposed that liberty would free them from many evils which they consider to be peculiar to a state of political slavery. It is now generally admitted, that in those states where a large part of the population have equal political knowledge with the few, who direct administration, the general interests are best served by this large number participating in the government. Political liberty then, to some extent or degree, is, in many countries, necessary for securing the advantages of good administration. But there are many evils incident to states, which are not due to the want of political liberty; and it is therefore a matter of importance for those who would make changes in government to consider whether the evils of which they complain are owing to the want of political liberty or to other causes.

The notion of political liberty has been based upon the analogy already pointed out between Political Liberty and Personal Liberty; which is a false analogy, though an historical one. Man, it has been assumed, is naturally free. No man is naturally or by nature another man's slave. As no man is naturally a slave, so all mankind have naturally a right to political liberty, and just government arises from the consent of the governed.

On these assumptions rests the American Declaration of Independence: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their joint powers from the consent of the governed," &c.

In this passage Liberty seems to mean the personal status, which is opposed to slavery; and it is on the assumption of the equality by birth and the endowment of all men with certain inalienable rights, that this instrument would found the American title to Political Liberty. It involves the doctrine of the social contract, and assumes, as an historical fact, an origin of governments by consent of the governed.

If theories of government are to be tested by historical facts, it would be consistent with such facts to say, that men are not created equal; that they have not been endowed with liberty, for a large part of them have always been slaves; and that governments have been constituted without the consent of the governed. These are real facts: those assumptions are untruths.

Political liberty rests on no such sorry basis as the Declaration of Independence places it on. That nation which can obtain it and maintain it, is in a better con-

dition than if it were politically a slave, even to the wisest of masters; and when it is able to obtain and maintain that liberty, it is right, or in other words it is for the general interest that a nation should, by force if necessary, alter that form of government which is political slavery.

That liberty promises to be most stable which is the growth of long time and the result of a perpetual struggle between a master and his slaves, in which the master has not ceased to be master all at once, but has always lost something in the contest.

That which is of sudden growth or is the offspring of Revolution, is often premature and always insecure; for liberty so acquired may only be a step from a state of political slavery to a more wretched state; it may be a step from a state of slavery, mild and tolerable, to an anarchy, which of all things is most intolerable.

The words Liberty and Equality often go together, and each of them in so doubtful a sense that one hardly knows what to make of them. Liberty is often used, apparently without people considering what they really mean, in the sense of freedom from restraint. But this kind of Liberty is inconsistent with Political Liberty properly understood; and all men's liberty of action is and must be restrained by positive laws in every well-ordered community. Every law that forbids any act directly or by implication abridges Liberty, and such abridgment is always a universal benefit when the law which so abridges liberty only abridges it in cases where it is useful to all that it should be abridged, and when the law is so framed as to accomplish that object. Equality, in its unlimited sense, can no more exist in any state than perfect individual liberty; for if each man is left to exercise his industry in the best way that he can, without interfering directly with the industry of others, some will be richer, and happier, and wiser than others. The only Equality that can be approached to in a well-ordered state is that Equality which is the result of a good polity, which polity, so far as it is consistent with the universal good, secures alike to every individual in the State the free enjoyment of his industry, wealth, and talents, imposes restraint on all alike, and makes all alike bear the burden of taxation and of the services due to the State. Further, it gives to as large a number as it can consistently with the universal interest an equal share in the sovereign power; but no polity that has ever yet been framed has ever given an equal share in the sovereign power to all the members of a community: such an Equality is impossible.

The Declaration of Rights published by the French National Assembly in 1791 contains the words 'free,' 'equal,' 'rights,' 'liberty,' and many others, all of which are used in a manner as remote from precision as the most confused understanding could suggest. This strange sample of nonsense has been examined and dissected by Bentham in his 'Anarchical Fallacies' (Bentham's Works, part viii., Edinburgh, 1839).

The word Liberties is often used to express those particular constitutional principles or fundamental laws by which the political liberty of a nation is secured. If the British parliament should attempt to abolish the trial by Jury in all cases, or the Habeas Corpus, such an attempt would be called an attack on the liberties of Englishmen.

LIBERTY. The general nature of a liberty, as a portion of the royal prerogative in the hands of a subject, has been already shown under FRANCHISE. Liberties were at first chiefly granted to monastic and other religious establishments, to ease the consciences of the royal grantors, or in testimony of their devotion to the church; and most of the ancient franchises now in existence are derived from an ecclesiastical source. They were afterwards granted as means of strengthening municipal corporations.

Though all Liberties emanate from the royal prerogative, a distinction is usually made between such liberties as have been actually exercised by the crown before the grant to the subject, and such as are said to be created upon their being granted. The former, when by escheat, forfeiture, or otherwise, they come again to the crown, are extinguished by merging in the general prerogative, and cannot

afterwards be regranted as existing franchises; the latter still have continuance for the benefit of the crown or of any subsequent grantee. To the former class belong such privileges as the right to have the goods of felons, &c., waifs, estrays, deodands, and wreck, arising within the lands of the grantee; to the latter, the return of writs; the right of holding fairs and markets and taking the tolls, the right of holding a hundred-court or a court-leet, the privileges of having a free-warren or a legal park, and the like; and in such cases the franchises, even whilst in the king's hands, are exempt from the jurisdiction of the ordinary officers of the crown, and are administered by bailiffs or other special officers, as when in the hands of a subject.

It is, however, only in a very wide and loose sense that franchises of the latter class can be said to be part of the royal prerogative of the crown, inasmuch as the prerogative is limited to the *creation* of such franchises, and they can never be enjoyed by the crown except as claiming them under a subject to whom they have been granted.

The fines paid to the crown for grants or confirmations of liberties are shown by Madox to have formed no inconsiderable part of the royal revenue. In his 'History of the Exchequer' he quotes the particulars of about 200 liberties, granted principally by King John. The men of Cornwall fine in 2000 marks and 200 marks for 20 palfreys estimated at 10 marks each, for a charter for disafforesting the county and choosing their own sheriffs. The men of Brough fine in 20 marks and 5 marks for a palfrey, for a market on Sunday, and a fair for two days. The men of Launceston fine in 5 marks for changing their market from Sunday to Thursday. The burgesses of Shrewsbury fine in 20 marks and 1 palfrey that no one shall buy within the borough new skins or undressed cloth, unless he be *in lot* (in *lotto*), and assessed and taxed with the burgesses.

Many of these franchises having been found to interfere with the administration of justice, the extension of them by fresh grants was frequently the subject of very loud complaints on the part of the commons in parliament, who represented them as prejudicial to the crown, an impediment to justice, and a damage to the people. It appears by the Parliament Roll, that Edward I., towards the close of his reign (in 1306), declared that after the grant which he had made to the Earl of Lincoln for his life, of the return of writs within two hundreds, he would not grant a similar franchise *as long as he lived* to any except his own children, and directed that the declaration should be written in the Chancery, the Gardrobe, and the Exchequer. And in 1347 Edward III., in answer to a strong remonstrance, promised that such grants should not in future be made without good advice.

The form in which the crown granted views of frankpledge [LEET] and other franchises may be seen in the charters granted by King Henry VI. to Eton College, and King's College, Cambridge. (5 *Rot. Parl.*, 51, 97.)

A person exercising a franchise to which he has not a legal title may be called upon to show cause by what authority he does so, by a writ of Quo-warranto, or an information in the nature of a Quo-warranto. And parties disturbed in the lawful exercise of a franchise may recover damages against the disturber in an action on the case.

LICENTIATE IN MEDICINE is a physician who has a license to practise granted by the College of Physicians. There are two classes: licentiates who are authorised to practise in London and within seven miles thereof; and extra-licentiates, who are only privileged to practise in the country at a greater distance from the metropolis. The former class are authorised exclusively by the College of Physicians, but medical graduates of Cambridge or Oxford may practise in the provinces independently of the college license.

LIEN (from the French *lien*, "a tie," or "band"). Various definitions have been given from the bench of this juristical term; but many of them are either incomplete, or too general because of comprehending other rights besides those of lien. The following definition is per-

haps as correct as any that has proceeded from the judges:—"A lien is a right in one man to retain that which is in his possession belonging to another till certain demands of him, the person in possession, are satisfied." (Grose, J., in *Hammond* v. *Barclay*, 2 East, 227.) The definition therefore includes possession by the party claiming the lien; and an unsatisfied demand by him against the owner of the property: but it does not show wherein this right to retain another man's property differs from the right of a pawnee or pledgee.

The determination of what shall be possession sufficient to constitute one element of lien is a part of the general doctrine of possession. It follows from the definition that if the party claiming the lien has not possession, he can have no lien; and as a general rule, if he has voluntarily parted with possession, he has lost his lien. What shall be a parting with possession sufficient to cause a loss of lien is also to be determined by the general doctrine of possession. When possession of the thing is regained, the lien does not revive if the possessor gets the thing back under any circumstances from which a different contract may be implied from that under which he originally obtained the lien.

The defect of the above definition in not showing wherein consists the difference between lien and pledge leads to the consideration of the way in which the right called lien arises. It has been said that "liens only exist three ways; either by express contract, by usage of trade, or where there is some legal relation." (Bayley, J., 1 Ba. and Ald., 582.)

When lien arises by express contract, it is simply mortgage, pawn, or pledge, which are then the more appropriate terms; or it is an agreement (such as may exist in the case of principal and factor) that goods intrusted by one person to another for the purpose of sale, or for some other purpose than pledge, may be retained by the party intrusted with them, as a security for any debt or balance due to him from the other; or it is an agreement that he may retain the proceeds of things intrusted to him to sell, for the same purpose. Pawn or pledge is the delivery of a thing by the owner to the pawnee, to be held and retained by him as security for a debt due from the owner to the pawnee; and it is a matter of express contract. Lien by contract differs from pawning or pledging in this, that in the former the retaining the thing is not the purpose for which the goods are delivered by the owner. In pawn or pledge goods are received in order to be retained and kept; in lien by contract they are delivered by the owner for some other purpose, but may be retained as a security for a debt due from the owner to the person to whom he has delivered his goods.

Where two parties have so dealt with one another that one has claimed and the other has allowed the right of lien in respect of any their mutual dealings, lien may exist in all cases of like dealings between them, if there be no verbal or written agreement to the contrary. The acts of the parties are here the evidence of the contract, which is as express as if made by formal words.

The "lien by usage," and "that where there is some legal relation between the parties," belong to one class, and are not distinguishable. They are both included under liens which do not arise from express, but from implied contract. Lien may be defined as *primâ facie* a right accompanying the implied contract. (Lord Eldon.) The "usage of trade" is merely evidence from which contract is to be implied: parties who mutually act in conformity to a custom have in effect, though not in form, made a contract. The term "legal relation" is only another mode of expressing the mutual rights and duties of the same parties, who by their acts have brought themselves within the limits of a custom, and so given evidence of an intention to make a contract. Thus an innkeeper has a lien upon the horse of his guest, which he takes into his stable to feed; a carrier has a lien on the goods which he carries; a tailor who is employed to make a suit of clothes has a lien on them for the price of his labour, if the cloth be given to him for the purpose of making the clothes; and if he furnishes the cloth, and his customer, after the clothes are made, agrees to have them,

and so obtains the property in them, the tailor has still a lien on the clothes, or any part of them, for the whole price. The contract in these and similar cases is for payment of money on one side, in consideration for certain acts to be done on the other; and the delivery by one party of his property to the other, who is to do some act to it, or in respect of it, for money, implies a payment of the money before the owner's right to repossess the thing can commence. Where the owner never had the property or possession of the raw materials, but acquires the property in a thing by his bare assent, as in the case just mentioned, the tailor's prior right of property is converted into a mere right to hold till his debt is paid, or, in other words, instead of property he has a lien. If the owner of a thing sells it, and agrees to receive the price at a future day, he cannot retain the thing till the day of payment, for he has, by the form of his contract, excluded himself from such right to a lien.

Lien, unless there be an express contract, or a custom to the contrary, must from its nature be *particular*, that is, must have reference to a particular transaction and to a particular thing. When it is *general*, that is, where the right to retain a particular thing is not limited to a particular transaction, but exists with respect to other transactions also, there must be express contract, or the dealings of the parties must be such as to create that implied contract which arises from acts done in conformity to well-known usage.

Lien may be lost by voluntarily parting with the thing, by express agreement, or by agreement to be implied from acts. In general, when a person has a lien for a debt, he waives it by taking security for the debt. A solicitor has a lien for his bill on his client's papers which come into his possession in the course of transacting his business; but if he accept a security for his debt, he can be legally compelled to give up the papers. From the expressed agreement for a special security there necessarily arises the implied agreement to give up the thing which is retained, the acceptance of such special security being equivalent to an agreement to receive the debt or demand at a future day, and such agreement as to future payment being inconsistent with the retaining the thing, which act of retaining is equivalent to a claim for present payment. A factor, who has a lien on goods in his possession, both for his outlay on or with respect to those goods and for his general balance, loses his lien if he enters into an express contract for a particular mode of payment. If usage of trade and acts in conformity to it can be considered as evidence of a contract that goods shall be retained by one person as a security for a debt or balance due to him from another, an express contract for securing payment of such debt or balance must be considered as inconsistent with the implied contract, and therefore as determining it.

In Equity, the vendor of an estate, though he has executed a conveyance and parted with the possession without being paid, still has his estate as a security for such part of the purchase-money as is unpaid. This security is generally, though not with strict propriety, called the vendor's lien. The ground of this so-called lien lies in the nature of the contract: one party contracts to give land for money, and the other contracts to give money for land. Until both parties have performed their engagement, the land and the money cannot be considered as exchanged.

Lien, from its nature, is incapable of transfer. Generally a lien gives no right to sell, except by particular custom. Where a factor who has a lien on the goods of his principal, pledges them for a loan of money, this is no transfer of the lien: the goods are a pledge or pawn in the hands of the lender, who may hold them as a security for his advance to the amount of the factor's lien. The lender may have a right to retain the goods as a security to precisely the same amount as the factor; but his right to retain flows from a different source.

The practical questions which arise under the general doctrine of lien are numerous and sometimes not easy of solution; many of them are of the greatest importance to the mercantile community. The chief cases in which lien exists may be referred to the law of Agent, Attorney, Bailment, Carrier, and Factor. Mon-

tagu's work 'On Lien' contains a collection of a considerable number of particular instances.

LIEUTENANT is an officer who discharges the duties of a superior in his name and during his absence; and who acts immediately in subordination to him when he is present.

Thus, in military affairs, the lieutenant-general and the lieutenant-colonel respectively superintend the economy and the movements of the army and the battalion under those who hold the chief command. The lieutenant of a company is also immediately subordinate to the captain, in whose absence he has the same powers. In the British service the lieutenants of the three regiments of foot-guards have the rank of captain: in the royal regiment of artillery, the royal corps of engineers and marines, and also in the fusiliers and rifle brigade, there being no ensigns, the subaltern officers are distinguished as first and second lieutenants.

In Ward's 'Animadversions of War' (1639), it is said, 'A lieutenant is an officer of high credit and reputation, and he ought in all respects to bee well indoctrinated and qualified in the arts military, and not inferior in knowledge to any officer of higher authority; for an unskilful captaine may better demeane himselfe with an experienced lieutenant than an unskilful lieutenant can fadge with a skilful captaine.'

The price of a lieutenant's commission is, according to the present regulation,—

	£		s.	d.
Life-Guards	1785	daily pay	10	4
Horse-Guards	1600	"	10	4
Dragoons .	1190	"	9	0
Foot-Guards	2050	"	7	4
Line . . .	700	"	6	6

A lieutenant in the royal navy takes rank as a captain in the army, and the number appointed to ships of war varies with their rate. A ship of the first rate has eight lieutenants, besides supernumeraries; those of the second, third, &c. rates, have respectively one less than the number appointed to the preceding rate; so that a sixth-rate vessel has three: sloops and bomb-vessels have only two. The monthly pay of a first-lieutenant of seven years' standing, in ships of the three first rates, and that of lieutenants commanding gun-brigs, schooners, and cutters, is 11*l.* 10*s.* The monthly pay of other lieutenants, for ships of all rates, is 9*l.* 4*s.*

LIEUTENANT-GENERAL. [GENERAL.]

LIEUTENANT, LORD and DEPUTY. [LORD-LIEUTENANT.]

LIFE ESTATE. [ESTATE.]

LIFE INSURANCE, OR REVERSION. By a reversion, in the widest sense, is meant a right of property the enjoyment of which is to commence at some future period, fixed or depending on contingencies, and is to continue either for ever or during a term either fixed or depending on a contingency: anything in fact which is to be entered upon, or which may be entered on at a future time, is a reversion in books which treat on the value of property. The legal sense of the word is more restricted.

Thus an assurance of 100*l.*, or a contract to pay 100*l.* at the death of a given individual, is 100*l.* in reversion to the executors of that individual. Our object in this article is to treat of this most common species of reversionary contract, life insurance, or assurance.

The value of a reversion depends in a very easy manner upon the value of the corresponding annuity; that is, any given sum, say 100*l*, to be received *when* a given event arrives, depends for its value upon that of 100*l.* a year to be received *till* the event arrives. Suppose, for example, that money makes five per cent., and that an annuity, say upon a life, is worth fourteen years' purchase, upon the method of calculation explained in ANNUITY, p. 141. That is, 100*l.* paid a year hence, and again two years hence, and so on as long as the life lasts, is now worth 1400*l.* Required the value of 100*l.* to be paid at the end of the year* in which the life drops. We must now reason as follows:—Suppose a perpetual annuity of 100*l.* a year is to be enjoyed by A during his life and by his legatees after him. By hypothesis A's portion is now worth

* Assurance companies usually pay in a few months after proof of death, which gives a trifling advantage to the assured, not worth considering in a very elementary statement of the question.

1400*l.*, and (money making five per cent.) the annuity for ever is worth twenty years' purchase, or 2000*l.*; consequently, the legatee's interest is *now* worth 2000*l.* − 1400, or 600*l.* But at the end of the year of death the legatee will come into 100*l.* current payment, and a perpetual annuity worth 2000*l*; for the remainder of a perpetual annuity is also a perpetual annuity: his interest will *then* be worth 2100*l.* Hence we have ascertained that 2100*l.* at the end of the year of death is now worth 600*l.*: and the rule of three then gives the value of any other sum: thus 100*l.* at the end of the year of death is now worth $\frac{600}{21}$*l.*, or 28*l.* 11*s.* $5\frac{1}{4}$*d.* Hence the following easy

RULE.—To find the value of a given reversion, subtract the value of the same annuity from that of a perpetual annuity, and divide the difference by one more than the number of years' purchase in a perpetual annuity: or multiply the excess of the number of years' purchase in a perpetual annuity over that in the life annuity by the reversionary sum, and divide as before.

Next, to find what premium should be paid for the reversion. A premium differs from an annuity in that a sum is paid down, and also at the end of every year: consequently it is worth one year's purchase more than an annuity. In the preceding question, the annuity was worth fourteen years' purchase; consequently the premium now is worth fifteen years' purchase. But the present value of all the premiums is to be also the present value of the reversion, or 28*l.* 11*s.* $5\frac{1}{4}$*d.*, whence the premium should be the fifteenth part of this, or 1*l.* 18*s.* 1*d.* Hence to find the premium, divide the present value of the reversion by one more than the number of years' purchase in the life annuity. But when, as most commonly happens, the premium is wanted without the present value, the following is an easier

RULE.—Divide the reversionary sum separately by one more than the number of years' purchase in the perpetual annuity, and one more than the number of years' purchase in the life annuity: the difference of the quotients is the premium required. Thus, if in the preceding example we divide 100*l.* by 20+1 and by 14+1, or by 21 and 15, we find 4*l.* 15*s.* 3*d.* and 6*l.* 13*s.* 4*d.*, which differ by 1*l.* 18*s.* 1*d.* the same as before.

The life we have been tacitly considering, when we talked of an annuity being worth fourteen years' purchase, at five per cent., is one of about thirty-six years of age. The first impression must be, that the proposed premium is ridiculously small. Make it up to 2*l.*, and it will be fifty years before the premiums reach 100*l.* Some such consideration must have moved the law officers of the crown in 1760, when they refused a charter to the Equitable Society, then charging a premium of about 4*l.* at the age of thirty-six, on account of the lowness of their terms. But it is to be remembered, that those who receive the premiums are to invest them immediately at five per cent., and are to invest the interest, thus making compound interest; persons aged thirty-six live, one with another, about thirty years, which is sufficient time for the premiums, with their interest, to realize 100*l.* for each person, one with another.

We now show the manner in which a simple result of calculation answers its end. To simplify the case, suppose an office starts with 5642 individual subscribers, each aged thirty years, the mortality among them being that of the Carlisle Table. The bargain is for a short assurance, as it is called, of twenty years, and of 1000*l.*; that is to say, the executors of each one who dies within twenty years are to receive 1000*l.* at the end of the year of death. Money makes three per cent. once a year. According to the table then, there are 57, 57, 56, &c., deaths in the successive years, and the following is the result, the proper premium being calculated at 11*l.* 12*s.* $3\frac{1}{2}$*d.* each person, or more exactly 11,614*l.* 16*s.* for 1000 persons. It is supposed that there are no expenses of management. At the outset the office receives 65,530*l.* from the 5642 persons assured: this is immediately invested at three per cent., and yields 1966*l.* by the end of the year, making 67,496*l.* But at the end of the year, the claims of the executors of fifty-seven persons who have died during the year are to be satisfied, which requires a disbursement of 57,000*l.*, reducing the

society's accumulation to 10,496*l.* The contributors who are left, 5585 in number, now pay their second premiums, 64,869*l.*, so that, these being immediately invested, the company has 75,365*l.* at interest during the second year. This yields 2261*l.*, so that by the end of the year 77,626*l.* is accumulated. Then comes the demand of 57,000*l.* on behalf of fifty-seven contributors deceased during the year, which reduces the accumulation to 20,626*l.* This is more than it was at the same time last year. In this way the company goes on, accumulating to an amount which would lead a person unacquainted with the subject to conclude that the premium must be too large; in fact, ten years give an accumulation of 91,809*l.* But now the state of affairs begins to change; the contributors have been diminishing, while the claims have been increasing, until the yearly incomings no longer equal the outgoings. The accumulations then come in to make good the difference in such manner that by the time the remaining contributors come to be fifty years of age, and the claims of sixty-one who died in their fiftieth year have been satisfied, there only remains 8*l.* of the 91,809*l.*; and this 8*l.* is merely the error arising from omitting shillings, &c., in the calculation. Something of the same kind must take place in every office which dies a natural and solvent death; the only difference being that, when new business ceases, instead of a number of contributors all of the same age, and under similar contracts, both ages and contracts vary considerably.

There are certain tables which are variously named (sometimes after Mr. Barrett, the inventor, sometimes after Mr. Griffith Davies, the improver; sometimes after D and N, letters of reference used in them), but which we call commutation tables. They are described in the "Treatise on Annuities," in the *Library of Useful Knowledge*, and a copious collection is given: also in an article in the 'Companion to the Almanac' for 1840. They very much exceed in utility those which preceded them.

An assurance company is a savings' bank, with a mutual understanding, presently to be noticed, between the contributors. To make out this proposition, let us suppose that A borrows money, and insures his life for the amount as a security to his creditor. For this he has to pay a premium. If life were certain, the office of the company would be to receive and invest these premiums, which would be calculated in such a manner as with their interest to amount to a sum sufficient to discharge the loan in a settled time. At the end of this time the creditor (who has been all this while receiving interest for his money from A) calls upon A to make his claim upon the office, and repay the loan with the money received. If such an office existed, life being certain, the rationale of the proceeding would be that the creditor, though tolerably confident of A's power and willingness to make any yearly payment, whether of interest or instalment, will not trust him steadily to lay by and improve yearly instalments, but requires that he should make his instalments payable to third parties, who are engaged not to return them on demand until they amount to a sum sufficient for the discharge of the debt. Such an office certainly could not exist, on account of the uncertainty of individual life. At soon, however, as it is known that the duration of masses of individuals can be calculated with tolerable accuracy, there is a remedy for the individual uncertainties. Let a large number of debtors, similarly situated with A, agree to be guarantees for one another; that is, let each of them pay during his life not only his own instalments, but such additional sums as will provide the means of meeting the deficits of those who die, and the savings' bank thus constructed will become an assurance office. Of course, it matters nothing whether these debtors pay their instalments to a person agreed on among themselves, or go to a company which undertakes the management of such concerns. And again, it makes no difference whether the instalments are for liquidation of debt, or to accumulate a provision for widows and children. We have taken the case of debtors, because in such a case an office looks more like a mere indemnity-office than when its contributors enter for the benefit of their families;

still however, in the former case, it is evident that the premiums are partly instalments of debts, partly sums intended to make good the deficiency of the life-instalments of those who die.

Let us now suppose a company to be formed for the simple purpose of assuring lives. Their business is to invest the premiums of those who assure with them; their receipts will consist entirely of current premiums and interest on the investments of the old ones; and their outgoings will contain expenses of management, payment of claims, purchase of their own policies, and (possibly) losses by bad investment.

There is one question which is generally settled at the very outset, namely, whether the company is to be what is called mutual, proprietary, or mixed.

A mutual company is one in which the members stand bound to each other, and constitute the company themselves. In such a company no capital is, generally speaking, raised at the outset, except a small sum for necessary expenses at starting. This, however, is not necessarily the feature of a mutual company; for if its members choose to constitute themselves an investment company as well as an assurance company, they may, without losing their *mutual* character, require every assurer to be also a shareholder. In a mutual company the profits of course are divided among the assured.

A proprietary company is one in which a body of proprietors raise a capital and pledge it for the payment of claims, in case the premiums are not sufficient: for this security they receive, in addition to the interest of their own capital, the profits of the assurance business. It has long been proved that, with proper tables of premiums, and a fair amount of business at starting, this capital is an unnecessary security; and the only reason which could now make such an office desirable would be the lowness of its premiums. Of course it matters nothing to the assured how they are paid, as long as they are paid; the capital may be diminished, but the assurer cares for nothing except its exhaustion before his turn comes. This must be the sole consideration with a person who is tempted by low premiums to a purely proprietary office: the nominal capital signifies nothing; it is upon the amount of assurance to which it (with the premiums) is pledged that the solvency of the office depends. Generally speaking, however, we believe it will be found that the purely proprietary offices have not allowed themselves to run much risk.

A mixed office is one in which there is a proprietary company, which does not take all the profits, but a share; the rest being divided among the assured. The only good effect of the capital upon the condition of the assured in such a company is this:—that the directors, having fixed capital as well as premiums, may justifiably seek for investments which a mutual company must avoid. Having the capital to make good purely commercial losses, they may perhaps attempt to get a higher rate of interest, and of course take more risk of loss; the assured, who are sharers in the whole of the profits, since the profits of premiums and profits of original capital are not distinguished, come in for their share of the extra profits of the capital. But no such attempt at gaining higher interest by secondary securities should be made until a sum sufficient (with future premiums) to meet all claims is invested in the very safest securities which the state of society offers.

There is much confusion in the ideas of many persons about interest, arising from not distinguishing between interest and other returns. Perhaps it would be best to retain the term interest in its general loose signification, and to subdivide it, for accuracy, into pure interest or net profit, debt-insurance, and salary.

In the construction of a table of premiums, three points must be left to the judgment of the constructor,—the rate of interest, the table of mortality, and the addition to be made for expenses of management and probable fluctuation, or discrepancy between the predictions of the table and the events which actually arrive. The third point would not arise if, as was once the case, the table of mortality made life much worse than the actually prevailing state of things shows it to be. Security against adverse fluctu-

ation is thus taken in the choice of the table; and this was done by the older offices, which chose the Northampton Table—by the Equitable, for instance. But we hold decidedly by the method of choosing a true table, and augmenting the premiums given by it as a safeguard against fluctuation; and for this reason, that wrong tables are usually unequally wrong, making different errors at different ages, and thus augmenting different real premiums by different per-centages.

According to the Carlisle Table (which we prefer for the purpose), of 5642 persons alive at the age of 30, 3018 are alive at 65, whence the chance of living till the second age is $3018 \div 5642$ or $\cdot 5525$. Now by applying calculation to this question, we find that an office which would have practical certainty (thousands to one for it) that, as far as this instance is concerned, the office should not be injured by adverse departure of events from tables, must make provision for twenty-five deaths, at least, in the period abovementioned, more than the tables predict, out of 250 persons at the commencement. And this even on the supposition that the table itself can be certainly reckoned upon as representing the law of mortality of the whole insurable population. It would be a very long process indeed to apply calculation in detail, so as to form a well supported idea of the proper amount of precaution against fluctuation; and the question is mixed up with another, to which we proceed.

The rate of interest to be assumed is an element which requires the greatest caution. It must be a rate which can actually be made, and therefore prudence requires that it should be something below that which may reasonably be looked for. To show how powerful an agent it is, we shall repeat the example already given, of the 5642 insurers for twenty years, on the supposition that the office which charges as for 3 per cent. finds itself able to make $3\frac{1}{2}$ per cent., and it will appear that the office leaves off with an accumulation of 15,441*l.* nearly; and if it be lucky during the first years, it may be said to be safe against any fluctuation for which there is an even chance, by the increase of interest alone.

Take what amount of precaution we may, an office must, at first starting, depend upon something either of capital or guarantee. Even a mutual office must raise something at the outset. Tables must be constructed with very large additions to the calculated premiums, which are to meet the very earliest contingencies alone; indeed it is difficult to say what addition would be too large. But this point it is unnecessary to insist on, since we can hardly suppose it possible that any set of men would found an office with no resource except premiums from the very commencement. Supposing proper precautions to be taken, we imagine that an addition of 25 per cent. to premiums calculated from the Carlisle Tables at 3 per cent. per annum, is sufficient to place a mutual office upon a sound footing, and to give a very great prospect of a return in the shape of what is called profit. It never has been found that an office charging at this rate has been without surplus of some kind.

This surplus has been called by the inaccurate name of profit, whereas it is really that part of the security against fluctuation of interest and mortality which has been found to be unnecessary. In mutual offices it is to be returned to the assured in an equitable manner; in purely proprietary offices, it is really profit to the proprietors, whose capital has yielded them the ordinary interest, since by hypothesis, none of it has been necessary to meet claims, and they therefore share among themselves the residue of the premiums. It is impossible to avoid this surplus in a well-constituted office, for the mathematical line which separates surplus from deficiency cannot be expected to be attained, so that those who would not have the latter must take care to have the former. It is usual among the offices to adopt a plan for increasing this surplus, which we will now describe.

Two rates of premiums are adopted, the one less than the other. Those who pay the higher rate are to have a share of the surplus: those who pay the lower rate have nothing but the nominal sum for which they assure. If the table of lower rates yield a surplus (which it is supposed it will do), that surplus goes to augment

the final receipts of those who assure for profits. This scheme may be very well practised by a proprietary company, or by an old mutual company, but whether it is a good plan for a young mutual company to adopt, may be a question.

The public has been much misled by a notion that assurance companies must accumulate large profits, and the Equitable has been constantly cited as the proof. Now, all who would form an opinion on this subject must remember that the circumstances of the Equitable are very peculiar. It realized large accumulations, in the first instance, by an excess of caution commendable at the time, but since proved to be unnecessary. Of late years, newly assured parties are allowed to share in these accumulations, on condition that they are first assured in the office for a large number of years, taking the chance of receiving less than their premiums are really worth. This however is not the question here; we merely stop to remind the reader who is disposed to form a general opinion about offices, because the executors of A, B, and C receive two or three times the sum for which those persons were nominally insured, that this only happens because D, E, and F, who died during the days of a caution which has since been shown to be unnecessary, did not get their share of the then existing surplus.

The expenses of management are relatively trifling when the office has obtained a large amount of business, but they bear heavily on young offices during the first years.

The division of the profits (so called), that is, the method of returning to the assured the surplus of their premiums, with their accumulations of interest, has been the subject of much discussion. Offices have adopted very different modes of proceeding in this respect: some keep this surplus for the older members; some divide it by addition to the policies made annually, or at periods of five, seven, or ten years; some apply it in reduction of premiums as fast as its value is ascercertained. Most, or all, of the methods followed by the offices seem to be fair, that is, they make the chance of surplus the same for one member as for another, at least of those who enter at the same age: if there be any thing inequitable, it arises when the premiums are disproportioned at different ages, so that the surplus is differently levied upon different classes of members. Leaving this however, we shall proceed to enquire what may be the probable amount of surplus in an office charging premiums made from the Carlisle Table at three per cent., with twenty-five per cent. added, taking the most favourable suppositions. Let the mortality be no greater than that in the table, let there be no expenses of management, and let the office be able to net four per cent. compound interest. Then we find that the office is in reality charging for the following sums, under the name of 100*l.*; that is to say, all the preceding suppositions being correct, the office might undertake to pay the following sums instead of the 100*l.* minimum which they do really guarantee. The sums are only roughly put down, within a pound or thereabouts.

Age.	£.	Age.	£.	Age.	£.
20	166	35	157	50	148
25	163	40	155	55	144
30	160	45	152	60	141

There is an inequality here which arises from the supposition of the office gaining a greater interest than was supposed in its tables; and it is obvious that the young assurer must make that excess of interest more beneficial to the office than the old one. Consequently where an office realizes some of its surplus by excess of interest, there is equity in giving the one who entered young somewhat more than the one who entered later in life. But this has never been the principle on which any office made its divisions: some distinguish those who have been a long time in the office from those who enter newly, and the greater number of those so distinguished must have entered younger than the greater number of the undistinguished; but the intention of the office has no reference to age at entry, but only to time of continuance.

The true method of determining the actually existing surplus must have some connection with that which would be followed if the company wished to break up, dividing its assets fairly among the

assured. Let us suppose the stock of the company, all that it actually has or could realize, to be worth half a million, and that the premiums which the existing contributors would pay are valued at another half million, while the claims of these contributors are valued at 750,000*l.* Consequently there is a million to meet 750,000*l.*, or 133⅓*l.* can be given for 100*l.* Now suppose that instead of breaking up, the office wishes to know how much it can afford to give in payment of a claim of 100*l.* The first question is, how did this surplus arise?—the office has in possession or prospect 250,000*l.* more than what is estimated to be absolutely necessary. If this surplus really arose out of the natural operation of the premiums, &c., it is clear that the office is now in a condition to pay 133⅓*l.* for 100*l.* Supposing this done for the current year, the valuation of the next year will point out what alteration, if any, is necessary. This mode of division is the safest in the long run, because any excess in one year will be compensated in future years. Another mode is to divide the surplus of 250,000*l.* among the existing policies, in equitable proportions; and a third is to consider it as advance of premium on the part of the existing contributors, and to diminish their future premiums as if they had actually made such advance. It is not however our present purpose to extend an article already longer than we had intended it to be, by entering into a lengthened explanation on this point.

The benefits of life assurance (which is in reality a large combination of small sums for the purpose of beneficial investment, with a contract among those who invest that the inequalities of life shall be compensated so that those who do not live their average time shall be sharers in the good fortune of those who exceed it), and the moral considerations which should induce every friend of his species to promote and extend it, are of course not the particular motives which actuate the founders of such offices, though no doubt they have them in the same degree as others. To bring business to a particular office becomes their interest and their object; and every possible mode of investment has been held out to engage the attention and suit the particular objects of the assurer. To this of course, in general, we do not object: for instance, when a company proposes twenty different kinds of assurances, it is enough for the public that the terms of each kind are sufficiently high and not too high. But it sometimes happens that among the proposals which are held out for the assurer's acceptance are to be found some which altogether militate against the moral principles of assurance; these are prudence, foresight, and present self-denial for the attainment of ultimate prosperity and of present security against the chances of life. When an office announces that it is willing to leave a part of the premium in the assurer's hands, on his paying interest for it in advance, the office in the meanwhile holding the policy as a security,—what is it but enticing a person to assure for more than he can afford to do, and to borrow money for the purpose of paying the premiums? The office may, with caution, make itself secure; but it throws upon the customer the strong probability of future disappointment. When the time comes for thinking of the repayment of the advances which the office has virtually made, the assurer will frequently find himself obliged to sell that policy to the office which he had counted upon for the benefit of his family. Now out of the purchase money must be deducted the sums in arrear to the office (upon which interest has always been paid in advance); and when the assurer comes to put his balance against what he has actually paid, he will see that he never did a more imprudent act. The office is not to blame for anything but having thrown the original offer in his way; they have only lent him money on the same terms as they would have lent it to others; and they may say, and truly, that it was his own fault if he engaged in an imprudent speculation. But is it not then a fault to entice others to imprudence, knowing how much more easily men are induced to be imprudent than to be prudent?

LIGAN. [FLOTSAM.]

LIGHTHOUSE. [TRINITY HOUSE.]

LINEAL DESCENT. [DESCENT.]

LINEN, cloth woven with the fibres

of the flax-plant (*Linum usitatissimum*), a manufacture of so ancient a date that its origin is unknown. Linen cloths were made at a very early period in Egypt, as we see from the cloth wrappings of the mummies, which are all linen. It appears also that linen was, in the time of Herodotus, an article of export from Egypt. (ii. 105.)

After the separation of the ligneous fibres of the plant, the distaff and common spinning-wheel were employed for the preparation of the thread or yarn, and the hand-loom generally, in its simplest form, was used for weaving the cloth. The first attempts to adapt the inventions of Hargreaves and Arkwright to the spinning of flax were made at Leeds within the present century. Mill-spun yarn is now universally employed by the linen-weavers of this kingdom for the production of the very finest lawn, as well as of the coarsest linen; and the use of the power-loom has been adopted for weaving all but the very finest and most costly fabrics. The consequences of these improvements have been to render this country independent of all others for the supply of linen yarn of every quality, and to diminish in a most important degree the cost of linen fabrics; so that British yarns and cloths are now profitably exported to countries with which the manufacturers of Great Britain and Ireland were formerly unable to compete, and against which they were "protected" in the home market by high duties on importation.

The growth of the linen manufacture in Ireland is ascribed to the legislative obstruction raised in the reign of William III. to the prosecution of the woollen manufacture in that part of the kingdom, which it was alleged interfered prejudicially with the clothiers of England. The linen weavers were at the same time encouraged by premiums of various kinds distributed by public boards authorised by parliament, and by bounties paid on the exportation of linen to foreign countries.

In 1835 the quantity of linen shipped from Ireland was estimated at 70,209,572 yards, the value of which was 3,730,854*l.* (*Report of Irish Railway Commissioners.*)

The linen manufacture was introduced into Scotland early in the last century, and in 1727 a board of trustees was appointed for its superintendence and encouragement. Notwithstanding this and the further stimulus afforded by premiums and bounties, the progress of the manufacture in that part of the kingdom was for a long time comparatively unimportant. At Dundee, the great seat of the Scotch linen trade, there were imported in 1837, 30,740 tons of flax, besides 3409 tons of hemp, and there were exported from that place 641,938 pieces of different qualities of linen, sail-cloth, and bagging, besides a quantity, computed to be as great, retained for home use.

The bounties allowed on the shipment of linens were graduated according to their quality and value, and ranged from a halfpenny to a penny halfpenny per yard. After being gradually diminished for some years these bounties were finally discontinued 5th January, 1832. The manufacture has not suffered from this circumstance, while the country has saved from 300,000*l.* to 400,000*l.* per annum formerly paid to enable foreigners to purchase our linen at prices below the cost of production.

The number of flax factories at work in different parts of the kingdom, according to returns made by the inspectors of factories in 1835 was 347, of which 152 were in England, 170 in Scotland, and 25 in Ireland. In 1843 there were 392 flax factories in the United Kingdom, and the number of persons employed in them was 43,487. According to the census of 1841, there were in Great Britain 85,213 employed in the linen manufacture in its various branches.

Linen is next in importance to cotton and woollen goods as an article of export. The quantity of linen exported from the United Kingdom in the five years from 1828 to 1832, averaged 59,734,219 yards annually, and in the five years from 1833 to 1837, the annual average was 69,911,799 yards. The quantity of linen yarn exported in the six years from 1832 to 1837 was as under:—

	lbs.
1832 . .	110,188
1833 . .	935,682

	lbs.
1834 . .	1,533,325
1835 . .	2,611,215
1836 . .	4,574,504
1837 . .	8,373,100

The quantities of manufactured linen and linen yarn exported in the following years was as under:—

	Linen, yards.	Yarn, lbs.
1838	77,195,894	14,923,329
1839	85,256,542	16,314,615
1840	89,373,431	17,733,575
1841	90,321,761	25,220,290
1842	69,232.682	29,490,987
1843	84,172,585	23,358,352

The declared value of the exports of linen and linen yarn in 1843 and 1844 was as follows:—

	1843. £.	1844. £.
Linen manufactures	2,803,223	3,055,243
Linen yarn . .	898,829	1,021,796
	3,702,052	4,077,039

The total value of the exports of linen to France in 1828 amounted to no more than 7228*l.*, the value of 64,212 yards of linen; whereas in 1842 that country took from us 8,586,667 yards of linen, and 22,202,292 lbs. of yarn, valued together at 1,019,694*l.* The exports to the United States of North America amounted in 1836 to 39,937,620 yards, and in this and the previous year the quantity amounted to nearly one-half the whole exports of linen. The quantity sent to the United States has fallen off one-half or more within the last few years.

LIST, CIVIL. [CIVIL LIST.]

LIVERY. [FEOFFMENT.]

LORD ADVOCATE. [ADVOCATE, LORD.]

LORD KEEPER. [CHANCELLOR.]

LORD-LIEUTENANT. It was formerly usual for the crown, from time to time, to issue commissions of array, requiring certain experienced persons to muster and array the inhabitants of the counties to which such commissioners were sent. They were directed to put into military order those who were capable of performing military service, and to distrain such as were not qualified to serve, but were possessed of real or personal property, to furnish armour to their more vigorous countrymen; and they were to erect beacons when necessary. The form of these commissions, after much complaint, was settled by statute, and may be seen at length in the Parliament-rolls of 5 Hen. IV., 1403-4, vol. iii. p. 527.

In the sixteenth century these commissions of array appear to have generally given place to commissions of lieutenancy, by which nearly the same powers as those of the old commissions of array were conferred on certain persons as standing representatives of the crown for keeping the counties for which they were appointed in military order. In 1545 a commission "de arraiatione et capitaneo generali contra Francos" issued to the duke of Norfolk, constituting him the king's *lieutenant*, and captain-general of all captains, vice-captains, men-at-arms, armed men, archers, and all others retained or to be retained against the French, in the counties of Essex, Suffolk, Norfolk, Hertford, Cambridge, Huntingdon, Lincoln, Rutland, Warwick, Northampton, Leicester, and Bedford. A similar commission issued to the duke of Suffolk for the counties of Kent, Sussex, Surrey, Hants, Wilts, Berks, Oxford, Middlesex, Bucks, Worcester, and Hereford, and London; and to John Russell, knight, Lord Russell, keeper of the privy seal, for the counties of Dorset, Somerset, Devon, Cornwall, and Gloucester. (Rymer.)

These officers are however spoken of by Camden, in the reign of Elizabeth, as extraordinary magistrates, constituted only in times of difficulty and danger, which was the case with commissioners of array, as appears from the recitals in their commission.

The right of the crown to issue commissions of lieutenancy was denied by the Long Parliament, and this question formed the proximate cause of the rupture between Charles I. and his subjects. Upon the Restoration the right of the crown to issue such commissions was established by a declaratory act, 14 Charles II., cap. 3.

The authorities and duties of the lord-lieutenant and of his temporary vice-lieutenants, and of his permanent deputy-

lieutenants, have latterly been fixed and regulated by the militia acts. [MILITIA.]

LORDS, HOUSE OF, one of the constituent parts of the Parliament of the United Kingdom. [PARLIAMENT.] The other is the House of Commons.

The persons who sit in the House of Lords are the Lords Spiritual and Lords Temporal.

The Lords Spiritual are the two archbishops and twenty-four bishops of the English Church, and one archbishop and three bishops of the Irish Church. Before the Reformation, when the monastic establishments which abounded in England were suppressed, the superiors of many of them, under the names of abbots and priors, sat as Lords Spiritual in this assembly. In those times the Lords Spiritual equalled, if they did not outnumber, the Lords Temporal who sat at any given time in Parliament; though now they form only about one-thirteenth of the persons composing this assembly. Six more bishops were added when the abbots and priors were removed.

The Lords Temporal are all the peers of England, being of full age, and not incapacitated by mental imbecility; sixteen representative peers of the Scottish peerage, and twenty-eight representatives of the Irish peerage. The number of the Scotch and Irish representative peers is fixed; but the number of peers of England by the acts of union with Scotland and Ireland in 1707 and 1800 respectively, is perpetually varying, and depends upon the casualties of minorities, and on the will of the king, who can make any man a peer.

The component parts of this assembly may be thus classified:—1. Persons sitting there in respect of offices held by them. Such are the spiritual lords of England. 2. Persons who sit in right of inheritance of a dignity of peerage. 3. Persons who have been created peers. 4. Hereditary peers of Scotland (for there can be no creation of peers of that part of the United Kingdom) elected by the whole body of the Scottish peerage to represent them in parliament, at the beginning of every parliament. 5. Hereditary or created peers of Ireland, elected by the whole body of the Irish peerage; they sit for life, and vacancies are supplied as they occur. And 6. Spiritual lords of Ireland, who sit in turns according to a cycle established by 3 Wm. IV. c. 37. The great body of the house however consists of hereditary Lords Temporal of England, under the several denominations of dukes, marquesses, earls, viscounts, and barons. Each of the individuals of these ranks has an equal vote with the rest; but they sit in the house in classes, and according to their precedency.

The only material changes which have been made in the constitution of this assembly in the long period of its existence have been: 1. The supposed limitation of the right of all holding lands in chief of the crown to sit therein, by King Henry III. after the battle of Evesham. 2. The removal from it of representatives of the counties, cities, and boroughs, who are supposed to have formerly sat with the lords, and the placing them in a distinct assembly, called the House of Commons. 3. The reduction in the number of the Lords Spiritual, by the suppression of the monastic establishments. 4. The introduction of the Scottish representative peers. And 5. The introduction of the Irish bishops and the Irish representative peers.

This house may be traced to the very beginning of anything like an English constitution. It is in fact the *magnum concilium* of the early chronicles. The bishops are sometimes said to sit there in virtue of baronies annexed to their respective offices; but it is questionable whether baronies are attached to the bishoprics of the new creation by Henry VIII.; and at best it is but a legal fiction, it being evident from the whole course of history that the bishops formed, as such, a constituent part of such assemblies in the Saxon times, and were, as such, among the chief advisers of the king. One of the last acts of King Charles I., before he finally left London and disconnected himself from the Parliament, was to give the royal assent to a bill for removing the bishops from Parliament. The bishops were restored after the return of Charles II., 1660.

A question has been raised whether, as the Lords Spiritual and the Lords Tem-

poral, though sitting together, form two distinct *estates* of the realm, the concurrence of both is not requisite in any determination of this house, just as the consent of the two houses of Parliament is necessary to every determination of Parliament. But it is now understood that the Lords Spiritual and Lords Temporal are one body, whose joint will is to be collected by the gross majority of voices; and statutes have been made in the absence of all the Spiritual Lords.

The House of Lords has two distinct functions: the legislative and the judicial.

In its legislative character, every new law, and every change in the existing law, must have the consent of a majority of this house, as well as of a majority of the House of Commons.

In its judicial character, it is a court for the trial—1. Of criminal cases on impeachment by the House of Commons; 2. Of peers on indictments found by a grand jury; 3. For the hearing and determining of appeals from decisions of the Court of Chancery; 4. For the hearing and determining of appeals on writs of error to reverse judgments in the Court of King's Bench; and 5. In hearing and determining appeals from the supreme courts in Ireland and Scotland. The house can require the attendance of the judges of the superior courts of law, to assist it in the discharge of its duties; which is sometimes done.

A few points in which the House of Lords differs from the lower house of Parliament remain to be noticed. In the chair of the house sits the lord high chancellor of England. When the king goes to Parliament he takes the throne in the House of Lords, and the Commons are summoned to attend him there to receive the communication of his will and pleasure. The royal assent to bills, whether given by the king or queen in person, or by a commission appointed by the king or queen, is given in the House of Lords. All bills which affect the rights and dignities of the peerage must originate in that house. The members of the House of Lords have a right of voting on any measure before the house by proxy, but the proxy must be a member of the house: and, lastly, they have the privilege of entering on the journals of the house their dissent from any measure which has received the sanction of the majority, with the reasons for that dissent. This is called their protest. For further information see PARLIAMENT.

LORDS JUSTICES. Our kings have been, ever since the Conquest, in the habit of appointing, as occasion required, one or more persons to act for a time as their substitutes in the supreme government either of the whole kingdom or of a part of it. When William I. returned to Normandy the year after the Conquest, he left his half-brother Odo, Bishop of Bayeux, and William Fitzherbert, to be *Custodes Regni*, or guardians of the realm, during his absence; and similar appointments were very frequent under the early Norman and Plantagenet kings. There is a commission of a *Custos Regni* in Rymer of the reign of John. One by Edward I. to the Earl of Pembroke describes the powers of the office in terms which imply that it had long been familiar, as extending over all those things which pertain to the said custody (*quae ad dictam custodiam pertinent*); and the same words are common in subsequent commissions. And down to the present time similar officers have been appointed under various names, and with more or less extensive powers according to circumstances. Protector, lieutenant, or locum tenens, regent, have been among the other names by which they have been known. Regents and councils of regency, during the nonage of the king or queen, have been sometimes named by the preceding possessor of the crown; but in modern times such arrangements have been usually made by statute. Coke remarks (4 *Inst.* 58) that the methods of appointing a guardian or regent have been so various, that "the surest way is to have him made by authority of the great council in parliament."

The most familiar case of the appointment by the crown of a representative to exercise the supreme executive power, not in a colony or dependency, is that of the appointment of a governor for Ireland, who has commonly borne the name of the Lord Lieutenant or the Lord De-

puty; or of a council of government composed of Lords Justices.

The governor-general of Ireland under the crown has been styled at different times Custos (keeper or guardian), justiciary, warden, procurator, seneschal, constable, justice, deputy, and lieutenant. Viceroy is a popular name of modern introduction. Formerly, upon the avoidance of the king's lieutenant for Ireland by death or otherwise, the privy council there was authorised to elect a successor, with the restriction that he should be an Englishman and no spiritual person, who held office till the king appointed another. The ancient powers of this officer were almost regal; he performed every act of government without any previous communication with England; and when he left the country he even appointed his own deputy. From about the time of the Revolution, however, till after the commencement of the reign of George III., the lord-lieutenant resided very little in Ireland; in several instances the person appointed to the office never went over; in other cases he went over once in two years to hold the session of parliament; and the government was very often left in the hands of lords justices, without a lord-lieutenant at all. In modern times the appointment of lords justices for Ireland has only taken place on the occasional absences of the lord-lieutenant, and during the interval which has sometimes occurred between the demise of one lord-lieutenant and the appointment of another. The lords justices have usually been the lord primate, the lord chancellor, and the commander of the forces.

In England lords justices and regencies have been repeatedly appointed since the Revolution, on occasion of the king going abroad; and the appointment has usually, if not always, been made by royal letters patent under the great seal, in the same manner as the lord-lieutenants or lords justices of Ireland have always been appointed. In some cases, however, the aid of parliament has been called in for certain purposes. When King William went over to Ireland, in 1689, he of his own authority appointed the administration of the government to be in the hands of the queen during his absence out of the kingdom, not, however, we suppose, by letters patent, but merely by declaration at the council-table; and at the same time an act of parliament was passed, 1 & 2 Wm. and Mary, sess. 2, in the preamble of which that declaration of his majesty's pleasure was recited, and it was enacted, that whensoever and as often as his majesty should be absent out of this realm of England, it should and might be lawful for the queen to exercise and administer the regal power and government in the names of both their majesties, for such time only, during their joint lives, as his majesty should be absent. This act was considered to be necessary or expedient, in consequence of the peculiar circumstances in which the queen was placed by the Act of Settlement, which had declared that the entire, perfect, and full exercise of the regal power and government should be only in and executed by his majesty in the names of both their majesties during their joint lives. It was at the same time provided, "That as often as his majesty shall return into this kingdom of England, the sole administration of the regal power and government thereof, and all the dominions, territories, and plantations thereunto belonging or annexed, shall be in his majesty only, as if this act had never been made." After the queen's death lords justices were repeatedly appointed by King William, on occasion of his going abroad, under the great seal, namely, 5th May, 1695; May, 1696; 22nd April, 1697; 16th July, 1698; and 31st May, 1699.

One of the provisions of the statute of 12 & 13 Wm. III. (passed in 1700) for settling the succession in the House of Hanover, was, "That no person who shall hereafter come to the possession of this crown shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament." This clause, however, was repealed in 1716, by 1 Geo. I. stat. 2, c. 51. The repealing act was passed to gratify the king, whose "impatience to visit his German dominions," says Coxe in his 'Life of Walpole,' i. 77, "now became so great as totally to overcome every restraint of prudence and sug-

gestion of propriety, and imperiously to demand indulgence." "The ministry," continues the historian, "were considerably embarrassed on this occasion; and drew up a strong remonstrance, representing the inconvenience which would result from the projected journey. The remonstrance, however, not only failed of success, but so far exasperated the king, that he declared he would not endure a longer confinement in this kingdom." It was thought more respectful to his majesty to obtain a repeal of the restraining clause at once, than to ask parliament merely for the leave of absence; and the bill passed through all its stages in both Houses without a dissenting voice, the Tories being favourably disposed to the principle, and the Whigs averse or frightened to offend the king. His majesty, who was at variance with his eldest son, now interposed another difficulty, refusing to intrust the government during his absence to the prince, without joining other persons with him in the commission, and also limiting his authority by the most rigorous restrictions. Upon this point, however, he yielded at last to the representations of the ministers, who concluded a long exposition of reasons against his leaving the kingdom at all at that crisis by stating that, "upon a careful perusal of the precedents, finding no instance of persons being joined in commission with the Prince of Wales," in the appointment of a regency, "and few, if any, restrictions upon such commissions," they were of opinion that the constant tenor of ancient practice could not conveniently be receded from. (See the paper in Coxe, ii. 51-54.) Upon this the king submitted to give the prince the sole direction of affairs; "yet," says Coxe, quoting from the work called 'The Political State of Great Britain,' "he appointed him *Guardian of the Realm and Lieutenant*, an office unknown in England since it was enjoyed by Edward the Black Prince." In point of fact the title given to the prince in the original Latin commission was *Custos Regni nostri et locum tenens*, which were the same words that had been commonly used in all such commissions down to the reign of Henry VIII., with this difference only, that one of the two titles (more frequently *Custos regni*) was alone employed. The earliest use of the term *regent* appears to have been in the commission from Henry VIII. to Queen Katherine Parr, when he went over to Boulogne in 1544, in which she is stated *Rectrix et Gubernatrix regni nostri*. Queen Mary, the wife of William III., whose case is the next that occurs, seems, as already stated, to have had no commission; and, being queen regnant in her own right, she was not even popularly styled regent.

When George I. went abroad the next time, in May, 1719, he intrusted the government during his absence not to a regent, or any single person, but to thirteen lords justices, namely, the Archbishop of Canterbury and the principal officers of state. A translation of the commission issued on this occasion, or rather, of the warrant to the attorney-general to prepare the commission, has been printed in the report of a committee of the House of Commons which sat in December, 1788, and affords us probably the most complete information to be found, in a printed form, on the subject of the present article. The committee state that they had found no entry of any earlier commission, except of the one issued in 1695, and that that was nearly the same with this of 1719, which appears to have been also closely followed in others subsequently issued. The commission begins by reciting that his majesty had "determined, for divers weighty reasons, speedily to go in person beyond the seas." The persons commissioned are appointed to be "our guardians and justices (*Justiciarii* must be the Latin term) of our said kingdom of Great Britain, and our lieutenants in the same, during our absence out of our said kingdom, or till further signification of our pleasure;" and they are authorized, four being made a quorum, "to execute the office and place of guardians, &c., and to order, do, and perform all and every act and acts of government and administration of government, and all other matters and things whatsoever, which, by virtue or by reason of the aforesaid office or place, have been usual, or may be lawfully ordered, done, or performed." Power

is afterwards specially given to keep the king's peace, to cause the laws and customs of the kingdom to be specially observed by all, to punish criminals and offenders, to hold the parliament then existing, and to continue, prorogue, and dissolve it, and likewise to summon and hold another parliament and other parliaments, and the same to continue, prorogue, and dissolve; also to direct and grant authority to the lieutenant, or justices and general governors, of the kingdom of Ireland for the time being, to summon, hold, prorogue, and dissolve the parliament and parliaments in the said kingdom, and likewise to prepare and transmit the bills which may be proposed to be enacted in such parliaments, according to the laws and statutes of the kingdom of Ireland; to summon and hold the Privy Council, and to appoint committees of the same; with the advice of the Privy Council, to issue proclamations, "and to do and perform all other things which have been usually done, or may be done, by us, by or with the advice of the same;" to appoint and authorize persons to treat with the ambassadors, commissaries, and ministers of emperors, kings, princes, republics, or states, and to make and conclude treaties, conventions, and leagues thereupon; to confer, grant, and present to all benefices, dignities, and ecclesiastical promotions, where the presentation is in the crown; to issue commands, authorities, orders, and warrants, under the privy seal or otherwise, to the treasurer, or commissioners of the treasury, and other officers, for and concerning the collection, levying, application, payment, and disposal of the royal treasure and revenue; to command the army; to suppress invasions and insurrections; to execute and employ martial law in time of war, if that should happen; in like manner to command and employ the naval forces of the kingdom; to appoint to and discharge from all offices at the disposal of the crown; to grant pardons for high treason and all other crimes and offences; and, finally, to do all these things in Ireland as well as in Great Britain.

This enumeration is probably the most authentic compendium that has been published of the powers of government ordinarily exercised by the crown. It does not, however, profess to be an enumeration of all the powers resident in the crown; and it will be especially observed, that (besides, perhaps, some appertaining to the office of supreme head of the church) the power of creating peers and conferring honours is not made over to the lords justices. That is a power which, we believe, never has been delegated, or attempted to be delegated, if we except only the case of the patent granted by Charles I., in 1644, to Lord Herbert (better known as the Earl of Glamorgan), which, after the Restoration, he was compelled to resign by the interference of the House of Lords.

The Lords Justices are further required in the commission of 1719, in the execution of their powers, punctually to observe his majesty's will and pleasure, as it might be from time to time more clearly and distinctly expressed in instructions signed by the royal hand; and the commission was accompanied by a set of instructions, also printed in the Report of the Committee of 1788, and stated to be nearly the same that had been issued, as far as was known, on similar occasions before and since. The rules prescribed are twenty-one in number, the most important things directed in which are, that no livings or benefices in the gift of the crown which may become vacant shall be disposed of without his majesty's directions as to the persons, to be signified from beyond the seas under the sign manual; that no orders or directions concerning the disposition of money at the treasury shall be given before his majesty's pleasure shall have been signified thereupon; and that there must be no exercise of the power of dissolving the parliament, or calling a new one, without special signification of the royal pleasure. The same restriction is put upon the exercise of the power of pardoning, and some of the other powers. In case, however, they should hold it necessary or expedient for the public service, the Lords Justices are authorized to fill offices immediately, and also to reprieve criminals; and they are permitted to continue the existing parliament by short prorogations, until they should be otherwise di-

rected under the royal sign manual, and to summon the privy council to meet as often as they shall see occasion.

The government was in the same manner intrusted by George I. to Lords Justices when he again went abroad in 1720, 1723, 1725, and 1727. It is strange that the Report of 1788 should notice only the second of the several regencies of Queen Caroline, in the earlier portion of the reign of George II. Her majesty so long as she lived was always intrusted with the administration of the government when the king went abroad; which he did in 1729, in 1732, in 1735, and in 1736. An act, the 2 Geo. II. chap. 27, was passed in 1729, "To enable her majesty to be regent of this kingdom, during his majesty's absence, without taking the oaths;" on the 15th of May thereafter, according to Salmon's 'Chronological Historian,' a commission passed the great seal constituting her guardian and lieutenant of the kingdom during the king's absence; and the same authority states her to have been appointed guardian in 1732, and regent on the two other occasions. According to the Report of the committee of 1788, a patent, with the like powers as that issued to the Prince of Wales in 1716, passed in 1732, appointing Queen Caroline guardian and lieutenant of the kingdom in the king's absence. Most probably all the four appointments were made in the same manner and in the same terms. After the death of Queen Caroline, the government was always left during this reign in the hands of Lords Justices when the king went abroad; as he did in 1740, 1741, 1743, 1745, 1748, 1750, 1752, and 1755. On all these occasions the commissions and the accompanying instructions were nearly the same with those issued in 1719.

George III. during his long reign never left England. When George IV. went to Hanover in September, 1821, nineteen guardians and Lords Justices were appointed, the Duke of York being the first. In an important article which appeared in the 'Morning Chronicle' for August 11th, 1845, the writer, after stating that Lord Eldon considered it indispensably necessary that Lords Justices should be appointed on that occasion, adds:—"One good effect arose from their appointment, that the Lords Justices during his (the king's) absence signed an immense number of military commissions and other documents, which had been accumulating since his accession to the throne." This writer contends that "the royal authority of an English monarch cannot be personally exercised in a foreign country." "We take it," he adds, "to be quite clear, that a patent sealed with the great seal in a foreign country would be void. To guard against any such irregularity, the law requires that the patent shall state the place where it is signed and sealed as *apud Westmonasterium*."

Nevertheless, no provision such as had been customary on such occasions was made for the exercise of the royal authority, either when her present majesty made her short excursion to the French coast in 1843, or when she made her late more extended visit to Germany (in August and September, 1845). On the latter occasion the subject was brought forward in the House of Lords by Lord Campbell, who, on the 7th of August (two days before the prorogation of Parliament), after stating at some length the course which he maintained had been uniformly taken down to the year 1843, asked if it was the intention that Lords Justices should be now appointed? The lord chancellor, however, replied that the government had no such intention. "On the occasion of her majesty visiting the king of the French," his lordship is reported to have said, "the then law officers of the crown, the present lord chief baron and the late Sir William Follett, had been consulted. . . . And after mature deliberation, these learned persons gave it as their decided opinion that it was not at all necessary in point of law that such an appointment should take place. . . . In the present instance also, the law-officers of the crown had been consulted as to whether it was necessary in point of law for her majesty to appoint a regency during her absence, and their reply was, that it was in no degree necessary; an opinion in which he entirely concurred." Both the speech with which Lord Campbell prefaced his question, and the subsequent article in the 'Morn-

ing Chronicle,' well deserve to be consulted.

It ought to be mentioned that the seven persons appointed in 1705 by the 4 & 5 Ann. chap. 8, and again in 1707, by the 6 Ann. chap. 7, to administer the government along with other persons whom the new king or queen should have named, in case of his or her absence at the time from the kingdom, are styled Lords Justices in the act, although called regents by Burnet, and in the common accounts. These Lords Justices (twenty-six in all), who actually came into office on the death of Queen Anne, 1st August, 1714, and continued till the arrival of the king on the 18th of September, enjoyed more extensive powers than any others that have been appointed at least in modern times. They were authorized, in the name of the successor, and in his or her stead, to use, exercise, and execute all powers, authorities, matters, and acts of government, and administration of government, in as full and ample manner as such next successor could use or execute the same if she or he were present in person within this kingdom of Great Britain," until such successor should arrive, or otherwise determine their authority. The only restrictions laid upon them were, that they were not, without direction from the "queen or king," to dissolve the parliament; and that they would subject themselves to the pains of high treason if they gave the royal assent to any bill or bills for repealing or altering the Act of Uniformity, or the Act for the Establishment and Maintenance of the Presbyterian Church Government in Scotland.

We are not aware that these facts have ever before been put together. The most important of them have been derived from the Report of the Committee appointed by the House of Commons in 1788, "to examine and report precedents of such proceedings as may have been had in the case of the personal exercise of the royal authority being prevented or interrupted by infancy, sickness, infirmity, or otherwise," which is printed in the Journals of the House, vol. xliv. pp. 11–42. See also, besides the other sources that have been already referred to, an article "On the Regency Question," in the Edinburgh Review, No. xxxv. (for May, 1811), pp. 46–80. And some particulars may be gleaned from the accounts of the proceedings in the two Houses of Parliament on occasion of the King's illness in 1788, as reported in the 'Parliamentary History,' vol. xxvii. pp. 653–1297; and from the discussions on the Regency Bill from the beginning of November, 1810, to the middle of February, 1811, which nearly fill the 18th volume of the 'Parliamentary Debates.' One of the speeches which attracted most attention on the latter occasion for its argument and research was afterwards published in an authentic form; that delivered on the 31st of December, 1810, by John Leach, Esq. (afterwards Vice-Chancellor).

LORDS OF PARLIAMENT. [LORDS, HOUSE OF.]

LORDSHIP. [LEET.]

LOTTERIES have been encouraged by some states for the purpose of raising a revenue. The general plan has been for the government to sell a certain number of tickets or chances, and to distribute by lot a part of the money thus collected among a comparatively small number of the purchasers. Lotteries are games of chance, the aggregate number of players in which are sure to lose a part of their venture. During the period in which the English state lotteries were carried on by act of parliament, it was the plan to distribute in prizes of different magnitudes an amount equal to 10*l.* for each ticket or chance that was issued, and the profit to the state consisted of the sum beyond that rate which contractors were willing to give for the privilege of selling to the public the tickets or shares of tickets, which for that purpose they might divide into halves, quarters, eighths, and sixteenths of tickets. The price paid by the contractors for this privilege varied with circumstances, but was usually about six or seven pounds per ticket beyond the amount repaid in prizes, while the price charged by the contractors to the public was generally four or five pounds per ticket beyond that paid to the government; and more than this rate of advance was always required when the tickets were divided into shares, the smaller

shares being charged more in proportion than the larger.

The earliest English lottery of which there is any record was in 1569, when 40,000 chances were sold at ten shillings each: the prizes consisted of articles of plate, and the profit was employed for the repair of certain harbours. In the course of the following century the spirit of gambling appears to have materially increased in this direction, for *private* lotteries were, early in the reign of Queen Anne, suppressed "as public nuisances." In the early period of the history of the National Debt of England, it was usual to pay the prizes in the state lotteries in the form of terminable annuities. In 1694 a loan of a million was raised by the sale of lottery tickets at 10*l.* per ticket, the prizes in which were funded at the rate of 14 per cent. for sixteen years certain. In 1746 a loan of three millions was raised on 4 per cent. annuities, and a lottery of 50,000 tickets at 10*l.* each; and in the following year one million was raised by the sale of 100,000 tickets, the prizes in which were funded in perpetual annuities at the rate of 4 per cent. per annum. Probably the last occasion on which the taste for gambling was thus encouraged was in 1780, when every subscriber of 1000*l.* towards a loan of twelve millions at 4 per cent. received a bonus of four lottery tickets, the value of each of which was 10*l.*

In 1778 an act was passed obliging every person who kept a lottery-office to take out a yearly licence, and to pay 50*l.* for the same, a measure which reduced the number of lottery-offices from 400 to 51.

By limiting the subdivision of chances to the sixteenth of a ticket as the minimum, it was intended to prevent the labouring population from risking their earnings, but this limitation was extensively and easily evaded by means which aggravated the evil, the keepers of these illegal offices (commonly known as "little goes") and insurance offices requiring extra profits to cover the chances of detection and punishment. All the efforts of the police were ineffectual for the suppression of these illegal proceedings, and for many years a growing repugnance was in consequence manifested in parliament to this method of raising any part of the public revenue. At length, in 1823, the last act that was sanctioned by parliament for the sale of lottery tickets contained provisions for putting down all private lotteries, and for rendering illegal the sale, in this kingdom, of all tickets or shares of tickets in any foreign lottery, which latter provision is, to this day, extensively evaded.

The system of state lotteries was very long carried on by the French government, and was the cause of still greater demoralization than in England. State lotteries have been abolished in France.

The Hamburg lottery, which is still continued, is established upon a fairer principle than was adopted in France or England. The whole money for which the tickets are sold is distributed among the buyers, except a deduction of 10 per cent. which is made from the amount of the prizes at the time of their payment.

Lotteries have been very common in the United States, and have been sanctioned by the several states, not so much as a means of raising money for state purposes, as with the view of encouraging, as they supposed, many useful objects which could only be effected by raising at once a large sum of money, such as canals, the establishment of schools, and even the publication of a book. The numerous frauds practised in lottery schemes in the United States have perhaps done more to open the eyes of the people to the mischief resulting from them than any investigation into the true principles of lotteries. A distinguished American lawyer, who figured in the New York State Convention above thirty years ago, declared that though "he was no friend to lotteries, he could not admit they were *per se* criminal or immoral, when authorized by law. If they were nuisances, it was in the manner in which they were managed. In England, if not in France, there were lotteries annually instituted by government, and it was considered a fair way to reach the pockets of misers and persons disposed to dissipate their funds. The American Congress of 1776 instituted a national lottery, and perhaps no body of men ever surpassed them in intelligence and virtue." These remarks are merely quoted in order

to show what a man of high character in America for integrity and knowledge thought of lotteries. The opinions which he expressed were at that time shared by a great number, and lotteries are still common in the United States, as the advertisements in their papers show.

The lotteries called Art-Unions, which are common in Germany, were very prevalent in England in 1844. The Art-Union of London, which was established in 1837, received subscriptions to the amount of 484*l.*, but in 1844 the amount received was 14,848*l.* Each member subscribed 21*s.*, and the committee of management set apart a portion of the aggregate sum subscribed for the purpose of engraving some work of art, a copy of which was given to each subscriber; but by far the greater portion of the sum subscribed was appropriated to the purchase of pictures ranging in value from 10*l.* to 400*l.*, and on a certain day these pictures were distributed as prizes amongst the subscribers, by a process resembling the drawing of a lottery. As lotteries had been put down by act of parliament, these Art-Unions were in reality illegal, and in consequence of a notice issued by the government in April, 1844, their operations were suspended for some time, and a parliamentary committee was appointed to inquire if they could not be placed on a safe basis, and rendered subservient to the improvement of art. A short act was passed to indemnify the managers for the penalties which they might be considered to have incurred, and in 1845 another act was passed with a similar object; but the legislature has still left the matter unsettled.

LUNACY. Unsoundness of mind is perhaps the most accurate definition of the present legal meaning of lunacy. Formerly a legal distinction was made between lunatics and idiots: a lunatic was described as one who has had understanding, but from some cause has lost the use of his reason; and an idiot, as one who has had no understanding from his nativity. The distinction between these two classes of persons of unsound mind also produced some important differences in the management of their property which have now fallen into disuse. Strictly speaking, perhaps a lunatic is one who has lucid intervals, but this distinction may also at the present day be disregarded.

Persons of unsound mind may inherit or succeed to land or personal property either by representation, devise, or bequest, but they cannot be executors or administrators, or make a will, or bind themselves by contract. It is stated by Blackstone that the conveyances and purchases of persons of unsound mind are voidable, but not actually void; this however perhaps needs some qualification, for a bargain and sale, or surrender, &c., and also personal contracts made or entered into by such persons, are actually void as against their heirs or other representatives, though it is true a feoffment with livery of seisin was voidable only. A person of unsound mind, though he afterwards be restored to reason, is not permitted to allege his own insanity in order to make his own act void; for no man is allowed to plead his own disability (13 Vesey, 590), unless he has been imposed upon in consequence of his mental incapacity (2 Carr. & P. 178; 3 Carr. & P. 1, 30); and an action will lie against a lunatic upon his contract for necessaries suitable to his station. The reader is referred for information upon this subject to 1 Blackst. *Comm.*, 291; 1 Fonbl. *Eq.*, b. 1, c. 2; 2 Sugden, *Pow.*, 295-6; 5 Barn. & C. 170; Moody & M. 105. 6. Acts done during a lucid interval are valid, but the burthen of proving that at the time when the act was done the party was sane and conscious of his proceedings, lies upon the person asserting this fact. The marriage of a person of unsound mind, except it be solemnized during a lucid interval, is void.

The degree of responsibility under which persons of unsound mind are placed with respect to crimes committed by them, as well as the degree of unsoundness of mind which should be considered as depriving the party of that amount of self-control which constitutes him a responsible agent, are in a state of uncertainty. As a general rule it may however be laid down that where unsoundness of mind, of such a nature as to render the party incompetent to exercise any self-control, is established, criminal

punishment will not be inflicted; but that he will be kept in safe custody during the pleasure of the crown (39 & 40 Geo. III., c. 94, and 1 & 2 Vict., c. 14). On the subject of criminal responsibility, and what constitutes unsoundness of mind in a legal point of view, the reader is referred to the various treatises on medical jurisprudence, particularly to that by Dr. Ray, lately published at Boston in the United States: and also generally to Dr. Haslam's 'Observations on Madness and Melancholy,' 'Medical Jurisprudence as it relates to Insanity,' 'Illustrations of Madness,' and his other works. Dr. Forbes Winslow on 'The Plea of Insanity in Criminal Cases' is a valuable book.

In an inquisition of lunacy the question to be decided is not whether the individual be actually of sound mind, though a jury on an inquisition held under a commission of lunacy must express their opinion or finding in the form that the alleged lunatic is of "unsound mind" (*In re Holmes*, 1 Russell, 182); but though such must be the finding in order to make a man legally a lunatic, the real question is whether or not the departure from the state of sanity be of such a nature as to justify the confinement of the individual, and the imposition of restraint upon him as regards the disposal of his property. No general rule can be laid down by which to ensure a right decision: but in all such inquiries it should be kept in mind that insanity varies infinitely in its forms and degrees. Persons may be of weak mind, and eccentric, and even be the subjects of delusions on certain subjects, and yet both inoffensive and capable of managing pecuniary matters. The individual's natural character should be taken into consideration as accounting for eccentricities of manner and temper, and his education in estimating his ignorance and apparent want of intellect; and lastly, due allowance must be made for the irritation and excitement produced in a mind, perhaps naturally weak, by the inquiry itself, and the attempt to deprive him of his liberty and the management of his property.

Sometimes the madman conceals his disease, and with such remarkable cunning and dissimulation that the detection of it is very difficult: this is more particularly the case when the insanity consists in some hallucination; and here, unless the nature of the delusion be known, it will often be in vain to attempt to establish by questions any proof of unsoundness of mind. Those who are insane on particular subjects will reason correctly on ordinary and trivial points, provided they do not become associated with the prevailing notions which constitute their disease.

When insanity is urged as the ground of non-responsibility for a criminal act, it has been erroneously held that the main point to be ascertained is, whether the individual has or had "a sense of good and evil," "of right and wrong." But this, though the doctrine of the English law, is found incapable of practical application; and the records of trials of this kind show that the guide to the decision has generally been the proof, or absence of proof, that insanity of some kind existed at the time of the act, although before and after it the power of reasoning and the knowledge of right and wrong might be retained. Thus, on the trial of Hatfield for shooting at George III., Erskine argued that the existence of a delusion in the mind absolves from criminal responsibility, if it be shown that the delusion and criminal act were connected; and on this principle Hatfield was acquitted, but confined for life. Bellingham however, who shot Mr. Perceval under an equally powerful delusion, in consequence of the greater excitement in the public mind occasioned by the result of the insane act, was convicted and executed. In many instances homicide has been prompted, not by any insane hallucination or delusion, but by a morbid impulse to kill. Here there is generally evidence of the feelings and propensities of the individual having been previously disordered, and judgment in such cases is aided by the absence of motive to the act. Where the general conduct of the prisoner has been such as to indicate unsoundness of mind, even though considerable contrivance has accompanied the act, or where there is evidence of his having been the subject of an irresistible impulse

to kill, it is becoming now the practice to find a verdict of acquittal, in opposition to the older authorities, who confined the exemption from responsibility on the ground of insanity within very narrow limits.

A perfect consciousness of right and wrong may exist, but the insane person may want that power of self-control which would secure his doing the right and avoiding the wrong. This was the line of defence adopted in the case of M'Naughten for shooting Mr. Drummond.

A lunatic is, according to law, responsible for acts committed during "lucid intervals," a term by which is understood however, not mere remissions of the violence of the disease, but periods during which the mind resumes its perfectly sane condition. In forming an opinion concerning such lucid intervals, the absence of the signs of insanity must have considerable duration before it can be concluded that the mind is perfectly sane; for lunatics, when apparently convalescent, are subject to sudden and violent paroxysms.

One of the most difficult points to be determined is with regard to the mental capacity of old persons, in whom the mind is impaired. The decay of intellect in old age is first manifested in the loss of memory of persons, things, and dates, and particularly with respect to recent impressions. But it is not the mere liability to forget names, and such matters which will render the will of an old person invalid; it should be shown that in conversation about his affairs, and his friends and relations, he did not evince sufficient knowledge to dispose of his property with sound judgment. Many old men appear stupid and forgetful, but when their attention is fairly fixed on their property, business, and family affairs, they understand them perfectly, and display sagacity in their remarks.

The care and custody of idiots and lunatics form a branch of the royal prerogative, and were formerly administered by the king himself. Since the dissolution of the Court of Wards, the lord chancellor has been specially appointed to exercise this power. [CHANCELLOR.] The method of proving a person to be of unsound mind, for the purpose of depriving him of the control of his property, and, where the circumstances require it, providing for the safe custody of his person, is as follows:—The lord chancellor upon petition supported by affidavits, and in some cases upon a personal interview also with the alleged lunatic, when such a course seems necessary, grants a commission to inquire into the state of mind of the party by a jury, and if the jury should find him to be *lunatic* or of *unsound mind* (one of which modes of finding is absolutely necessary in order to establish the legal fact of lunacy), the care of his person is committed to some relation or other fit person with a suitable allowance for maintenance, who is called the committee of the person; and the care of the estate is committed either to the same or some other person, who is called the committee of the estate. The acts of the lunatic with respect to the disposition of his property, which he has done after the time at which the verdict finds that he was of unsound mind, are void. The commission is a proceeding issuing from the common-law side of the Court of Chancery; but after the appointment of the committee, the chancellor acts by virtue of his general authority, and his orders are enforced by the general process of the court. The committee of the estate is considered as a mere bailiff appointed by the crown for the sole interest of the owner, and without any regard to his successors; but the court will order allowances to be made to near relations of the party who is of unsound mind, and even to his natural child, where the circumstances of the several parties justify and require it, and will direct proper acts to be done for the management of the lunatic's estate and property. Unless a person is declared of unsound mind in due legal form, no person can meddle with the management of his property, even if the person is incompetent to manage it himself. Cases occur in which the expense of a commission of lunacy is a great difficulty, when the property is small; and it is therefore desirable to diminish the expenses of such commissions, and to facilitate the proceedings, so far as is

consistent with proper inquiry, and the prevention of fraudulent attempts to deprive persons of the management of their property and of their liberty.

Some recent acts have made alterations in the proceedings under commissions of lunacy.

An act of the 3 & 4 Wm. IV. c. 36, is entitled 'An Act to diminish the Inconveniences and Expenses of Commissions in the Nature of Writs De Lunatico Inquirendo; and to provide for the better Care and Treatment of Idiots, Lunatics, and Persons of Unsound Mind, found such by Inquisition.'

An act of the 5 & 6 Vict. c. 84, is entitled 'An Act to alter and amend the Practice and Course of Proceeding under Commissions in the Nature of Writs De Lunatico Inquirendo.' The first section empowers the Lord Chancellor to appoint two serjeants or barristers at law, to be called 'The Commissioners in Lunacy;' and enacts that in future all Commissions in the nature of Writs De lunatico inquirendo shall be directed to such commissioners, and that such Commissioners shall jointly and severally have and execute all the powers, duties, and authorities now had and executed by commissioners named in commissions in the nature of Writs De lunatico inquirendo. The commissioners (§ 2) are to conduct all inquiries with respect to Lunatics and their estates in such manner as the Lord Chancellor shall from time to time direct; and it is provided that nothing in this act shall prevent the Chancellor from issuing any commission in the nature of a writ De lunatico inquirendo, addressed to any fit or proper person or persons, in addition to the Commissioners in Lunacy.

§ 3 empowers the Chancellor to refer to the Commissioners in Lunacy, or either of them, any of the inquiries and matters connected with the persons and estates of Lunatics which are usually referred to the Masters in Ordinary in Chancery; and § 4 makes the Commissioners in Lunacy visitors, under the direction of the Chancellor, of all persons found idiot, lunatic, or of unsound mind, by inquisition, jointly with the three visitors appointed by the 3 & 4 Wm. IV. c. 36.

§ 7 empowers the Chancellor from time to time to regulate the form and mode of proceeding before and by the said commissioners, and the practice in matters in Lunacy; and to regulate the number of jurymen to be sworn to try inquests on Commissions in the nature of Writs De lunatico inquirendo; but it is provided that every inquisition on such commission shall be found by the oaths of twelve men.

By the 8 & 9 Vict. c. 100, § 2, the two commissioners of lunacy are henceforth to be called Masters in Lunacy, and take the same rank and precedence as the masters in ordinary of the High Court of Chancery. Some other regulations as to the duties of the masters in lunacy are contained in 8 & 9 Vict. c. 100, § 95-98.

The other sections of the act 5 & 6 Vict. c. 84, make regulations as to fees and other matters, for which the act must be consulted. The salary of the commissioners is 2000*l.* a-year, free from all taxes or abatement.

The term Lunatic is only properly applied to a person who is found to be a lunatic by the verdict of a jury under an inquisition, as already explained. But the term lunatic is also applied to those who, being considered lunatics, are confined in lunatic asylums or hospitals, under such regulations as the 8 & 9 Vict. c. 100, § 44-49 prescribe, without having been found lunatics under an inquisition; and also to any single patient who is boarded or lodged for pay as a lunatic in a house not licensed under the act, § 90; and also to any person who is under the care of any person who receives or takes the charge of such one lunatic only, and derives no profit from the charge (§ 112). As to the persons and property of such so-called lunatics, who have not been found lunatic by a jury, the 8 & 9 Vict. c. 100, § 94, enacts, That whenever the commissioners in lunacy shall have reason to suppose that the property of any person detained or taken charge of as a lunatic is not duly protected, or that the income thereof is not duly applied for his maintenance, such commissioners shall make such inquiries relative thereto as they shall think proper, and report them to the lord chancellor. § 98 enacts, That when any person shall have been received or

taken charge of as a lunatic upon an order and certificate, or an order and certificate under the provisions of that act, and shall either have been detained as a lunatic for the twelve months then last past, or shall have been the subject of a report by the commissioners in lunacy in pursuance of § 94, the lord chancellor shall direct one of the masters in lunacy to inquire and report to him as to the lunacy of such person so confined, and the chancellor is authorised to make orders for the appointment of a guardian or otherwise for the protection, care, and management of such lunatic, and such guardian is to share the same powers and authorities as a committee of the person of a lunatic found such by inquisition now has, and to appoint a receiver or otherwise for the care and management of the estate of such lunatic, and such receiver is to have the same powers as a receiver of the estate of a lunatic found such by inquisition now has; and the chancellor is also empowered to make orders for the application of the income of the lunatic towards his maintenance, and the cost of the care and management of his person and estate, and also as to the investment or other application for the purpose of accumulation of the overplus; but such protection, care, and management are only to continue so long as such lunatic shall continue to be detained as a lunatic upon such order or certificate as aforesaid, and such further time, not exceeding six months, as the chancellor may fix; but the chancellor may in any such case, either before or after directing such inquiry, and whether the master shall have made such inquiry or not, direct a commission in the nature of a Writ De lunatico inquirendo to issue, to inquire of the lunacy of such person.

In the Roman system, persons of unsound mind (furiosi) might be deprived of the management of their property on application to the praetor by his next of kin. This legislation was either introduced or established by the Twelve Tables. The person who had the care of the lunatic and of his property was called a curator [CURATOR]. The Twelve Tables gave the care of the lunatic to his agnati. In those cases where the law had not provided for the appointment of a curator, the praetor named one. (*Dig.* 27, tit. 10; *Instit.* 1, tit. 23.)

On the general subject see Stock *On the Law of Non Compotes Mentis;* and Collinson *On Lunacy.*

LUNATIC ASYLUMS. COMMISSIONERS IN LUNACY. STATISTICS, CONSTRUCTION, and MANAGEMENT OF ASYLUMS. The subject of insanity and asylums for the insane has of late years occupied a very large share of public attention; particularly as an opinion has prevailed that insanity is on the increase in this kingdom beyond the ratio of population. The want of accurate information renders this point doubtful; but it is certain that more than 20,000 insane persons are in confinement in the public asylums and licensed houses in England and Wales, of whom 16,000 are paupers. But as a great number of patients are confined separately, or in the care of their relatives, of whom no public returns are made, this number is probably much underrated.

Two acts passed in 1845 (8 & 9 Vict. caps. 100 and 126) have placed the powers vested in the Commissioners in Lunacy on an entirely new footing, and have in many respects modified the constitution of asylums. The first act repeals 2 & 3 W. IV. c. 107; 3 & 4 W. IV. c. 64; 5 & 6 W. IV. c. 22; 1 & 2 Vict. c. 73; 5 Vict. c. 4; & 5 & 6 Vict. c. 87. This first act appoints six commissioners, three of whom are physicians, and three barristers, with salaries; and five other commissioners who act gratuitously. The rule that none of these shall be connected with any asylum is continued. No person can act as a commissioner who within two years has been directly or indirectly connected with any asylum. Licences are granted by these commissioners at each of their quarterly meetings. Any person who wishes to open a house for the reception of patients is required to send a plan upon a scale of one-eighth of an inch to a foot of every part of the premises at least fourteen days previously to his application. No additions to or alterations in a licensed house can be made without the consent of the commissioners. No licence is to remain in force more than thirteen months, and

the notice of a wish to renew must give the number of patients then confined. The jurisdiction of the commissioners extends to the whole of London and Middlesex, and Southwark: and to all places within seven miles of London, Westminster, and Southwark: in the country the licences are to be granted by the justices of the peace in quarter-session, who are bound to appoint three of their number, together with one physician, surgeon, or apothecary, as visitors of the asylums licensed by them. Strict regulations are enforced for the reception of patients; it is required that every person not being a pauper, received as insane, shall be certified to be so by two physicians or surgeons, who shall visit such patient separately, and shall have no interest in the asylum in which such patient is to be confined; and certain entries of these particulars are to be kept at each asylum. For a pauper, the certificate of one medical man and the order of two justices is required.

Penalties are fixed for neglecting these rules, or those which direct notice to be given of every admission, death, discharge, or escape. Houses having 100 or more patients are to have a resident medical attendant, and those of smaller size are to be visited by a medical attendant at defined periods, according to their size. Every house within the immediate jurisdiction of the commissioners shall be visited by them at least four times in the year, and every other house at least twice in every year; these visits may be made at any hour, even by night, and it is penal to conceal any part of a house from them. Similar powers are given to the visitors in the country.

The commissioners are to present an annual report to the lord chancellor of the state of the different asylums visited by them, which Report shall be laid before parliament.

An important alteration is made in the law concerning the care of single patients. Orders and medical certificates must in future be procured for the care of one patient similar to those used for the admission of patients into licensed houses; and copies of these documents are to be privately sent to and registered by the secretary to the commissioners. This act only extends to England and Wales, and it does not affect Bethlem Hospital, London. The persons appointed to hold commissions "De lunatico inquirendo," heretofore styled commissioners, are in future to be termed "Masters in Lunacy."

The second act, which repeals 9 Geo. IV., c. 40, relates to the regulation of lunatic asylums for counties and boroughs, and the maintenance and care of pauper lunatics; and gives to the commissioners a greater power over these institutions, which had previously been entirely under the control of justices of the peace. The justices of every county and borough are now to be compelled to erect or to join in the erection of an asylum when none such already exists; and all proposals, agreements, and plans, and the rules and regulations of each asylum, are to be submitted to the commissioners, and all contracts and estimates approved by the secretary of state. Contracts for the care of insane persons in licensed houses do not exempt any county or borough from the obligation of providing an asylum. Power is given to committees to grant retiring allowances to the officers of asylums; and a medical officer must be resident in every asylum which contains more than 100 patients. Lists of all the patients are to be sent twice in every year to the commissioners by the medical officer. This act extends only to England and Wales, and does not apply to Bethlem Hospital.

Great advantages may fairly be anticipated from the restrictions imposed by these acts; and they may probably only be considered as steps towards the highly desirable result of making all insane persons immediately the care of the State. The duties of the commissioners have, until the last few years, been very imperfectly performed, and the utmost secrecy as to their names and movements was preserved. The management of private asylums must vary considerably, as such houses are rarely built for the purpose, and are frequently under the direction of persons unfitted by their want of education for such an important charge; but these circumstances can by no means be admitted as excuses for the scandalous in-

stances of cruelty and mismanagement which have gone on under the eyes of the commissioners, and in houses which have received their praise; especially in those large private asylums, where an immense number of paupers are taken at low rates; the temptation held out in such cases to economy at the expense of the care and comfort of the patients ought to call forth an especial watchfulness on the part of the commissioners.

The patients who are confined in prisons, hospitals, workhouses, or in the houses of their relatives, are exposed perhaps more than any others to great neglect and mismanagement; and not unfrequently are treated with great cruelty, even when the intentions of the parties who have charge of them are good, through their entire ignorance of the nature and proper treatment of the disorder.

Management of Public Asylums.—There is considerable diversity in the internal regulations of different public asylums as to the power and position of the medical and non-medical officers. In some there is a resident physician who holds the supreme authority, and is also steward and general manager; in others the physician only presides in his own department; and in others the chief officer is not medical, and the physician is non-resident. The Norfolk asylum is the only large one in England without a resident medical officer; and this fact is severely commented on by the commissioners in their report. Under the new act a resident medical officer must be appointed; but we understand that the chief authority will still remain with the non-medical superintendent. In the 70th Report of the visiting justices of Hanwell (April, 1844), it is stated that they have appointed an officer in the army to superintend the institution, with a view to the preservation of greater order and discipline than had been maintained under medical rule; in the 72nd Report (October, 1844) the resignation of the governor is mentioned, and we cannot learn from the reports that any steps have been taken to appoint a successor, nor whether the advantages derived from his appointment equalled the expectation of the justices.

In all asylums the position of the matron is one which requires to be settled in some uniform manner; owing to the matron having been in many cases the wife of the superintendent, an undue importance has been given to her position; the appointment of the female attendants, and even the classification of the female patients, has sometimes been left in her hands. When we consider that the matron cannot possibly have had a medical education, and that in very few cases those who hold the situation possess any previous knowledge of insanity, or are even persons of good general information, it is manifestly improper to allow her too high an authority. In the French asylums, and we believe also in some of those in the United States, there is no matron: a few of the most experienced female attendants act as heads of departments, and receive the orders of the medical officers; and this arrangement, which is found to work exceedingly well at the Salpêtrière, where there are 1500 female patients, seems on the whole to be the best. The effect of placing the matron in a higher position is almost certainly to bring about interference on her part with the duties of the medical officers, which cannot fail to be injurious to the welfare of the patients. At Hanwell the salary of the matron is higher than that of the resident medical officers, or than that of any officer excepting the physician.

In the appointment of a chaplain, steward, secretary, accountant, and any other officers, the most important point is to confine their duties within certain proper limits, and to prevent their interference with the patients without the concurrence of the medical officers.

If the government should at any time take the entire supervision of asylums for the insane into its own hands, we trust that the mode of proceeding will be to appoint to each asylum one resident medical officer, who shall be responsible for the entire conduct of the asylum; and to whom, therefore, the power of appointing and dismissing all the subordinate officers shall be given. Uniformity of system, the want of which has been a great evil in many asylums, would thus be secured; and the careful selection of a competent

principal officer responsible for every instance of negligence or cruelty in the asylum under his care, could not fail to improve the general management of these institutions. At Glasgow the whole authority has for some years been in the hands of the resident physician, with the most satisfactory results; and an approximation is made to this plan in the Irish district asylums, where the non-resident physician is the principal officer.

By the acts lately passed, the power which the justices who had the control of different asylums possessed of passing rules at any meeting which entirely changed the system of management, or of summarily dismissing any officer, is done away with. The caprices of the governors of some asylums have changed their entire constitution in a few years.

A great improvement has been made of late years in the class of persons appointed as attendants, or, according to the old phraseology, *keepers*. That all such persons should possess benevolence and intelligence is essential to the effective working of a humane and enlightened system; and they should be liberally paid. The proportion of attendants to patients in the different English public asylums varies from one to ten, to one to twenty; the former does not seem too much, and is far less than that in all well-managed private asylums. No ward, however small, should have less than two attendants, in order that it should never be left; this is enforced by the rules of several asylums. A large number of attendants renders a vigilant superintendence by night practicable, which is no less important than by day, although it is entirely omitted in some institutions.

Every part of the treatment of the insane has of late years been much modified by the introduction of a much milder mode of management. The total abolition of personal coercion, known as *the non-restraint system*, was first introduced at the Lincoln asylum in 1837, and its complete success there led to its adoption at Hanwell in 1839, and shortly afterwards at Northampton, Gloucester, Lancaster, Stafford, and Glasgow. This system has since been adopted at Haslar Hospital, and also at Armagh, Londonderry, and Maryborough; and very little restraint is used at the other Irish district asylums. The asylums which do not agree to the disuse of restraint as a principle, have effected it in practice, with very few exceptions; thus the reports of Nottingham, Dorset, Montrose, Edinburgh, and Dumfries speak of the advantages of restraint, although the writers abstain from availing themselves of it; while on the contrary the authorities of Bethlem, St. Luke's, Kent, Oxford, and the Retreat at York, profess the non-restraint system, although they do not entirely practise it.

It would far exceed the limits of this article to point out the progress of this system, and the circumstances which rendered it desirable; from the year 1792, when Pinel struck off the chains of the patients at the Bicêtre, a gradual improvement has been going on in the treatment of these, the most unfortunate of human beings; but the declaration that mechanical restraints were "never necessary, never justifiable, and always injurious," made by Mr. Hill of Lincoln, has caused this march of improvement to proceed much more rapidly. The reports of the asylums in which the new system has been introduced, especially those of Hanwell, give all particulars as to the mode of management substituted for coercion.

However much opinions may differ as to the advantages of the abolition of restraint in those asylums which have not yet tried the experiment, we have before us the facts that many thousand patients have been treated entirely without it; that in no asylum where the new system has been introduced has it been found necessary to abandon it; that the reports of all these asylums state their general condition to be improved; that the cures have not decreased; and, which we consider of equal importance, that the comfort of the incurables is much increased: and we may therefore be justified in considering that within a few years the instruments of restraint now remaining in use will disappear like those much more severe ones which preceded them.

Whilst many excellent asylums exist for the rich, and the law is providing an

increase of accommodation for the poor, benevolent individuals are making efforts to secure the benefits of proper treatment for the middle classes. It is proposed to build an asylum in the neighbourhood of London for 300 patients, at a cost of 30,000*l.*, which sum is to be raised by donations and subscriptions. When once established, it will be self-supporting, and it is expected that payments of from 1*l.* to 1*l.* 10*s.* per week for each patient will cover all the expenses. No existing asylum offers to persons able only to pay such a sum the comforts to which their position in society has accustomed them.

Construction.—The site and construction of an asylum for the insane are matters of great importance. A healthy and cheerful situation should be the first consideration in an institution intended for the cure of diseased minds. In this respect some existing asylums are very well placed; Hanwell, Lincoln, and Surrey may be instanced. Others have been originally on the outskirts of towns, and have been surrounded and built in by the increase of building. The commissioners mention several so placed in proper terms of censure.

It seems now generally admitted that the building ought not to be larger than to accommodate 300 or 400 patients. As to plan, no two of the existing asylums are alike, and the most recently erected are by no means the best. In the Surrey asylum a complete copy has been made of the worst and newest part of Hanwell, in which the bed-rooms face one another, and the galleries are lighted from the top, which renders proper ventilation impossible. To make wide galleries with rooms only on one side, would certainly increase the cost of the building; but by introducing a bow or expansion into each gallery, the necessity for a day-room will be done away with. An open fire should be in each of these expansions; it will be a great source of comfort to the patients, and an improvement in the ventilation as well as the general appearance of the gallery; and, with a light wire guard, is perfectly safe. This plan is to be adopted in the Derby asylum now building; and as a ward must occasionally be left with one attendant, there is an advantage in bringing the whole of it within sight from a central position. No ward should contain more than thirty patients; and of these from twenty to twenty-five ought to have single rooms. It is matter of regret to find that dormitories are approved by the commissioners, and supported by the officers of some asylums; they certainly lessen the cost of building, but the quiet and comfort of the institution must be much diminished. Their ventilation is also very difficult: single rooms may be warmed with a hot-water pipe passing along the floor (not over-head), and opening the window will be a sure means of making a complete change in the air; but in dormitories it will be difficult to preserve freshness of air with warmth, more especially as the great argument in favour of them is their economy, and an economy partly made by allowing to each patient a smaller number of cubic feet than would be given in a single room. For the sick, the violent, the dirty, and the noisy, single rooms are obviously necessary; and it will, we believe, generally be found that the remaining patients, those whose tranquillity and usefulness entitle them to indulgences, will consider a single room, which they can call their own, one of the greatest that can be given them.

An asylum containing 400 patients may probably be built in a straight line, which is desirable, without the necessity of carrying it higher than the first floor. The chapel and chief officers' rooms, and the rooms used for the work or amusement of the patients, should form the centre; behind which the kitchen may be conveniently placed, with the laundry on the side next the wards of the women, and the workshops on that of the men. In the wards branching off from the centre, those patients who are quiet and convalescent and the sick should be placed, and the most refractory at the extreme ends of the building, to prevent them from disturbing the others. Six classes of patients may usually be found, for each of which some modification of management will be required:—

1. Tranquil: convalescent and melancholic.

2. Moderately tranquil.
3. Refractory.
4. Sick and infirm.
5. Idiots and other dirty patients.
6. Epileptics of the better class. These are frequently in the intervals of their fits the most intelligent of the patients, but during the fits they require great attention.

All the sick, idiots, and epileptics should be on the ground-floor, which will be easily arranged, as the tranquil and moderately tranquil, who form the great bulk of the patients, may occupy the upper floor.

To describe the numerous minute particulars to be attended to in constructing and furnishing an asylum is unnecessary here; the great rule should be, that every possible amount of safety should be combined with every possible amount of cheerfulness. There should be the strength of a prison without its gloomy character. No part of the building, within or without, should be neglected; and scarcely a day passes without improvements being made in one asylum or other—improvements that are worthy of adoption in any to be hereafter built.

An abundant supply of warm and cold water should be secured; or in some cases it will be found that the cost of supplying this necessary article will neutralize the advantages of an otherwise favourable site.

Baths, water-closets, a store-room, and rooms for washing, are essential in every ward. Warm baths are considered by many authorities to be valuable remedial agents, as well as advantageous to the general bodily health.

The Commissioners have expressed an opinion that incurable paupers may be accommodated in asylums apart from the curable at a much less expense, and an arrangement for a separate provision for incurables is required by the new act (s. 27*); but they cannot be aware that while the incurables comprise all the most tranquil and intelligent of the patients, whose society is of great value to the curables, they also comprehend patients who display every different form of insanity, and require every variety of treatment. It is certainly much to be wished that provision could be immediately made for all insane paupers; but we cannot consider that the removal of all hope from a large number of them, by immuring them in an "asylum for incurables," would be the best mode of attaining this object.

The following is a statement of the cost of building and furnishing twenty-two asylums, including that of the land, which in some cases amounts to a large sum. The mean cost for each patient accommodated is 154*l.* 2*s.* 3*d.*, which is probably more than will be found necessary in most future asylums. The expense of maintaining patients varies from seven to fourteen shillings per week; this must of course depend in some degree upon the prices of provisions in different parts of the kingdom, and be modified by cheap and dear seasons.

* § 27. 'And be it enacted, That in the erecting and providing of every asylum hereafter to be erected or provided for the reception of pauper lunatics, and also in enlarging the same or any asylum already erected, regard shall be had to the number of lunatics to be provided for therein who shall be or be deemed curable or dangerous; and in order to prevent such lunatics being excluded from admission into such asylum by reason of the admission or accumulation therein of chronic or incurable lunatics, some separate or additional building shall be provided for chronic or incurable lunatics whenever, by reason of the increase in numbers of lunatics, the asylum shall be insufficient for the accommodation of all lunatics entitled to be received therein; and in order to secure the immediate admission into every such asylum of all lunatics deemed curable or dangerous, a sufficient number of such chronic or incurable lunatics shall, from time to time, be transferred from such asylum to such separate or additional building to be provided as aforesaid.'

Name of Asylum.	No. of Patients.	Cost.			Cost per Patient.			Land.		
		£.	s.	d.				A.	R.	P.
Bedford . .	180	20,500	0	0	113	17	9	9	0	0
Cheshire . .	152	28,000	0	0	184	4	2	10	3	0
Cornwall . .	172	18,780	0	0	109	3	8	presented		
Dorsetshire . .	113	14,717	0	0	130	4	9	8	3	0
Gloucester . .	274	51,360	0	0	187	8	11	15	0	0
Kent . . .	300	64,056	0	0	213	10	5	37	0	0
Lancaster . .	655	100,695	16	9	153	14	8	15	0	0
Leicester . .	152	27,630	13	3	181	15	6	8	1	0
Middlesex . .	1,000	202,000	0	0	202	0	0	77	0	0
Norfolk . .	220	50,000	0	0	227	5	5	4	2	0
Nottingham . .	200	36,800	0	0	184	0	0	8	0	0
Suffolk . .	228	32,000	0	0	140	7	0	30	2	0
Surrey . .	403	85,366	19	1	211	16	7	97	0	0
Yorkshire, W. Riding	420	46,846	0	0	111	10	7	40	0	0
Glasgow . .	350	46,000	0	0	131	8	6	68	0	0
								not included in cost		
Armagh . .	134	20,970	4	5	156	9	10	8	0	23
Carlow . .	180	22,577	16	4	125	8	8	15	0	39
Clonmel . .	120	16,677	19	3	138	19	7	11	1	14
Connaught . .	316	27,130	4	6	85	17	1	22	2	28
Londonderry .	212	26,282	8	3	123	19	3	12	5	2
Maryborough .	170	24,442	19	0	143	15	7	22	2	17
Waterford . .	127	16,964	12	1	133	11	7	14	2	12

Statistics.—There are in England and Wales 12 county asylums, 5 county and subscription, 11 partly subscription and partly charitable, 1 military, 1 naval, and 142 licensed houses; 14 of which last receive paupers. The hospital of Bethlem, which is exempt from the rules that affect other asylums, is to be added to this number.

Scotland has eight public asylums; in all of which, we believe, private patients as well as paupers are received; and some are assisted by charitable endowments.

Ireland has twelve public asylums; ten of these are district asylums for the poor; Cork is locally governed, and Swift's Hospital is founded by charter.

Several new asylums are in progress both in England and Ireland.

With a view to present in a few plain statistical tables the results of treatment in each of the existing public asylums, the writer of this article sent blank forms to each superintendent in the kingdom; in almost every case they have been filled up and returned, and their contents are embodied in the following tables. When information could not be obtained in this manner or from reports, the statistical tables published by the Commissioners in lunacy have been resorted to; but these only extend to the end of the year 1843, and required much correction, as they are not upon one uniform plan. We may instance the tables furnished by Bethlem and St. Luke's as omitting many of the particulars desired by the Commissioners. In several asylums no average number of patients is given, and the percentages of deaths and cures are calculated upon other numbers; in other asylums which have been opened many years the early records are so incomplete as to be useless. In several asylums, even in some recently opened, the published returns do not contain any distinction of the sexes.

The first table shows the whole number of patients admitted into the 49 public asylums of the United Kingdom to the latest date to which we can obtain information; being 38,498 males, 38,207 females, and 8,394 of whom the sex is

not specified. Thus the admissions of males exceed those of females by 291, or in the proportion of 1 to ·9924; a scarcely appreciable difference. Of the whole number of insane persons in England and Wales on the 1st January 1844, according to the report of the Commissioners, 9862 were males, and 11,031 females; thus the females exceed the males in the proportion of 1 to ·894. The greater mortality among men is the cause of this apparent discrepancy.

Table I.

Name of Asylum.	Date of Opening.	Date of Return.	Admissions.		
			Male.	Female.	Total.
ENGLAND.					
Bedford	Aug. 1812	31 Dec. 1843	577	524	1,101
Bethlem*	1547	„ 1844	2,658	3,643	6,301
Bristol, St. Peter's Hospital†	1696	„ „	265	316	581
Chatham (Military)	10 May 1819	„ 1843	586	22	608
Cheshire	20 Aug. 1829	„ „	511	386	897
Cornwall	Oct. 1820	„ „	429	329	758
Dorsetshire	1 Aug. 1832	„ 1844	202	253	455
Exeter, St. Thomas's Hospital	1 July 1801	„ 1843	644	737	1,381
Gloucester	21 July 1823	„ 1844	895	804	1,699
Haslar (Naval)	15 Aug. 1818	„ „	807	..	807
Kent	1 Jan. 1833	„ „	439	325	764
Lancaster	28 July 1816	24 June 1845	2,384	1,912	4,296
Leicester	10 May 1837	31 Dec. 1844	284	291	575
Lincoln	25 Mar. 1820	„ „	577	494	1,071
Liverpool	1792	„ „	2,418	1,456	3,874
Middlesex	16 May 1831	30 Sept. „	1,431	1,370	2,801
Norfolk	May 1814	31 Dec. „	716	794	1,510
Northampton	1 Aug. 1838	„ 1843	309	311	620
Norwich, Bethel Hospital‡	1713	„ 1844	96	105	201
Nottingham	12 Feb. 1812	30 June 1845	1,045	808	1,853
Oxford§	July 1826	31 Dec. 1844	..	..	493
St. Luke's	30 July 1751	„ „	7,130	10,410	17,540
Stafford§	1 Oct. 1818	25 Dec. „	..	..	3,073
Suffolk	1 Jan. 1829	29 Aug. 1845	627	620	1,247
Surrey	14 June 1841	27 Aug. „	370	343	713
York§	Nov. 1777	1 June „	..	..	4,032
„ Friends' Retreat	June 1796	24 „ „	336	379	715
Yorkshire, W. Riding	23 Nov. 1818	31 Dec. 1843	1,682	1,657	3,339
WALES.					
Pembroke	1824	„ „	16	14	30
SCOTLAND.					
Aberdeen	1 Jan. 1821	1 May 1845	538	614	1,152
Dumfries (Crichton)	1 June 1839	11 Nov. 1844	176	122	298
Dundee	1 April 1820	16 June 1845	586	505	1,091
Edinburgh‖	..	31 Dec. 1844	83	79	162
Elgin	9 April 1835	„ 1843	49	24	73

* Only for 24 years. † Only for 16 years. ‡ Only for 6 years.
§ Sexes not distinguished. ‖ Only for 1 year.

Name of Asylum.	Date of Opening	Date of Return.	Admissions.		
			Male.	Female.	Total.
Glasgow	12 Dec. 1814	31 Dec. 1843	1,754	1,421	3,175
Montrose*	May 1782	" "	..	..	796
Perth	1 June 1827	1 June 1845	307	270	577
IRELAND.					
Armagh	14 July 1825	31 Mar. 1845	800	609	1,409
Belfast	June 1829	" "	817	776	1,593
Carlow	7 May 1832	31 Dec. 1844	302	307	609
Clonmel	1 Jan. 1835	31 Mar. 1845	256	223	479
Connaught	16 Nov. 1833	" "	691	472	1,163
Cork	1 Mar. 1826	31 Dec. 1844	1,739	1,749	3,488
Dublin (Richmond)	Dec. 1830	31 Mar. 1845	763	626	1,389
" (Swift's Hospital)†	..	31 Dec. 1844	104	67	171
Limerick	31 Jan. 1827	28 Aug. 1845	906	840	1,746
Londonderry	June 1829	31 Dec. 1843	676	638	1,314
Maryborough	14 May 1833	31 Mar. 1845	296	301	597
Waterford	9 July 1835	31 Dec. 1844	221	261	482

* Sexes not distinguished. † Only for 6 years.

The following table (II.) shows the result in the same asylums as to cures and deaths during the same period. This comparative table is recommended by the commissioners, in addition to the tables showing the per-centage of cures and deaths on the average number.

The cures are taken as 1.

The term "Removed" includes all discharged improved or uncured, or escaped.

This table likewise shows the number remaining in the different public asylums at the latest dates to which we have been able to make up the returns, and which appears to be 5143 males, 5052 females, and 236 of whom the sex is not specified.

Table II.

Name of Asylum.	Discharged Cured.		Removed.		Died.		Remain.		Deaths, Cures being 1.	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
ENGLAND.										
Bedford	217	165	170	185	115	110	75	64	·529	·666
Bethlem	1052	1761	1022	1301	220	205	189	197	·209	·116
Bristol	117	133	51	71	61	72	36	40	·521	·541
Chatham	144	4	156	5	218	7	68	6	1·373	1·5
Cheshire	233	197	52	28	138	81	88	80	·592	·411
‡ Cornwall	240	225	..	..	113	32	74	79	·470	·142
Dorset	87	112	6	13	58	65	51	63	·666	·580
Exeter	382	337	166	326	88	34	8	40	·230	·100
Gloucester	467	457	167	128	121	85	140	134	·259	·186
‡ Haslar	328	..	..	..	356	..	123	..	1·085	..
Kent	114	72	35	45	159	71	131	137	1·394	·986
Lancaster	933	832	152	116	967	641	332	323	1·036	·770
Leicester	123	135	41	52	45	32	75	72	·365	·237

‡ Those discharged improved and uncured are included with the cures.

Table II.—*continued.*

Name of Asylum.	Discharged Cured.		Removed.		Died.		Remain.		Deaths, Cures being 1.	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Lincoln	200	189	196	172	124	86	57	47	·620	·455
Liverpool	1024	548	1083	746	276	144	35	18	·269	·262
Middlesex	324	314	73	51	525	436	418	569	1·620	1·388
Norfolk	308	393	19	21	326	291	63	89	1·058	·740
Northampton	105	123	33	22	55	55	116	111	·523	·447
* Norwich	43	..	62	..	28	..	68	..	1·581	1·581
Nottingham	450	399	321	232	174	77	100	100	·386	·192
* Oxford	246	..	141	..	59	..	47	..	·239	·239
St. Luke's	2575	4624	3503	4879	959	764	93	143	·373	·165
* Stafford	1336	..	875	..	612	..	134	116	.458	·458
Suffolk	245	278	82	67	188	159	112	116	·763	·571
Surrey	56	57	17	9	116	55	181	222	2·071	·964
†*‡ York	3179	..	..	..	701	..	80	72	·220	·220
„ Friends' Retreat	145	192	67	48	81	85	43	54	·558	·442
Yorkshire, W. Riding	686	771	159	218	622	430	213	238	·906	·557
WALES.										
Pembroke	3	5	..	..	3	3	10	6	1·	·6
SCOTLAND.										
Aberdeen	251	272	85	169	104	87	98	86	·414	·319
*Dumfries	..	..	..	..	..	..	121	..	..	..
Dundee	247	230	129	118	107	64	105	91	·433	·278
Edinburgh	38	52	21	12	11	9	172	175	·289	·173
Elgin	5	7	9	5	3	0	15	11	·6	·000
Glasgow	769	669	556	474	233	130	196	148	·302	·194
* Montrose	324	..	129	..	255	..	47	44	·787	·787
Perth	116	124	60	53	45	29	86	64	·387	·233
IRELAND.										
Armagh	348	282	278	171	109	91	65	65	·313	·322
Belfast	424	428	99	69	152	173	142	106	·358	·404
† Carlow	160	190	..	..	49	39	93	78	·306	·205
Clonmel	154	115	30	18	46	25	62	60	·298	·217
Connaught	239	212	59	36	213	89	180	135	·891	·419
Cork	877	980	288	218	351	330	223	221	·400	·336
§ Dublin (Richmond)	357	324	169	176	193	117	137	150	·540	·361
„ (Swift's Hospital)	46	36	31	16	25	23	73	71	·543	·638
Limerick	499	468	69	65	175	129	163	178	·350	·275
Londonderry	313	336	105	85	151	143	107	74	·482	·425
Maryborough	121	156	22	22	68	38	85	85	·561	·243
Waterford	98	105	49	69	26	23	48	64	·265	·219
								Mean	·622	·458

* Sexes not distinguished.
† Those discharged improved and uncured are included with the cures.
‡ Great doubts exist as to the accuracy of the older books at the York Asylum.
§ There is some mistake here; the admissions are made to amount to 1389, and the cures, deaths, and remaining patients to 1623.

The greater number of cures, and smaller number of deaths among females must be in a great measure ascribed to their comparative immunity from epilepsy and paralysis; which, when combined with insanity, render recovery very nearly, if not quite, hopeless. It is said also that women more frequently recover from the acute stage of mania, while men die of exhaustion.

The reverse of this apparent rule is found only in the results of some of the smaller asylums, where the deaths of either sex are few. In those returns where the sexes are not distinguished we have reckoned the proportion as equal.

The tables of per-centage of cures and deaths published by the commissioners have unfortunately not been compiled upon any fixed plan. All computations excepting upon the average number of patients in the asylum during the specified year, must be fallacious. The following tables have been made upon that principle; the blanks indicate the cases in which correct returns are wanting. Some asylums do not publish their average number of patients; others calculate the per-centage of cures and deaths upon the whole number admitted; but this is an entirely delusive method, as these numbers must be continually increasing, while the proportion of patients remaining decreases.

We have, as far as possible, made an average of all the public asylums for ten years past.

TABLE III.

Per-centage of cures upon the average number of patients in the Public Asylums for the Insane in the United Kingdom, for ten years, ending 1845.

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
ENGLAND.											
Bedford	..	..	..	25·66	12·28	9·40	12·60	19·53	..	..	15·88
Bethlem	..	..	..	..	..	..	..	44·14	36·76	..	40·45
Bristol	19·33	25·00	19·33	18·03	30·64	20·31	23·18	10·81	58·90	..	25·05
Chatham	13·00	1·40	2·80	2·80	2·78	2·78	·00	1·49	..	..	3·38
Cheshire	..	..	..	28·90	29·35	36·00	30·26	25·94	..	..	30·09
Cornwall	..	..	..	..	..	15·43	11·56	13·10	..	..	13·36
Dorsetshire	17·40	17·95	17·65	14·25	11·27	17·05	17·41	17·71	21·92	..	17·95
Gloucester	23·88	29·01	32·44	29·44	28·03	33·19	36·03	31·12	29·10	..	30·24
Haslar	..	..	..	..	..	..	10·67	13·00	15·20	..	12·95
Kent	11·18	8·90	9·88	5·84	10·40	6·49	4·32	10·41	7·19	..	8·29
Lancaster	17·98	23·60	21·34	18·81	18·89	13·40	15·64	16·69	20·55	11·16	17·80
Leicester	..	..	..	37·33	53·84	32·65	42·05	19·81	17·73	..	33·90
Lincoln	30·00	16·40	32·80	23·10	9·50	17·40	14·80	23·40	10·09	..	19·79
Liverpool	..	..	..	68·62	53·19	35·29	41·00	96·49	85·93	..	63·42
Middlesex	5·90	4·76	5·67	9·14	8·14	5·65	5·30	5·56	3·55	..	5·96
Norfolk	12·27	10·55	12·42	9·14	13·87	7·50	16·00	19·76	16·46	..	13·10
Northampton	..	..	..	37·33	40·19	31·85	22·39	29·31	..	..	32·21
Nottingham	23·53	24·61	23·13	18·85	20·54	21·05	24·05	26·58	..	18·32	22·29
Oxford	..	..	..	25·00	22·91	21·73	27·27	16·95	..	..	22·77
St. Luke's	..	..	..	..	..	..	..	..	44·54	..	44·54
Stafford	..	..	..	..	18·77	22·54	25·43	23·93	25·20	..	22·17
Suffolk	..	..	..	22·70	19·17	16·00	11·32	12·20	18·91	..	16·71
Surrey	..	..	..	..	..	2·62	9·46	11·39	7·06	..	7·63
York	10·75	12·19	9·41	8·04	8·02	10·00	6·17	7·05	..	5·92	8·61
„ Friends' Retreat	..	..	..	9·19	7·05	12·08	3·40	11·11	..	8·51	8·55
Yorkshire, W. Riding	20·06	19·87	19·65	21·46	18·20	15·34	15·46	16·01	..	..	18·25
WALES.											
Pembroke	..	..	..	11·11	5·00	5·26	0·00	20·00	..	..	8·27

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
SCOTLAND.											
Aberdeen . . .	. .	. .	. .	. .	18·57	17·36	15·17	17·21	16·76	16·39	16·91
Dundee . . .	. .	. .	. .	18·66	24·20	15·34	10·61	13·88	10·69	9·47	14·70
Edinburgh . .	. .	. .	. .	. .	. .	. .	. .	. .	30·61	. .	30·61
Glasgow . . .	. .	. .	. .	38·99	47·36	61·79	50·00	45·66	. .	. .	48·76
Perth	13·00	16·37	13·71	11·50	17·77	15·00	12·00	12·00	. .	8·90	13·36
IRELAND.											
Armagh . . .	42·00	30·50	29·25	29·11	20·47	7·50	15·12	29·50	26·51	29·10	25·91
Belfast	. .	26·50	27·50	29·89	23·67	26·12	29·10	36·14	26·87	26·25	28·00
Carlow . . .	24·80	22·22	22·45	21·52	12·84	16·23	9·87	16·66	14·20	15·42	17·62
Clonmel . . .	. .	. .	. .	28·00	20·02	27·00	17·20	20·12	14·03	14·16	21·50
Connaught . .	24·16	20·26	22·70	21·29	19·67	17·42	16·10	15·19	10·35	10·35	17·74
Cork	27·65	31·90	32·00	34·80	44·17	34·80	35·22	33·80	25·33	27·31	32·69
Dublin (Richmond)	. .	. .	. .	. .	15·51	9·31	15·17	13·10	13·05	12·37	13·08
„ (Swift's Hospital)	. .	. .	. .	10·52	12·00	9·32	7·84	8·10	7·24	. .	9·17
Limerick . . .	. .	. .	. .	19·41	20·40	19·06	16·19	19·77	7·36	. .	17·03
Londonderry . .	. .	. .	. .	21·25	24·34	26·57	16·58	26·08	18.22	. .	22·17
Maryborough . .	. .	. .	. .	17·33	13·83	14·63	10·11	17·36	12·94	10 00	13·74
Waterford. . .	30·23	23·91	50·56	32·00	25·75	32·11	29·56	29·66	24·36	17·94	29·60
										Mean..	21·30

TABLE IV.

Per-centage of deaths upon the average number of patients in the Public Asylums for the Insane in the United Kingdom, for ten years ending 1845.

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
ENGLAND.											
Bedford . . .	. .	. .	. .	10.61	7·89	7·69	12·60	13·28	. .	. .	10·41
Bethlem . . .	. .	. .	. .	. .	. .	. .	. .	6·81	7·79	. .	7·30
Bristol	9·00	5·20	3·25	9·83	29·17	23·43	20·29	16·21	13·69	. .	14·45
Chatham . . .	3·53	15·00	14·00	19·71	7·00	12·50	4·66	4·50	. .	. .	10·10
Cheshire . . .	. .	. .	. .	18·75	10·48	12·66	11·18	6·96	. .	. .	12·00
Cornwall . . .	. .	. .	. .	. .	. .	8·72	9·52	5·51	. .	. .	7·91
Dorsetshire . .	11.96	15·84	6·86	9·50	6·57	18·94	12·82	13·05	8·77	. .	11·59
Gloucester . . .	5·97	4·76	6·91	6·09	9·34	9·78	14·98	12·03	10·44	. .	8·92
Haslar	. .	. .	. .	. .	. .	. .	11·65	14·00	10·40	. .	12·01
Kent	9·31	13·29	7·55	10·62	9·32	7·16	8·17	16·66	9·09	. .	10·13
Lancaster . . .	18·71	26·76	16·70	12·80	16·25	12·68	12·75	11·50	10·11	11·16	14·94
Leicester . . .	. .	. .	. .	13·33	12·08	13·26	12·84	6·30	2·83	. .	10·10
Lincoln . . .	5·20	16·40	10·50	9·34	15·38	15·46	16·85	18·01	12·85	. .	13·33
Liverpool . . .	. .	. .	. .	19·60	14·89	14·70	15·38	18·18	17·18	. .	16·65
Middlesex . . .	10·84	7·88	11·99	11·53	8·26	9·39	9·65	7·01	6·40	. .	9·21
Norfolk . . .	18·40	19·25	21·11	20·12	12·71	24·70	12·57	26·35	18·90	. .	19·34
Northampton . .	. .	. .	. .	17·33	8·82	18·51	10·40	15·51	. .	. .	14·11
Nottingham . .	7·56	9·23	5·22	5·80	6·16	9·86	13·92	9·49	. .	7·32	8·28
Oxford	. .	. .	. .	4·54	4·16	13·04	9·09	6·79	. .	. .	7·52
St. Luke's . . .	. .	. .	. .	. .	. .	. .	. .	. .	7·86	. .	7·86
Stafford . . .	. .	. .	. .	. .	13·87	13·51	15·51	10·68	13·67	. .	13·44
Suffolk	. .	. .	. .	8·64	10·36	11·00	9·90	13·61	9·45	. .	10·49
Surrey	. .	. .	. .	. .	. .	3·93	11·13	10·82	14·39	. .	10·06

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
York	4·43	9·14	5·88	5·17	8·64	4·37	9·25	6·41	. .	6·57	6·65
„ Friends' Retreat	. .	. .	. .	10·34	1·17	4·39	7·95	4·44	3·19	. .	5·24
Yorkshire, W. Rid.	18·12	19·28	10·69	16·30	10·81	15·07	13·21	12·86	. .	. .	14·54
WALES.											
Pembroke . . .	. .	. .	. .	11·11	10·00	5·26	4·76	0·00	. .	. .	6·22
SCOTLAND.											
Aberdeen . . .	. .	. .	. .	. .	7·14	13·19	6·89	7·28	7·18	3·82	7·58
Dundee . . .	6·20	7·48	5·83	7·33	4·45	4·87	5·58	5·00	6·41	7·37	6·05
Edinburgh . .	. .	. .	. .	. .	. .	. .	. .	. .	6·80	. .	6·80
Glasgow . . .	. .	. .	. .	9·43	7·01	10·11	12·24	11·32	. .	. .	10·02
Perth	3·00	5·83	4·33	2·29	2·96	4·25	3·54	6·29	. .	3·42	8·99
IRELAND.											
Armagh . . .	8·00	11·00	10·00	9·91	4·80	6·66	5·88	9·01	9·09	10·44	8·47
Belfast	. .	18·50	12·50	7·73	11·83	9·79	10·93	7·23	8·30	15·40	11·35
Carlow . . .	3·30	3·16	8·69	3·54	6·42	5·19	7·40	5·35	4·14	4·00	5·11
Clonmel . . .	. .	. .	. .	6·12	10·68	8·57	4·80	6·25	7·89	3 33	6.80
Connaught . .	15·43	15·68	15·41	15·27	15·98	12·87	10·11	10·95	10·67	10·67	13·30
Cork	12·50	12·33	11·60	11·90	13·83	11·02	11·58	12·35	10·98	11·73	11·98
Dublin (Richmond)	. .	. .	. .	. .	5·51	6·55	5·51	8·27	6·19	6·52	6·42
„ Swift's Hospital	. .	. .	. .	3·28	8·00	4·02	4·57	6·08	6·52	. .	5·41
Limerick . . .	. .	. .	. .	6·17	8·45	4·26	6·56	5·08	5·94	. .	6·07
Londonderry . .	. .	. .	. .	14·49	12·07	12·07	7·72	9·00	10·28	. .	10·93
Maryborough . .	. .	. .	. .	4·00	13·20	4·26	7·78	4·79	4·11	4·11	5·93
Waterford . . .	3·48	3·25	3·37	7·00	1·99	4·58	5·21	7·62	8·40	8·54	5·34
										Mean . .	9·64

The mean number of cures thus appears to be 21·3 per cent., and of deaths 9·64 per cent.; but many asylums depart very widely from this standard. Bethlem, St. Luke's, and Liverpool, receive only recent cases; and in the Liverpool institution their probation is very short. The large asylums at Hanwell, Surrey, and Lancaster are consequently compelled to receive almost entirely incurables, which accounts for their small number of cures. The large number cured in the Irish asylums may be in some measure accounted for by the peculiar character of their patients. The Irish patients in English asylums usually recover rapidly, the form of disorder being frequently pure excitement, which is soon allayed by quiet, by temperance, and the orderly regulations of an asylum.

Many attempts have been made to obtain a uniform system of keeping statistical tables; at present a different plan is adopted in almost every asylum. A great improvement would be effected if every report, in addition to its information for the current year, contained a condensed statement from the opening of the institution as to admissions, cures, and deaths; and there would be little difficulty in adding the ages, forms of disease, the causes of death, and other tables. Much important information as to the most favourable and unfavourable ages, and the results of immediate and delayed admission, would be easily gained, if a reference to the last report of any asylum were sufficient to show the experience of that institution from its opening in a condensed form. No asylum has yet published any such tables; but in the numerous new asylums which will be built in the course of a few years, nothing could be more easy than to adopt them. The legislature may possibly enforce certain tables; and such a law would be exceedingly desirable, if we could hope that the practical experience of the superintendents of lunatic asylums would be allowed to be of any weight: but if the returns

are to be made out according to the fancy of men ignorant of the subject upon which they legislate, the present system, by which every superintendent follows his own discretion, is far preferable.

The following points seem to deserve attention in any plan for uniform registration:—

I. Admissions for the current year:—
1. Form of disease.
2. Causes of disease.
3. Duration of disease.
4. Age.
5. Age when first attacked.
6. Social state.
7. Station or occupation.

II. Similar returns for the whole number admitted from the opening of the asylum.

III. Cures for the current year:—
1. Form of disease.
2. Causes of disease.
3. Duration of disease.
4. Age.
5. Age when first attacked.
6. Duration of residence.
7. Per centage upon average number of patients.

IV. Similar returns for the whole number cured.

V. Deaths for the current year:—
1. Form of mental disease.
2. Causes of mental disease.
3. Duration of mental disease.
4. Age.
5. Age when first attacked.
6. Duration of residence.
7. Per centage upon average number of patients.
8. Causes of deaths.

VI. Similar returns for the whole number who have died.

VII. Number discharged uncured, improved, by request of friends, removed by parishes, or escaped, during the current year, distinguishing the reasons for removal, and the duration of residence.

VIII. Similar returns for the whole number removed or escaped.

IX. Patients remaining in the asylum:—
1. Form of disease.
2. Duration of disease.
3. Duration of residence.
4. Age.
5. Number probably curable.
6. Number probably incurable.

The registers, to contain all this information, might be of very simple form, far less complicated than those at present in use in several asylums. The sexes should be distinguished in every statement.

Registers should likewise be kept of every instance of restraint, its nature and duration, and of the duration of every seclusion; also of employment and of the value of the work done. Many others might be suggested as useful in various ways, though not strictly necessary for statistical purposes.

('Report of the Metropolitan Commissioners in Lunacy to the Lord Chancellor,' 1844; 'Statistical Tables prepared by the Metropolitan Commissioners in Lunacy,' 1844; 'An act for the Regulation of the Care and Treatment of Lunatics' (8 & 9 Vict. c. 100); 'An Act to amend the laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the maintenance and care of Pauper Lunatics, in England' (8 & 9 Vict. c. 126); 'Report of the Inspectors-General of District, Local, and private Lunatic Asylums in Ireland,' 1845; 'Returns from each District Lunatic Asylum, in Ireland,' 1845; 'Reports' of all the principal Asylums in England, Scotland, and Ireland, and information privately supplied by many of the superintendents; 'Farr on the Statistics of English Lunatic Asylums;' 'Benevolent Asylum for the Insane of the Middle Classes, Prospectus;' 'History of the York Asylum;' 'Tuke's Description of the Retreat near York;' 'Hill on the Management of Lunatic Asylums;' 'Remarks by Mr. Serjeant Adams on the Report of the Metropolitan Commissioners in Lunacy;' Personal knowledge of the Middlesex Lunatic Asylum, Hanwell.)

LYON KING-AT-ARMS. [HERALD.]

M.

MACHINERY. It is proposed to consider, in this article, the influence which is exercised by machinery upon the ge-

neral interests of mankind, and especially upon the well-being of different classes of society. There is no subject in the present age which is more deserving of attention; and none, perhaps, in which all classes are so much concerned. Whatever theoretical opinions may be entertained by speculative men, the use of machinery in aid of human labour, or, as some contend, instead of it, is rapidly increasing and cannot be restrained; it is right therefore for all men to endeavour to judge for themselves in what manner it is valuable to society, and whether the injuries attributed to it be real or imaginary. By some, every new machine is viewed as an addition to the wealth and resources of a country; by others it is regarded as a hateful rival of human industry—as iron contending with straining sinews—as steam struggling against the life and blood of man. The one view is full of hope and promise: the other is fraught with gloom and sadness. One would present society advancing in wealth and comfort; the other would show it descending faster and faster into wretchedness. But even those who believe that the inventive faculties of men have been engaged in devising for themselves a curse, would gladly be convinced that cheerful anticipations of good are consistent with sound philosophy.

The influence of machinery is of two kinds, 1st, as it affects the production and consumption of commodities; and 2ndly, as it affects the employment of labour.

As regards production, the effects of machinery have been well described to be the same "as if every man among us had become suddenly much stronger and more industrious." (*Results of Machinery*, 7th edit., p. 36.) If, by the aid of machinery, ten men can perform the work of twenty, and perform it better and more quickly, the products of their labour are as much increased as if they had really "become suddenly much stronger and more industrious," and, it may be added, more skilful. Thus production, which is the object of all labour, is more abundant, and society enjoys the results of industry at a less cost. Who can doubt that this is a great benefit, unless it be attended with evils which are not at first perceptible? No man labours more than is necessary to effect his object, and his constant desire is to contrive modes of saving his own physical exertions. A rich soil and a fine climate are universally esteemed as blessings because the people enjoy abundance with comparatively little labour. A poor soil and bad climate are evils, because the husbandman must labour much though the produce of his industry be small.

Labour without adequate results is always regarded as a curse, and almost every human invention, from the earliest times, has had for its object the saving of labour and the increase of production. Horses and other beasts of burden were made to work for man: to bear loads which otherwise they must have borne themselves; to draw the plough which otherwise their own strength must have forced through the soil. To the same object all nature has been made subservient. The stream turns the mill, and does the work of man; the wind performs the same office. A boat is built to save men the labour of carrying their goods to a distance, and it is less labour to row the boat than to carry its cargo: but rowing is laborious, and sails were invented that the wind should do the work of man. In all other matters it has been the same. Man is weak in body, and ill endowed by nature with the means of self-preservation and subsistence. Many animals are stronger and most animals are more active than himself: they can pursue their prey with more certainty, they are armed with weapons of offence and defence, and they need no shelter from the weather but that which nature has provided; their own powers and their own instinct suffice for their preservation. But man was created naked and defenceless. To live he must invent, and reason was given to him that he might force all nature into his service. His teeth and nails were powerless against the fangs and claws of the wild beast; but his hands were formed with wondrous aptitude for executing the tasks which reason set them. He invented tools and implements and weapons, and all nature became his slave. He was now

able to make his own strength effect as much as if he had become stronger and more industrious. He produced more for his own comfort and subsistence, with little labour, than the greatest exertions could otherwise have obtained for him. Every successive invention has made him more powerful, has increased his strength, and multiplied the productions of his industry; and at length the giant power of steam has peopled the world with inanimate slaves who do his work faster and better than he did it himself with the greatest labour and the most ingenious tools.

The flint and fish-bone of the savage, the tool of the workman, and the steam-engine of the manufacturer, have but one common object—to save the labour of man and to render it more productive: but that is the most perfect invention which attains this object the most effectually. Can any one doubt the advantage of abundant production? It needs but a few words to point out its benefit. Whether it be for evil or for good, we are not satisfied with the enjoyment of the common necessaries of life; we all desire comforts, luxuries, and ornament; and in proportion as we desire them do we become civilized. There are many who sneer at civilization, and unhappily it has its vices, its follies, and its absurdities; but it seems the law of our nature to advance towards that state, and with the increase of artificial wants our intellects become more active and enlightened, refinement of manners succeeds to barbarism, and all those moral qualities for which man is distinguished, become developed. We may conceive some Utopia in which all the noble parts of man's nature are cultivated, while his wants remain simple and easily satisfied, but the world we live in presents another picture. We might wish it were otherwise; but it is in vain to deny that refinement is the accompaniment and, in some degree, the consequence of riches, and brutality the condition of those people who have not been elevated by the increase of wealth. It follows, therefore, that to multiply the objects of comfort and enjoyment which human industry can produce, is to improve the condition of mankind, to raise them in the scale of moral and intellectual being, and to minister to their enjoyment of life. It is quite consistent to deprecate the vices and follies which are ever associated with our craving for new possessions, while we observe the benefits resulting from it. Throughout the world good and evil are found side by side; but the good, as we would fain believe, preponderates.

When once it is admitted that men are to be decently housed and clothed, and are to surround themselves with such comforts as they can obtain, it is clear that the more easily they can obtain them, and the more generally such possessions are enjoyed, the more completely are the objects of civilized life secured. If all men could obtain them easily, there would be no poverty, and infinitely less vice. Machinery, by diminishing the amount of labour required for the production of commodities, lowers their price and renders them more universally accessible to all classes of society. Working-men no longer toil for the rich alone, but they participate in the results of their own industry. If they desire such luxuries, "purple and fine linen" are not beyond their reach; and their dwellings are more commodious and often more elegant than were the houses of the rich three centuries ago. If this increased facility of acquiring the comforts of life had been accompanied by greater prudence and frugality, we believe that the beneficial results of machinery would have been conspicuously shown by the improved condition of all the working classes of this country; but more money has been squandered by them in poisonous spirits, within the last fifty years, than would have sufficed to place themselves and their children beyond the reach of want.* Cheap production is more beneficial to the poor than to the

* The amount spent annually upon spirits is equal to the interest of the national debt; and the amount spent within the last fifty years may be estimated at considerably more than the entire capital of the funded debt. Six millions a year are now sufficient to support all the poor of the country; and thus some idea may be formed of the prosperity of the labouring classes of the present day, if they had accumulated a fund producing an income of thirty millions beyond the wages of their labour.

rich. The rich man is certain of gratifying most of his wants, but the poor man is constantly obliged to forego one enjoyment in order to obtain another. If his shoes or his coat be worn out, his dinners must be stinted perhaps until he can pay for a fresh supply; and thus, unless his wages be reduced in consequence of the cheapness of such articles, it is beyond all question that cheapness is an extraordinary benefit to him, the money which he saves in the purchase of one cheap article is laid out upon another, and without privation or suffering he satisfies the wants which custom has made imperative. In short, he is no longer poor.

These facts are undeniable; but it is alleged that machinery not only makes articles abundant and cheap, but multiplies them beyond the wants of the world, and by causing gluts brings ruin and misery upon the working classes. For reasons explained elsewhere [DEMAND AND SUPPLY] a universal glut of all commodities is impossible: the more men produce, the more they have to offer in exchange, and their wants are only limited by their means of purchasing. But particular commodities are frequently produced in excess, and a glut of the market ensues. In causing such gluts machinery is a powerful agent, but only in the same manner as all labour would be, if applied in excess. The results would be precisely the same if too many men were employed in any department of industry; they would produce more than there was a demand for, and their goods would fall in value or be unsaleable. Commodities produced by machinery are subject to the same laws as govern all other commodities. If the supply of them exceed the demand, they are depreciated in value; but the power of producing with facility does not necessarily occasion an excess of production: it must be applied with caution, and its use be properly learned by experience. Suppose that the soil of any isolated country were extraordinarily fertile and the population very small; but that without considering these circumstances the people were to cultivate the whole of their land and bestow upon it all their skill and labour. An excess of food would be the result—more than could be eaten within the year; much would be wasted or sold without profit, and much laid up in store for another season. The husbandmen would be disappointed at the unfortunate results of their industry, but would they complain of the fertility of the soil? It would not be the soil that had caused the glut, but their own misapplied exertions; and so it is with machinery, which like a fertile soil gives forth abundance: its capabilities are known and its advantages ought to be appreciated; but if its productiveness be brought into excessive activity, it causes the evils of a glut.

The influence of machinery upon the production and consumption of commodities need not be followed any further. It increases the common stock of wealth in the world and is capable of multiplying indefinitely the sources of human enjoyment. But these benefits will be neutralized if, while it cheapens production, it has a tendency to diminish the means of employment for the people and the wages of labour;—and this leads us to the second part of our inquiry.

The invention of a machine which should immediately do the work of many men employed in a particular trade would certainly, in the first instance, diminish employment in that trade. Several men would be turned off to seek employment in other trades, and much individual suffering would be occasioned. There have been frequent instances of such a result, and so far as the immediate interests of the particular sufferers are concerned, it is an evil which cannot be too much lamented. In their case machinery is like a rival bidding against their labour, and is as injurious to them as if a fresh set of workmen had supplanted them in the service of their employer. But great as this evil is (and we would not underrate it) it is of comparatively rare occurrence and of short duration. If the invention of the machine caused no more production than the labour of the workmen had previously accomplished, the labour of a certain number of men would be permanently displaced: but as an equal quantity of goods is produced at a less cost of labour, their

price is reduced and their consumption consequently encouraged. An increased supply is thus called for and more workmen are again required in the trade. In this manner the demand for increased production corrects the tendency which machinery would otherwise have to displace labour permanently. Even the temporary displacement which frequently occurs is less extensive than might be supposed. Machines are rarely invented which at once dispense with many workmen. They are at first imperfect, and of limited power: they make the labour of the workmen more efficient; but do not become substitutes for labour. Thus, even if the demand for commodities were not increased, the displacement of labour would be very limited and deferred to a distant period: but as an increased demand almost invariably follows every successive improvement in machinery, it will be found, practically, that more operatives are employed in every branch of manufacture, after the introduction of improved machinery than before.

Of this fact we shall offer some examples presently: but here it may be necessary to allude to the case of the hand-loom weavers, which is constantly adduced in proof of the supposed evils of machinery. Their unhappy condition can scarcely be overstated, nor can it be denied that it has been caused by machinery: but it must be recollected that while they have vainly contended against machinery—like pigmies against a giant—hundreds of thousands of other classes, unaccustomed to the labour of operatives, have gained a profitable employment by working *with* it, in the same trade as themselves. No one can suppose that the labour of the hands could compete with the power of steam, and the real cause of their distress is, that instead of adapting the form of their industry to the altered circumstances of their trade, they have continued to work, like an Indian caste, with the same rude implements which their fathers used before them. Their case is the same as that of a miller who should persist in grinding corn by hand, while his neighbours were building mills upon a rapid stream which ran beside his garden. His own ignorance or obstinacy, and not the stream, would be the cause of the failure of his trade.

If the case of the hand-loom weavers be adduced as an example of the permanent displacement of labour by machinery, and if it be contended that it is the natural result of machinery to diminish employment in other trades, in the same manner, we must necessarily infer that wherever machinery has been largely introduced into any trade, the number of persons supported by it must have been diminished. We should infer that the agricultural population of this country must have been rapidly increasing, while the population engaged in those branches of manufacture in which steam-power is used must have been falling off or increasing less rapidly. The correctness of such an inference may be estimated from the following facts:—

In no trades has machinery been so extensively introduced as in the manufacture of cotton, wool, and silk, and nowhere has the population increased so rapidly as in the principal seats of these manufactures. Between 1801 and 1841, Manchester increased in population from 90,399 to 296,183, or 227·5 per cent.: Liverpool (whose prosperity has been caused by the cotton trade) increased, in the same period, from 79,722 to 264,298, or 231·5 per cent.: Leeds, from 53,162 to 151,874, or 185·6 per cent,: Bradford (York), from 6393 to 34,560, or 440·5 per cent.: Bolton, from 17,416 to 49,763, or 185·7 per cent.: Huddersfield, from 7268 to 25,068, or 244·3 per cent.: Macclesfield from 8743 to 24,137, or 176 per cent.: and Dukinfield from 1737 to 22,394, or 1189 per cent. In Scotland the same results have followed from the use of machinery. Between 1801 and 1841 Glasgow increased from 77,385 to 274,533, or 254 per cent.: Paisley, from 31,179 to 60,487, or 94 per cent.: and Greenock, from 17,458 to 36,936, or 111·5 per cent.

Thus far of the manufactures of cotton, wool, and silk. The seats of the iron and hardware trades exhibit similar results. In the same period of forty years Birmingham increased from 73,670 to 190,542, or 158 per cent.; Sheffield, from 31,314 to 68,186, or 117·6 per cent.;

Wolverhampton, from 12,565 to 36,382, or 189 per cent.; Merthyr Tydvil, from 7705 to 34,947, or 353 per cent.; and West Bromwich from 5687 to 26,121 or 359 per cent.

In this extraordinary ratio has the population increased in the seats of our staple manufactures, which by the aid of machinery have supplied the whole world with articles wrought by the industry of our people. Let us now compare these places with those agricultural counties in which machinery has exercised the least influence, and let us see if the absence of machinery has been equally favourable to the support of a growing population. In the same period, from 1801 to 1841, Devon increased 55·3 per cent.; Somerset, 59 per cent.; Norfolk, 50·9; Lincoln, 73·5; Essex, 52, and Suffolk, 49·5 per cent. The average increase of these six agricultural counties did not exceed 50 per cent. in forty years; while, setting aside the extraordinary increase exhibited in the particular towns already enumerated, the population of six manufacturing counties, viz.: Lancaster, Middlesex, York, W. R., Stafford, Chester, and Durham, including all the agriculturists, increased 112·5.

These facts prove conclusively that machinery, so far from diminishing the aggregate employment of labour in those trades in which it is used, increases it in an extraordinary degree. And not only does it give employment to larger numbers of persons, but their wages are considerably higher. We will not stop to compare the income of an agricultural labourer with that of operatives engaged in the infinite variety of trades carried on in manufacturing towns, in connexion with machinery: but it is sufficient to ask, whence has come the manufacturing population? Its natural growth would have been comparatively insignificant if thousands had not been attracted to the towns from other places. And what could have induced them to leave their homes and engage in new trades but the encouragement offered by more certain employment and higher wages?

It has been shown that machinery has had a beneficial influence upon the employment of labour in the particular trades in which it has been used, and it now remains to consider its effects upon the employment of labour in other trades. In the first place, a few of its obvious results may be noticed. For example, the manufacture and repair of machinery alone gives employment, directly and indirectly, to vast numbers of persons who are unconnected with the particular trades in which the machinery itself is used. Again, the production of all commodities is increased by machinery; and thus the producers of the raw materials of manufactures, the carriers of goods by land and sea, the merchants, the retail-traders, their clerks, porters, and others, must find more employment. It is clear also, that while the manufacturing and commercial population are thus increased by the use of machinery, the cultivators of the soil must receive more employment in supplying them with food.

In this and other ways the general employment of labour is directly extended by machinery. At the same time the application of machinery to existing branches of industry creates new trades and distributes capital into other enterprises which afford employment for new descriptions of labour. A hundred examples of this fact might be cited; of which railways and steam navigation are amongst the most remarkable; but such examples will be superfluous if it can be shown that it is the necessary result of the use of machinery to apply capital to new enterprises. It has been said that machinery cheapens production by reducing the amount of labour expended upon it: it follows that a less amount of capital with the aid of machinery will produce as much as a larger capital without such aid. A portion of capital is thus disengaged, either for increased production in the same trade, or for application to new speculations. In some way it must be employed, or it will yield no profit, and in some form or other it must be ultimately expended in labour. As long as a person can extend the accustomed operations of his own trade with a profit, he is disposed to do so; but as soon as he finds them less profitable than other investments, he changes the direc-

tion of his capital, and seeks new modes of increasing his profits.

There is no truth more certain than that the employment of labour is small or great according to the proportion which capital bears to the number of labourers. Capital is the fund which supports labour, and which must employ it or be unproductive; and thus, if in any country capital be increasing more rapidly than the population, employment will be abundant and wages high; if less rapidly, employment will be scarce and wages low. In the one case, capitalists will be bidding high for labour; in the other, labourers will be bidding against each other for employment. Accumulation of capital is therefore highly conducive to the interests of the labouring population generally, and the use of machinery is especially favourable to accumulation, as may be shown by a simple example. Suppose a man to have a capital of 10,000*l.*, which he is expending annually upon labour in a particular trade, and that his profits are ten per cent., or 1000*l.* a-year. Each year his whole capital is expended, and his means of accumulation are thus restricted to a portion of his annual profits only. But let him invent a machine to facilitate his business, and his position is immediately changed. If this machine should cost 5000*l.*, and the other 5000*l.* be still expended in labour, he may be said to have saved one half of his entire capital in a single year; for instead of spending the whole of it as before, in labour, he is possessed of a durable property which, at a small annual cost, will last for ten or probably twenty years. Nor can it be said that this saving is effected at the expense of labour; for the owner of the machine is placed in a new position in respect to his profits, which prevents him from securing to himself the difference between the amount paid now and that previously paid for labour. To gain a profit of ten per cent. it had been necessary for him, before the invention of the machine, to realize 11,000*l.* annually, being his whole capital and the profits upon it: but now, in order to obtain the same profit, it is sufficient if he realize 6500*l.* only: viz., 500*l.* profit upon his fixed capital of 5000*l.*; 500*l.* for repairs, and wear and tear, calculated at ten per cent.; and 5500*l.* to replace the sum spent upon labour with a profit of ten per cent. He would realize the whole 11,000*l.* as before, if he were able; but he is restrained by competition, which levels the profits of trade. For some time he will most probably obtain more than ten per cent. profit, and so long as he is able to do this, his means of accumulating fresh capital in addition to his machine will be increased, which capital will be expended upon additional labour. But when his profits have been reduced to their former level by competition, society has gained in the price of his goods 4500*l.* a year, being the difference between 11,000*l.* formerly realized by him, and 6500*l.* his present return. But is this amount thus gained by society lost to the labourer? Unquestionably not. As a consumer, he participates in the advantage of low prices, while the amount saved by the community in the purchase of one commodity must be expended upon others which can only be produced by labour. It cannot be too often repeated, that all capital is ultimately expended upon labour; and whether it be accumulated by individuals in large sums, or distributed in small portions throughout the community, directly or indirectly it passes through the hands of those who labour. If a manufacturer accumulates by means of higher profits, he employs more labour; if the community save by low prices, they employ more labour in other forms. So long as the capital is in existence it is certain to have an influence upon the general market for labour.

We are now speaking not of the interests of particular workmen to whose temporary sufferings caused by the use of machinery we have already adverted, but of the general and permanent interests of the working population of a country. As regards these, the statistics of British industry amply confirm all reasoning from principles, and prove beyond a doubt that machinery has had a beneficial influence upon the employment and wages of labour. Any one who will reflect upon the facts which have been noticed above, as disclosed by the Census [CENSUS], can scarcely fail to arrive at the conclusion

that without machinery England could not have supported her present population, or could only have supported them in poverty and wretchedness. Nor must the degradation of a part of the manufacturing population be thoughtlessly attributed to machinery, instead of to moral and social causes, which are independent of it. Into these causes it would be out of place, at present, to inquire; but enough has been said to show, 1st, that machinery by increasing production multiplies the sources of enjoyment, and places them within the reach of a greater number of persons; and 2ndly, that by giving increased employment to labour it enables more persons to enjoy those comforts which it has itself created. These are the elements of social prosperity, and if evils have sprung up with it, like tares with wheat, it is not machinery which has caused them. Wherever the influence of machinery has been felt, wealth has advanced with rapid strides; and though in too many cases religion, virtue, and enlightenment may have lagged behind, the tardiness of their progress is to be ascribed, not to machinery, but to the faulty institutions of men.

MADHOUSE. [LUNATIC ASYLUMS.]

MAGISTRATE, a word derived from the Latin *magistratus*, which contains the same element as *magnus* and *magister*, and signifies both a person and an office. A Roman magistratus is defined to be one who presides in a court and declares the law, that is, a judge. The kings of Rome were probably the sole Magistratus originally, and on their expulsion the two consuls were the Magistratus. In course of time other offices, as those of Praetor and Aedile, were created; and those who filled these offices were elected in the forms prescribed by the constitution, and they had jurisdictio. [JURISDICTION.] The original notion of a magistratus, then, is one who is elected to an office, and has jurisdiction.

In England the term magistrate is usually applied to justices of the peace in the country, and to those called police magistrates, such as there are in London. It has also been applied in other ways; for instance, people have sometimes said that the king is the chief magistrate in the state. But these applications of the term do not agree with its proper sense. A Roman magistratus was elected, and so far he differed from a justice of the peace; he also exercised delegated power in his jurisdiction, in which respect, as well as being elected, he differed from the king of England, who is not elected, and does not exercise delegated jurisdiction, but delegates jurisdiction to others.

MAGNA CHARTA. The terms of the compact between the feudal chief and his dependants underwent frequent changes in the middle ages. When a material alteration was made in the terms of the compact, a record was made of it in writing. These records are called Charters, in the restricted use of a term which is popularly applied to almost every species of early diplomas. The tenants of the various honours, or great tenancies in capite, are seldom without one or more charters which have been granted to them by their lords, by which exemptions or privileges are given, base services are commuted for payments in money, and the mode is settled in which justice shall be administered among them; and even in some of the inferior manors there are charters of a similar kind, by which certain liberties are guaranteed by the lord to his tenants. These charters run in the form of letters, '*Omnibus*,' &c. from the person granting; they set forth the thing granted, and end with the names of persons who were present when the lord's seal was affixed, often ten, twelve, or more, with the date of place and time of the grant.

Such a charter is that called the Magna Charta, which was granted by King John, acting in his twofold character of the lord of a body of feudatories, and king. This charter is often regarded as the constitutional basis of English liberties; but in many of its provisions it seems to have been only a declaration of rights which had been enjoyed in England before the Conquest, and which are also said to have been granted by King Henry I. on his accession. However, if it did not properly found the liberties which the English nation enjoys, or if it were not the original of those privileges and franchises which the barons (or the chief

tenants of the crown, for the names are here equivalent), ecclesiastical persons, citizens, burgesses, and merchants enjoy, it recalled into existence, it defined, it settled them, it formed in its written state a document to which appeal might be made, under whose protection any person who had any interest in it might find shelter, and which served, as if it were a portion of the common law of the land, to guide the judges to the decisions they pronounced in all questions between the king and any portion of the people.

Besides the great charter there was granted at the same time a charter relating to the forests only. There were very extensive tracts of land in England which were uncultivated, and reserved for the pleasure of the king; and there were purlieus to these forests, all of which were subject to a peculiar system of law, many parts of which were oppressive, and from some of which this charter exempted the people.

The independence and rights of the church were also secured by the great charter.

Magna Charta has been printed in a great variety of forms. There are facsimiles of a copy of it which was made at the time, and still exists in the British Museum, and of another preserved at Lincoln, and translations of it into the English language. The provisions of the Magna Charta are numerous, and some of them have fallen into desuetude. The following is the substance of the Great Charter, as given by Blackstone in his 'Commentaries,' who also wrote a treatise on it.

"The Great Charter," says he, "confirmed many liberties of the church, and redressed many grievances incident to feodal tenures, of no small moment at the time; though now, unless considered attentively and with this retrospect, they seem but of trifling concern. But besides these feodal provisions, care was also taken therein to protect the subject against other oppressions, then frequently arising from unreasonable amercements, from illegal distresses or other process for debts or services due to the crown, and from the tyrannical abuse of the prerogative of purveyance and pre-emption. It fixed the forfeiture of lands for felony in the same manner as it still remains; prohibited for the future the grants of exclusive fisheries, and the erection of new bridges, so as to oppress the neighbourhood. With respect to private rights: it established the testamentary power of the subject over part of his personal estate, the rest being distributed among his wife and children; it laid down the law of dower as it hath continued ever since; and prohibited the appeals of women, unless for the death of their husbands. In matters of public policy and national concern, it enjoined an uniformity of weights and measures; gave new encouragements to commerce by the protection of merchant-strangers, and forbad the alienation of lands in mortmain. With regard to the administration of justice: besides prohibiting all denials or delays of it, it fixed the Court of Common Pleas at Westminster, that the suitors might no longer be harassed with following the king's person in all his progresses; and at the same time brought the trial of issues home to the very doors of the freeholders, by directing assizes to be taken in the proper counties, and establishing annual circuits; it also corrected some abuses then incident to the trials by wager of law and of battle; directed the regular awarding of inquests for life or member; prohibited the king's inferior ministers from holding pleas of the crown, or trying any criminal charge, whereby many forfeitures might otherwise have unjustly accrued to the exchequer; and regulated the time and place of holding the inferior tribunals of justice, the county court, sheriff's tourn, and court-leet. It confirmed and established the liberties of the city of London, and all other cities, boroughs, towns, and ports of the kingdom. And lastly (which alone would have merited the title that it bears of the *Great* Charter), it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his peers or the law of the land."

Such a concession from the king was not gained without a violent struggle; in fact he was compelled to yield it by an armed force, consisting of a very large

portion of the baronage, which he was unable to resist. The names of the chiefs are preserved by the chroniclers of the time, and in the charter itself; and whenever mentioned they call up to this day a mingled feeling of respect and gratitude, the respect and gratitude which men pay to those who have obtained for them the extension of political rights. They appear the patriots of a rude age; and the mists of distance and antiquity obscure to us the selfishness and the other evils (if such existed) which were manifested in the contest. The first name is that of Robert Fitz Walter, who belonged to the great family of Clare. The title given to him as head of the host was Marshal of the Army of God and of the Holy Church. Next to him come Eustace de Vesci, Richard de Percy, Robert de Roos, Peter de Brus, Nicholas de Stutevile, Saier de Quenci, earl of Winchester, the earls of Clare, Essex, and Norfolk, William de Mowbray, Robert de Vere, Fulk FitzWarine, William de Montacute, William de Beauchamp, and many others of families long after famous in English history, the progenitors of the antient baronial houses of England.

The charter was sealed in the open field, at a place called Runnymede, between Windsor and Staines; but it was not merely by an accidental meeting of two armies at that place that this act was done there, for it appears by Matthew of Westminster that Runnymede was a place where treaties concerning the peace of the kingdom had been often made. All was done with great solemnity. The memorable day was June 5, 1215.

What was unwillingly granted, it could scarcely be expected would be religiously observed. John himself would gladly have infringed or broken it, as would his son King Henry III., but the barons were watchful of their own privileges, those of the church, the cities, the boroughs, and of the people at large; and King Henry was led to make one or more solemn ratifications of the charter. To keep the rights thus guaranteed fully in the eyes of the people a copy was sent to every cathedral church, and read publicly twice a year.

The work of Sir William Blackstone is entitled 'The great Charter and Charter of the Forest, with other authentic Instruments; to which is prefixed an Introductory Discourse concerning the History of the Charters,' Oxford, 1759, 4to. The late Board of Commissioners on the Public Records caused to be engraved and published an exact fac-simile of the charter, from a copy preserved in the archives of the cathedral church of Lincoln, with other of the greater charters. In the first volume of their work, entitled 'The Statutes of the Realm,' these charters are all printed, with English translations of them.

MAIM or MAYHEM, according to the old law, is such an injury done to the body of a man by force as deprives him of the use of some member which is serviceable in fight as a means of offence or defence. If a man's eye be beaten out, or he is forcibly deprived of a finger by another person, the offence is maim. But the distinction between legal maim and maiming of the body in the common meaning of that term is now obsolete, or nearly so. The offence of maiming is now punished under 7 Wm. IV. & 1 Vict. c. 85. [LAW, CRIMINAL.]

The offender, besides being punished in the name of the crown, is liable to an action of trespass by the injured party, who may in such action recover damages. If the damages given by the jury are not commensurate to the loss, the court may increase them on inspection of the maim.

MAINTENANCE is defined to be when a man maintains a suit or quarrel to the disturbance or hindrance of right; and if he who maintains another is to have by agreement part of the land or debt, &c. in suit, it is called Champerty. Maintenance was an offence at common law, and has also been the subject of several statutes. By the 32 Hen. VIII. c. 9. no person shall bargain, buy or sell, or by any means obtain any pretended rights or titles to any lands, unless he who bargains or sells, or his ancestors, or they by whom he claims the same, have been in possession thereof, or of the reversion or remainder thereof, or taken the rents and profits thereof, by the space of a year next before the bargain or sale, on pain of the seller forfeiting the whole

value of the lands so bargained or sold, and the buyer, knowing the same, also forfeiting the value of such lands. The professed object of the statute was to prevent the inquietness, oppression, and vexation which the preamble mentions as the consequence of the buying of titles and pretended rights of persons not being in possession of the lands sold.

A man may assign his interest in a debt after he has instituted a suit for its recovery, and such assignment of itself is not maintenance. But if the assignment be made on condition that the assignee prosecute the suit, or if the assignee give the assignor any indemnity against the costs of the suit, already incurred or to be incurred, this makes it maintenance.

(Comyn's *Digest*, 'Maintenance.')

MAINTENANCE, SEPARATE. [ALIMONY; DIVORCE.]

MAJOR, a field-officer next in rank below a lieutenant-colonel, and immediately superior to the captains of troops in a regiment of cavalry, or to the captains of companies in a battalion of infantry. His duty is to superintend the exercises of the regiment or battalion, and, on parade or in action, to carry into effect the orders of the colonel. The major has also to regulate the distribution of the officers and men for the performance of any particular service, and he has a temporary charge of the effects appertaining to any individual of the corps, in the event of the absence or death of such individual.

This class of field-officers does not appear to have existed before the beginning of the seventeenth century; and, at first, such officers had the title of *serjeants-major*, a designation borne at an earlier time by a class corresponding to that of the present majors-general of an army. (Grose, vol. i. p. 243.)

No mention is made of either lieutenants-colonel or majors as field-officers in the account of Queen Elizabeth's army in Ireland (1600). But Ward, in his 'Animadversions of Warre' (1639), has given a description of the duties of the latter class, under the name of serjeants-major, from which it appears that those duties were then nearly the same as are exercised by the present majors of regiments. They are stated to consist in receiving the orders from the general commanding the army; in conveying them to the colonel of the regiment, and subsequently in transmitting them to the officers of the companies; also, in superintending the distribution of ammunition to the troops, and in visiting the guard by day or night.

A brigade-major is a staff-officer who performs for a brigade, or in a garrison, duties corresponding to those of a major in a regiment or battalion.

The prices of a major's commission are,—

		Daily Pay.
In the Life and Royal Horse Guards . .	£5350	£1 4 5
In the Dragoons . .	4575	0 19 3
In the Foot Guards (with the rank of colonel) . . .	8300	1 3 0
In the regiments of the line . . .	3200	0 16 0

A serjeant-major of a regiment is a non-commissioned officer, who in general superintends the military exercises of the soldiers: on parade, he has the care of dressing the line.

MAJOR-GENERAL. [GENERAL.]

MALICIOUS INJURIES TO PROPERTY. At common law, mischief perpetrated with whatever motive against the property of another was not punishable criminally, unless the act amounted to felony, was accompanied with a breach of the peace, or affected the public convenience. In other cases the offender was liable only to an action for damages at the suit of the party injured. But the legislature has, at different times, interposed to repress, by penal enactments, injuries to private property of an aggravated nature, committed with the malicious intention of injuring the owner of such property. The different statutory provisions against mischievous acts done wilfully and maliciously were modified, as well as consolidated, by 7 & 8 Geo. IV. c. 30, which also contains a provision rendering it immaterial whether the malice of the offender be against the owner of the property or otherwise. [LAW, CRIMINAL.]

The enactments in this statute with respect to the offence of arson have been

repealed; and now, by 7 Wm. IV. & 1 Vict. c. 89, § 2, it is felony punishable by death to set fire to a dwelling-house, any person being therein. [LAW, CRIMINAL, p. 189.]

For the protection of shipping against malicious mischief several statutory provisions have been made. [LAW, CRIMINAL.]

By 7 Wm. IV. & 1 Vict. c. 89, § 5, it is made felony punishable by death to exhibit false lights or signals with intent to bring any ship or vessel into danger, or to do anything tending to the immediate loss or destruction of ships or vessels in distress. [LAW, CRIMINAL, p. 189.] And by the 4th section it is made felony punishable by death to set fire to, cast away, or destroy any ship or vessel, either with intent to murder any person or whereby the life of any person shall be endangered.

The legislature has in certain cases given relief to persons whose property has been subject to petty but wilful aggressions, by summary conviction (7 & 8 Geo. IV. c. 30, § 24) before a justice of the peace, on which the offender must forfeit and pay such sum of money as shall appear to him a reasonable compensation for the damage, injury, or spoil committed, not exceeding 5*l.*, to be paid, in the case of private property, to the party aggrieved, except where such party is examined in proof of the offence; and in such cases, or in the case of property of a public nature, or wherein any public right is concerned, the money is to be applied towards the county-rate or borough-rate; and if such sums of money together with costs (if ordered) are not paid either immediately or within such period as the justice may appoint, the justice may commit the offender to the common gaol or house of correction, to be kept to hard labour for any term not exceeding two calendar months, unless such sum and costs be sooner paid. This enactment does not extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, or to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game.

By the 28th section any person found committing any offence against this act, whether punishable upon indictment or upon summary conviction, may be immediately apprehended without a warrant, by any peace-officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace.

These summary proceedings before magistrates must be commenced within three calendar months from the commission of the offence. The capital felony of destroying ships of war is mentioned in LAW, CRIMINAL, p. 189.

All the other malicious injuries to property except those here enumerated are non-capital felonies; and the punishments for these several offences, and the statutes relating to them, are mentioned in LAW, CRIMINAL, under 'Felonies, Non-capital,' and 'Misdemeanours,' p. 190, 194, 196, 198, 201, 202, 203, 206, 215.

The provisions of the law of France with respect to malicious injuries to property are to be found in the 3rd section of liv. iii. of the Code Pénal, entitled 'Destructions, Dégradations, Dommages.' Capital punishment is inflicted only against those who set fire to buildings, ships, warehouses, wood-yards (chantiers), forests, underwoods, or crops growing or cut down, or to any combustible matter placed so as to communicate fire thereto. Minor offences in forests are provided for by titre 12 of the Code Forestier.

MANCI'PIUM, MANCIPA'TIO. The right apprehension of these terms is of some importance to those who study Roman authors. The following is the description of *Mancipatio* by Gaius (i. 119, &c.):—"Mancipatio is a kind of imaginary sale, and is a peculiar privilege of Roman citizens. It is effected in the following manner:—There must be present not fewer than five witnesses. Roman citizens, of full age, and also another person, of the same class and condition, to hold the brazen scales, who is called *libripens*. The person who receives *in mancipio*, taking hold of the thing, says, 'I affirm that this man is my property, according to Quirital Law, and I have purchased him with this money (æs) and

these brazen scales.' He then strikes the scales with a piece of money, and gives it to him from whom he receives *in mancipio* as the price. In this manner both slaves and free persons are mancipated, as well as animals, which belong to the class of things *mancipii*, or *mancipi*, such as oxen, horses, mules, asses; lands also (prædia), as well in the city as in the country, which are of the class *mancipi*, such as are the Italic lands, are mancipated in the same way. The mancipatio of lands differs from that of other things in this respect only, that persons, whether free or slaves, cannot be mancipated unless they are present, it being necessary that he who receives *in mancipio* should take hold of that which is given him *in mancipio:* whence in fact comes the term *mancipatio*, signifying that the thing is taken (capitur) by the hand (manu); but it is the practice to mancipate lands which are at a distance."

In this passage Gaius describes generally what "mancipati" is, and by implication, what things admit of "mancipatio," or, in other words, what things are "mancipi." He was led to these remarks by that part of the subject matter of his text which treats of the rights of persons, or *status;* and he prefaces his description of "mancipatio" by stating that all children who are in the power of their parents, and the wife who is in that peculiar relation to her husband when she is said *in manu viri esse* [MARRIAGE, ROMAN], are things *mancipi*, and may be mancipated in the same way as slaves. [ADOPTION.]

All things, as subjects of ownership, were either "res mancipi" or "res nec mancipi:" and there is, observes Gaius (ii. 18, &c.), "a great difference between things 'mancipi' and things 'nec mancipi.' The latter can be alienated by bare tradition or delivery, if they are things corporeal, and therefore susceptible of delivery. Thus the property in a garment, gold, or silver, may be transferred by bare tradition. Lands in the provinces may be transferred in the same way." Thus "mancipatio" was the proper term for expressing sale or transfer of things "mancipi;" and "traditio" for expressing the transfer of things "nec mancipi." (Ulpian, *Frag.* tit. 19.)

The mancipatio was that form of transfer of which we find similar examples in the early history of most countries, and implied originally an actual seisin of the thing transferred. No writing being required, it was necessary that there should be some evidence of the transfer, and such evidence was secured by the mode of transfer which the law required. So far as relates to land, mancipatio in its origin may be presumed to have been equivalent to the feoffment with livery of seisin. [FEOFFMENT.]

There was another mode of alienating things "mancipi," by the form called *in jure cessio*, which, according to Ulpian, was applicable also to things "nec mancipi." The *in jure cessio* was a fictitious action before a competent magistrate at Rome, or a prætor, or before a praeses in a province. The purchaser claimed the thing as his, and the seller either acknowledged his claim or made no defence, upon which the magistrate gave judgment for the purchaser. This form was in effect and was called 'legis actio.' (Gaius, ii. 24.) Its great resemblance to the fictitious suit formerly in use in our own system, called a Fine, might lead to the conjecture that the notion of a Fine was taken by the early practitioners in our courts from the Roman Law; and that this hypothesis is exceedingly probable will be the more apparent, the further any person examines into the connection between the early English and the Roman Law. The *in jure cessio* has apparently a closer resemblance to a Fine than the *transactio* of the Roman Law, to which some writers would refer as the origin of the Fine.

Mancipatio, as Gaius observes (ii. 26), was more in use than the *in jure cessio*, inasmuch as it was easier to transact the business with the assistance of a few friends than to go before a prætor, or a praeses.

Easements (*jura prædiorum*, otherwise called *servitutes*) could be transferred in the case of lands in the city only by the *cessio in jure;* but in the case of lands in the country, also by *mancipatio*. But this observation applies only to Italic

lands; in the provinces, rights of this kind, such as right of road, of conveying water, &c., were matter of contract. [EASEMENT.]

MANDA'MUS is a writ by which the Court of King's Bench, in the name of the reigning king or queen, commands the party to whom it is addressed to do some act in the performance of which the prosecutor, or person who applies for or sues out the writ, has a legal interest; that is, not merely such an interest as would be recognised in a court of equity or in a court of ecclesiastical jurisdiction, but an interest cognizable in a court of common law; the right must also be one for the enforcing of which the prosecutor has no other specific legal remedy. Thus, a copyholder can transfer or alien his customary tenement or estate [COPYHOLD] in no other manner than by surrendering it into the hands of the lord of the manor to the use of the purchaser or surrenderee. The courts of common law formerly took no notice of the right of the surrenderee to call upon the lord for a grant or admittance, and the court of king's bench therefore left the party to seek his remedy in a court of equity, and would not interfere by granting a mandamus. But the obligation on the part of the lord to admit the surrenderee is not merely an equitable liability, because this mode of tranferring property of this nature is founded upon ancient custom, and rights dependent upon custom are matters of common-law cognizance. Of late years the court of king's bench appears to have taken this view of the subject, and has awarded writs of mandamus in all cases where the lord has refused to admit the party to whose use a surrender of the copyhold has been made. Again, the duty of parishioners to assemble in vestry for parochial objects, whether those objects be of a temporal or spiritual nature, is a common-law duty, and a mandamus will be granted to compel the parishioners to meet. But when they are met, the power of the court to interfere further by mandamus depends upon the nature of the act which the parishioners have to do. If the provisions of a statute are to be carried into execution, the act to be done, whatever its nature, is considered a temporal matter, because the construction of statutes belongs especially to the courts of common law. But if the object for which the vestry are assembled be one purely of ecclesiastical cognizance, as the setting up of bells, the purchase of books or vestments necessary for divine service, or the making provision for the repairs of the fabric of the church (delinquencies in which matters are punishable by ecclesiastical censures), the court of king's bench, has no jurisdiction. Again, the court can by mandamus compel the visitor of an eleemosynary foundation to hear an appeal, but it has no further authority than "to put the visitorial power in motion." It cannot compel him to do any specific act as visitor.

The term "mandamus" (we command) is found in a great variety of writs, and those usually distinguished by this name by the old law writers are totally different from the modern writ of mandamus, which appears to be nothing more than the ancient "writ of restitution" enlarged to embrace a great variety of objects, that writ being adapted merely to the purpose of restoring a party to an office from which he has been unjustly removed.

The writ of mandamus is now granted not only to restore a man to an office from which he has been wrongfully amoved, but also to admit to an office to which the party has been duly elected or appointed. It lies for a mayor, recorder, alderman, town-councillor, common-councilman, burgess, and town-clerk,—for a prebendary, master of a free-school, parish-clerk, sexton, and scavenger,—to hold a court-baron, court-leet, or a borough court of record,—to justices, to do an act within the scope of their authority, and which will not subject them to an action,—to restore a graduate in a university to degrees from which he has been suspended—to a corporation, to pay poor-rates where they have not sufficient destrainable property,—to parish officers, to receive a deserted infant,—to permit inspection of documents of a public nature in which the party is interested,—to appoint overseers of the poor,—to swear in churchwardens,—to proceed to the election of a corporate officer,—to grant probate or letters of administration,—to affix the common seal

to an answer agreed to by the majority of the members of a corporation aggregate, —and to allow a poor-rate, in which case the rule for a mandamus is absolute in the first instance.

The mandamus is said to be a prerogative writ; by which is meant,—either that the power to award it is not delegated by the crown to the ordinary judges between party and party, that is, the justices of the common pleas, but is reserved for that court in which the king is supposed to be personally present,—or that it is a writ of grace and favour, granted according to discretion, and not a writ of right, that is, not such a writ as the party applying for it has a right to call upon the court to issue under the clause of Magna Charta by which the king binds himself not to refuse or delay justice or right.

In order to obtain a Mandamus the applicant lays before the court the affidavit of himself or of others presenting the facts upon which his right and interest in the thing to be done, and his claim or title to the remedy, are founded. Upon this application the court, if it see a probable cause for interference, grants a rule calling upon the party against whom the writ is prayed, to show cause why such writ should not be awarded. At the appointed time the party so called upon either does not appear, in which case the rule is made absolute, and the mandamus is awarded as prayed, or he appears and resists the rule, either by insisting upon the insufficiency of the facts disclosed by the affidavits upon which the rule was obtained, or by producing other affidavits which give a different aspect to the transaction. If the resistance be effectual the rule is discharged; if not, the mandamus is awarded.

The writ, in the first instance, issues in an alternative form, requiring the party to do the act, or to show why he has not done it. The party may therefore make a return to the writ saying that he has not done the act required for such and such reasons. Where the reasons returned are insufficient in law, the court quashes the return, and awards a peremptory mandamus requiring the party absolutely, and without allowing him any alternative, to do the act. Where the answer is apparently sufficient, the mandamus is at an end; and if the statements are untrue, the remedy is by action on the case for a false return, though in order to avoid expense and delay the party is allowed in some cases, by the statute 9 Anne, c. 20, and now in all cases, by 1 Wm. IV. c. 21, to engraft an action upon the mandamus itself by traversing the return, that is, by putting in a plea contradicting the allegations contained in such return. (Comyns's *Digest;* Selwyn's *Nisi Prius;* 1 Vict. c. 78.)

MANDATARIUS. [AGENT.]

MANOR (*Manerium*). At the time of the Norman conquest manerius or manerium (from *manere*, to dwell) denoted a large mansion or dwelling. The "manerium" of the Exchequer Domesday is the "mansio" of the Exeter Domesday, each being therefore the equivalent of the Anglo-Saxon or French term used by the officers who made the survey. In France the corresponding word "manoir" has never acquired any other signification than that of a mansion; and an estate possessing the peculiar incidents of an English manor never became so common in France as to require a specific name.

The modern English manor derives its origin from subinfeudation [FEUDAL SYSTEM], as it existed before the modifications of the system of tenures introduced in 1225 by Magna Charta, and the still more important alterations made in 1290 by "The King's Statute of buying and selling Lands," commencing with the words "Quia Emptores Terrarum," and in 1324 by the statute 'De Prærogativâ Regis,' by which statutes, the process of subinfeudation, or of granting land in fee-simple, to be held by the grantee as a tenant or vassal to the grantor, was stopped.

Where a subinfeudation made by A to B extended to the whole of A's land, nothing remained in A but a seigniory with the ordinary feudal incidents of tenure, together with such rents or other services as might have been reserved upon the creation of the subtenure. This interest in A was a seigniory in gross, that is, a seigniory held by itself, unattached to any land, an incorporeal seigniory, termed by

the French feudists "un fief *en l'air.*" But in the case of subinfeudation of *part* of the land, the ordinary mode of proceeding was this:—A, a large proprietor, having a mansion and land at Dale, created a subtenure in a portion of his land by granting such portion to B and his heirs, to hold of A and his heirs, as of A's manerium (mansion) of Dale, which words created an implied condition that B should perform the service of attending, with the other tenants of A holding by virtue of similar subinfeudations, at A's halmote of Dale, that is, at A's court meeting in the hall of A's mansion at Dale (afterwards called A's court-baron of his manor of Dale), for the purpose of deciding judicially all disputes among A's free tenants holding of him by the same tenure as B, in respect of their lands so holden, and also all actions brought by persons claiming such lands.

Upon this subinfeudation being effected, A would continue to be the owner of the mansion of Dale, and of that part of the land of Dale, of which he had made no subinfeudation, in demesne (in dominico suo,)—as his own immediate property; and he would have the seigniory of lands of which B and others had been subinfeoffed, as a seigniory appendant or legally annexed to the mansion of Dale, and to the demesnes of Dale, of which the mansion formed part.

This conjoint or complex estate, taking its denomination from the mansion (manerium), which was considered as its head, and which, in the language of the Year Book of P. 14, Edward II. (Maynard, 426), "drew to itself all the appendancies," by degrees acquired the name of Manerium or Manor.

A Manor therefore *originally* consisted of lands in demesne, upon which the lord had a mansion, and to which lands and mansion, and more especially to the latter, there was appendant a seigniory over freeholders qualified in respect of quantity of estate (*i. e.* by a tenancy for life at the least, if not a tenancy in fee-simple), and sufficient in point of number to constitute a court-baron. These freeholders were called vavasors, and their lands "tenemental lands," *i. e.* lands granted out in tenure, to distinguish them from the lord's demesnes. These tenemental lands, anciently known by the denomination of vavassories, though held of the manor and within the seigniory (or, as it was usually termed, within the fee) of the lord, were not considered as part of the manor; but the services issuing from such tenemental lands were part of the manor and essential to its existence.

Afterwards it was sufficient if the site of a mansion at which the services had been reserved, or, as it was called, the site of the manor, formed part of the demesnes; and, at last, this vestige of the origin of the name of the estate was dispensed with, and if the lord retained any portion of the land, so that there would be some demesnes to which the seigniory over the freehold tenants of the manor, and the services rendered by them, might continue to be appendant, the compound estate called a manor was not dissolved, whether it could be shown that a mansion had ever stood on the part of the demesnes or lands retained or not, and even if the lord had aliened and severed from his demesnes the spot on which the mansion had once stood.

A Manor is commonly said to consist of demesnes and services, which have been called the "material causes;" but other things may also be members and parcel of a manor.

1. The demesnes are those lands within the manor of which the lord is seised, *i. e.* of which he has the freehold, whether they are in his own occupation, or in that of his tenants at will, or his tenants for years. The tenants at will have either a common-law estate, holding at the joint will of the lessor and of the lessee, or a customary estate, holding at the will of the lord according to the custom of the manor. [COPYHOLD.] The tenancy for years of lands within a manor is, in modern times, usually a common-law estate.

2. The services of a manor are, the rents and other services due from freehold tenants holding of the manor. These services are annexed or appendant to the seigniory over the lands holden by such freehold tenants. The lands holden by the freeholders of the manor are holden *of* the manor, but are not *within*, or

parcel of, the manor, though within the lord's fee or manorial seigniory.

Copyholds, being part of the demesnes, are not held of the manor, but are within and parcel of the manor.

3. But though a perfect legal manor cannot exist without demesnes and services, other incorporeal hereditaments, which are not services, may be parcel of the manor, as advowsons, rights of common, rights of way, and other things.

In general, no person can hold courts of justice, except under authority derived from the crown, either by actual grant or by prescription; and the crown may at any time issue process for the purpose of instituting an inquiry by what authority (quo warranto) a subject holds a court of justice. It is a distinguishing feature of the feudal system, to make civil jurisdiction necessarily, and criminal jurisdiction ordinarily, co-extensive with tenure; and accordingly there is inseparably incident to every manor a court-baron (curia baronum), being a court in which the freeholders of the manor are the sole judges, but in which the lord, by himself, or more commonly by his steward, presides. The jurisdiction of the court-baron extends over all personal actions in which the debt or damages sought to be recovered are under 40*s.*; and real actions in respect of lands held of the manor could not have been brought in any other court, except upon an allegation that the lord of the manor had in the particular instance granted or abandoned his court to the king (quia dominus remisit curiam). To a quo warranto therefore for holding a court-baron, it is a sufficient answer—that the defendant has a manor. As this court was essential to the due administration of justice in questions respecting the right of property held of the manor arising amongst the lord's tenants, there could never have been a perfect manor without a sufficient number of freeholders to constitute the court-baron, which number must consist of three, or two at the least; three being necessary where the litigation was between two of the freeholders. The practice, which prevailed in France, &c., of *borrowing* suitors from the court of the lord paramount, to make up a sufficient number of freeholders to constitute a court, does not appear to have been adopted in England.

4. Some things are popularly supposed to be incident to a manor, which have no necessary connexion with it. Thus the ownership of wastes within the district over which the manor extends is frequently called a *manerial* right, though the right and interest of the lord in wastes, over which no acts of ownership can be shown to have been exercised by him, rests entirely upon the presumption in favour of the lord, arising out of the circumstance of his being the present owner of the demesne lands, and the former owner of the tenemental lands which adjoin such wastes. The same presumption would arise in favour of any other owner of an extensive district. It is however true that lords of manors in their original grants, both to their freehold and to their copyhold tenants, usually reserved the waste lands, giving to the freeholders and copyholders merely rights of common over wastes. Hence it arises that, in point of fact, manors, in proportion to their extent, frequently contain a much larger portion of wastes than other estates. From this cause, and from the circumstance of manors being generally large properties in the hands of the nobility and gentry, several statutes have given to lords of manors privileges in respect of game, and the appointment of gamekeepers, which other estates, though they may be of greater extent and value, do not enjoy. [GAME LAWS.] But except in particular cases in which a free-chase, free-warren, or legal park is, by royal grant or prescription, annexed to a manor, the lord of a manor has no privilege, in respect of game, beyond what is given him by these modern statutes.

Copyholds are a common incident to the demesnes of a manor, but there are many manors in which this species of tenure does not appear to have ever existed, and many more in which it has been long extinct; and though there are now no copyholds unconnected with a manor, the custom of demising by the lord's rolls appears to have formerly been common to every lord or freeholder who had demesnes which were held in villenage. So the right to have a court-leet is

a royal franchise [LEET], under which the grantee holds a court of criminal jurisdiction in the king's name, over the resiants (residents) within a particular district. This privilege may be granted to persons who are not lords of manors; and where the grantee has a manor, the limits of the manor and of the leet are not always co-extensive.

Since the statutes of Quia Emptores and De Prærogativâ Regis no manors have probably been created; and it has been commonly said that no new manor could afterwards be created. But as a proposition of law this appears to be stated too broadly.

Practically, however, no entirely new manors are now created; but where, upon the partition of a manor, part of the demesnes and part of the services, including suit of court of a sufficient number of freehold tenants to constitute a court-baron, are assigned to one parcener, joint-tenant, or tenant in common, and other parts of the demesnes and services to another parcener, &c., each party has a manor, and may hold a court-baron. It is also said that if a manor extends into several townships, the lord may create separate manors by conveying the demesnes and services in township A to one, and those in township B to another.

A manor is not destroyed by the loss of those incidents which, though members, and forming part of the manor, are not, like demesnes and services, the "material causes of a manor." Nor will the legal existence of the manor be affected by the alienation of *part* of the demesnes, or by the alienation or extinction of *part* of the services, or by the extinction of all the copyholds. But upon the alienation of all the demesnes, or the alienation or extinction of all the services, the manor ceases.

Manors in Ancient Demesne are those manors which, though now mostly in the hands of subjects, formed part of the royal domain at the time of the Conquest, and are designated in Domesday as "terra regis." The peculiarity of these manors is, that there exists in them a particular class of tenants possessing certain customary privileges, supposed, by Lord Coke and others, to be derived from the indulgence of the crown in matters "pertaining to the king's husbandry." They were formerly called "tenants in socage in ancient tenure," but are now commonly known as "tenants in ancient demesne," a term not in itself very accurate, since all tenants within these ancient demesne manors, whether copyholders or leaseholders, and even the lord himself, are strictly speaking tenants *in* ancient demesne. In these customary tenures the freehold is not in the lord, but in the tenant, who is therefore called a customary *freeholder;* and it does not appear to be necessary to the continuance of the manor that there should be any other freehold tenants, though lands may be held of a manor in ancient demesne by the ordinary freehold tenure, which lands are called lands in frank-fee by way of distinguishing them from the customary freeholds held by the "tenants in socage in ancient tenure," now called "tenants in ancient demesne."

Lord Coke enumerates six privileges as annexed for this peculiar tenure. (4 *Inst.*, 269; Bac., *Abr.*, 'Ancient Demense;' Com., *Dig.*, 'Ancient Demense.')

Manors in Border Counties.—The exposed state of the northern borders of England, liable to hostile incursions in time of war, and scarcely less in times of nominal peace, created a peculiar species of tenure in the manors in the four northern counties. Persons holding by this tenure are called customary freeholders; though here the *freehold* is in the lord, and the timber and mines belong to him, and not (as in the tenure in ancient demesne) to the tenants; but they are so called because they are allowed the privilege of passing their estates, as freeholders do, by feoffment and livery, a privilege perhaps derived from the irregularity with which the customary courts of the manor were held, and from the necessity of allowing persons whose tenure of land and of life was so uncertain to make immediate dispositions of their property.

Manors, Assessionable, a term peculiar to that part of the domain of the duke of Cornwall which is situate within the county of Cornwall, consisting of seventeen manors, namely, Launceston, Tre-

maton, Tyntagell, Restormel, Stoke-Climsland, Tybeste, Tewington, Helston-in-Kerrier, Moresk, Tywarnhaile, Penkneth, Penlyn, Rellaton, Helston-in-Trigshire, Liskeard, Calstock, and Talskydy.

The earls and dukes of Cornwall, and, when no earl or duke, the crown, have sent from time to time (commonly every seven years) certain persons commissioned to visit these manors in succession, and to *assess* the lord's demesnes, *i.e.* to let them at such rents and upon such terms as might appear to them to be advantageous to the duchy. The courts held by the commissioners for the purpose of exercising the authority thus delegated to them were called *assessions*, or courts of *assession*. The course usually was to let the land until the next assession. From the conventions (covenants or engagements) entered into by the persons to whom those demesnes were so arrented, the interest demised was called a tenure *in conventione*, and the tenants were styled conventionaries. These demises were made both to freemen and villeins; the former being called free conventionaries, the latter villein or native conventionaries. The latter class appear to have become extinct in the sixteenth century.

By degrees the conventionary tenants acquired an inheritable interest in the certainty of the renewal of their holdings in favour of themselves and their descendants at each successive assession. The conventionary tenant thus acquired, like a copyholder of inheritance, an interest freehold in point of duration, without a freehold tenure.

In conventionary tenements the minerals belong to the lord, and not to the customary tenant; as it was held upon a trial at bar in 1829, which lasted seven days (*Rowe* v. *Brenton*, 3 Mann. and Ryl., 133-364.)

MANSION. [MANOR.]

MANSLAUGHTER. [LAW, CRIMINAL; MURDER.]

MANUMISSION. [SLAVE.]

MARINE INSURANCE. [SHIPS.]

MARINES, men embodied to serve as soldiers on board of ships of war in naval engagements; and on shore, in the event of a descent being made upon an enemy's coast. In the British service they also assist occasionally in performing some of the operations connected with the working of the ship; they cannot however be be sent aloft at the command of a naval officer.

Originally in this country, as well as in France, the national fleets were composed of merchants' ships, which were armed on occasion for war; and then there were no soldiers particularly destined for the naval service. The first troops of this kind in France were men skilled in the practice of the useful trades, who, when unemployed by the government, lived on shore on half-pay; receiving only the full pay when called upon to serve at sea. This regulation did not, however, long subsist; and, subsequent to the administration of Cardinal Richelieu, companies of marine soldiers have been constantly retained on full pay.

It is not precisely known at what period distinct corps were appointed, in Britain, to this branch of the public service. In 1684 mention is made of the Duke of York's maritime regiment of foot; and in the reign of William III. several regiments were placed on the establishment of the navy, but these were subsequently disbanded. At that time the marine soldiers seem to have been retained as persons in training to become good seamen; and in Burchet's 'Naval History,' quoted by Grose ('Mil. Antiq.,' vol. i.), it is said that they were discharged from the regiments and entered on the ship's books as foremast-men as soon as they became qualified to serve as such.

In the beginning of Queen Anne's reign (1702), six regiments of maritime soldiers were raised; and among the regulations concerning their service it is stated that they were to be quartered, when on shore, near the principal seaports. Whether at sea or on shore, they were to be paid at the same rate as the land forces, and the same deductions were to be made for clothing. At sea they were to be allowed provisions equal in every respect to the shares of the seamen, without suffering any diminution of pay on that account.

In 1749, the then existing regiments of marine soldiers, ten in number, were disbanded; and six years afterwards, on the recommendation of Lord Anson, there were raised 130 companies, consisting in all of above 5000 men, who were put under the immediate command of the lords of the Admiralty, and whose head-quarters were appointed to be at Plymouth, Portsmouth, and Chatham. The corps of marines, as it was then called, has subsequently been considerably increased; in 1759 it numbered 18,000 nen; and during the late war its strength amounted to about 20,000 men. An additional division was, by an order of council in 1805, established at Woolwich; and there are two companies of marine artillery, whose head-quarters are at Portsmouth.

The marines are now clothed and armed in the same manner as the infantry of the line, and, like all the other royal regiments, their scarlet uniform has blue facings. In an engagement at sea, they annoy the enemy by a fire of musketry from the tops and deck; and they repel with the bayonet any attempt to board the ship. The gallant *jollies*, as the marines are familiarly called, have often distinguished themselves when acting on shore; and their meritorious services at the taking of Belleisle (1761), in the battle of Bunker's Hill (1775), in the defence of Acre (1709), and in 1837, under Lord John Hay, on the coast of Spain, have earned for themselves a lasting reputation.

The royal corps is commanded by a lieutenant and a major-general, who are naval officers holding, in addition to their rank as such, those military titles. There are also four colonels-commandant of divisions, besides four colonels and second commandants. No commissions in the corps are obtained by purchase; and the officers of marines rise in it by seniority, as high only however as the rank of colonels-commandant.

MARITIME LAW. [ADMIRALTY COURTS; SHIPS; INTERNATIONAL LAW.]

MARKET, in law Latin *mercatum*, a public place and fixed time for the meeting of buyers and sellers. A legal market can exist only by virtue of a charter from the crown or by immemorial usage, from which it will be presumed that a royal charter once existed, although it can be no longer produced. A market is usually granted to the owner of the soil in which it is appointed to be held, who, as such grantee, becomes the owner, or lord, of the market. In upland towns, that is, towns which, not being walled, had not attained the dignity of boroughs, markets were frequently granted to lords of manors; but in walled towns or boroughs, particularly in such as were incorporated, the ownership of the soil having usually, by grant from the crown, or other lords of whom the borough was originally holden, been vested in the incorporated burgesses, the practice has commonly been to grant markets to the municipal body.

The prerogative of conferring a right to hold a market is however subject to this limitation, that the grant must not be prejudicial to others, more especially to the owners of existing markets. In order that the crown may not be surprised into the making of an improper grant, the first step is to issue a writ Ad quod damnum, under which the sheriff of the county is to summon a jury before him to inquire whether the proposed grant will be to the damage of the king or of any of his subjects. This writ must be executed in a fair and open manner, and the sheriff is bound to receive evidence tendered against, as well as in favour of, the grant. But as the writ does not purport to affect the interest of any person in particular, it is not necessary that notice should be given of the time or place at which it is meant to be executed. Notwithstanding a finding by the jury that the proposed market will not be injurious, any party who conceives that his interests are affected by the grant when made, whether he appeared upon the inquiry under the writ Ad quod damnum or not, may traverse the finding, or sue out a writ of Scire facias, which, after reciting the alleged injury, calls upon the grantee, in the name of the crown, to show cause why the grant should not be cancelled. If a new market be set up without any grant from the crown, the party is liable to be called upon by the crown by the writ of Quo warranto, to show by what warrant he exercises such a franchise

[LIBERTY]; and he is also liable to an action on the case for damages, at the suit of any person to whose market, or to whose property, the market so set up by the defendant is a nuisance. A new market is presumed to be injurious to another held within the distance of twenty miles, even though it be on a different day; but this presumption may be rebutted.

Formerly markets were held chiefly on Sundays and holidays, for the convenience of dealers and customers, who were brought together for the purpose of hearing divine service. But in 1285, by 13 Edward I. c. 5, fairs and markets were forbidden to be held in churchyards; and in 1448, by 27 Henry VI. c. 5, all showing of goods and merchandise, except necessary victuals, in fairs and markets, was to cease on the great festivals of the church, and on all Sundays except the four Sundays in harvest. The holding of fairs and markets for any purpose on any Sunday was prohibited in 1677, by 29 Charles II. c. 7.

The grantee of a market has a court of record called a court of pie-powder (pieds pouldreux, 'dusty feet'), for the prompt decision of matters arising in the market. Such a court being considered necessary for the expedition of justice and for the support of the market, the power for holding it is incident to a grant of a market, even though the royal letters patent by which the grant is made be entirely silent on the subject.

Sales in markets may be of goods actually brought within the precincts of the market, or of goods not so brought. Goods not within the precincts of the market are sold sometimes by sample, sometimes without sample. Where goods are usually brought into the market for sale, it is incumbent on the lord of the market to take care that every thing be sold by correct and legal weights and measures.

For the security of dealings in markets, contracts were formerly required to be made in the presence of an officer appointed for that purpose by the lord of the market, for which service he received from the buyer a small remuneration called market-toll.

It is a rule of the common law that every sale in market-overt (open market) transfers to the buyer a complete property in the thing sold; so that however defective the title of the vendor may be, that acquired by the vendee is perfect, even where the property belongs to a person who is under legal disability, as an infant, a married woman, an idiot, or a person in prison or beyond sea. In the city of London every shop is market-overt for goods usually sold there.

But this rule is subject to certain exceptions. A sale in market-overt does not affect the rights of the crown: nor does it affect the rights of others, unless the sale be in an open place, as a shop, and not a warehouse or other private part of the house, so that those who go along cannot see what is doing; it must not be in a shop with the shop-door or windows shut, so that the goods cannot be seen. The articles bought must be such as the party usually deals in. The sale must be without fraud on the part of the buyer, and without any knowledge on his part of any want of title in the vendor. If the seller acquire the goods again, the effect of the sale in barring the true owner is defeated. There is no transfer of property if the goods are given or pawned; and if sold to the real owner it is not a contract of sale. The sale must be between sunrise and sunset, and must be commenced and completed in the market.

By 21 Henry VIII. c. 2, 'If any felon rob or take away money, goods, or chattels, and be indicted and found guilty, or otherwise attainted upon evidence given by the owner or party robbed, or by any other by their procurement, the owner or party robbed shall be restored to his money, goods, or chattels.' Since this statute, stolen goods, specified in the indictment, have, upon the conviction of the offender, been restored to the prosecutor, notwithstanding any sale in market-overt.

As stolen horses can easily be conveyed to distant markets, the legislature has frequently attempted to protect the owner against the consequences of a sale in market-overt. By 2 and 3 Philip and Mary, c. 7, 'No sale of a horse stolen binds the

property, unless it stand or be ridden an hour together between ten o'clock and sunset, in an open part of the market, and all parties to the bargain come with the horse to the book-keeper and enter the colour, and one mark, at the least, of the horse sold, and pay the toll, if any due, or else a penny.' The 31 Elizabeth, c. 12, contains numerous provisions on this matter.

By 1 James I. c. 21, 'No sale, exchange, pawn, or mortgage, of any jewels, plate, apparel, household stuff, or other goods, wrongfully purloined, taken, robbed, or stolen, and sold, uttered, delivered, exchanged, pawned, or done away, within London and its liberties, or Westminster, or Southwark, or within two miles of London, to any broker or pawn-taker, shall work or make any change or alteration of the property or interest.'

A market is generally appointed to be held once, twice, or three times in a week, for the current supply of commodities, mostly of provisions. A large market held once or twice a year is called a fair; and, according to Lord Coke, a large fair held once a year is a mart.

Fairs have all the legal incidents of markets, and are subjected to further regulations by 2 Edward III. c. 15, one of which requires, that at the opening of the fair, proclamation be made of the time that it is to continue.

MARQUE, LETTERS OF. [PRIVATEER.]

MARQUIS, a title of honour in England. Persons who have this title are the second in the five orders of English nobility: dukes are the first. The younger sons of marquises are addressed as "my lord," as Lord Henry Petty, Lord John Thynne.

All titles of honour seem to have been originally derived from offices. The term marquis designated originally persons who had the care of the marches of a country. The word "marches" is the plural of "mark," which in its political sense signfies "boundaries." The "marches" in England, in the earlier period of our history, were the lands on the borders of England and Scotland, and England and Wales. In Germany the corresponding term to marquis is *markgraf* (margrave), which is "lord of the marches," or according to the German form, of the "mark."

There were no English marquises before the reign of Richard II. In the reign of Edward III. a foreign marquis, the marquis of Juliers, was made an English peer with the title of earl of Cambridge, and this circumstance probably suggested to King Richard the introduction of this new order of nobility. The person on whom it was conferred was his great favourite Robert de Vere, earl of Oxford, who was created duke of Ireland and marquis of Dublin in 1385. But three years after he was attainted and his honours forfeited.

In 1397 one of the illegitimate sons of John of Gaunt was created marquis of Dorset, but he was soon deprived of the title, and his son had only the earldom of Somerset. The title of marquis of Dorset was however revived in the same family in 1443, when also William de la Pole was made marquis of Suffolk.

In 1470 John Nevil, earl of Northumberland, brother to Richard Nevil, earl of Warwick, the king-maker, was made marquis Montacute, but he was soon after slain at the battle of Barnet, and the title became lost.

In 1475 Thomas Grey, earl of Huntingdon, son to the queen of King Edward IV., by her former husband, was made marquis of Dorset; and in 1489 Maurice Berkeley, earl of Nottingham, was made marquis of Berkeley. Henry VIII. made Henry Courtenay, earl of Devonshire, marquis of Exeter; and he made Anne Boleyn, a little before his marriage with her, marchioness of Pembroke. William Parr, earl of Essex, brother of Queen Catherine Parr, was created marquis of Northampton by King Edward IV.; and William Powlett, earl of Wiltshire, marquis of Winchester.

All these titles had become extinct in 1571, except that of marquis of Winchester. This title still continues in the male representative of the original grantee, though for a century or more it was little heard of, being lost in the superior title of duke of Bolton.

Queen Elizabeth made no new marquis, nor did King James I. till the fifteenth

year of his reign, when his great favourite, George Villiers, was created marquis of Buckingham. Charles I. advanced the earls of Hertford, Worcester, and Newcastle to be marquises of those places; and Henry Pierrepoint, earl of Kingston, was made marquis of Dorchester.

Charles II. advanced the earl of Halifax to be marquis of Halifax in 1682, and James II. made the earl of Powis marquis of Powis in 1687.

A new practice in relation to this title was introduced at the Revolution. This was the granting of the title of marquis as a second title when a dukedom was conferred. Thus when Schomberg was made duke of Schomberg he was made also marquis of Harwich; when the earl of Shrewsbury was made duke of Shrewsbury he was also made marquis of Alton; and when the earl of Bedford was made duke of Bedford he was also made marquis of Tavistock. There were many other creations of this kind in the reign of William III., and several of marquisates only. Of the existing dukes ten have marquisates in the second title, which is borne by the eldest son during the life of the father.

The only marquis who sits in the House of Peers as a marquis, and whose title dates before the reign of George III., is the marquis of Winchester. The other marquises are all of recent creation, though most of them are old peers under inferior titles.

The title seems not to have been known in Scotland till 1599, when marquises of Huntley and Hamilton were created.

MARRIAGE is a contract by which a man and a woman enter into a mutual engagement, in the form prescribed by the laws of the country in which they reside, to live together as husband and wife during the remainder of their lives.

Marriage is treated as a civil contract even by those Christians who regard it as a sacrament, and as typical of the union between Christ and the church. The religious character of the transaction does not arise until there has been a complete civil contract, binding according to the laws of the country in which the marriage is contracted. The authority of the sovereign power in regulating and prohibiting marriages is therefore not affected by the superinduced religious character.

Among Protestants marriage has ceased to be regarded as a sacrament, yet in most Protestant countries the entrance into the marriage state is accompanied with religious observances. These are not, however, essential to a valid marriage any further than the sovereign power may have annexed them to, and incorporated them with, the civil contract.

After the establishment of Christianity it became usual to make the marriage-promise in the presence of the assembled people, and to obtain at the same time the blessing of the priest upon the union, except when one of the parties had been married before, in which case no nuptial benediction was antiently pronounced, by which distinction it was perhaps intended to intimate that second marriages, though tolerated, were not approved by the church. So late however as the twelfth century, in a decretal epistle of Alexander III. to the bishop of Norwich, the pope says, "We understand from your letter that a man and woman mutually accepted one another without the presence of any priest, and without the observance of those solemnities which the Anglican church is wont to observe, and that before consummation of this marriage he had contracted marriage with another woman, and consummated that marriage. We think right to answer, that if the man and the first woman accepted one another de præsenti, saying one to another, 'I accept thee as mine, and I accept thee as mine,' although the wonted solemnities were not observed, and although the first marriage was not consummated, yet the woman ought to be restored to her husband; since after such consent he neither should nor could marry another."

Private marriages, designated *clandestine* marriages by the clergy, continued to be valid till the Council of Trent, which, after anathematizing those who should say that private marriages theretofore contracted by the sole consent of the parties were void, decreed, contrary to the opinion of 56 prelates, that thence-

forward all marriages not contracted in the presence of a priest and two or three witnesses should be void. This decree, being considered as a usurpation upon the sovereign power, which alone can prescribe whether any and what formalities shall be required to be added to the consent of the parties in order to constitute a valid marriage, has never been received in France and some other Catholic countries.

A marriage was clandestine if contracted otherwise than in public, that is, in face of the church; and it was called an *irregular* marriage if it was clandestine, or if, though not clandestine, it was contracted without the benediction of a priest in the form prescribed by the rubric, the intervention of a priest having latterly been required in all cases, even though one of the parties were a widower or a widow. Clandestinity and irregularity subjected the parties to ecclesiastical censures, but did not affect the validity of the marriage.

The decrees of the Council of Trent had no force in England. A marriage by mere consent of parties, until the passing of the Marriage Act in 1753, constituted a binding engagement; though if application were made to the ecclesiastical courts for letters of administration, &c., under a title derived through such irregular marriage, those courts sometimes showed their resentment of the irregularity by refusing their assistance, more especially where the non-compliance with the usual formalities could be traced to disaffection to the Established Church. What the formalities required by the Church before the Marriage Acts were, it is now immaterial to consider. Such of them as are not incorporated into any of the Marriage Acts are now of no force for any purpose.

To constitute a valid marriage, as well before as since the Marriage Acts, it is necessary, 1st, that there should be two persons capable of standing in the relation of husband and wife to each other; 2ndly, that they should be willing to stand in that relation; and 3rdly, that they should have contracted with one another to stand in that relation.

1. The capacity of standing in the relation of husband and wife implies that at the time of the contract there should be no natural or legal disability. Total and permanent disability on either side to consummate marriage will render the contract void. Temporary disability from disease does not affect the validity of a marriage. Temporary disability from defect of age does not invalidate the marriage, but it leaves the party or parties at liberty to avoid or to confirm such premature union on attaining the age of consent, which for males is 14, and for females 12. Before the abolition of feudal tenures, when the lords were entitled to sell the marriages of their male and female wards, infantine marriages were very common, fathers being anxious to prevent wives and husbands from being forced upon their children after their death, and lords being eager either to secure the prize for their own family, or to realise the profit resulting from a sale. A person who is already married is under a legal disability to contract a second marriage whilst the first wife or husband is alive; and although there may have been the strongest grounds for believing that the first wife or husband was dead, the children of the second marriage would not in England derive any benefit from the absence of moral guilt in their parents, though in France and some other countries the issue of marriages so contracted, bonâ fide, are treated with greater indulgence.

Consanguinity within certain degrees, and affinity also, is a legal impediment to marriage. The degree of nearness which shall disable parties from uniting in marriage varies in different countries, and has varied at different periods in our own. [AFFINITY.]

The impediment to marriage arising out of consanguinity applies in the same degree to illegitimate as to legitimate consanguinity, and the impediment resulting from affinity is created by illicit connexion as well as by marriage. The Council of Trent restricted the impediment of affinity arising out of illicit connexion to the second degree.

2. Each party must have the will to contract marriage with the other. An idiot therefore, who cannot understand

the nature of the conjugal relation, is incapable of contracting marriage; and also a lunatic, except during a lucid interval. But however absurd it may appear, children are presumed to have sufficient intelligence to understand the nature of the marriage engagement at seven; and though the contract is not absolutely binding upon them until they reach the age of consent, still the marriage of a child above the age of seven would prevent its forming a second marriage until the age of consent, as until that age it cannot dissent from the first marriage.

3. There must be an actual contract of marriage. This, at common law, might be by words of present contract, which would, without more, constitute a perfect marriage,—or by words of future contract, followed by cohabitation.

The unlimited freedom of marriage was first limited in England by the Marriage Act of 1753 (26 Geo. II. c. 33), the principal provisions of which form the basis of the present law. Many of these provisions are taken from the canon law, an observance of which was, before this statute, necessary to constitute a *regular* marriage, though a marriage contracted without them was *valid*.

The restrictions upon the common-law freedom of marriage are now embodied in two statutes.

The 4 Geo. IV. c. 76, contains the following provisions:—Banns of matrimony are to be published in the church, or a public chapel in which banns are allowed to be published, of the parish or chapelry wherein each of the parties dwells, immediately after the second lesson of morning service, or of evening service if there be no morning service, upon three Sundays preceding the solemnization (§ 2). Notice of the names of the parties, their place of abode, and the time during which they have dwelt there, is to be delivered to the minister seven days before the first publication (§ 7). Banns are to be republished on three Sundays, if marriage do not take place within three months after publication is completed (§ 9). No licence of marriage (that is, dispensation from the obligation to publish banns) is to be granted to solemnize marriage in any church or chapel not belonging to the parish or chapelry within which the usual place of abode of one of the parties has been for fifteen days immediately before the granting of the licence (§ 10). Extra-parochial places are to be taken to belong to the parish or chapelry next adjoining (§ 12). Upon obtaining a licence, one of the parties must swear that he or she believes that there is no impediment of kindred or alliance (consanguinity or affinity), or of any other lawful cause, nor any suit commenced in any ecclesiastical court, to hinder the marriage, and that one of the parties has, for fifteen days immediately preceding, had his or her usual place of abode within the parish or chapelry; and where either of the parties, not being a widower or widow, is under the age of twenty-one, that the consent of the person or persons whose consent is required by that act has been obtained, or that there is no person having authority to give such consent (§ 14). The father, if living, of any party under twenty-one, not being a widower or widow, or, if the father be dead, the guardian or guardians of the person of such party, or one of them, and in case there be no guardian, then the mother of such party if unmarried, and if there be no mother unmarried, then the guardian or one of the guardians of the person appointed by the Court of Chancery, has authority to give consent to the marriage of such party; and such consent is required, unless there be no person authorised to give it (§ 16). In case of the father, guardian, or mother being *non compos mentis*, or beyond sea, or unreasonably or from undue motives refusing or withholding consent, any person desirous of marrying may petition the lord-chancellor, master of the rolls, or vice-chancellor; and in case the marriage proposed shall, on examination, appear to be proper, the lord-chancellor, &c. may judicially declare the same to be so; and such declaration shall be equivalent to consent of the father, &c. (§ 17.) If a marriage be not had within three months after licence, marriage cannot be solemnized without a new licence or banns (§ 19). The archbishop of Canterbury is authorized to grant special licences to marry at any convenient time

or place (§ 20). If any persons knowingly and wilfully intermarry in any other place than a church or such public chapel, unless by special licence, or, knowingly and wilfully, intermarry without the publication of banns and licence, or, knowingly and wilfully, consent to the solemnization of such marriage by a person not being in holy orders, the marriage is null and void (§ 22). (It has been held, that in order to invalidate a marriage under this section, both parties must know the irregularity of the proceeding.) When a marriage is solemnized between parties, both or one of them being under age, by false oath or fraud, the marriage is valid, but the guilty party is to forfeit all property accruing from the marriage (§ 23). After the solemnization of any marriage by banns or licence, no proof can be required of actual dwelling or usual place of abode, nor can any evidence be received to prove the contrary (§ 26). Marriages are to be solemnized in the presence of two witnesses besides the minister, and registered.

The principal provisions of 6 & 7 Wm. IV. c. 85, which was passed chiefly in favour of those who scrupled at joining in the services of the Established Church, are these:—Marriages may be solemnized on production of the registrar's certificate, under the provisions of that act, in like manner as after publication of banns (§ 1). In every case of marriage intended to be solemnized according to the rites of the Church of England, unless by licence or special licence, or after publication of banns, and in every case of marriage intended to be solemnized according to the usages of the Quakers or Jews, or according to any form authorized by that act, one of the parties is to give notice, according to the form set out in the act, to the superintendent registrar of the district or each of the districts within which the parties have dwelt for seven days then next preceding, stating the name and surname, and the profession or condition, and the dwelling-place of each, and the time (not less than seven days) during which each has dwelt therein, and the church or building in which the marriage is to be solemnized (§ 4).

After the expiration of seven days, if the marriage is to be solemnized by licence (that is, from the surrogate, or officer of the ecclesiastical court), or of twenty-one days, if without licence, the superintendent registrar, upon request, is to issue a certificate, provided no lawful impediment be shown, stating the particulars set forth in the notice, the day on which it was entered, that the full period of seven days or of twenty-one days has elapsed since the entry of such notice, and that the issue of such certificate has not been forbidden by any authorized person (§ 7). (This provision does not apply to marriages by licence celebrated according to the rites of the Church of England.) The like consent is required to a marriage solemnized by licence, as would have been required to marriages by licence before the passing of the act (that is, by 4 Geo. IV. c. 76, §§ 16, 17); and every person whose consent to a marriage by licence is required by law is authorized to forbid the issue of the superintendent registrar's certificate (§ 10). Every superintendent registrar may grant licences for marriage in any building registered within any district under his superintendence, or in his office (§ 11). Before any licence for marriage can be granted by a superintendent registrar, one of the parties must appear personally before him, and must, in case the notice of the intended marriage has not been given to the same superintendent registrar, deliver to him the certificate of the superintendent registrar or registrars to whom such notice has been given; and such parties must make oath, affirmation, or declaration that he or she believes that there is not any impediment of kindred or alliance, or other lawful hindrance to the marriage, and that one of the parties has for fifteen days immediately before the day of the grant of the licence (or rather the day of the making of the oath, &c.), had his or her usual place of abode within the district in which such marriage is to be solemnized; and where either party, not being a widower or widow, is under twenty-one, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there

is no person having authority to give such consent (§ 12). No marriage after notice, unless by virtue of a licence by the superintendent registrar, is to be solemnized or registered until after the expiration of twenty-one days after entry of notice, and no marriage is to be solemnized by the licence of any superintendent registrar, or registered, until after the expiration of seven days after the day of the entry of notice (§ 14). Whenever a marriage is not had within three calendar months after notice entered by the superintendent registrar, the notice and certificate, and any licence granted thereupon, and all other proceedings, become utterly void; and no person can proceed to solemnize the marriage, nor can any registrar register the same, until new notice, entry, and certificate (§ 15). The certificate of the superintendent or superintendents is to be delivered to the officiating minister, if the marriage is to be solemnized according to the rites of the Church of England; and such certificate or licence is to be delivered to the registering officer of Quakers for the place where the marriage is solemnized, if the same shall be solemnized according to their usages; or to the officer of a synagogue by whom the marriage is registered, if to be solemnized according to the usages of persons professing the Jewish religion; and in all other cases it is to be delivered to the registrar present at the marriage (§ 16).

Any proprietor or trustee of a separate building certified according to law as a place of religious worship may apply to the superintendent registrar, in order that such building may be registered for solemnizing marriages therein; and in such cases he is to deliver to the superintendent registrar a certificate signed in duplicate by twenty householders, that such building has been used by them during one year as their usual place of public religious worship, and that they are desirous that the place shall be registered; each of which certificates is to be countersigned by the proprietor or trustee by whom the same is to be delivered, and the superintendent registrar is to send both certificates to the registrar-general, who is to register such building accordingly, and indorse on both certificates the date of the registry, and to keep one certificate with the other records of the general register office, and to return the other certificate to the superintendent registrar, who is to keep the same with the other records of his office; and the superintendent registrar is to enter the date of the registry of such building, and is to give a certificate of such registry under his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and is to give public notice of the registry thereof, by advertisement in some newspaper circulating within the county and in the 'London Gazette' (§ 18).

After the expiration of the twenty-one days, or of seven days, if the marriage is by licence (that is, from the surrogate), it may be solemnized in the registered building stated in the notice, between and by the parties described in the notice and certificate according to such form and ceremony as they may see fit to adopt: every such marriage to be solemnized with open doors between eight and twelve in the forenoon, in the presence of some registrar of the district in which the building is situate, and of two witnesses.

In some part of the ceremony, and in the presence of registrar and witnesses, each of the parties is to declare—

> "I do solemnly declare, that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D."

And each of the parties is to say to the other—

> "I call upon these persons here present, to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)."

Provided also, that there be no lawful impediment to the marriage of such parties (§ 20).

Persons who object to marry in a registered place of worship may, after due notice and certificate issued, contract and solemnize marriage at the office of the superintendent registrar, and in his presence and in that of some registrar of the district, and of two witnesses, with

open doors, and between the hours aforesaid, making the declaration and using the form of words as above (§ 21). After any marriage solemnized, it is not necessary, in support of such marriage, to give proof of the actual dwelling of either of the parties previous to the marriage within the district for the time required by the act, or of the consent of any person whose consent is required; nor is evidence admissible to prove the contrary in any suit touching the validity of such marriage (§ 25). The registrar before whom any marriage is solemnized according to the provisions of this act may ask of the parties to be married the several particulars required to be registered touching such marriage (§ 36). Every person knowingly and wilfully making any false declaration, or signing any false notice or certificate required by this act, for the purpose of procuring any marriage, and every person forbidding the issue of any superintendent registrar's certificate by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, is to suffer the penalties of perjury (§ 38). If any person knowingly and wilfully intermarry under the provisions of this act, —in any place other than the church, chapel, registered building, or office, or place specified in the notice and certificate,—or without due notice to the superintendent registrar,—or without certificate of notice duly issued,—or without licence, in case a licence is necessary,—or in the absence of a registrar, where the presence of a registrar or superintendent registrar is necessary, the marriage of such persons, except in certain excepted cases, is null and void (§ 42); as under 4 Geo. IV. c. 76, § 22, a marriage would not be void unless *both* parties knowingly and wilfully concurred in marrying contrary to the provisions of the 42nd section. If any valid marriage be had under the provisions of this act by means of any wilfully false notice, certificate, or declaration made by either party to such marriage, as to any matters to which a notice, certificate, or declaration is required, the attorney-general or solicitor-general may sue for a forfeiture of all estate and interest in any property accruing to the offending party by such marriage (§ 43). Consent to marriage may be withdrawn upon good reason; but it would rather appear that this cannot be done merely because the parent or guardian has changed his mind. The question of consent is not however of such vital importance as under the first Marriage Act (26 Geo. II. c. 33, § 11), which made marriages without consent of parents, &c. absolutely void. Under 4 Geo. IV. c. 76, § 23, and 6 & 7 Wm. IV. c. 85, § 43, a false statement as to consent subjects the fraudulent party to the penalties of perjury, and to a forfeiture of all estate and interest in any properties accruing by the marriage, but leaves the marriage itself in full force.

These statutes do not extend to marriages contracted out of England, or to marriages of the royal family, which are regulated by a particular statute, 12 Geo. III. c. 11.

In August, 1844, an act was passed (7 & 8 Vict. c. 81) relating to marriages in Ireland, and for registering such marriages, which came into operation April 1st, 1845. It establishes a system very nearly similar to that which exists in England and Wales under 6 & 7 Wm. IV. c. 85.

Before 1835 marriages within the prohibited degrees of consanguinity and affinity were valid until annulled by a declaratory sentence of the ecclesiastical court, after which they became void from the beginning, and the issue of such marriages were, by such sentence, rendered illegitimate; and the law is still so with respect to personal incapacity existing at the time of the contract. But as the ecclesiastical court could only proceed for the benefit of the souls of the parties, and its authority to annul an incestuous marriage was founded upon the duty of putting a stop to the incestuous intercourse, the power of annulling the marriage ceased upon the death of either of the parties. The validity of such marriage, and the legitimacy of the issue, depended therefore upon the contingency of a suit being instituted and a sentence pronounced during the joint lives of the husband and wife. But now, by 5 & 6

Wm. IV. c. 54, all marriages thereafter celebrated between persons within the prohibited degrees of consanguinity or affinity are absolutely void. [AFFINITY.] A marriage contracted while there is a former wife or husband alive is void, without any declaratory sentence. [BIGAMY.]

Generally speaking, a marriage, valid according to the law of the country in which it was contracted, is valid in every other country. This is the general rule of law among European nations and nations of European origin. [INTERNATIONAL LAW.]

As to the legitimation by marriage of children born before a marriage, see BASTARD.

Marriage Statistics.—The number of marriages registered in England and Wales in the four years from 1839 to 1842 inclusive was as under:—

1839	123,166
1840	122,665
1841	122,496
1842	118,825

In 1841 and 1842 the number of marriages celebrated according to the rites of the Established Church were:—

	1841.	1842.
By special licence	13	9
Licence	15,792	14,935
Banns	78,015	75,744
By registrar's certificates	972	944
Form not stated	19,579	18,415
Total	114,371	110,047

Other marriages not celebrated according to the forms of the Established Church:—

	1841.	1842.
In registered places of worship	5882	6200
In registrar's offices	2064	2357
Between Jews	66	58
Between Quakers	113	163
	8125	8778

In each of the four years from 30th June, 1837, to July 1st, 1841, the marriages celebrated in registered places of worship and in registrar's offices were as under:—

	In Registered Places of Worship.	In Registrar's Offices.
1837-38	2976	1093
1838-39	4654	1564
1839-40	5140	1938
1840-41	5816	2036

The proportion of marriages at registered places of worship and at the registrars' offices has slowly increased, and in 1842 the number of marriages so performed represented a population of about 1,160,000. The number of buildings registered in England and Wales for the solemnization of marriages was 2232 on the 30th June, 1844. They belonged to the following denominations:—

Presbyterians	186
Independents or Congregationalists	903
Baptists	539
Methodists (Arminian)	204
Methodists (Calvinistic)	69
Roman Catholics	284
Foreign churches	5
Miscellaneous	42

Out of the total number 215 registered buildings were in Lancashire, 202 in Yorkshire, 128 in Middlesex, and 86 in Devonshire.

From 1839 to 1842 inclusive the mean number of marriages was 1 in 130 of the total population, or 1 in 64 of the male, and 1 in 66 of the female population. In 1839 the proportion of marriages was 1 in 126, and in 1842 only 1 in 136. This decrease was caused by the severe depression of trade in 1842. Dividing England and Wales into eleven great districts, the proportion of marriages varied in the four years 1839-42 from 1 in 102 in the metropolis to 1 in 149 in the south-eastern counties; but in all England out of 100,000 persons 30,615 only were of the ages of from 20 to 40, while in the metropolis the numbers of this age were 36,480. Thus the annual marriages were to the persons aged 20-40 nearly as 1 to 40 in all England, and 1 to 37 in the metropolis. The number of females in England and Wales aged from 15 to 45 was 3,811,654 in 1841, and the proportion married was estimated by the registrar-general (*Sixth Report*, p. xxxiv.) at 45.48 per cent., or

1,733,576, leaving 2,078,078, who were widows and spinsters. Of the married women, nearly 1 in 4 gave birth to a child in that year; and of the unmarried women, nearly 1 in 59 gave birth to an illegitimate child.

In 1842 eleven per cent. or 1 in 9·07 of the persons married had been married before, namely, 15,619 widowers and 10,579 widows (total 26,198). The total number of persons married in 1842, who were under age (21) was 5387 men and 16,003 women, or 4·53 and 13·47 per cent. respectively of the total numbers married, or a mean of 9 per cent. In 1841 the proportion was 8·83 per cent. In Worcestershire the proportion of women who were under 21 at the time of marriage was 15·63 per cent., and in Berkshire, Cheshire, Rutlandshire, Lancashire, and Norfolk from 14·20 to 14·75. In Devonshire the proportion was lowest (7 43 per cent.); and in Wales, Shropshire, Hereford, and Westmoreland it varied from 8·09 to 9·07 per cent. In Cheshire, Worcestershire, Rutlandshire, and Dorsetshire the proportion of men who were under 21 at the time of marriage varied from 6·01 to 6·52 per cent.; and in Devonshire it was as low as 2·08 per cent. In 1844 33 in 100 men and 49 in 100 women married signed the marriage register with marks; but in Monmouthshire 51 men and in North Wales 71 women signed with marks, while in Cumberland the proportion was 16 men and 36 women in 100.

The proportion of marriages to the total population in several of the principal countries of Europe is as follows:—

Austria . .	1 in 124
France . .	1 in 121
Prussia . .	1 in 113
Russia . .	1 in 99

In England on an average of four years the proportion was 1 in 130. The returns for Austria, France, and Prussia are the average of three years, and the return for Russia is for 1842 only.

The number of births (in wedlock) to a marriage is about 3·33 in France; 4·05 in Prussia; 4·34 in Austria; and 4·26 in England; but if a correction be made for first marriages (*Sixth Report of Registrar General*, p. xxx.), the proportion for England is 4·79 to every two persons married. (*Reports of Registrar General, First to Sixth*).

MARRIAGE in Scotland is a mere consensual contract, which admits of being proved like any other contract. Marriages are, however, distinguished into regular and clandestine. For the former a certificate that the banns have been three times proclaimed in the parish church of both parties is necessary. All marriages deficient in this respect are called clandestine. The *celebration* of a clandestine marriage subjects all the parties to penalties; but if there be no celebration but a mere attestation by a justice of peace or any other person not a clergyman, that parties have declared each other in his presence man and wife: this, if supported by other circumstances, is evidence of the contract. Clandestine marriages are nearly unknown among the respectable inhabitants of Scotland. By the 4 & 5 Wm. IV. c. 28, regular marriages may be solemnized by the clergy of any religious persuasion—the privilege was previously confined to the established and licensed episcopalian clergy. A doctrine has for some time existed, which has received some support from Lord Stowell's judgment in Dalrymple's case (2 Haggard 54), that in Scotland merely living as man and wife constitutes marriage. The very wide nature of the doctrines laid down in that case astonished some of the Scottish lawyers, and it may be questioned whether they will be all confirmed. A *promise* of marriage, proved by writing or the oath of the promiser, if followed by connection, undoubtedly constitutes marriage in Scotland.

MARRIAGE, ROMAN. The right conception of a Roman marriage and of its legal consequences is essential to enable us to approximate to a right understanding of the old Roman polity. It is also an important element in the history of the condition of women in civilized Europe.

Children were in the power of their father only when they were the offspring of a legal marriage (justæ nuptiæ), or were adopted in due form. [ADOPTION.] To constitute such a legal marriage there must be between the parties *connubium*,

the nature of which condition is best explained by an example:—Between a Roman citizen and the daughter of a Roman citizen there was *connubium*, and as a consequence the children of such marriage were Roman citizens, and in the power of their father. Between a Roman citizen and a female slave (ancilla) there was no *connubium*, and consequently the children which sprung from such a union were not Roman citizens. Whenever there was no *connubium*, the children followed the condition of the mother: when there was *connubium*, they followed the condition of the father. Various degrees of consanguinity, as the relation of parent and child, prevented *connubium* between parties in such a relation. After the Emperor Claudius had married Agrippina, his brother's daughter, such relationship was no longer an impediment to a legal marriage; but the licence was carried no further than the terms of the decretum of the senate warranted, and the marriage of an uncle with his sister's daughter remained, as before, an illegal union. (Tacit., *Annal.*, xii. 7; Gaius, i. 62.) Further, to constitute a legal marriage, the two parties must be of sufficient bodily maturity; both parties also must consent, if they are capable of giving a legal consent (sui juris); or if not, their parents must consent.

Connubium then is the capacity to contract a Roman marriage. No particular ceremony was necessary for marriage; legal capacity, consent, and cohabitation were sufficient. But in order that the wife might become a member of the husband's family, there must be either Usus, Confarreatio, or Coemptio.

A woman who lived for one year with a man without interruption as his wife, came by virtue of this cohabitation (usus) into his hand (in manum). As in the case of all movables, by the laws of the Twelve Tables, one year's enjoyment of a thing transferred the ownership of it, so by one year's uninterrupted cohabitation the husband acquired this interest in the wife. The Twelve Tables provided that if the wife wished to avoid the legal effect of this cohabitation, it was only necessary to absent herself from her husband for three nights during the year, which would be a sufficient legal interruption to the usus. In the time of Gaius this part of the old law had been partly abolished by enactments, and had partly fallen into disuse.

The Confarreatio, so called from the use of a loaf of bread on the occasion, appears to have been of the nature of a religious ceremony, and it existed in the time of Gaius. It appears that certain offices, such as that of Flamen Dialis, could be held only by those who were born of parents who had been married by the ceremony of Confarreatio. (Gaius, i. 112; Tacit., *Ann.*, iv. 16.) The form of divorce that applied to a marriage by Confarreation was called Diffareation (diffareatio).

The Coemptio was, in form, a sale (mancipatio) before five witnesses. The Coemptio might be made either between a woman and her intended husband, in which case she became, in contemplation of law, his daughter, or between a woman and a stranger (fiduciæ causa), which was a necessary legal process in case a woman wished to change one guardian for another, or to acquire the privilege of making a will. For until the Senatusconsultum passed in the time of Hadrian, no woman could make a testamentary disposition (with the exception of certain privileged persons), unless she had contracted the Coemptio, that is, had been sold, and then resold and manumitted. The Coemptio, being effected by mancipatio, worked a legal change of status (*Dig.* iv. tit. 5, s. 1), or *diminutio capitis;* and it was the least of the three kinds of *diminutio capitis*, or that by which a person underwent no change in his civil capacity except the being transferred into another family. (Paulus, *Dig.*, iv., tit. 5, s. 11.) This explanation will render intelligible the passage of Cicero on the testamentary power of women (*Topic.*, 4), taken in connection with Gaius (i. 115, &c.). The essays of Hoffmann and Savigny in the 'Zeitschrift für Geschichtliche Rechtswissenschaft,' vol. iii., p. 309, &c., may also be read with advantage.

When a wife came into the hand of her husband she was properly called Mater familiae: when she did not come into the hand of her husband, she was simply

Uxor (Cicero, *Topica*, 3). The 'conventio in manum,' or coming into the hand of the husband, made the wife a part of the husband s family, and her personality, like that of the husband's children, was merged in that of her husband. It followed that if she had property, it became her husband's property. As the wife in manu was in the place of a daughter to her husband and a sister to her children, she inherited, in case of the husband's intestacy, like one of her children. (Gaius, iii. 14.) If there was no conventio in manum, the wife still belonged to her former family, and the husband had no power over her property, except that which he received as Dos, the nature of which will presently be explained. In the late Republic and under the Empire, it appears that the conventio in manum became less common, and the husband and wife (uxor) were two different persons in all matters that related to their property. The wife (uxor) was, in fact, nothing more than a person of a different sex, who bore children which were in the power of the husband. The wife was independent of her husband, who had no right over her, except the exclusive enjoyment of her person, and the wife could divorce the husband, just as the husband could divorce the wife. When there was conventio in manum, it is impossible that the wife could have divorced her husband by her own act. [DIVORCE.]

As the wife who was not in manu did not belong to her husband's family, she could neither succeed to the property of her children, nor could they succeed to her property, according to the old Civil Law. If the wife was in manu, she and her children could inherit the property of one another, by virtue of the consanguinity between them, like other Agnati. The Praetor so far modified the law in the case of children of a mother who was not in manu, as to allow the mother and children to succeed to one another as Cognati. The Senatusconsultum Tertullianum passed in the time of Hadrian, allowed the mother (uxor) to succeed to the property of her children who left no sui heredes (sons or daughters, or their descendants, in the power of the deceased) or agnati in the first degree, such as father, or brothers or sisters. The Senatusconsultum Orphitianum, in the time of Marcus Aurelius, gave the children the succession to the mother's property in preference to her agnati.

There could be no *dos* (marriage portion), unless there was a legal marriage. The term *dos* comprehended both what the wife brought to the husband on her own account, and what was given or contracted to be given by any other person, in consideration and for the purposes of the marriage. (*Dig.* xxiii. tit. 3, s. 76.) When the *dos* came from the wife's father, it was called *profecticia*, but when from any other person, *adventicia*. It was a general rule that the *dos adventicia* remained with the husband, unless there was some agreement to the contrary, in which case it was called *dos recepticia*. What came into the husband's possession, not as *dos*, was included in the term Parapherna (παράφερνα), or Paraphernalia, and did not become the property of the husband. All kinds of property could be the subject of *dos*. If they were things that could be estimated by number, weight, and measure (res fungibiles), the husband took them, subject to the liability, in case of a dissolution of the marriage, of restoring things the same in number, weight, and measure. Things given as *dos* might be valued or not valued: in case they were valued, the complete ownership of them passed to the husband, inasmuch as the valuation was in the nature of a sale, and the husband could dispose of the things as he pleased, subject only to the liability of restoring their value, in case of a dissolution of the marriage. If the things were not valued, and any loss ensued, without the fault or culpable neglect of the husband, the loss fell on the wife. In the case of things which were not fungibiles or not valued, the ownership during the marriage might be considered as in the husband, and as returning to the wife on the dissolution of the marriage. In such a case the husband could manage the wife's property as his own; he enjoyed the profits of it during the marriage, and could sell it. With some exceptions however he could not sell or dispose of the wife's immovable property

which was included in the *dos* (dotale praedium). (Gaius, ii. 63; *Instit.* ii. tit. 8.) The portion became the husband's on the solemnization of the marriage, and he had the profits of it during the marriage. In the case of divorce the portion, or a part of it, according to circumstances, was restored. In case the wife died during the subsistence of a marriage, part returned to her father, and part remained to the children of the marriage, if any; but it might, by the terms of the marriage contract, become the husband's, even if there were no children of the marriage. As to the portion of the wife, whatever might have been originally the rights of the husband over it by virtue of the marriage, it was in later times the subject of the express stipulations of the marriage settlement. The questions of law which arose on the subject of the *dos* were numerous and sometimes difficult.

A gift from husband to wife, or from wife to husband, was void (with some few exceptions). The transaction was the same as if nothing had been done. The Donatio mortis causâ, or divortii causâ, in contemplation of death, or in consideration of divorce, was a valid gift.

In enumerating the modes by which a man may acquire property *per universitatem*, Gaius mentions the case in which a woman comes *in manum viri*, and he observes that all things pass to the husband.

(*Dig.* 23, tit. 3, 'De Jure Dotium;' tit. 5, 'De Fundo dotali;' Ulpian, *Frag.* vi., 'De Dotibus;' Gaius, i. 108, &c.; Thibaut, *System des Pandekten-Rechts.*) An outline of the Roman law of Marriage and its consequences is given in Laboulaye's *Recherches sur la Condition Civile et Politique des Femmes*, Paris, 1843.)

MARSHAL (French, *maréchal*), a term which, in its origin, meant simply a groom or manager of horses. One of the principal officers of state in England is the king's marshal, which office is now held hereditarily by the Duke of Norfolk, who is said to have the office of marshal of England, and also an honour in respect of which he is earl-marshal. This office was executed in time of war in the king's army; in time of peace, in the aula regis, or king's great court. Upon the division of the aula regis the marshal appointed deputies in the new courts. In the King's Bench the marshal's deputy was called the marshal of the marshalsea of the king's court, or marshal of the King's Bench. In the Exchequer, the deputy was marshal of the Exchequer, or clerk of the marshalsea of the Exchequer. The duty of the acting marshal is regularly to attend the court, and to take into his custody all persons committed to his custody by the court.

The lord high constable, when there was one, and the earl-marshal, were the judges before whom the court of chivalry or court martial was held. This court had cognizance of contracts touching deeds of arms and of war arising out of the realm, and of all appeals of offences committed out of the realm, and of matters within the realm relating to war, in cases where the courts of common law were incompetent to decide. The proceedings were according to the course of the Roman law. The earl-marshal cannot hold this court alone, and there has been no hereditary or permanent high constable since the forfeiture of the Duke of Buckingham, "poor Edward Bohun," in the time of Henry VIII. In the few cases in which the court of chivalry has been since held, a high constable has been appointed for the occasion. In the case of an appeal of death brought in 1583 against Sir Francis Drake by the heir of one Dowtie, whose head Drake had struck off in parts beyond sea, Queen Elizabeth refused to appoint a high constable; and thus, says Lord Coke, the appeal slept. The minor duties of the earl-marshal are set out with great minuteness of details in a document preserved in Spelman's 'Glossary.'

Besides the earl-marshal, there is a knight-marshal, or marshal of the king's household. The office of earl-marshal, and that of marshal of the King's Bench, as well as that of the knight-marshal, is called a marshalsea; but the term is ordinarily applied to the last only.

MARSHALSEA. In the marshalsea of the king's household there are two courts of record:—1. The original court

of the marshalsea is a court of record, to hear and determine causes between the servants of the king's household and others within the verge, that is, within a circle of twelve miles round the king's palace, with a jurisdiction of pleas of trespass where either party is one of the king's servants. 2. The palace court was erected by letters patent, 6 Charles I., confirmed by Charles II., and has authority to try all personal actions between party and party, though neither of them be of the king's household, provided they arise within twelve miles round Whitehall. The judges of this court are the steward of the king's household and knight-marshal; but the court is, in fact, held before a barrister deputed by the knight-marshal. The palace court is held once a week in Scotland Yard, and causes are here brought to trial in four or five court-days, unless they are of sufficient magnitude or importance to induce either party to remove it into one of the superior courts. A writ of error lies from both courts into the court of King's Bench.

MARTIAL LAW is a series of regulations made to preserve order and discipline in the army, and enforced by the prompt decisions of courts-martial: this is generally however called military law. During the existence of a rebellion, when, in consequence of the ordinary processes of general law becoming ineffectual for the security of life and property in any province or state, the legislature has appointed that a military force shall be employed to suppress the disorders and secure the offenders; and when the trial of the latter takes place according to the practice of military courts, that province or state is said to be subject to martial law.

On the occurrence of such an event in any part of the British dominions, the two houses of parliament, jointly with the crown, determine that a temporary suspension of the Habeas Corpus Act shall take place. This measure is, of course, adopted only in cases of great emergency, on account of the abuses to which it may give rise; and the necessity of it and the time of its duration are always stated in the provisions of the decree. The act by which martial law was declared in Ireland during the Rebellion in 1798 may be seen in Tytler's *Essay on Military Law*, Appendix, No. 6.

In merely local tumults the military commander is called upon to act with his troops only when the civil authorities have failed in preserving peace; and the responsibility of employing soldiers on such occasions falls entirely upon the magistrate. The military officer must then effect by force what by other means could not be effected; and, for the consequences, the officer can be answerable only to a military court or to the parliament of the nation.

The constitution of this country permits a military law for the government of the army, even in times of internal tranquillity. to co-exist with the general law of the land. But the former applies to military persons only; among these its jurisdiction comprehends all matters relating to the discipline of the army, to the cognizance of which the civil courts are not competent—as disobedience of orders, cowardice, &c.; and extends to such crimes as desertion, mutiny, and holding correspondence with the enemy. On the other hand, every citizen who is not engaged in the military profession is subject to the general laws of the land alone, and is free from all the restraints which, by the necessity of preserving discipline, are imposed on the soldier: he is his own master, he can dispose of his time at pleasure, and the peculiar regulations of the military service are, to him, as though they did not exist.

This distinction between the two classes of persons with respect to military law is clearly expressed in the 'Mutiny Act,' as it is called, which was first passed in the reign of William III. It is there stated that the subjects of this realm cannot be punished in any other manner than conformably to the common laws of the country. But an exception is immediately made in the case of military persons; and there follow several enactments for the purpose of bringing soldiers who shall mutiny, excite sedition, or desert from the service, to a more exemplary and speedy punishment than the usual forms of law will allow.

Immediately after the Norman conquest of this country the military law consisted in the obligation imposed on the vassals of the crown to follow the king to the field, under penalty of a pecuniary fine or the forfeiture of their land. But the first known record concerning the regulation of the army is believed to be that which was made in the reign of King John; and this relates chiefly to the purchase of provisions at the sales held for supplying the army with necessaries. The ordonnances of Richard II. and of Henry V., and the statutes of Henry VIII., contain many useful rules for the government and discipline of the army. They prescribe obedience to the king and the commanders; they award punishments for gaming, theft, and other crimes; for raising false alarms in the camp, and for the seizure of religious persons. They also contain regulations concerning the disposal of prisoners taken in battle, and concerning the stakes, fascines, ladders, and other materials for military operations, with which the soldiers were to provide themselves. (Grose, vol. ii.)

The early kings of this country do not appear to have exercised, generally, a discretionary power over the army; for a statute of Edward I. states that the king had power to punish soldiers only according to the laws of the realm The court of high constable and high marshal of England had for many years an exclusive jurisdiction in all military affairs, and this was sometimes extended over the civil courts. But the power of that court was restrained by a statute in the reign of Richard II. (1386), and it subsequently expired. From the time of Henry VII. till the reign of Charles I. the enactment of laws for the government of the army depended on the king alone.

The excesses which, during the last-mentioned reign, were committed by the undisciplined army which that ill-advised prince quartered on such of the people as had refused to lend money to the crown for raising them, led to the promulgation of a martial law, by which power was given to the magistrates to arrest and execute the persons guilty of murders, robberies, and other crimes, as in time of war. The *petition of right* abolished martial law for a time in this country, but it was subsequently restored by the parliament, and several ordinances of great severity were during the interregnum enacted respecting the maintenance of discipline. In the beginning of the reign of James II., after the rebellion of the Duke of Monmouth, several executions took place by martial law; and this may be said to have been the last occasion on which the law was exercised in Great Britain. At the time of the Revolution the present regular code was established for the government of the army; and this, under the name of the 'Mutiny Act,' has ever since been annually renewed by parliament.

The Romans, in time of danger to the state, were accustomed to suspend the law by conferring unlimited power upon the consuls by the formula, "Videant consules ne quid respublica detrimenti capiat" (Sallustius, *Catil.* c. 29). In the case of Catiline's conspiracy many of the conspirators were seized and put to death without a regular trial.

(Grose, *Military Antiquities;* Tytler's *Essay on Military Law,* by Charles James; Samuel, *Historical Account of the British Army;* Major Adye, *Treatise on Military Law;* Major-General C. J. Napier, *Remarks on Military Law.*)

[COURT-MARTIAL.]
MASTER AND SERVANT. [SERVANT.]
MASTER OF ARTS. [UNIVERSITY.]
MASTER OF THE ROLLS. [CHANCERY.]
MASTERS EXTRAORDINARY. [CHANCERY.]
MASTERS IN CHANCERY. [CHANCERY.]
MATRONS, JURY OF. [LAW, CRIMINAL, p. 228.]
MAYOR. [MUNICIPAL CORPORATIONS.]
MEDIETAS LINGUAE. [ALIEN; JURY.]
MEMORY, LEGAL. [PRESCRIPTION.]
MENDICITY. [PAUPERISM.]
MERCHANT SEAMEN. [SHIPS.]
MESNE PROCESS. [INSOLVENT.]

MESSENGER. [BANKRUPT.]

MESSENGERS, KING'S, certain officers employed under the secretaries of state, who are kept in readiness to carry dispatches both at home and abroad. They are not now so often employed as formerly in serving the secretaries' warrants for the apprehension of persons for high-treason or other grave offences against the state. Formerly too it was not unusual for them to keep the prisoners they apprehended at their own houses. A remarkable instance of this practice is detailed in the 'Post-Boy' newspaper of 1713. "London, Jan. 10.—Yesterday morning the Morocco ambassador was taken into the custody of one of her majesty's messengers, by way of reprisal for his master's ordering and committing to slavery several of her majesty's subjects." In the same paper, July 14, 1713, we read, "The Emperor of Morocco having released those of her majesty's subjects that had been carried into slavery, Don Bentura de Zari, his ambassador, who was in custody of Mr. Chapman, the messenger, by way of reprisal, was on Saturday last set at liberty." So that his excellency must have passed six months in the messenger's custody.

METROPOLIS. [COLONY.]

METROPOLITAN. [BISHOP, p. 378.]

MIDSHIPMEN are young men ranking as the highest of the first class of petty officers on board a ship of war: their duty is to pass to the seamen the orders of the captain or other superior officer, and to superintend the performance of the duties so commanded. They are educated for their profession at the Royal Naval College, and are required to complete two years' service at sea before they can be rated. Such as are appointed by the special authority of the Lords Commissioners of the Admiralty are denominated Admiralty midshipmen.

By the regulations of 1833, the whole number allowed to be entered on board a ship of war varies according to the rate of the latter; a sixth-rate ship may have eight, and a first-rate may have twenty-four midshipmen. And, on a ship being put in commission, the captain or commander may select them from the Royal Naval College, subject however to the approbation of the lords of the Admiralty.

Should there be more Admiralty or College midshipmen than can be provided for, their lordships may give appointments, as extra-midshipmen, to two at most for any one ship; these must be in the places of an equal number of seamen, and they are included in the complement of midshipmen when vacancies occur.

The monthly pay of an officer of this class is 2*l.* 8*s.* for ships of all rates.

MILITARY FORCE. There are many circumstances to be taken into account in estimating the military power of a country: the character of the people, the spirit of the government under which they live, the natural features of their territory, must amongst other things have their due influence assigned to them. Such an estimate would lead to historical and geographical details, which cannot be treated of satisfactorily in a work like this. The strength of the army which each country in Europe keeps on foot is the most direct indication of its military power; and so far as this is an exponent, the present military resources of all the principal countries in Europe and of the United States of North America are shown in the following statements, which have been collected from the best and most recent authorities.

Austria.—The Austrian army, on the peace and war establishment, is as under:—

	Peace Establishment.	War Establishment.
Infantry ..	314,912	489,240
Cavalry ..	48,842	64,560
Artillery ..	25,675	..

In addition to the peace establishment there are 2167 engineers and miners and sappers; horse and foot gendarmes in Lombardy, 3020 men; quarter-master generals' staff, and pioneers, 4384 men; 4000 men and 6000 horses in the waggon train; a regiment of guards, 666 men; 728 on the staff; and a battalion of pontonniers. The annual expenses of the army amount to 77,600,000 florins, = 6,600,000*l.*

Austria has a small naval force, which consists of 3 frigates, 2 corvettes, 3 brigs, and 49 other smaller vessels, the whole carrying 510 guns.

Bavaria.—The infantry of the line are

36,688 in number; cavalry, 12,954; artillery, 5628; gendarmerie, 1875; besides engineers, sappers and miners, &c. The total strength of the army on the peace establishment is 58,239 men, and, in addition, there are 4 companies of veterans. In time of war there is an army of reserve, which consists of a Landwehr of two bans, that is, raised by two levies. The expenses of the military department are 7,319,976 florins, = 625,000*l.*

Belgium.—The army on the peace establishment consists of 2449 officers, and 29,847 non-commissioned officers and men. The sum expended in the department of the Minister of War is 28,022,000 fr., = 1,220,000*l.*; and there is a sum of 1,031,719 fr., = 41,000*l.*, expended under the Ministry of Marine.

Denmark.—Strength of the army on the peace establishment, 25,000 officers and men; on the war establishment, 75,000. The navy consists of 6 ships of the line of 84 guns, 1 of 66 guns; 8 frigates of from 40 to 48 guns; and 16 smaller vessels, the whole number of guns for 31 vessels being 1126; and there are in addition, 92 gun-boats, bombs, and other craft, and 4 steamers. The expenses of the army are 3,215,836 reichbankthalers, = 360,000*l.*, and of the navy 1,047,050 reichbankthalers, = 97,000*l.*

France.—The army consists of 338,732 men, and the expenses of the ministry of war amount to 13,000,000*l.* There are at present—

Infantry	..	214,778
Cavalry	..	58.389
Artillery	..	29,306
Engineers	..	8,770
Gendarmerie	..	16,125
Waggon Train, &c.		3,818

The national guards (militia) in France comprise all Frenchmen (ecclesiastics, students at the universities, &c., excepted) between 20 and 60. The expenses of the ministry of marine amount to 3,584,000*l.* There are—

Ships of the line, frigates, and corvettes	. .	229
" "	building	48
War steamers	. .	53
"	building	22

The *personnel* of the navy consists of 2 admirals, 10 vice-admirals, 20 rear-admirals, 100 captains of ships of the line, 200 captains of corvettes, 600 lieutenants, making altogether 1372 officers, besides 3438 men of the marine artillery, 16,123 marines, and 297 men of the marine gendarmerie. The force of 170 ships afloat consists of 1649 officers and 24,120 sailors, exclusive of ships laid up in ordinary.

Germanic Confederation.—One of the objects of the Confederation is mutual defence against a common enemy, and the preservation of internal peace among the Federative States is another object. [GERMANIC CONFEDERATION.] Each state is obliged to furnish a military contingent in proportion to its population in 1817. This proportion was fixed at 1 per cent. on the total population; and though the population of the Confederation now amounts to 40,192,344, the military contingent remains at 303,493 men, although the population has increased about ten millions since 1817. The contingent of the seven most important states is as follows:—

			Men.
Austria	..	..	94,822
Prussia	..	..	79,484
Bavaria	..	..	35,600
Würtemberg		..	13,955
Hanover	..	..	13,054
Saxony	..	..	12,000
Baden	..	..	10,000

The total contingent consists of 292,377 effective men:—

Infantry of the line	..	216,343
" Chasseurs	..	11,388
Cavalry	.. ..	40,754
Artillery (594 guns) and waggon train	.. ..	20,977
Pioneers and pontonniers		2,915

In conformity with the decrees of the Diet, 29th Oct., 1835, and 10th Dec., 1840, there is a division of infantry of reserve. By the acts of the Diet it is provided that in time of war Mainz should be garrisoned by 7000 Austrian and 7250 Prussian troops; Luxemburg by 3000 Prussian troops, and 2536 troops of the country acting as troops of the Confederation; and that Landau should be garrisoned by 4000 Bavarian troops.

Great Britain.—The number of regiments of infantry and cavalry has already been given. [INFANTRY, p. 110; CA-

VALRY, p. 463.] For the year 1845 the force for which Parliamentary supplies were granted was as under:—

	Cavalry.	Infantry.	Total.
Officers ..	826	5,075	5,901
Non-commissioned officers	1,097	8,303	9,400
Rank and file	10,004	104,372	114,376
	11,927	117,750	129,677

The total charge for the above force for one year was 3,528,190*l.*, but of this sum 823,323*l.* was defrayed by the East India Company on account of regiments serving within the Company's territories. The charge of the artillery and engineers is provided for in the ordnance estimates. There is a brigade of horse artillery; 9 battalions of foot artillery of 8 companies each; and a corps of engineers, which comprises sappers and miners, &c. The force of the artillery and engineers is about 9000 men. The different colonial corps which are maintained by the mother country comprise about 5000 men. The army in the pay of the East India Company in 1842 consisted of 210,757 officers and men, of whom 5531 were European officers, 4459 native officers, 19,164 European soldiers, and 181,612 native soldiers. In 1840 the expenditure of the East India Company in India on account of the army amounted to 7,932,268*l.*; and in 1830 it amounted to 9,474,481*l.* The East India Company also maintains a small naval force of its own.

The naval force of Great Britain, including ships in the course of construction, is as follows:—

Rate.	Ships.	Guns.
1st.	27	2074
2nd.	37	3114
3rd.	54	3954
4th.	21	1050
5th.	32	3440
6th.	34	870
	255	14,502
Gun-brigs, &c.	165	1,550
War and other steamers	123	..
Hospital ships, police do., &c.	49	..
	592	16,052

On the 1st of Jan., 1845, the number of ships in commission was 233. The number of officers was 7854; seamen, 29,500; marines, 10,500. The Parliamentary votes for the navy for 1845-46 amounted to 6,936,192*l.* On the opening of the session of 1845 the necessity for an increase in the navy estimates was announced in the speech from the throne in consequence of "the progress of steam navigation, and the demands for protection to the extended commerce of the country." The payments on the annual grants of Parliament for the year 1844 for military and naval purposes were as under:—

Army ..	£6,178,714
Navy ..	5,858,219
Ordnance ..	1,924,311
	13,961,244

Greece.—The regiments of infantry of the line comprise about 3300 men, and there are besides 4 battalions of frontier-guards, 1150 foot, and 160 horse gendarmes, and 283 artillery and 210 cavalry. The expenses of the war department amount at present to 4,063,850 drachmas. The naval force consists of 2 corvettes of 26 guns each, and 33 small vessels, of 104 guns altogether. The naval expenditure is 1,053,573 drachmas.

Hanover.—Infantry, 16,176; cavalry, 3344; artillery, 1466; total strength of the army, 21,206 men; and the military expenditure 1,695,105 thalers, = 290,000*l.*

Holland.—There are 10 regiments of infantry and a garrison battalion; 5 regiments and 1 squadron of cavalry; 4 regiments of artillery; a corps of engineers, sappers and miners, which form 2 battalions; besides a corps of pontonniers. The expenses of the war department are 12,000,000 florins, = 1,025,000*l.* The naval force consists of 85 large vessels of 2207 guns, and 90 small vessels of 200 guns. The officers of the navy are 1 admiral, 2 vice-admirals, 3 rear-admirals, 21 captains, 31 captain-lieutenants, and 272 lieutenants. The expenses of the marine department are 5,296,733 florins, = 452,000*l.*

Mexico.—The regular army in 1844 was 19,624 strong, and the active militia 30,000.

Portugal.—The real force of the army is said to be 18,000 men and 1800 horses; but the full peace establishment is 28,800

men: infantry, including the municipal guards (1780) of Lisbon and Oporto, 21,150; cavalry, 3550; artillery and engineers, 3400. The number of troops in the Portuguese colonies in Africa is stated to be 4600, and in Asia 4400, total 9000. There are 19 companies of veterans, consisting altogether of 3000 men. There are besides nearly 2000 persons on the staff, in the military schools, fortresses, arsenals, and in the civil departments of the army. To these numbers must be added officers who have been temporarily removed from active service in consequence of political events and other causes, and who are said to amount to 2500 in number. The naval force of Portugal consists of 41 sail of 944 guns. There are 2 ships of the line of 80 guns each; 5 frigates of 50 guns; 1 of 44 guns; 8 corvettes of from 20 to 24 guns; 11 brigs of from 10 to 20 guns. The expenses of the ministry of war are 2,488,249,170 reis. The marine department is united with the colonial department, and the naval expenses are not distinguished separately.

Prussia.—The infantry, cavalry, and artillery are divided into guards and regiments of the line. The peace establishment consists of 74,586 infantry, 23,124 cavalry, 15,651 artillery, and 2,544 engineers.

The total strength is 115,905 men. The war establishment is about 205,000 strong. This statement however does not give an adequate idea of the military strength of Prussia. The Landwehr of the first ban is composed of men from 20 to 25 years of age who have served three years in the regular army, and are then discharged for two years, during which they are liable to be called out as the reserve. In time of war this ban is on the same footing as the standing army, and equally liable to serve both at home and abroad. The Landwehr of the second ban comprises all the men aged from 32 to 39, and is called out only in time of war. The Landsturm comprises all men from 17 to 50 who are capable of bearing arms. Including the Landwehr of the first ban (81,048) and the Landwehr of the second ban (62,608) the military force of Prussia amounts to 259,561 men, besides the Landsturm. In time of war the first ban is 130,000 strong. The expenses of the war department are 24,604,208 thalers, = 3,600,000*l.*

Russia.—This great military power has in Europe an army of—

	Men.	Horses.	Cannon.
	386,000	79,720	1200
and a reserve of	182,000	17,920	472
Total	568,800	97,640	1672

Besides this force there is the army of the Caucasus 80,000 strong; and in the Transcaucasian provinces there is also another force of 80,000 men. There are besides—1, a corps d'armée in Finland, which consists of 16 battalions of infantry and a brigade of artillery; 2, a corps in Orenburg of 16 battalions of infantry, a brigade of artillery, and 16 regiments of Cossacs of the Ural; 3, a corps in Siberia of 16 battalions of infantry and a brigade of artillery; and there are besides different corps of Cossacs amounting to 50,000 men. The expenses of the ministry of war are estimated at 30,000,000 thalers, = 5,000,000*l.* The Russian navy consists of 50 ships of the line, 25 frigates, 36 steamers, besides brigs and other small vessels. The expenses of naval establishments are estimated to amount to 12,000,000 thalers, = 1,800,000*l.*

Sardinia.—The strength of the army in time of peace is 25,000 men, and 100,000 in time of war. Sardinia possesses a small naval force of 28 sail, 5 of which are frigates of 60 guns each. The expenses on account of the army and navy are not known.

Saxony.—The regular army comprises 529 officers and 13,700 men, and the military expenditure amounts to 1,339,782 thalers.

Sicilies, Two, Kingdom of the.—In 1838 the army consisted of 44,948 men: 29,381 infantry, 4473 cavalry, 2100 artillery, and 750 engineers. The expenses of this force are not known. There is also a small naval force.

Spain.—There are 99,000 troops of the line: 75,485 infantry, 11,016 cavalry, 9809 artillery, and 2795 engineers. To these numbers must be added the provincial militia (43,095), which makes the total military force 142,200 men. This does not include the staff at head-quarters

and the persons employed in the civil departments of the army. The Spanish navy was almost entirely destroyed in the last war. It now consists of only 3 ships of the line, 6 frigates, 3 corvettes, 6 brigs, and 11 other vessels, and a number of small craft. A corvette of 36 guns and two war-steamers respectively of 450 and 220 horse power were lately built in England for the Spanish government. The expenditure of the ministry of war is 322,334,008 reals. The marine department is united with that of commerce and the colonies.

States of the Church.—There are three military divisions: Rome, Ancona, and Bologna. The army in 1840 consisted of 14,680 men, a reserve of 6000, and 3000 national guards of Rome and Bologna. The infantry comprised 9300 men, of whom 3300 were Swiss, and the 6000 others were not the pope's subjects; cavalry, 800; artillery, 800; gendarmes, 1700; arquebusiers, 800; douaniers, 1200; and a guard noble of 80 men. The army cost 1,756,029 scudi, = 380.000*l.*

Sweden and Norway.—Strength of the Swedish army, 39,846; namely, 26,700 infantry, 8000 cavalry, 4340 artillery, and 806 engineers and staff. Sweden has a naval force of 21 ships of the line, 8 frigates, and 255 small craft. The army costs 4,118,240 thalers, = 289.000*l.*, and the navy 1,414,100 thalers, = 100,000*l.* A considerable portion of the expenses of the army is defrayed from the estates of the crown, and the actual military expenditure is not shown in the budget. Norway has a distinct military force of 12,150 men (10,000 infantry, 1000 cavalry, and 1150 artillery and engineers); and a naval force, which consists of 6 brigs and 117 gun-boats. The military and naval expenses of Norway are provided for by the Norwegian storthing. The army costs 700,000 thalers, (specie) = 140,000*l.*; and the navy 245,000 thalers, = 49,000*l.*

Switzerland.—The federal army is 64,019 strong, and consists of 51,864 infantry of the line, 4200 riflemen, 1500 cavalry, 5751 artillery, and 700 engineers, sappers and miners, &c. The expenses are not given in the 'Almanach de Gotha' for 1846.

Turkey.—The army is reckoned at 610,000 men, and is divided into four corps of nearly 40,000 each. There is the corps of Constantinople, of Roumelia, of Asia, and of Arabia. The naval force consists of 47 sail. The expenditure for military and naval purposes is not made public.

United States of North America.—The United States' army consists of 2 regiments of dragoons, 4 of artillery, and 8 of infantry, and comprises 716 officers and 7590 men, besides the staff. The number of all ranks, including non-effective men, is 8600. This force is commanded by a major-general. The whole territory of the United States is divided into 2 military geographical divisions, which are subdivided into 8 geographical departments. The military force is stationed at 58 military posts. The expenses of the war department for the year ending 30th June, 1845, were 8,231,317 dollars, = 1,749,154*l.* The effective force costs 3,053,294 dollars; pensions, 2,013,072 dollars; fortifications and other works of defence, 705,980 dollars; Indian department, 1,021,500 dollars; and there were small items for arming and equipping the militia. The expenditure on account of the military academy at West Point was 123,195 dollars. The cost of the military establishments in 1844-5 was less than it had been in any one year since 1832. In 1837 and 1838 the expenditure in each year amounted to nearly 20,000,000 dollars. In 1814 the expenditure was 20,608,366 dollars. In 1811 it was only 2,259,747 dollars. The militia of the United States consists of 1,759,810 officers and men. In this number are comprised 662 general officers and 15,661 field officers, and the total number of commissioned officers is 69,450.

The navy of the United States consists of 10 ships of the line, 1 of which is of 120 guns and 9 of 74 guns; there are 12 frigates of the first class of 44 guns and 1 of 54; 2 second-class frigates, each of 36 guns; 23 sloops of war of from 16 to 20 guns; 8 brigs of 10 guns each; 8 schooners; 9 steamers; and 4 store-ships.

The sum expended under the direction of the navy department for the year

ending 30th June, 1845, was 6,496,990 dollars = 1,386,610*l.* The largest sum expended on naval establishments since 1811 was 7,963,678 dollars in 1842-3. From 1828 to 1835 the expenditure was under 4,000,000 dollars a year.

MILITARY TENURES. [FEUDAL SYSTEM.]

MILITIA. In Great Britain and Ireland the term is applied particularly to those men who are chosen by ballot to serve for a certain number of years within the limits of these realms. The regulations of the militia service differ widely from those of the conscription on the Continent: under the conscription the troops become members of the regular army, and may be marched beyond the frontiers of the state; whereas the British militia is enrolled only for home service, and may be said to constitute a domestic guard. [CONSCRIPTION.]

The military force of this country in the time of the Saxons was formed by a species of militia, and every five hydes of land were charged with the equipment of a man for the service. The ceorles, or peasants, were enrolled in bodies and placed under the command of the Ealdermen or chiefs, who were elected by the people in the folkmotes. After the Norman conquest of the country the proprietors of land were compelled, by providing men and arms in proportion to their estates, to contribute to the defence of the realm in the event of a threatened invasion. The troops were raised under the authority of *commissions of array*, which were issued by the crown; and the command was sometimes vested in the persons to whom the commissions were granted; though frequently the high constables, or the sheriffs of the counties, commanded in their own districts. This militia seems, at first, to have been liable to be marched to any part of the kingdom at pleasure, but in the reign of Edward III. it was declared by a statute that no man thus raised should be sent out of his county, except in times of public danger. From the reign of Philip and Mary the lords-lieutenants have had the charge, under the king, of raising the militia in their respective counties.

Charles I. having, by the 'Petition of Right,' been deprived of the power of maintaining a disposable body of troops in the country, found himself in 1641 unable to suppress the rebellion then raging in Ireland; and was in consequence induced to commit the charge of restoring peace to the care of the parliament. The parliament immediately availed itself of the circumstance to get into its own hands all the military force of the nation; and in the following year the two houses passed a bill in which it was declared that the power over the militia, and also the command of all forts, castles and garrisons, should be vested in certain commissioners in whom they could confide. The king having refused his assent to the bill, the parliament made a declaration that it was necessary to put the nation in a posture of defence, and immediately issued orders to muster the militia; on the other hand, the king issued commissions of array for a like purpose to some of the nobility, and thus commenced the war which desolated the country for several years.

When Charles II. ascended the throne, the national militia was re-established on its former footing, and the chief command was vested in the king. The lords-lieutenants of counties were immediately subordinate to the king, and granted commissions (subject however to the king's approbation) to the field and regimental officers who commanded under them. New regulations respecting the amount of property which rendered persons liable to the charge of providing men and arms were then established; an at that time no one who had less than 200*l.* yearly income or less than 2400*l.* in goods or money could be compelled to furnish a foot-soldier; nor could one who did not possess 500*l.* per annum or an estate worth 6000*l.* be made to provide a man for the cavalry. Persons having less property were required, according to their means, to contribute towards finding a foot or a horse soldier. The militia was then mustered and trained, by regiments, once a year and during four days; but the men were mustered and trained, by companies, four times in the year, and during two days each time. At the

periods of mustering, every man was obliged to provide himself with his own ammunition.

These regulations, being found expensive, at length ceased to be observed, and the trainings of the militia were discontinued in every part of the realm except the city of London. In 1756, under an apprehension that the country was about to be invaded by a French army, considerable bodies of Hanoverian and Hessian troops were brought over for its defence; the spirit of the nation revolted however at the disgrace of being indebted to foreign mercenaries for protection; and these troops being sent back to the Continent, a national militia was again raised and organised under an act of parliament in the 30th year of George II. The measure was generally popular, though it did not meet with universal approbation; and there were many persons who maintained the opinion that, for want of military knowledge and habits, this species of force could not be relied on in the event of its being called into active service. Experience has however shown that such an opinion is destitute of foundation; and it was soon afterwards admitted that, when well disciplined, these constitutional battalions rivalled those of the regular troops in the performance of all military evolutions. It may be observed here, that the greater part of the 16,000 British troops who gained the battle of Talavera were men drafted from the militia regiments at home; and so recently had they joined the army in Spain, that in the action many of them bore on their accoutrements the numbers of their former corps. (Napier, vol. ii.)

The militia laws were repealed in the 2nd year of George III., when a new act regulating the service of this force was passed; and in the 26th George III. all the previously existing statutes relating to the force were formed into one law. New regulations however were made by acts passed in the 42nd, 51st, and 52nd years of the same reign. The militia of the kingdom when embodied and in active service is subject to the provisions of the Mutiny Act, or Articles of War; but when merely called out for annual training they are not subject to any punishment which affects life or limb. The king is empowered to employ the militia in any part of the United Kingdom, but not out of it. The militia of Great Britain may serve in Ireland, and that of Ireland in Great Britain: the period of service for each out of the island to which it belongs, being at most two years. When called into active service the officers rank with those of an equal grade in the regular army, but as the juniors of each grade, and they may receive promotion for meritorious services during a rebellion or an invasion; but no officer of militia can serve on a court-martial at the trial of an officer or soldier of the regular troops.

All persons not labouring under bodily infirmity and not specially excepted, are liable to be chosen for private militia men and to serve either personally or by substitute. The persons excepted are—peers of the realm; commissioned and non-commissioned officers and privates serving in the regular forces; half-pay officers of the navy, army and marines, and commissioned officers who have served four years in the militia; members of corps of yeomanry and volunteers, and privates serving in the local militia; seamen and persons doing duty in the royal docks, at the gun-wharfs, and powder-magazines; also persons employed under the direction of the Board of Ordnance; resident members of the two universities; clergymen of the Established Church; also Protestant dissenting preachers, provided they take the oaths of allegiance and supremacy, and exercise no other occupation, or only that of schoolmasters; constables or other peace-officers; articled clerks; apprentices; free watermen on the Thames; poor men having more than three legitimate children, and persons above 45 years of age. To alleviate the distress of a poor man, when drawn for the militia, and who has provided a substitute, the churchwardens of the parish are bound to return to him a sum not exceeding 5*l.*, or half the current price of a substitute. No one having served personally, or by substitute, during three years in the militia, can be obliged to serve again till it comes to his turn by

rotation; but if a man has served as a substitute for another, this does not exonerate him from serving again if chosen by the ballot.

The militia when embodied is trained and exercised by battalions or regiments twice in a year, and during fourteen days each time, or once in a year for twenty-eight days, at the discretion of the lords-lieutenants or their deputies.

The balloting of the militia has been suspended by successive acts of parliament since 1829. Since this period the commandants and staff only of the disembodied militia have been kept up. The expenditure for this purpose amounts to about 100,000*l.* a year. The number of militia regiments is 76 for England and Wales, 15 for Scotland, and 38 for Ireland. In December, 1845, a circular was addressed by the War Office to the colonels of the different regiments of militia of Great Britain, requiring them to complete the permanent staff of their respective regiments to the full number limited by 5 & 6 Wm. IV. c. 37, namely, one adjutant, one serjeant-major, and seven serjeants. The staff of each regiment has been recently inspected; and the circular recommends that notwithstanding some of the serjeants were unfit for active duty, they should nevertheless be retained, as they were capable of discharging duties incidental to the ballot, enrolment, as well as the exercise of the militia, and would be able to afford assistance on the first training. It is believed that arrangements are now making (December, 1845) for the balloting of the militia in 1846.

The supplementary militia is an additional body of men which was first raised in 1793, for the defence of the country at that juncture. It may still be raised when the necessities of the state require it, and it is subject to the same regulations as the ordinary militia. The local militia was a body raised in 1809, for the purpose of replacing, in certain districts, the corps of volunteers. By the 52nd George III., this force may be marched to any part of Great Britain in the event of a rebellion or an invasion, and it may be kept embodied till six months after the former is terminated or the latter repelled. Persons enrolled in the local militia cannot be compelled to serve in the regular militia till one year after their period of service in the former has expired.

The whole amount of the several militia forces in England alone exceeded 200,000 men; and during the late war, when an invasion of the country was apprehended, the force which might have been assembled in arms amounted to more than twice that number of men.

In France a militia was first raised from the provinces during the reign of Louis XIV.; but the several corps were disbanded after the peace of Ryswick. In 1726 was organised a force of the like kind, consisting of men chosen by lot from the towns and villages, and held in readiness to be assembled when required: and in 1778 these provincial troops were formed into 106 battalions. Since the great Revolution, the National Guard may be said to constitute the militia of France.

In the United States of North America, by an act passed in 1792, the principal provisions of which are still in force, all able-bodied white male citizens between the ages of eighteen and forty-five, with certain exceptions, are enrolled in the militia; and when drafts are to be made for active service, the individuals are selected by ballot as in this country. The persons excepted are the executive, judicial, and representative officers of the Union, those who are employed in the post-office department, &c.; and, in some of the states, persons are exempted who have scruples of conscience against bearing arms. The president has the power of calling out the militia of the states; and, when on active service, it is subject to the same rules and articles of war as the regular troops, but courts-martial for the trial of military offenders are composed of militia officers only.

A militia may be a useful addition to a regular standing army, when it can be rendered an efficient body; and provided a large number of persons at a time are not withdrawn from profitable industry. But any militia system which interferes largely with regular occupations is a loss to a country. A regular army is

cheaper than such a militia and more efficient. It may be argued that a militia possess the united characters of defenders of their country and of contributors to its prosperity, while they remain connected in social union with their fellow-citizens, and are interested, like them, in the support of the laws and in the preservation of good government; and that it is in some respects otherwise with the soldiers of a regular army, who are devoted exclusively to the profession of arms, and have few feelings in common with the rest of the community. However, the regular army of Great Britain that is employed at home is insignificant when compared with the regular force of many other countries in Europe; and there is little danger to be apprehended from it to the liberties of the people, even if it should be increased to any considerable amount, because the money required for this service is voted annually by the parliament. [ARMY.]

MINES.—Under COAL TRADE, p. 526; COPPER, STATISTICS OF, p. 631; and IRON, p. 132, an account has been given of the three largest branches of mining industry, to which we now add a brief notice of the produce of the lead and tin mines, in order to give a general view of the importance of the mines of England as a source of national wealth.

Lead.—The quantity raised and smelted in the United Kingdom is believed to amount to about 60,000 tons, which is more than sufficient for our own consumption, and the remainder is exported. Foreign lead is imported into England, chiefly from Spain, but comparatively little is used in this country; in 1844 only 49 tons out of 3058 tons imported.

Tin.—The earliest commercial intercourse with Britain arose out of the trade for tin. (Diod. Sic. v. 38.) From 1817 to 1837 the average annual produce of the tin mines in Cornwall was 4211 tons. A duty of 4*s.*, and fees equivalent to 5*s.*, for each 120 lbs., were paid to the Duchy of Cornwall prior to 1838. The consumption of tin in Great Britain from 1830 to 1837 averaged annually 3363 tons, which was about three times the annual consumption from 1800 to 1810. From 1783 to 1790 the proportion of British tin exported was 7-10ths of the total produce of the mines; and it had gradually diminished until it amounted to 1-5th only from 1830 to 1837. From 1815 to 1831 the annual average importation of foreign tin was 213 tons; from 1831 to 1838 the quantity imported had reached 1527 tons. Nearly all the foreign tin is again exported.

The exports of mineral produce and metals worked into manufactured goods, were as under in 1844:—

	Quantities.	Declared Value.
Brass and copper manufactures	388,882 cwts	£1,736,545
Coals, culm, and cinders	1,754,171 tons	672,056
Hardware and cutlery	451,043 cwts	2,179,087
Iron and steel, wrought and unwrought	458,745 tons	3,193,363
Lead and shot	15,664 tons	270,344
Tin, unwrought	22,216 cwts	77,893
Tin and pewter wares and tin plate ..	..	506,691
Salt	13,476,884 bushels	224,656
		£8,860,635

Metals imported in 1844:—

	Imported.	Home Consumption.
Iron, bar .	24,483 tons	21,599
Lead, pig and sheet	3,058 tons	49
Tin . .	12,085 cwts	2,056

According to the census of 1841 the number of persons employed in mines in Great Britain was as follows:—Coal, 118,233; Copper, 15,407; Lead, 11,419; Iron,* 10,449; Tin, 6,101; Manganese, 275; Salt, 268; Mineral not specified,* 31,173;—Total, 193,825.

The above number of persons who are

* The coal-miners and iron-miners easily exchange occupations. In 1841 the iron trade was in a state of great depression, and the coal-mines were, on the other hand, in full activity.

employed under ground in mines is nearly equal to an eighth of the total numbers employed in the cultivation of the surface; to this number might perhaps be added 18,148 quarriers. The number of persons employed in the manufacture (smelting, &c.) of metals was 36,209, as follows:—

Iron	29,497
Copper	2,126
Lead	1,293
Tin	1,320
Metal not specified	1,973

The total annual value (profits) of mines and iron works assessed to the Property and Income Tax in 1843 was as follows:—

	Mines.	Iron Works.
England and Wales	£2,081,387	559,435
Scotland ..	177,592	147,412

The mines in Durham were assessed at 392,112*l.*; those in Lancashire at 348,006*l.*; the Yorkshire mines at 154,073*l.*; and the Staffordshire mines at 196,149*l.*

The Staffordshire iron works were assessed at 155,685*l.*; the Monmouthshire works at 56,897*l.*; Yorkshire iron works at 67,890*l.*; and Shropshire at 34,279*l.*

MINISTER. [BENEFICE.]

MINOR, MINORITY.—A person is a minor, according to English law, when he is under twenty-one years of age. The term applies either to a male or female. [AGE.]

The term is derived from the Roman law, in which persons under twenty-five years of age (minores viginti annis or annorum) were, to a certain extent, under the care of a curator. [CURATOR.]

MINT. The place where money is coined, from the Anglo-Saxon 'mynet,' and that in all probability from the Latin *moneta*. It is a part of the royal prerogative to coin money. [COINING.] The Roman *moneta* was the place where the money was coined. It was a building on the Capitoline Hill, which was attached to the Temple of Juno Moneta. The subject of the earliest coinage is treated by Eckhel, *Doctrina Numorum Veterum*, Prolegomena, vol. i.

On the early Anglo-Saxon coins are found, in addition to the names of the kings, those of other persons also, who are conjectured to have been the moneyers, because on later Anglo-Saxon money the names of those officers frequently occur, with the addition of their title of office. From this circumstance we may probably conclude that they were responsible for the integrity of the money; and that they were the principal officers of the mint.

In the Anglo-Saxon times an officer called the reeve seems also to have had some kind of connection with the mint, or some jurisdiction over it; for in the laws of Canute it is provided, that if any person accused of false coinage should plead that he did it by licence from the reeve, that officer should clear himself by the triple ordeal. If he failed to do this, he was to suffer the same punishment as the falsifier himself, which was the loss of that hand by which the crime was committed, without any redemption either by gold or silver. (*Leg. Anglo-Saxon.*, p. 134; *Ll. Cnuti*, § 8.)

After the Norman conquest the officers of the mint appear to have been in some degree under the authority of the Court of Exchequer, as they were admitted to their respective offices in that court, and took the usual oath of office before the treasurer and barons.

The mint did not attain its full constitution of superior officers until the 18 Edward II., when a comptroller first appeared and delivered in his account, distinct from those of the warden and master, whose accounts also were distinct from each other. Thus they operated as mutual checks, and no fraud could be practised without the concurrence of all these three persons. One of the principal offices, namely, that of cuneator, and probably others, descended by inheritance even in the female line, and the inheritor was sometimes allowed to sell it. See Ruding's account of this office in his 'Annals of the Coinage of Britain,' 8vo. edit., vol. i., pp. 109-114, where its descent is traced from the time of Domesday Book to the 4 Richard II.

In the Anglo-Saxon and the early Norman period there were many mints beside the king's, and some were continued to a much later time. Barons and bishops struck money, especially in King

Stephen's reign, and in two or three instances the privilege of coining was granted to the greater monasteries. Wolsey exercised this franchise, both as Bishop of Durham and Archbishop of York; and there are coins of the Archbishops of Canterbury, distinctly marked as such, at intervals from Jaenberht, consecrated in 793, to the close of the reign of Henry VIII. Of the lay barons of Stephen's time, we have but one coin now extant, usually ascribed to Robert Earl of Gloucester.

From a very early time the moneyers seem to have enjoyed exclusive privileges. In the 33 Henry II. the moneyers of York were expressly exempted from the payment of the 'Donum' which was assessed upon the men of that city. (Madox, vol. i., p. 635.) In the 18 Henry III. the mayor, &c., of London were commanded not to infringe upon the liberties of the king's moneyers of London, by exacting from them tallages or other customs contrary to their privileges (Cl. 18 Henry III., m. 30); and before his 41st year those privileges appear to have been extended to the whole body of officers belonging to the mint; for at that time the bailiffs, &c. of Canterbury were ordered to appear in the Exchequer to receive judgment for having distrained upon the officers of that mint. (Madox, *Hist. Exch.*, vol. i., p. 748; Ruding, *Annals*, vol. iv., p. 273.)

The earliest grant of these privileges by charter was in the reign of Edward I., when the officers of the exchange and of the mint were (by the names of the keepers of the changes of the city of London and Canterbury, the labourers, or workers, money-makers, or coiners, and other ministers deputed or appointed unto those things which touch the office of the changes aforesaid) freed from all tallages, and were not to be put into any assizes, juries, or recognizance, and were to plead before the said keepers of the changes only, except in pleas appertaining unto freehold and the crown.

These privileges were confirmed by Edward II. in his second year, with some additions. Letters-patent to the same effect were issued by Edward III., Richard II., Edward IV., Henry VII., Henry VIII., Edward VI., and Philip and Mary.* All these are referred to in the charter of incorporation which was granted by Elizabeth in the first year of her reign, but those of Edward I. and Edward II. alone are given at length.

In that year Queen Elizabeth, at the humble suit of the keeper of the changes, the labourers, coiners, and ministers deputed or appointed to those things which touch the offices of the change, and in consideration of certain general words in the former grants which had occasioned them and their predecessors to be molested, granted and confirmed to them the letters patent and grants aforesaid; and incorporated them by the name of the keeper of the changes, and the workmen, coiners, and other ministers deputed to the said office. This charter gave all the officers various privileges and exemptions. This charter bore date at Westminster on the 20th February, and there were subsequent confirmations of it in the second, third, fourth, and fifth years of her reign. Ruding has cited various instances in which these privileges were intrenched upon; they were nevertheless confirmed by King James I. in the second year of his reign; by King Charles II. in his fourteenth year; and by the indenture which was in force in the year 1744, and which established the officers in their houses, places, &c., and in their charters and privileges.

These privileges they continue to enjoy to the present time. (Ruding, vol. i., p. 47.)

The following is the establishment of which the Mint at present consists:—

1. A Master and Worker. The salary is 2000*l*. a year. The office of master of the Mint is usually conjoined with some other high official situation. In 1845, the Right Hon. W. E. Gladstone was President of the Board of Trade and Master of the Mint, and he was also a cabinet minister; on his retiring from office, his successor in the mastership of the Mint was Vice-President of the

* There were also confirmations in the 1 Henry IV., Pat. p. 5, m. 25; 1 Henry V., Pat., m. 28; 5 Henry VI., Pat., p. 1. m. 17; 18 Henry VI., Pat., p. 3, m. 25; 23 Henry VI., Mich. Commun, rot. 17; Madox's MSS., No. 69, p. 94.

Board of Trade, but was not in the cabinet.

2. The principal officers, forming a Board, viz:—

The Deputy Master,
Comptroller,
King's Assay Master,
King's Clerk, and the
Superintendent of Machinery and Dies.

3. Officers in the service, viz.:—

The Master Assayer,
Probationer Assayer,
Weigher and Teller,
Surveyor of Meltings,
Surveyor of Money-Presses,
Chief Engraver,
Second Engraver,
Medallist, and
Clerk Assistant and Deputy Master.

Besides these there are four clerks in the Mint-office, two porters, and two or three other inferior persons.

The Company of Moneyers receive a rate on the coinage, conditionally 40*l.* to each member when the coinage is under 500,000*l.*

Ruding (vol. i., p. 51-58) has given the tables of fees and wages for the several officers in the years 1584, 1599, 1649, 1689, 1739, 1743, and 1797.

A comparative statement of the salaries and allowances, contingent expenses, and rates of coinage, between the establishments of the French and English mints in 1836 will be found p. 87-89 of the Appendix to the 'Report from the Select Committee of the House of Commons on the Royal Mint,' ordered to be printed 30th June, 1837.

In ancient times extraordinary methods were resorted to in order to furnish the mint with workmen. Thus in the 31st Henry III., a writ was issued, authorising Reyner de Brussell to bring into England, from beyond the seas, persons skilled in the coinage and exchange of silver, to work in the kingdom at the king's charge. (Pat., 31 Hen. III., m. 3.) And in the 25th Edw. III., Henry de Brussell and John de Cicestra, masters of the mint, were appointed by letters-patent to choose and take as many goldsmiths, smiths, and other workmen in the city of London and other places, where it might seem expedient to them, as should be necessary for the works of the mint in the Tower of London; and to bring the said workmen to the said Tower, and to place them there to work at the wages allowed by the said masters. And any of them which should be rebellious in that case, to seize and arrest, and to detain in prison within the said Tower, and to keep in safe custody until the king should determine upon their punishment. These letters were directed to all sheriffs, &c., who were commanded to assist the said masters in carrying their provisions into execution. (Pat., 25 Edward III., p. 2, m. 13 dors.) This power to take workmen, &c., for the service of the mint was not discontinued in the reign of Elizabeth. (*Indent. with Lorison*, 14 Elizabeth, in *Harl. MSS.*, Brit. Mus., 698.)

The custom of placing the moneyer's name upon the coins prevailed, as already observed, at a very early period; indeed we find it upon the money of Ecghberht, king of Kent, which is the second in point of antiquity in the Anglo-Saxon series, and must be dated about the middle of the seventh century. It was usually stamped upon the reverse of the coin, but in some few instances it is found upon the obverse, whilst the name of the king is removed to the other side. The names of two moneyers sometimes occur upon the same coin. From the time of Aethelstan, with some few exceptions only, the name of the town was added, probably in conformity to his law that the money should be coined within some town. (Wilkins, *Leg. Anglo-Sax.*, p. 319.) The name of the moneyer is not found lower than the reign of Edward I., but that of the mint was not entirely disused in the last year of Queen Elizabeth.

The mode of coinage in early times in this country, was very rude; the sole expedient employed being to fix one die firmly in a wooden block, and to hold the other in the hand as a puncheon; when, by striking the latter forcibly, and repeatedly, with a hammer, the impression required was at length worked up. That no improvement of any importance was made until the power of the screw was applied to coinage in the French mint

about the middle of the sixteenth century. (Le Blanc, *Traité Hist. de Monnoyes de France*, p. 268.) The new invention was not however admitted into our mint before the year 1561, when it was used together with the old method of coining by the hammer, until the latter was wholly laid aside in the 14th Charles II., A.D. 1662. The coinage has been gradually improved by giving the rim of the money a completely circular form, instead of being, as it formerly was, ruder and unfinished, and by milling the edges.

From the money, when completely finished, two pieces are to be taken from every fifteen pounds weight of gold, and two, at least, from every sixty pounds weight of silver, one for the private assay within the mint, and the other for the trial of the Pix. No. 347 of the Parliamentary Papers (Session 1845) is a copy of the Report of the Pix jury which made the assays and trials of Her Majesty's coins in the Pix of the mint on the 17th of May, 1845. "The whole of the monies are weighed and tried in the aggregate, and from the heap a certain number of pieces, about a pound in weight, are taken promiscuously, and melted into an ingot, from which a portion is cut for the assay. The computations and the result of these proceedings are shown in the verdict."

The following is the process which at present takes place, from the time at which an ingot of gold is imported into the mint, to the period when it is issued from the mint in the shape of money, as stated in evidence to the committee on the royal mint, April 18, 1837, by J. W. Morrison, Esq., the deputy-master.

"The bullion or ingots are brought to the mint, and it being ascertained that such ingot has been melted by approved refiners in the trade, and also an assay upon the purchase by the king's assayer, they are taken into the master's assay-office, where pieces are cut out for him to assay; the ingots are then locked up under the keys of the deputy-master, comptroller, and king's clerk, and as soon as the ingots are reported by the master assayer, they are weighed by the weigher and teller in the mint-office, in the presence of the importer and the mint officers and the clerks, who calculate the fineness of each ingot, and ascertain the standard value of the whole importation, when a mint bill and receipt is given to the importer, signed by the deputy-master and witnessed by the comptroller and king's clerk; the mint being bound to return an equal weight of standard coin. The ingots are then made up into pots of a certain weight, and a portion of alloy or fine metal calculated, which is to be added in the melting to produce the standard; they are then cast into bars fit for the moneyer's operation; an assay being made by the king's assayer, with reference to the delivery of the bars, from a sample taken from each pot by the surveyor of melting for that assay, the moneyer rolls the bars to proper thickness, and cuts out the piece for the stamping of the intended coin; and having made that piece of the right weight, they are coined, and are put into bags of a given weight to be examined by the king's assayer, the comptroller, the king's clerk, weigher and teller, at the process called the pix. The money is then locked up till the assay is reported by the king's assayer, when it is delivered to the owner weight for weight, as expressed in the mint bill which had been given, and which bill and receipt are then returned."

The largest amount of gold and silver coined in any one year between 1816 and 1845 was—gold, 1821, 9,520,758*l.*; silver, 1817, 2,436,297*l.* There is no seignorage or charge for coining gold. In 1843 the seignorage which accrued on the coinage of silver amounted to 26,649*l.*, and on copper to 21,964*l.* [MONEY, p. 350.]

Burke, in his speech on economical reform in 1780, proposed that the Mint should be abolished as a public establishment, and that the Bank of England should take charge of the business of coining. "The Mint," he said, "is a manufacture, and it is nothing else; and it ought to be undertaken upon the principles of a manufacture: that is, for the best and cheapest execution, by a contract upon proper securities and under proper regulations."

There is a provision in the Act of

Union for maintaining a mint in Scotland, and although every species of the money of Great Britain and Ireland was coined in London, the establishment of a mint was retained in Scotland for above a century after the union.

The reader may consult the *Report from the Select Committee of the House of Commons*, already referred to, in the Appendix to which he will also find a large collection of papers relating to the French mint, the mint of the United States of North America, and the Dutch mint.

MISCHIEF, MALICIOUS. [MALICIOUS INJURIES.]

MISDEMEANOUR. [LAW, CRIMINAL, p. 181.]

MISPRISION OF TREASON. [LAW, CRIMINAL, p. 187, *note*.]

MONACHISM, MONASTERIES. [MONK.]

MODUS. [TITHES.]

MONARCHY. [See p. 362.]

MONEY is the medium of exchange by which the value of commodities is estimated, and is at once the representative and equivalent of such value.

Barter is naturally the first form in which any commerce is carried on. A man having produced or obtained more of any article than he requires for his own use, exchanges a part of it for some other article which he desires to possess. But this simple form of exchange is adapted to a rude state of society only, where the objects of exchange are not numerous, and where their value has not been ascertained with precision. As soon as the relations of civilized life are established in a community, some medium of exchange becomes necessary. Objects of every variety are bought and sold, the production of which requires various amounts of labour; these at different times are relatively abundant or scarce; labour is bargained for as well as its products: and at length the exchangeable value of things, in relation to each other, becomes defined and needs some common standard or measure, by which it may be expressed and known. It is not sufficient to know that a given quantity of corn will exchange for a given quantity of a man's labour, for their relative value is not always the same; but if a standard be established by which each can be measured, their relative value can always be ascertained as well as their positive value, independently of each other.

As a measure of value only money is thus a most important auxiliary of commerce. One commodity from its nature must be measured by its weight, another by its length, a third by its cubic contents, others by their number. The diversity of their nature, therefore, makes it impossible to apply one description of measure to their several quantities; but the value of each may be measured by one standard common to all. Until such a standard has been agreed upon, the difficulties of any extensive commerce are incalculable. One man may have nothing but corn to offer for other commodities, the owners of which may not have ascertained the quantity of corn which would be an equivalent for their respective goods. To effect an exchange these parties would either have to guess what quantity of each kind of goods might justly be exchanged for one another, or would be guided by their own experience in their particular trades. Whenever they wanted a new commodity their experience would fail them, and they must guess once more. But with money all becomes easy; each man affixes a price to his own commodities, and even if barter should continue to be the form in which exchanges are effected, every bargain could be made with the utmost simplicity: for commodities of every description would have a denomination of value affixed to them, common to all and understood by every body.

But however great may be the importance of money as a measure of value in facilitating the exchange of commodities, it is infinitely more important in another character. In order to exchange his goods it is not sufficient that a man should be able to measure their value, but he must also be able to find others who, having a different description of goods to offer as an equivalent, are willing to accept his goods in exchange, in such quantities as he wishes to dispose of. Not to enlarge upon the obvious difficulties of barter:—suppose one man to have nothing but corn to sell, and another nothing but bricks: how can any exchange be effected unless

each should happen to require the other's goods? But presuming that this is actually the case, is it probable that each will require as much of the other as will be an exact equivalent; or in other words, as much as represents an equal amount of labour? Such a coincidence might occur once or twice, but it is not conceivable that it should occur often. Corn is consumed annually: but bricks once produced endure for many years; and their interchange between two persons in equal proportions, for any length of time, would therefore be extremely inconvenient. In order to dispose of his corn, the producer might buy the bricks and dispose of them to others; but in that case, in addition to the business of growing corn he must become a seller of bricks. But human labour has a natural tendency to a division of employments; and as society advances in wealth and in the arts of life, men confine themselves more and more to distinct occupations, instead of practising many at the same time. [Division of Employments.] With this tendency a system of simple barter is obviously inconsistent; as by the one, a man is led to apply the whole of his labour to one business: by the other, he is drawn into many. By the one he has only to produce and sell: by the other he must also buy what he does not want himself, and become a trader.

But all these difficulties are removed if some one commodity can be discovered which represents a certain amount of labour, and which all persons agree to accept as an equivalent for the products of their own industry. If such a commodity be found, it is no longer necessary for men to exchange their goods directly with each other: they have a medium of exchange, which they can obtain for their own goods, and with which they can purchase the goods of others. This medium, whatever it may be, is Money.

When money has assumed the character of a medium of exchange and equivalent of value, the cumbrous mechanism of barter gives place to commerce. But what must be the qualities of an article which all men are willing to accept for the products of their own labour? It is now no longer like a weight or measure, the mere instrument for assessing the value of commodities; but, to use the words of Locke, "it is the thing bargained for as well as the measure of the bargain." A bargain is complete when money has been paid for goods; it has no reference to the price of other goods, nor to any circumstance whatever. One party parts with his goods, the other pays his money as an absolute equivalent. But though money as a medium of exchange thus differs from money as a mere standard of value; yet in both characters it should possess, if it be possible, one quality above all others—an invariable equality of value at all times and under all circumstances. As a measure of value it is as essential that it should always be the same, as that a yard should always be of the same length. And unless, as a medium of exchange, its value be always the same, all bargains are disturbed. He who gives his labour or his goods to another in exchange for a delusive denomination of value instead of for a full equivalent which he expects to receive, is as much defrauded as one who should bargain for a yard of cloth and receive short measure.

But however desirable may be the invariableness of money, complete uniformity of value is an impossibility. There is no such thing as absolute value. All descriptions of measures correspond with absolute qualities, such as length, weight, and number, and may be invariable. But as value is a relative and not an absolute quality, it can have no invariable measure or constant representative. The value of all commodities is continually changing; some more and some less than others. Their real value depends upon the quantity of labour expended upon them; but temporary variations in their exchangeable value are caused by abundance or scarcity—by the relations which subsist between supply and demand. No commodity yet discovered is exempt from the laws which affect all others. If precisely the same quantity of labour were required for a long series of years to produce equal quantities of any commodity, its real value would remain unchanged; but if it were at the same time an object of de-

mand amongst men, variations in the proportion between its supply and the demand for it would affect its exchangeable value. It follows therefore, that to be an invariable standard, money must always be produced by the same amount of labour, and in such quantities as shall constantly bear the same proportion to the demand for it.

But even if any description of money could be invented which possessed these extraordinary qualities, the value of all other articles would still be variable, and thus its representative character would be disturbed. At one time, for example, a given denomination of money will represent a certain number of bushels of wheat; at another time, the same money, unchanged in real value or in demand, will represent a much greater number. Every application of machinery, every addition to the skill and experience of mankind facilitates production, and by saving labour reduces the real value of commodities. Their value is also liable to temporary depreciation from other causes, from too abundant a supply, or from an insufficient demand. But if money maintain the same value, in relation to itself, notwithstanding the diminished value of other articles, its proportionate value is practically increasing. The consequences of a growing disproportion between the representative value of money and the value of commodities are these: 1st. a producer has to give a larger quantity of his goods than before for the same amount of money. 2ndly, Those who are entitled to payments in money, receive the value of a greater quantity of commodities than they would have received if the relative value of money and of commodities had not been disturbed. It follows from these circumstances, that as a general rule, all creditors whose debts have been calculated in money derive advantage from any increase in its value relatively to commodities; while debtors derive benefit from any circumstance which raises the value of commodities, as compared with that of money: whether it be by increasing the value of the former, or by depreciating the value of the latter. To make these principles intelligible the following example may not be superfluous: Suppose a farmer to hold land under a lease for twenty-one years at a money rent; and that from any cause the value of agricultural produce is no longer represented by money in the same manner as when the arrangement was entered into with his landlord, but that the value of money has been relatively increased. In order to pay his rent, he must now sell a larger proportion of his produce, even though its production may have cost him as much as ever. On the other hand, his landlord receives the same money rent, but is able to purchase more commodities than before on account of the increased comparative value of money.

Thus far we have thought it convenient to confine ourselves to the abstract qualities and uses of money, and to explain such general principles only as are introductory to the consideration of particular kinds of money, and of the modes of using and regulating them.

In all ages of the world, and in nearly all countries, metals seem to have been used, as it were by common consent, to serve the purposes of money. It is true, that other articles have also been used, and still are used, such as paper in highly civilized countries, and cowrie shells in the less civilized parts of Africa; but in all, some portion of the currency has been and is composed of metals. We read of metals amongst the Jews, the Chinese, the Egyptians, the Persians, the Greeks, the Romans. In the earliest annals of commerce they are spoken of as objects of value and of exchange; and wherever commerce is carried on they are still used as money. But as they were introduced, for this purpose, in very remote times, it is not probable that they were selected because their value was supposed to be less variable than that of other commodities. More than two thousand years ago, indeed, Aristotle saw clearly (but what did he not see clearly?*) that the

* Many important principles of political economy, the discovery of which is attributed to Adam Smith and other modern writers, may be found in the works of Aristotle, expressed with wonderful precision and clearness. Mr. M'Culloch, for example, refers to Locke as the first who laid it down that labour is the source of value; but the same principle was affirmed by Aristotle

principal use of metallic money was that its value was less fluctuating than that of most other substances (*Ethic. Nicom.* v. 5). But however clearly this great philosopher may have observed the true character of money, many ages after the circulation of metals, those who first used them were men engaged in common barter, who considered their own convenience and security without reference to any general objects of public utility. They must have used metals, not as a standard of value, but as an article of exchange, which facilitated their barter. All metals are of great utility and have always been sought with eagerness for various purposes of use and ornament: but gold and silver are especially objects of desire. Their comparative scarcity, the difficulty and labour of procuring them, their extraordinary beauty, their singular purity, their adaptation to purposes of art, of luxury, and display: their durability and compactness; must all have contributed to render them most suitable objects of exchange. They were easily conveyed from place to place; a small quantity would obtain large supplies of other articles; they were certain to find a market; none would refuse to accept articles in payment which they could immediately transfer to others: and thus gold and silver naturally became articles of commerce, readily exchangeable for all other articles, before they were circulated as money, and were acknowledged as such by law and custom.

The transition of the precious metals from the condition of mere articles of exchange, amongst many others, to that of a recognised standard of value by which the worth of all other articles was estimated, was very natural. Merchants carrying their wares to a distant market would soon find it necessary to calculate the quantity of gold and silver which they could obtain, rather than the uncertain quantities and bulk of other commodities. They would not know what articles it would be prudent to buy until they reached the market and examined their quality and prices: but a little experience would enable them to predict the quantity of gold and silver which would be an equivalent for their own merchandise. Merchants, from different parts of the world, meeting one another in the same markets, and finding the convenience of assessing the value of their goods in gold and silver, would begin to offer them for certain quantities of those metals, instead of engaging, more directly, in bartering one description of goods for another; and thus, by the ordinary course of trade, without any law or binding custom, the precious metals would become the measure of value and the medium of exchange.

But when gold and silver had attained this position in commerce, they were not the less objects of barter; nor were they distinguishable, in character, from any other articles of exchange. They were weighed, and being of the required fineness, a given weight was known as a denomination of value, but in the same manner only as the value of a bushel of wheat may be known. In the earliest ages gold and silver seem to have been universally exchanged in bars, and valued by weight and fineness only. The same custom exists at the present day in China. There is no silver coinage, "but the smallest payments, if not made in the copper *tchen*, are effected by exchanging bits of silver, whose weight is ascertained by a little ivory balance, on the principle of the steelyard." (Davis's *China*, c. 22.)

Notwithstanding the ease with which gold and silver are divided into the smallest portions, each of which is of the same intrinsic purity and value as the others, the trouble of weighing each piece, and the difficulty of assaying it, render these metals in bars, or other unfashioned forms, extremely imperfect instruments of exchange, especially when they are used in small quantities. However accurately they may be weighed, it

in more than one part of his works, and more accurately than by Locke (*Ethic. Nicom.* v. 5). Again, he perceived, perhaps as distinctly as any other writer, the distinction between productive and unproductive labour (*Metaph.* ix. 8). As another example we would refer to his account of the origin of barter, its development into commerce, and the connexion of the latter with the use of money (*Pol.* i. 6). And, lastly, any economist must be struck with his clear perception of the relations between a division of employments and the exchange of the products of labour (*Ib.* ii. 2).

requires considerable skill and labour to assay them, which in small pieces would scarcely be repaid. Even in large quantities the difficulty of assaying their fineness, in countries which have made considerable advances in the arts, is greater than might be expected. The Chinese affect much accuracy in the art of assaying. The stamped ingots of silver in which their taxes are paid, are required to contain ninety-eight parts in a hundred of pure silver, and two per cent. only of alloy; and strict regulations for maintaining this standard are rigidly enforced. Hence we should naturally infer that the attention of merchants and of all persons dealing in silver would be particularly directed to the most accurate assays. Yet, at Canton, an enormous trade in opium has, for a long series of years, been conducted entirely in sysee silver, which has been found to contain so large an admixture of gold that it bears a premium of five or six per cent. for exportation to England. (Davis's *China*, § 22.)

If the Chinese have been unable to discover the presence of gold, which it would be their interest to appropriate, how difficult must it be to detect alloys of baser metals in gold or silver circulated amongst a people in the ordinary course of trade. To obviate this difficulty coinage was introduced, by which portions of gold, silver, copper, and other metals have been impressed with distinctive marks, denoting their character, and have become current under certain denominations, according to their respective weight, fineness, and value. These coins have always been issued by the government of each country as a guarantee of their genuineness; and the counterfeiting of them has been punished as a serious offence against the state.

In rich countries these three metals of gold, silver, and copper are very convenient substances for the manufacture of coins, on account of the differences in their relative value. Gold coins containing a high value in small compass, are convenient for large payments, silver coins for smaller payments, and copper coins for those of the lowest value; while all the larger coins are multiples of the smaller. These several descriptions of coin serve the ordinary purposes of trade sufficiently well: they are universally received as money within the country in which they circulate, and the principal part of all payments of moderate amount are made in them. But payments of large amounts cannot conveniently be made in coins of any metal; and in this and other countries paper money and various forms of credit have been used as substitutes. Of these we shall speak presently; but it will first be necessary to consider the suitableness of gold and silver coins as standards of value.

Coins made of these metals are not exempt from the laws which govern the prices of other commodities. They have accordingly varied in their own value, in successive periods, and are at no time secure from variation. In the sixteenth century new mines of extraordinary richness were opened in America which were worked with such ease, and were so unusually productive, that the value of the precious metals, as representatives of so much labour expended in their production, was lowered all over Europe to about a third of their previous value. And thus a revolution, so to speak, was effected in the gold and silver coins of that period, as standards of value. Similar causes have produced the same effect, at other times, though not in the same degree; and we cannot be secured against their recurrence.

If the production of gold and silver be free, like that of other commodities, the only circumstance which can permanently diminish their value, in relation to themselves at different periods, is a reduction in the quantity of labour required for their production. But they are also liable to fluctuations in their value by reason of variations in the demand for them in particular countries. Though fashioned into coins, they retain all their properties as articles of commerce: they are readily fused into other forms, and rendered available for all purposes of use and ornament; and the occasions of commerce often withdraw them from one country and attract them elsewhere. From these causes their value, instead of being always the same, is liable to permanent alterations, and also to occasional fluctuation.

Both gold and silver are alike subject to these general laws, and are therefore imperfect standards of value. If one be the standard independently of the other, it is liable to change in itself, and also in its relation to other commodities: if both be adopted as standards at the same time, they will not only each vary in themselves, and in relation to other commodities, but they will vary also in regard to each other. And thus another element of uncertainty is introduced into the coinage, which becomes still more imperfect as a standard.

But it is not customary for the state to allow coins to fluctuate in their legal value according to the circumstances which determine the market prices of gold and silver. Coinage does not merely authenticate the weight and fineness of a piece of metal, leaving it to find its own level in exchange for other commodities; but it attaches to it a definite value, by fixing the standard price of the metal as well as the weight and fineness of the coin. The object of this regulation is to maintain a greater equality in the standard; and as regards small fluctuations in the value of the precious metals, it will generally have that effect. But if any considerable disproportion should arise between the standard price of bullion and the market price, no such regulation can prevent a practical change in the standard. If the market price should become considerably higher than the standard price, the coins would be melted down for the sake of the profit arising from the difference. If it should become considerably lower for any length of time, the value of the coins, though nominally unchanged, would in fact be depreciated; for they would exchange for a less quantity of other commodities than they exchanged for before. And thus a currency composed exclusively of metals cannot be made an accurate standard of value by any expedients of law.

We may here remark, however, that a seignorage, or charge by government to cover the expenses of coinage, acts as a protection, within certain limits, against the melting of coins, because unless their value be depreciated by over-issue, the whole charge will be added to their value as coins, and will be lost when they are melted. For this amongst other reasons a seignorage should always be charged by the state.

There is yet another imperfection in coins, as standards of value. Notwithstanding their natural durability, they are subject to continual wear, and must be gradually diminished in weight. They are also exposed to the fraudulent experiments of men whose trade it is to rob them of a portion of their weight by artificial wear. The value of coins is therefore certain to be continually depreciated by loss of weight, apart from any other causes of variation.

From all these circumstances it is evident that gold and silver coins have qualities inherent in them which render them necessarily imperfect standards of value, with whatever care and skill they may be regulated. But, in addition to these natural causes of imperfection, others have been artificially produced by erroneous or dishonest political expedients. There is no country perhaps in which the coinage has never been debased by the government. Debasement of coins was formerly a common artifice for increasing the revenue of states, and it has been effected in three different ways:—1, by diminishing the quantity of metal, of the standard fineness, in coins of a given denomination; 2, by raising their nominal value and ordaining that they shall pass current at a higher rate; and, 3, by debasing the metal itself—*i. e.* by leaving the coin of the same weight as before, but reducing the quantity of pure metal and increasing the quantity of alloy. In all these ways have the coins of England been debased at different periods of our history; and to so great an extent were they debased by successive kings, that from the Conquest to the reign of Queen Elizabeth, the total debasements of the silver coins have been estimated at 65 per cent. (Lord Liverpool *On Coins*, p. 35.) By expedients of an opposite character the standard of coins may be artificially raised; and the result of measures connected with the coinage of this country was, that in a period of 115 years, from the 1st James I. to the 1st George I. the value of gold coins, as compared with

silver coins, was raised 39 per cent (Ibid, p. 84.) No further examples are needed to prove the inconstancy of coins as a standard, when they form the sole currency of a country.

But notwithstanding these imperfections, the convenience of gold or silver coinage, as money, has led to the universal adoption of one or the other, or of both conjointly, as the standard of value. The objections to a double standard have already been noticed, but throughout a long period of the history of this country we find gold and silver prevailing equally as standards. There appears to have been no public coinage of gold, at the royal mints, prior to the 41st Henry III. The gold pennies coined at that time were expressly declared not to be a legal tender, and never obtained a very general circulation. Silver was then the universal medium of exchange, and the people were unaccustomed to the use of gold as money: but as their commerce and riches increased gold naturally became more convenient for large payments. The results of this progress became apparent in the reign of Edward III., who established a general circulation of gold coins, which, though partially introduced nearly a hundred years before, by Henry III., had not been continued by his successors. From this time gold and silver coins circulated together, and were both legal tenders. To what an extent their relative value varied at different periods, has already been noticed; but they were equally recognised by law as authorised standards of value in all payments whatever, until the year 1774, when it was declared by statute (14 Geo. III. c. 42) that, in future, silver coins should not be a legal tender in payment of any sum exceeding 25*l.*, except according to their value by weight, at the rate of 5*s.* 2*d.* an ounce. This was a temporary law, but was continued by several statutes until the year 1816, when the legal tender of silver coins was further restricted to payments not exceeding forty shillings (56 Geo. III. c. 68). And thus, as all large payments were made and calculated in gold coins, they became the sole standard of value, so far as coinage alone was the real medium of exchange.

The expediency of adopting gold as the standard instead of silver, has been a question of much doubt and controversy amongst the highest authorities upon monetary affairs. It was the opinion of Locke, of Harris, and Sir William Petty (all great authorities) that silver was the general money of account in England, and the measure of value in its commercial dealings with other countries. Its general adoption for such purposes was urged as a proof of its superiority as money over gold; and of this opinion are many thinkers of high authority at the present day. On the other hand it has been argued, that the metal of which the chief medium of exchange is fabricated, should have reference to the wealth and commerce of the country for which it is intended; that copper or silver coins of the lowest denominations suffice for the convenience of a very poor country; but that as a country advances in wealth its commercial transactions are more costly and require coins of corresponding value. As a matter of convenience this is undoubtedly true. Gold is the standard in England; silver is the standard in France; and the comparative facility of effecting large payments in the current coins of the two countries can admit of little doubt. Habit will familiarize the use of silver, and render a people insensible to its inconvenience; but it is certain that in England fifty sovereigns can be carried about in a man's waistcoat pocket, while in France the value of that sum in silver would weigh about 48 lbs. troy: so heavy and bulky, indeed, would it be that a carriage would be required to convey it from one part of Paris to another.

But the convenience of coin for a certain class of payments is a question quite distinct from that of its fitness for a standard of value. It is not necessary to exclude gold from the coinage because it is not adopted as the standard; it may be circulated as freely as the people desire to use it, while, instead of being the legal standard, its value may be calculated in silver. If silver be the standard, a large gold coinage may circulate at the same time for the convenience of larger payments, just as silver circulates for small payments where gold is the standard. In

either case, however, that metal which is chosen by the state as the lawful standard governs all calculations and bargains, while the other metal merely conforms to its standard, and is subsidiary to it. But even if the relative convenience of gold or silver as a standard were the sole question, it could not be determined by the modes of effecting large payments only. All payments are calculated as easily in the coins of one metal as of another, in whatever form they may be actually effected. But by far the greater number of bargains are made for articles of small value. It is in silver and copper that the consumption of all commodities is mainly paid for. The wages of the country are paid and expended in that form; and in that form the prices of nearly all the ordinary articles of daily use are calculated. However the wholesale bargains of merchants may be conducted, the goods bought and sold by them are ultimately distributed to the consumers in very small quantities, the prices of which are estimated in silver and copper. The aggregate value of the small bargains must be equal to that of the large mercantile bargains which relate to the internal trade of the country, and in frequency and number they are, beyond all comparison, more important. It is certain, also, that in the vast operations of commerce the bargains, in whatever medium they may be calculated, are very rarely paid for in any coin whatever, but are settled by various forms of credit; while all minor transactions—the bargains of daily life—can be adjusted by money payments only. It is for such purposes, therefore, that the metallic currency of a country is mainly needed; and it may be contended with much force, that silver represents the value of commodities more universally than gold, and is consequently a fitter standard.

The fitness of a standard, however, cannot be determined solely by considerations of convenience; for we must chiefly regard its intrinsic qualities as a permanent measure of value. How shall uniformity of value be maintained as far as practicable in the money of a country? is the main question to be determined; and not, Which is the most convenient form in which to make bargains? In what medium shall the whole property of the country be valued, from one year to another? By what standard shall the relative value of all things be compared? How shall fluctuations be restrained in the value of this standard itself? These are the questions to be answered.

In favour of gold as a standard it is argued that being less extensively used for plate and other manufactures, it is less an article of commerce than silver, and is confined more specifically to the purposes of money. On the other hand, it is contended that gold is used in large quantities for jewellery, watches, and decorative purposes, and that being a comparatively scarce material, its consumption, in this manner, affects its quantity and value to a greater extent than the use of plate affects the price of silver.* And in this argument there is much weight, for it is estimated that the quantity of gold compared with the quantity of silver is as 1 to 50; and their relative value is as 1 to 15. (See *Bullion Report*, 1810, *Allen's Evidence.*) Now it is evident that any variation in the commercial demand for gold must be more sensibly felt than a similar variation in the demand for silver.

But it is not sufficient to consider the demand for the precious metals as articles of consumption only; they are suddenly sought for in large quantities for other purposes. If the exchanges be unfavourable to a country, its precious metals are in greater demand for exportation than its commodities; or if there be a foreign war, its metals are in demand for the payment of the troops and for the purchase of food and munitions of war. Here again gold must feel the demand to a greater extent than silver. If metals be required for exportation in payment of goods, gold is sure to be preferred by merchants; it is compact and portable; a large value can be exported at a small cost and without difficulty; while fifteen times as much silver must be taken to effect the

* For an account of the consumption of gold and silver in various manufactures, see Jacob 'On the Precious Metals,' chap. xxvi. vol. ii. p. 270.

same purpose. In war gold is even more in request than for the purposes of commerce: its facility of transport is so important that it must be obtained at any cost, and it is consequently drained from all countries in which it can be found. Thus not only is gold, from its limited quantity, more sensibly affected by any increased demand than silver; but it is more peculiarly liable to great and sudden drains from any country in which it forms the standard of value.

If it should happen that one country has a large gold coinage in circulation in addition to all the bullion which is required for the purposes of commerce, while all the adjacent countries use a silver currency, and possess very little more gold than is necessary for its consumption, it is clear that whenever a large demand for gold arises, it must be directed to the country in which there is a gold currency. That country will be immediately used by all others as a rich gold mine, whence abundance of metal without alloy, and assayed ready to their hands, may at once be grasped, without digging in the earth. No laws and no vigilance can restrain its export: as soon as it is wanted abroad, it disappears like water through a sieve. And this has been the case with England. Every other country in Europe has a silver standard; and whenever gold is wanted, her coinage supplies it. The extent to which gold is exported when the foreign exchanges are unfavourable may be estimated from the returns of bullion retained by the Bank at different periods. On the 28th February, 1824, the Bank had in its coffers 13,810,060*l.* in bullion; at the same period, in 1825, it had 8,779,100*l.*; on the 31st August in that year its treasure was reduced to 3,634,324*l.*; and on the 28th February, 1826, to 2,459,510*l.* Again in March, 1836, the bullion amounted to 8,003,400*l.*, but was reduced by the following February to 3,938,750*l.* A similar exhaustion of treasure was exhibited in 1838-9. In December, 1838, the Bank possessed 9,686,000*l.* of bullion; and in August, 1839, no more than 2,444,000*l.*

These are undoubtedly very strong objections to a gold standard, and in order to test them thoroughly it would be satisfactory to compare the actual prices of gold and silver, and estimate their relative variations. But such comparisons are extremely delusive, for there is no common standard by which to compare the price of each metal. If silver be purchased with gold, how shall we determine in which there has been variation? Or if gold and silver be both purchased alike with bank notes, there is a standard wanting; for the notes are made to conform to the value of the gold, and not to the value of the silver. These elements of uncertainty make all returns fallacious; but if reliance could be placed upon them, the fluctuations in the price of silver bullion would appear to be very slightly greater than those of gold (see *Bank Charter Report*, 1832, *Sess. Paper*, No. 722, App. p. 98; *Banks of Issue Report*, 1841, No. 410, App. p. 316). These results do not corroborate the objections to a gold standard; but it must be recollected that independently of fluctuations in the prices of bullion, a diminution in the quantity of money circulating in a country raises the value of the remainder, and disturbs its relation to the prices of other commodities. It is in this form that the effects of an abstraction of gold must be felt rather than in the price of bullion; and though its influence upon prices is very injurious, the cause is not always perceptible. If a country had a circulation composed exclusively of gold, it might sometimes be deprived of all its money; if of gold and silver conjointly, it might sometimes be deprived of all its gold; but no country could be deprived of all, or nearly all, its silver by the operations of commerce. When paper money is added to gold and silver coins as part of the circulation, a country can always command a sufficient quantity of money; but the drain of its metals has an important influence upon the value of its circulating medium, and upon the operations of commerce; but of these matters more will be said hereafter.

The principal imperfections of the precious metals as standards of value have now been adverted to. Both of them are less liable to variations than any other known commodity which could be used

for the purposes of money; but of the two, silver would appear to be, upon the whole, the most suitable for a standard of value.

But whatever metal may be chiefly used as money, there is a disadvantage attending the circulation of coins which remains to be noticed. To maintain a large circulation of them is the most expensive mode of furnishing a people with a medium of exchange. In the first place the whole value of the metals of which they are composed, is subtracted from the productive capital of the country, in order to facilitate the exchange of other commodities. Unless this expense be absolutely necessary, it is an unwise extravagance. It is as if children should play at cards with gold counters instead of ivory fish. Secondly, the wear and abrasion of coins makes it necessary to supply their deficiency with more of these costly metals, in addition to the amount already coined. Thirdly, not only are coins diminished in weight, but great numbers are irretrievably lost and destroyed. They are buried in the earth by misers, and never found again; they are lost in the sea; they are wasted by fire; they are dropped in the roads, and trampled under foot with the dust and stones. Every accident of this kind diminishes the wealth of the country, and wastes the products of its labour. Some cheaper kind of money therefore should, as far as possible, be used as a substitute for gold and silver;—and such a substitute has been found in paper.

Not only is paper more economical than gold and silver, but it is more convenient than either for effecting large payments, or for transmitting sums of money to a distance. In this respect it excels gold more than gold excels silver. A million of money may be paid in bank notes as easily as ten sovereigns, and transmitted to a distance even more easily.

But notwithstanding these advantages, paper may be deemed an imperfect instrument of exchange, because it is subject to forgery. It shares this defect, however, with other kinds of money. Gold and silver coins are counterfeited in baser metals; paper-money is imitated by the forger. But the more exquisite the art with which a coin is struck, the more difficult is it to counterfeit its impression; and, in the same manner, the more elaborate the design of a promissory note, the greater will be the obstacles to forgery. No precautions, perhaps, can altogether prevent a spurious imitation of valuable articles; but the possibility of forgery can only be objected to the use of paper-money in the same manner as the danger of buying paste ornaments may be urged against the wearing of diamonds.

Paper is thus as well suited as any other material for the purposes of a currency; but its character is essentially different from that of other descriptions of money. Its cheapness, which renders its use economical, prevents it from being exchanged as an absolute equivalent for other commodities. Gold and silver have a value of their own, distinct from their value as money; but, except in its monetary character, paper is nearly worthless. To be accepted, therefore, in exchange for commodities, paper must represent some value besides its own.

In considering what that value may be, it will be convenient to describe the character and functions of a promissory note. The state, a bank, or some person of known wealth, instead of paying a sum of money in the ordinary coins of the country, issues a note promising to pay that sum, on demand, to any person who shall present it for payment. This is the form of promissory notes which circulate as money: but there are also promissory notes, payable at some particular period, which, for reasons which will be presently explained, do not form part of a monetary circulation. Now, in the ordinary transactions of life, no one will promise to pay a sum of money without receiving or expecting to receive an equivalent for it, and such equivalent, whatever it may be, is the value represented by the note. Suppose that A in London owes B at Edinburgh a thousand pounds, and that he has a thousand sovereigns to discharge his debt. Instead of transmitting the gold to Edinburgh, A takes it to the bank and exchanges it for a promissory note of that amount, which is

accepted by B in payment of his debt. In this case it is clear that the note represents a thousand sovereigns; and any person in whose possession it may be can obtain them from the bank. Suppose again that C applies to D for a loan of 1000*l.*, for the repayment of which he is able to offer security in the shape of goods or property; and that D, instead of advancing that sum in money, gives him his promissory note for 1000*l.* payable on demand. In that case, the promissory note, if issued by a solvent person, would be equally payable in coined money, but it would represent the security upon which it was given. The issuer of the note will suffer if that security be insufficient, for he has pledged his own property against it; but the interest which he expects to receive is a compensation for the risk he incurs in realizing, as it were, the property of another. A promissory note, it seems, may therefore represent either coined money or capital in any other form. But here an important question arises which affects the entire character of paper-money. Why do persons accept promissory notes instead of gold and silver? Why are they satisfied with the representative of value instead of receiving the value itself? For the explanation of this point it will be necessary to divide promissory notes into two kinds, viz.: 1, those issued by the state, or by a state bank; and 2, those issued by bankers, or other persons unconnected with the state.

1. Promissory notes issued by the state or by a state bank are under the protection of the law, and are made a legal tender. When once in circulation they discharge debts as completely as the current coin; they may not be refused in payment, although if from any cause their value be depreciated, they may be taken in exchange for a less sum than they profess to represent. Such notes are therefore money, to all intents and purposes, just as if they were composed of gold and silver. Their value is liable to fluctuation, according to the regulations under which they are issued: but they are lawful money, coined by the state in paper, instead of in the precious metals. Such money will be current throughout the country in which it is issued; but it differs from gold and silver, inasmuch as it cannot serve the purposes of an international currency. Gold and silver are current all over the world, and their value is everywhere understood; but paper-money is necessarily confined to the purposes of internal circulation.

2. Promissory notes issued by bankers or other persons unconnected with the state, not being a legal tender, may be refused in payment of any debt. They can only be circulated, therefore, with the entire concurrence of those who receive them. It is by means of banking accommodations, however, that they usually get first into circulation. A person who wishes to borrow money is not very particular concerning the form in which he obtains it, and he willingly accepts a note, if it be offered him instead of gold. He probably owes money to another to whom he, in his turn, offers the note as payment. This third party will readily accept it, for he wishes to secure the payment of the debt, and if he distrust the value of the note, he may immediately call upon the party who issued it, for gold. When the credit and solvency of a bank are well known in any neighbourhood, its notes pass from hand to hand without any distrust, but they rarely circulate beyond the adjacent district. Within its own district they are received as money, as readily as a state bank-note is received all over the country; beyond its district they are sure to be returned for gold, just as a Bank of England note would be returned from Russia. A bank of issue is also a bank of deposit, and the people amongst whom its notes are circulated pay them into the bank whence they issued, and receive credit for them—not as notes only, but as current money: and when they draw again upon their deposits, they may receive the amount in gold and silver or in state bank-notes. In this manner the distinction between local notes and other descriptions of money is gradually lost sight of; they are readily convertible: they are universally circulated: habit familiarises the use of them; and at length, without the sanction or protection of any law, they become money: usage, and not the state, has coined them. Still

any one may refuse to receive them, and the extent of their circulation depends upon the credit of the issuer. Let a whisper be heard against his solvency, and in a single day all his notes may be returned to him for immediate payment in the currency of the state.

The circumstances which occasion a large circulation of both these kinds of paper-money in a country, are the convenience of such a circulation and the difficulty of obtaining a sufficient coinage for effecting the various purposes for which money is used. The demand for money is continually increasing in proportion to the increase of commodities in quantity and value: and in a rapidly improving country no coinage can keep pace with such an increase. When paper-money is issued it does not supersede gold and silver, but is used concurrently with them. Its denominations of value are the same as those of the coins; and if it be a properly regulated currency, its value will also be precisely the same as that of the coins of a like denomination. A hundred pound note should be of precisely the same value as a hundred sovereigns. But how is this equality of value to be maintained between two descriptions of money differing so materially in character? Gold and silver, as already explained, have a known value as articles of commerce, and their real value depends upon the quantity of labour required for their production. If this continue unchanged for many years, their exchangeable value may still be liable to fluctuation by reason of varying proportions between supply and demand. The supply of them may be the same with an increased demand: or the demand may remain the same and the supply be either increased or diminished. But paper has scarcely any real value when used as money; the labour expended upon it compared with its denomination of value is merely nominal: and its value, supposing its credit to be good, must therefore depend entirely upon the proportion which the quantity issued bears to the requirements of commerce. If less be issued than there is a demand for, its value will rise; if it be issued in excess, its value will be depreciated. So strong is the operation of this principle, that promissory notes, which are a legal tender, may even be raised above the value of gold, though inconvertible into specie, if their amount be sufficiently limited. This result was actually produced, after the suspension of specie payments in 1797; when, so far from being depreciated in value, bank-notes bore a premium over gold, until they were issued in excess and fell to a discount. It is evident, therefore, that the value of paper-money is independent of convertibility. If convertible, but issued in excess, its value will be depreciated; if inconvertible, but limited in amount, its value will be sustained. And further, if government paper and local notes be concurrently in circulation, and if either be issued in excess, the value of both will be depreciated, because the aggregate quantity of paper-money will be increased beyond the demand for it.

The mode of regulating the issue of paper-money so as to sustain its value and to prevent it from fluctuation, is one of those difficult problems which have perplexed theorists and statesmen, and still remain to be completely elucidated by experience; but the principles upon which any sound system of paper-currency must be founded are now agreed upon by the best authorities.

Let it be supposed that no paper-money is in circulation but government notes, inconvertible into specie, and that it is the desire of government to maintain them at the same value as the gold and silver coinage. By what principle could the issue be regulated so as to effect this object? Gold and silver maintain a reasonable steadiness of price, as they are possessed of a real value, and being in demand all over the world, are distributed in quantities proportioned to the wants of each country. Without any standard price being fixed by the state, their value will, therefore, be self-regulated; but paper-money, not being possessed of any real value, has no element of stability in itself, and unless its issue be adjusted with the utmost nicety, its value will be constantly fluctuating. As the object to be secured is an equality of value between the precious metals and paper-

money, and as the former have an element of stability which is wanting in the latter, it is clear that paper-money must be made, in some manner, to conform to the value of the precious metals. Now this can only be accomplished by making paper-money convertible into gold or silver, whenever its holders demand such a conversion. To regulate the issues of inconvertible paper is like filling a vessel with water, in the dark, and without a measure: it is by the overflow only, that the vessel is known to be full; while a convertible paper, under proper regulation, adjusts itself to the standard of the precious metals.

If convertibility be desirable when there is no other paper in circulation but that issued by government, it is indispensable when promissory notes are permitted to be issued by other parties; for, in that case, it is necessary to guard against an excessive issue of both descriptions of paper; and when government paper is convertible, other issues of paper will in some degree conform to its standard, as it, in its turn, conforms to that of the precious metals.

The manner in which convertibility restrains the over-issue of notes may be thus explained. If too much money be in circulation, its value is depressed, and the prices of commodities relatively raised. It thus becomes more profitable to export money than commodities in payment of the price of imports; but paper-money not being current abroad, gold or silver is taken, and whenever this occurs, the exchanges are said to be unfavourable. If a state bank issuing notes be required to give gold or silver in exchange for them, it must be constantly possessed of a large store of the standard metal. If it be the sole or chief bank of issue, it will be the principal depository of bullion in the country; and thus any drain caused by unfavourable exchanges will be first and chiefly felt by it. Persons wishing to export bullion will demand it of the bank in exchange for notes. In this way the bank is apprised of the state of the foreign exchanges, and learns that money is too abundant; while it has the power of immediately contracting its circulation by means of this very demand for bullion. It has merely to lock up those notes which it has received back in exchange for bullion, and every exportation of its bullion effects a proportionate contraction of the currency and restores the exchanges to a healthy state, by adjusting the quantity of money to the requirements of commerce. This is a simple mode of regulating the circulation of a country, and if all the paper-money were issued by one body only, it could not fail to be effectual. So far as the principle has been tested in England it has been successful; but its operation has been interfered with by the competing issues of many independent banks, and by the admixture of banking business with the issue of notes, in the bank itself. Both these causes of disturbance have been partially provided against by the recent Bank Charter Act (7 & 8 Vict. s. 32), and the experience of a few years will show if there be any imperefction in the principle, that the paper-circulation of the country must be regulated by the foreign exchanges.

Any further reference to the particular laws and practice by which the circulation of this country is regulated, in connection with a complicated system of banking, will be unnecessary for the explanation of principles, and these matters have already been treated under another head. [BANK.] But we cannot quit the subject of convertibility without adverting to a point of great importance. In order to regulate the issues of paper with reference to the exchanges, it is by no means necessary that gold or silver coins should be given by the issuing body in exchange for its own notes. Uncoined bullion would serve the purpose equally well, and would occasion a considerable economy in the coinage. It would be sufficient, therefore, to require the bank, or other issuing body, to give bullion in exchange for its notes, at the standard price, whenever a certain amount should be demanded. There can be no object in giving facilities to every person who possesses a 5*l.* note, to exchange it for gold, and much mischief is caused by such facilities, in times of panic; while, on the other hand, no impediment would be offered to the great operations of commerce by raising the minimum quantity

of bullion to be demanded. By this arrangement whenever notes fell below the value of bullion, they would be brought in exchange for it, until the prices of both were again equalized; and if by any undue limitation of issue, the value of notes should be raised above that of bullion, the bank should be obliged to give its notes in exchange for bullion. In this manner the circulation would be enlarged and the equilibrium between gold and paper restored. This excellent system was proposed by the late Mr. Ricardo in his able pamphlet entitled 'Proposals for an Economical and Safe Currency,' and was carried into effect, for a short period, on the resumption of cash-payments, in 1819, but was succeeded by the present plan of convertibility into gold coin, which is more costly and less secure in its operation.

In regard to the issue of paper-money there are two antagonist theories, which remain to be noticed, although it will be impossible to enter fully into the arguments by which each is supported. By one it is proposed that all paper-money should, like gold and silver, be coined by the state alone, in order that its issue may be properly regulated and its convertibility secured. By the other it is maintained that the issue of paper-money should be open to all persons without restriction, like the drawing of bills of exchange, except in so far as securities may be necessary for the solvency of the issuers. In this country neither of these principles has been adopted singly, but the circulation has been founded upon the union of them both. It has, however, been the policy of the government gradually to contract the issues of private banks, and to replace them by the notes of the Bank of England, which, for the purposes of issue, now stands in the position of the government itself.

In considering the relative merits of a system of government issues and of free competition amongst issuing bodies, there are three main questions to be considered —1st, the profits arising from the issue of notes; 2ndly, the solvency of the issuers; 3rdly, the convertibility of the notes and the securities against over-issue. If the two first questions were the sole consideration, it would be difficult to oppose the claims of those who insist upon the right of free issue.

1. The profits arising from the circulation of paper may be regarded as one of the many forms in which profits are realized by trade. It is true that the right of issuing money has ordinarily been claimed as a royal prerogative, and that promissory notes might be included in that category. If such a claim had been made on the first introduction of paper-money, it could, undoubtedly, have been supported by the analogy which paper-money bears to a coinage; and if the law had pronounced in favour of the claim, a lucrative prerogative would have been created, instead of a profitable branch of banking. But no such claim was advanced: the issue of notes has always been distinct from the coinage of money; and the state is now no more entitled to the profits arising from a paper-circulation, than to the profits of any other description of business.

2. The solvency of the issuers of promissory notes is a matter which can be provided for by law. There are few who will question the necessity of some security, when money is permitted to be issued by private parties. It is, indeed, contended by some that a promissory note is like a bill of exchange—that it represents capital and securities, and that, in its representative character, it is circulated instead of money, upon the credit of the issuer, and upon the responsibility of those who accept it. But there is an essential difference between a promissory note and a bill of exchange. The one is money and discharges a debt; the other leaves a debt outstanding until the bill becomes due and is paid. Again, a note passes from hand to hand upon the sole credit of the issuer; a bill of exchange passes not only upon the credit of the acceptor, but also upon the credit and responsibility of each endorser. A bill is circulated amongst merchants precisely as credit is given to persons of known solvency; but a promissory note, whatever may be the solvency of its issuer, if received at all, is received as money, and is a final discharge of a debt. It is obviously just, therefore, that when the state permits so important a privilege to be exercised as

that of the issue of money, it should at the same time provide securities against its abuse. Such securities cannot be enforced without interfering, in some measure, with an unrestricted freedom of issue, but they are essential to the public safety, and should on no account be neglected.

3. But the solvency of the issuers of notes concerns those parties only, who may happen to hold the notes of a particular bank: it does not affect the whole country. If a bank fail, its creditors suffer like the creditors of any other bankrupt firm; but the general business of the country is not disturbed by its failure. On the other hand, however, the regulation of its issues has an influence upon the entire trade of the country. However effectual may be the securities against the insolvency of private banks—however complete the protection of the individual holders of their notes—the public interests are still in need of protection against the consequences of an ill-regulated currency. The securities against insolvency and the securities against over-issue are entirely distinct: the former may be complete; the latter may, at the same time, be inoperative. The mode of sustaining the value of paper-money on a par with the precious metals has already been explained. It is only by means of convertibility and by a reference to the foreign exchanges, that the issues of paper can be adjusted to the wants of the country; and this principle is incompatible with an unrestricted issue of paper by private banks.

If no control be exercised by government or by some central body, over the issues of private banks, notes will be circulated, not according to any fixed principle, nor with reference to the exchanges, but to promote the business of banking. If too many should be in circulation, the action of the foreign exchanges cannot be brought to bear upon many independent banks with sufficient force and distinctness, and the convertibility of all the paper-money in the country is consequently endangered. This is the danger which is sought to be averted by restrictions upon the issues of private banks, and by the gradual substitution of the notes of one issuing body for those of many. No interference with the business of banking would be justifiable, except for the protection of the public interests; but the evils arising from the suspension of specie payments are so great, that every practicable precaution must be taken to avert it. It deranges all commercial transactions, it injures public credit, disturbs prices, and suddenly withdraws the standard of value by which all existing obligations and all future bargains are to be adjusted. When notes are issued by one body only, a limitation of its issues, as already noticed, may sustain their value; but when many independent bodies are issuing notes, during a period of inconvertibility, there is no principle at work to regulate or to limit their issues, and it is almost certain that their notes will not only be greatly depreciated, but also will be liable to constant fluctuations of value.

There are some political reasoners who have ascribed every commercial convulsion to an ill-regulated currency; while others deny its influence upon prices and upon the general arrangements of commerce. The opinions of both these parties are probably extreme, and their facts somewhat exaggerated; but the temperate view taken by Mr. S. Jones Loyd may be adopted with less hesitation. He says, "The currency, in which all transactions are adjusted, has the same reference to the healthy state of trade, which the atmosphere in which we all live has to the physical constitution of our bodies; irregularities and disorders may arise from a variety of causes, but the duration and virulence of them will materially depend upon the pure, healthy, and well-regulated condition of the medium in which they exist. A well-managed currency cannot prevent the occurrence of periods of excitement and over-trading, nor of their necessary consequences—commercial pressure and distress; but it may tend very powerfully to diminish the frequency of their return, to restrain the suddenness of their outbreak, and to limit the extent of their mischief." (*Remarks on the Management of the Circulation*, 1840.)

As yet such promissory notes only have

been spoken of as are payable on demand: but a few remarks may be added concerning promissory notes and bills of exchange payable at some period more or less distant. These are regarded by some as paper-money, and are said to form part of the general circulation; but the essential distinction between them and paper-money has been more than once noticed above. They do not discharge obligations, but are merely written engagements to discharge them at a future period: they are one of the many forms of credit, and as such are used as substitutes for money; but they cannot be considered a part of the national currency. When transferred from one hand to another they do not pass as money, but as the transfer of a debt, of which the payment is guaranteed by each endorser in succession. It is true that they are among the most efficient agents for economising the use of money, and that they leave the circulating medium more free for other purposes, in which payments are made in notes or specie. If this were not the case the circulation of notes must be almost indefinitely increased in order to meet the various demands of commerce; but this economy in the use of money makes a comparatively small circulation sufficient. It is this circulation, however, of which the relative scarcity or abundance affects the prices of commodities and the foreign exchanges. The final settlement of a bill of exchange must be adjusted in the current money of the country. If money be dear, the acceptor exchanges more goods for it in order to meet the bill when it becomes due; if money be relatively cheap, he makes a better bargain; but the bill of exchange itself is no more money than the goods which had been originally purchased with it. Every bill of exchange when first drawn and accepted, and subsequently endorsed, represents, at each transfer, a distinct commercial transaction, of which the bill is the immediate result. The number and amount of bills of exchange in circulation cannot, therefore, be added to the currency in order to compare the aggregate circulation with the aggregate amount of commodities; for those commodities which are exchanged by means of bills may be set off against the value of other commodities represented by the bills, while the notes and specie taken together, may be compared with the aggregate of other transactions, added to the balances of accounts arising out of the final settlement of bills of exchange. It is undeniable that bills of exchange perform many of the functions of money, and they are regarded as a part of the circulation by some high authorities in monetary matters; but it appears to us that the balance of reason and of authority inclines to the other side and assigns to bills of exchange a distinct place as substitutes for currency instead of including them as part of the currency itself. (See the Evidence upon this point before the Committee on Banks of Issue, 1840.)

A similar question arises in reference to the monetary character to be assigned to banking deposits: are they currency or not? The transfer of deposits pays debts and purchases commodities; it performs the functions of money, and so far would seem to be a part of the currency and to have an influence upon prices and upon the foreign exchanges. But it cannot be contended that the whole of the deposits are currency, for a large portion of them is invested by the bankers; and if every depositor were to call for his deposits at once, they could not be paid. Nor can the uninvested portion be properly called money; it is a form of credit which, like bills of exchange, economises the use of money and is a substitute for it, but is not the thing itself. It bears so close a resemblance to currency that to assign to it a distinct character is a matter of some difficulty; but still we are disposed to class all portions of banking deposits which are not actually held by the bankers in notes and specie, in the same category with bills of exchange, book-debts, and transfers in account. All these are modes of facilitating the exchange of commodities by a refined species of barter, without the intervention of any circulating medium. Each transaction is valued in the current medium of exchange, and final settlements of accounts are adjusted in money; but the estimated value of the transaction itself cannot be reckoned as a part of the cir-

culation, for if it were, then commodities themselves would be money.

An ordinary case of barter would seem to offer a good illustration of the functions of all forms of credit as substitutes for money. Suppose a merchant, A, to have indigo to the value of 1000*l.* to sell, and that he wishes to purchase cotton of the same value, which B is willing to give in exchange for the indigo. The transfer is made at once between them: the transaction is complete without the passing of a shilling, for the indigo performs the functions of money. But can the indigo on that account be reckoned as a part of the circulating medium? Suppose again, that these merchants, at the time of the transfer, each drew a bill for 1000*l.* upon the other at three months, which each accepted. These bills would represent the value of the indigo and of the cotton; but no more money would pass between them until these bills became due, than if no part of their bargain had been committed to paper. When the bills became due, each would be indebted to the other to the same amount, and might write off one debt against the other; or each might transfer a portion of his bank-deposits to the other. In the case first supposed, no money would pass, but one commodity would be taken as an equivalent for the other. In the second case the credit of each party would be accepted as an equivalent for the goods without the intervention of a money payment: and this credit would afterwards be exchanged for another form of credit,—a bank-deposit. In neither case, as it would seem, does the transaction involve the use of any portion of the circulating medium, nor call any new description of currency into existence.

It is of the utmost importance to form a clear opinion as to the distinction between various forms of credit and the circulating medium of a country; for if they be confounded one with another, all the established theories of currency are put to confusion. All hopes of regulating and controlling the circulation must be abandoned, for its variety and magnitude would be such as to defy the operations of the government, or of a bank, by means of paper issues, which would form only one insignificant portion of the aggregate currency; and free trade in banking and free trade in the issue of notes must be recognised as the only reasonable principle for supplying commerce with a circulating medium.

We have now adverted to the main principles involved in the consideration of the character and functions of money. In treating of a subject which has been so fruitful of controversy, we have been obliged to touch lightly upon many points which to deep students of the "currency question" may seem to have deserved more consideration. To examine them fully would add volumes to the many which have already been published upon that subject; and frequent allusions to the opinions of others, however deserving of attention, would give a controversial character to an inquiry after truth. We have endeavoured to state, as concisely as we could, the opinions we have formed, together with the grounds upon which we have formed them; and those who agree with us will think us right, while they who differ from us will pronounce us wrong. Upon currency questions unanimity is nowhere to be found; but the more men seek after truth in preference to quarrelling with one another, the more certainly will truth be found at last.

(Harris, *Essay on Money and Coins;* Locke, *Considerations on Raising the Value of Money;* Sir W. Petty, *Political Anatomy of Ireland;* Hume, *Essay* III. (*Of Money*); Lord Liverpool, *On Coins;* Adam Smith, *Wealth of Nations*, vol. iv. and Note by M'Culloch; Ricardo, *Principles of Political Economy*, c. 27; *Proposals for a Safe and Economical Currency*, 1816; Jacob, *Historical Enquiry into the Production and Consumption of the Precious Metals; The Gemini Letters*, 8vo., 1844; *Observations on the System of Metallic Currency in this Country*, by W. Hampson Morrison; *Remarks on the Management of the Circulation in* 1839, By Samuel Jones Loyd, 1840; *Reply Thereto*, by J. R. Smith, President of the Manchester Chamber of Commerce; *Observations on the Standard of Value*, by W. Debonaire Haggard, 1840; *Reflections on the recent Pressure of the Money Market*, by D. Salomons, 1840; *Answers to Questions 'What Constitutes Currency?'*

&c., by H. C. Carey, 1840; *Report of the Manchester Chamber of Commerce*, Dec. 12th, 1839; *A Letter to Thomas Tooke, Esq.*, by Col. Torrens, 1840; *On the Causes of the Pressure of the Money Market*, by J. W. Gilbart, 1840; *The Credit System in France, Great Britain, and the United States*, by H. R. Carey, 1838; *Remarks on the Expediency of Restricting the Issue of Promissory Notes to a Single Issuing Body*, by Sir W. Clay, Bart., M.P., 1844; *A Treatise on Currency and Banking*, by C. Raguet, 1839; *Bullion Report of* 1810; *Reports of Lords and Commons*, 1819; *On the Resumption of Cash Payments; Reports on the Circulation of Notes under 5l. in Scotland and Ireland*, 1826-27; *Bank Charter Report*, 1832; *Reports on Agricultural Distress*, 1833 and 1836; *Reports on Banks of Issue*, 1840 and 1841; *Debates on the Resumption of Cash Payments*, 1819; *and on the Bank Charter Renewal Bills*, 1832 *and* 1844; Tooke, *History of Prices.*)

MONARCHY, from the Greek μοναρχία, a word compounded of μον,ος, 'alone,' and the element αρχ.ω, 'govern,' and signifying the 'government of a single person.' The word *monarchy* is properly applied to the government of a political community in which one person exercises the sovereign power. [SOVEREIGNTY.] In such cases, and in such cases alone, the government is properly styled a monarchy. Examples of monarchy, properly so called, are afforded by nearly all the Oriental governments, both in ancient and modern times, by the governments of France and Spain in the last century, and by the existing governments of Russia, Austria, Prussia, and the several States of Italy.

But since monarchs have in many cases borne the honorary title of βασιλεύς, *rex, re, roi, könig*, or *king*, and since persons so styled have, in many states not monarchical, held the highest rank in the government, and derived that rank by inheritance, governments presided over by a person bearing one of the titles just mentioned have usually been called *monarchies.*

The name *monarchy* is however incorrectly applied to a government, unless the king (or person bearing the equivalent title) possesses the entire sovereign power; as was the case with the king of Persia (whom the Greeks called 'the great king,' or simply 'the king'), and in more recent times with king Louis XIV., called by his contemporaries the *Grand Monarque.*

Now a king does not necessarily possess the entire sovereign power; in other words, he is not necessarily a monarch. Thus the king has shared the sovereign power either with a class of nobles, as in the early Greek States, or with a popular body, as in the Roman kingdom, in the feudal kingdoms of the middle ages, and in modern England, France, Holland, and Belgium. The appellation of *monarch* properly implies the possession of the entire sovereign power by the person to whom it is affixed. The title of *king*, on the other hand, does not imply that the king possesses the entire sovereign power. In a state where the king once was a monarch, the kingly office may cease to confer the undivided sovereignty; and it may even dwindle into complete insignificance, and become a merely honorary dignity, as was the case with the ἄρχων βασιλεύς at Athens, and the *rex sacrificulus* at Rome.

In Sparta there was a *double* line of hereditary kings, who shared the sovereign power with some other magistrates and an assembly of citizens. The government of Sparta has usually been termed a republic, but some ancient writers have called it monarchical, on account of its kings; and Polybius applies the same epithet to the Roman republic, on account of its two consuls. (*Philological Museum*, vol. ii., p. 49, 57.)

States which were at one time governed by kings possessing the entire sovereign power, and in which the king has subsequently been compelled to share the sovereign power with a popular body, are usually styled *mixed monarchies* or *limited monarchies.* These expressions mean that the person invested with the kingly office, having once been a monarch, is so no longer; and they may be compared with a class of expressions not unfrequent in the Greek poets, by which a privative epithet, denying a portion of the essence of the noun to which

it is prefixed, is employed for the purpose of circumscribing a metaphor. Thus Æschylus (Sept. ad Theb. 82) calls the dust the *speechless messenger of the army;* and Aristotle in his Poetic (c. 35) speaking of the same class of metaphors, says that the shield of Mars might be called his *wineless cup.* (See Blomfield's Glossary on Æsch. Ag. 81.) *Still life,* as a term in painting, is analogous to *limited monarchy,* since it denotes *dead animals;* i. e. animals which were alive, but are so no longer.

Governments are divided into *monarchies* and *republics;* and therefore all governments which are not monarchies are republics. As we have already stated, a monarchy is a government in which one person possesses the entire sovereign power; and consequently a republic is a government in which the sovereign power is shared between several persons. [REPUBLIC.] These definitions of *monarchy* and *republic* however do not agree with existing usage; according to which, the popular, though royal, governments of England and France, for example, are monarchies (viz. *mixed* or *limited* monarchies), not republics.

The popular usage of the terms in question, to which we have adverted, is mainly owing to three causes. 1. Kings not possessing the entire sovereign power have in many cases succeeded kings who did possess the entire sovereign power; in other words, kings not monarchs have in many cases succeeded kings who were monarchs. 2. Both in royal monarchies and in royal republics, the crown or regal title usually descends by inheritance. 3. Kings who are not monarchs enjoy the royal status and dignity, as much as monarchs properly so called; they intermarry only with persons of monarchical or royal blood, and refuse to intermarry with persons of an inferior degree.

Governments such as those of England and France are included by popular usage, together with republics, in the term 'free' or 'constitutional governments,' as distinguished from pure monarchies, absolute monarchies, or despotisms.

According to the existing phraseology therefore, the use of the two terms in question is as follows:—

Monarchies are of two sorts, viz. *first,* pure, absolute, or unlimited monarchies, that is, monarchies properly so called; and, *secondly,* limited, mixed, or constitutional monarchies, or monarchies improperly so called, that is, republics presided over by a king, or kingly governments where the king is not sovereign.

Republics are states in which several persons share the sovereign power, and in which the person at the head of the governing body does not bear the title of king. Accordingly, Holland with a stadtholder, Venice with a doge, and England with a protector, are called republics, not monarchies. If the head of the Venetian aristocracy had been styled king instead of doge, and if his office had descended by inheritance instead of being conferred by election, Venice would have been called a monarchy, and not a republic. The only exception to this usage of which we are aware, occurs in the case of Sparta, which is commonly called a republic, and not a monarchy, although it had hereditary kings. The reason of this exception probably is, that there being *two* lines of kings at Sparta, it was thought too gross an inaccuracy to call its government monarchical, though its government would have been called monarchical if there had been only one king, in spite of the narrow powers which that king might have possessed.

The comparative advantages of a popular or republican government and of a monarchical government have been stated, with greater or less completeness and candour, by many writers. The best statement of the advantages of monarchy (properly so called), with which we are acquainted, is in Hobbes's 'Leviathan,' part ii. c. 19.

MONK, MONACHISM, MONASTERY.

Monachism, as the term implies, properly means a solitary life; but we now usually understand by it the life of persons who are under religious vows, and live in monasteries, abbeys, or nunneries.

Monasteries (μοναστήρια) are places of residence for persons who have devoted themselves to a religious life.

The history of monasteries and nunneries in Europe, and among those nations who profess Christianity, is part of the history of Christianity, and a very important part of the history of modern Civilization. The ascetic practices of some of the early Christians were probably the origin of Monachism. Many persons renounced all the pleasures and business of life, and abstained from marriage and all sexual connection, and subjected themselves to privation and sufferings, with a view of securing eternal happiness. The founders of the first monastic communities were probably Egyptian Christians, among whom the most distinguished was Pachomius, the disciple of St. Antonius, who himself is considered to be the founder of the monastic or solitary life. After the foundation of the Egyptian monasteries, they extended to other parts of the Roman empire; and in the Eastern church they became the subject of legal regulation, by a constitution of Justinian (*Nov.* 5), addressed to Epiphanius, the archbishop of Constantinople and œcumenic patriarch, in the consulship of Belisarius, A.D. 535. By these enactments no monastery could be founded except the ground was first consecrated by the bishop within whose diocese it was, who was required to put up a cross on the spot. Persons were not permitted to assume the monastic habit till after a three years' probation, and the abbots (ἡγουμένοι) were required, during this time, to examine well into their life, conversation, and fitness for the monastic profession. On being approved, the candidates assumed the dress and tonsure. Both free persons and slaves were alike admissible into monasteries, and were received on the same footing in all respects. A master might claim and take away his slave within the three years, if he could prove that the person was his slave, and had run away for theft or any other offence; but not otherwise. Thus the monasteries became places of refuge to slaves who had severe masters, like the ancient temples. The law ordained that the monks should eat together, and should all sleep in a common dormitory, each in his own bed; but an exception was made in favour of those called anachorets and hesuchasts (ἀναχωρηταὶ καὶ ἡσυχασταί), who led a contemplative life in perfection (such is the phrase), and were allowed to have separate cells. It seems that a man could leave his monastery and enter the world again, though it was considered sinful; but as all the property which he had not disposed of before entering the monastery (subject to some provisions for his wife or children, if he had any) became the property of the monastery on his entering it, if he choose to leave it, he could not take with him or recover any part of his property. Celibacy and chastity were required of the monks, though at this time marriage was permitted to certain clerical persons, as singers and readers. Further regulations on the life of monks and nuns are contained in the 134th Novel. A monk was prohibited from entering a female monastery (for one word only is used in these laws for male and female convents), and a nun was prohibited from entering a male monastery, under any pretext whatever. Other regulations to the same general effect of ensuring chastity and the due observance of all monastic duties are prescribed by the legislator.

The institution of monachism had arrived at a state of great corruption both in the Eastern and the Western churches, when St. Benedict arose to reform it, in the latter, in the earlier part of the sixth century. It does not appear, however, that Benedict, in drawing up what is called his Regula Monachorum, or Rule, had any intention of founding a new order of monks; he writes as if he designed it for the use of all the monasteries then existing. In point of fact, from the year 530, or 532, according to others, when he established his first monastery at Monte Casino, till after the commencement of the thirteenth century, when the new mendicant orders made their appearance, the principal monasteries that were founded throughout Europe were of the Benedictine order. The Carthusians, Cistercians, Grandimontenses, Præmonstratenses, Cluniacs, &c., were all only so many varieties of Benedictines. The innovations introduced by Benedict were longest in penetrating to the more remote corners of Christendom; and perhaps in

no other part of Europe were they so long in being generally received as in the British Islands. Bede and others denominate the system which prevailed among the British monks before the arrival of St. Augustin in 597, the apostolic discipline; but it was probably merely the antient rule of Pachomius, one of the Egyptian disciples of St. Antonius. It is even disputed whether St. Augustin brought over with him the rule of St. Benedict; and at all events it is tolerably clear that that rule was not universally established in the British churches till its observance was enforced by St. Dunstan and his friend Oswald, in the reign of Edgar, after the middle of the tenth century.

In the earliest age of the monastic system, the monks were left at liberty as to many things which were afterwards regulated. St. Athanasius, in one of his epistles, speaks of bishops that fast, and monks that eat and drink; bishops that drink no wine, and monks that do; bishops that are not married, and many monks that are the fathers of children. Originally too, monks were all laymen; and, although it gradually became more and more the common practice for them to take holy orders, it was not till the year 1311 that it was made obligatory upon them to do so by Pope Clement V. Nor was any vow of celibacy or any other particular vow formally taken by the earliest monks on their admission. It appears even that it was not unusual for persons to embrace the monastic life with the intention of only continuing monks for a few years, and for those who had spent some time in a monastery actually to return to the world. We have just seen how the practice as to some of these points was at length regulated by the Imperial legislation.

The word nun, in Greek Νονὶς, in Latin *Nonna*, is said to be of Egyptian origin, and to signify a virgin. Another account is, that the original meaning of the Latin *nonna*, *nonnana*, or *nonnanis*, was a penitent. The Italians still use *nonno* and *nonna* for a grandfather and grandmother. Cyprian and Tertullian, in the latter part of the third century, make mention of virgins dedicating themselves to Christ. Some of these ecclesiastical or canonical virgins, as they were called, appear already to have formed themselves into communities, similar to those of the monks: but others continued to reside in their fathers' houses. The progress of female monachism however, from the rudeness and laxity of the first form of the institution, to the strict regulation which characterized its maturity, moved on side by side with that of male monachism.

Monasteries are called by the Greek fathers not only Μοναστήρια and Μοναὶ, but also sometimes σεμνεῖα, that is, holy places: ἡγουμενεῖα, the residences of the abbots, styled ἡγουμένοι, or chiefs; μάνδραι, inclosures; and φροντιστήρια, places of reflection or meditation, that being one of the purposes to which they were very early applied. For a general account of the different sorts of religious houses, and of their government, and the habits and other peculiarities of the principal orders of monks and nuns, the reader is referred to the works mentioned at the end of this article. The three vows of Chastity, Poverty, and Obedience are taken by all monks and nuns at their admission. All, both male and female, likewise receive the tonsure, like all the ecclesiastics of the Romish church. In all the orders the candidate for admission must first undergo a novitiate, which varies from one to three years. The age at which novices may make profession differs in different countries; but the rule laid down by the council of Trent only requires that the party, whether male or female, should be sixteen. In the modern constitution of monachism, the vows and status of a professed person, as indeed of all ecclesiastics, are by the law of the Roman church for life and indelible.

The greatest revolution by which the history of monachism has been marked since the establishment of the rule of St. Benedict, was the rise, in the beginning of the thirteenth century, of the Mendicant Friars.

The general dissolution of monastic establishments was one of the first consequences of the Reformation in our own and all other countries that separated from the Romish church. There are however a few Protestant monastic establishments

in some parts of Germany. Even in some Roman Catholic countries, especially in Germany and France, the number of these establishments has been greatly reduced within the present century and the latter part of the eighteenth century, and the wealth and power of those that still exist most materially curtailed. The reform of the German monasteries was begun by the Emperor Joseph II.: those of France were all swept away at the commencement of the Revolution; but some of them were set up again, though with diminished splendour, after the restoration of the Bourbons. Since the relaxation of the penal laws, several Roman Catholic nunneries have been erected in England and Scotland, as well as in Ireland. (As to the present statutes on the subject, see LAW, CRIMINAL, p. 203.) Monks and nuns of all descriptions still swarm in Italy, and in the countries of South America lately subject to the Spanish and Portuguese crowns: in Spain and Portugal all monasteries have been suppressed within these few years. Even in modern times we still hear occasionally of the institution of a new order of monks. One, called the Congregation of the Blessed Virgin Mary, was established by the late Pope Leo XII. in 1826. The most important new order of monks, founded in the Roman Catholic church since the first outbreak of the Reformation, is that of the Jesuits.

If we would rightly appreciate all the effects of monachism, good and bad, we must travel through the history of eighteen centuries. It must be admitted, that the institution for a long time produced some benefit. In the present condition of Europe the strict rules of monachism are perhaps purely a social evil. The institution is, in its complete form, inconsistent with Protestantism. But whatever prejudice there may be against monachism, there appears to be no well founded objection to persons voluntarily entering any religious societies where they can live in quiet and retire from the world, provided they may quit such societies when they please. But if such societies should ever be revived in Great Britain to any extent, it will be necessary to provide for their visitation in order to prevent persons being detained there against their will; and it will be necessary to regulate their establishment and administration by general rules. All associations of individuals, and especially those of a religious character, are greedy of acquiring property; and fraud will be used for this purpose, as the history of religious societies shows. The restrictions at present placed on the acquisition of property in England by corporate bodies, are to a certain extent useful and necessary, even when these bodies are not religious or ecclesiastical. But in all states where freedom of opinion is established, and religious and ecclesiastical matters are regulated by the same power which regulates matters not religious and ecclesiastical, it is essential to the conservation of true political liberty to keep within strict limits all associations, religious and ecclesiastical, and to limit their acquisition of property. In those countries where monachism still retains its original character, the institution must be destroyed before political liberty [LIBERTY] can exist.

(Among the most important works on the subject of monachism are the following: 'Nebridii a Mundelheim Antiquarium Monasticum,' fol. Vien., 1650; 'Philippi Bonanni Ordinum Religiosorum Catalogus,' 3 vols. 4to., Rom. 1706-8; 'Histoire des Ordres Monastiques Religieux et Militaires,' par le Père Hippolyte Hélyot,' Par., 8 vols. 4to., 1714, &c.; and nov. edit. 1792; Crome's 'Pragmat. Geschichte der vornehmsten Mönchsorden,' 10 vols. Leipz., 1774-83; Tanner's 'Notitia Monastica,' fol. 1744; Dugdale's 'Monasticon,' new edit. by Cayley and Ellis, 6 vols. fol., 1812-30; Fosbrooke's 'British Monachism,' 2 vols. 8vo., 1802. See also Thomasin, 'Discipline de l'Eglise,' tom. i; Bingham's 'Antiquities of the Christian Church,' book vii.; and Gibbon's 'Decline and Fall of the Roman Empire,' chap. 37.)

Monk. (From the Greek μοναχός, 'Solitary,' or 'one who leads a solitary life,' *Monachus*, in church Latin). In England, before the Reformation, a person who 'entered and professed in religion,' as the phrase was, from that time

was considered, for all legal purposes, to be dead. Littleton (§ 200) says, "When a man entereth into religion and is professed, he is dead in the law, and his son or next cousin (consanguineus) incontinent shall inherit him, as well as though he were dead indeed. And when he entereth into religion, he may make his testament and his executors; and they may have an action of debt due to him before his entry into religion, or any other action that executors may have, as if he were dead indeed. And if that he make no executors when he entereth into religion, then the ordinary may commit the administration of his goods to others, as if he were dead indeed." It was a consequence of this legal notion of a civil death, that if a lease was made to a man for the life of another person, and this other person professed in religion, the lease determined; and for this reason such a lease was always made for the *natural* life of any person on the continuance of whose life the lease was to depend; and this phraseology is still maintained in legal instruments. (Co. 2, *Rep.* 48.)

All Regulars, that is, those who vowed obedience, chastity, and poverty, entered some house of religion, where they professed. Bare admittance into such a house was an entry into religion; but the person was not professed till the year of probation was expired, and he had taken the habit of his order and made the vows above mentioned.

By the 27 Hen. VIII. c. 28, all monasteries, priories, and other religious houses of monks, canons, and nuns, of whatever habit, rule, or order. not having lands, rents, or other hereditaments above the value of 200*l.* per annum, and all their manors and lands, were given to the king and his heirs for ever. The act declared that the king should have and enjoy, according to the act, the actual and real possession of such religious houses as were comprehended within it, and might give, grant, or dispose of them at his will and pleasure, to the honour of God and the wealth of the realm. The act of the 31st Henry VIII. c. 13, was still more comprehensive. By the 1st Ed. VI. c. 14 (which recites the 37th Henry VIII. c. 4), all colleges, free chapels, and chantries, and all manors, lands, or hereditaments belonging to them, or which had been given or assigned to the finding of any priest, or of any anniversary or obit, or any light or lamp, to have continuance for ever, were given to the king and his heirs and successors.

It should be observed that these acts did not affect ecclesiastical bodies or persons, simply as such; that is, they did not affect the secular clergy, such as archbishops, bishops, deans and chapters, prebendaries, archdeacons, parsons, and vicars; but only the regular clergy. It was decided in the archbishop of Canterbury's case (Co. 2, *Rep.* 48), that no ecclesiastical house, unless it was also religious, was within the act of 31 Henry VIII. These acts however completely put an end to all the houses of regular clergy within the realm; and on the occasion of carrying into effect the statute of Edward VI., a great many grammar-schools and other charities which did not come within the provisions of the act were also suppressed. "This act," says Strype, "was soon after grossly abused, as the act in the former king's reign for dissolving religious houses was. For though the public good was pretended thereby (and intended too, I hope) yet private men, in truth, had most of the benefit, and the king and commonwealth, the state of learning, and the condition of the poor, left as they were before or worse." (Strype's *Ecclesiastical Memoirs*, ii. 101-103, 423, and iii. 461, where there is a catalogue of King Edward's free grammar-schools, which were endowed for the most part out of the charity lands given to the king by the said act for this and other like purposes.)

The existing laws against members of religious orders or societies of the Church of Rome are stated in LAW, CRIMINAL, p. 203.

MONO'POLY, from the Greek *monopólia* (μονοπωλία), which occurs in Aristotle's *Politick* (i. 11), where it is used simply in the sense of a man buying up the whole of a commodity so as to be the sole holder of it, and to have the power of selling it at his own price. When the word monopolium was used by Ti-

berius in addressing the Roman senate (Suet. *Tib.*, c. 71), he thought an apology necessary for introducing a new word. The word however soon came into common use. The term monopoly, which literally signifies *single* or *sole selling*, is used in a constitution of Zeno (*Cod.*, iv. 59) in the sense in which it is used by Aristotle, and in the sense of what our law understands by forestalling, engrossing, regrating; to which we may add combining to keep up prices. [FORESTALLING.] Zeno declares that no person shall exercise a monopoly of clothing, fish, or any other thing adapted for food or use. He gives no definition of monopoly. The term however must be explained from the context, from which it appears to signify any means by which a person gets or attempts to get the whole of any commodity into his possession for the purpose of enhancing the price. In the same Constitution he forbids all combination among dealers to raise the prices of any commodity. Zeno's punishment for monopoly was confiscation of the goods of the offender and perpetual exile.

A monopoly, according to the English law, is defined by Coke (3 *Inst.* 181, c. 85, 'Against Monopolists,' &c.) to be "an institution or allowance by the king, by his grant, commission, or otherwise, to any person or persons, bodies politic or corporate, of or for the sole buying, selling, making, working or using of any thing, whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade." In *Le Case de Monopolies* (11 *Co.*, 86, *b*) it is said that every monopoly has three inseparable incidents—the raising of the price, the deterioration of the commodity, and the impoverishment of artificers and others. It appears that these inseparable incidents were considered as tests by which a grant savouring of monopoly might be tried.

Every royal grant or letters patent tending to a monopoly as thus defined and explained was void. The crown however could by letters patent grant and create exclusive privileges of buying and selling when such grant was of general use, or when the grant was to an individual who had introduced into the country something new and useful. This prerogative of the crown was often abused, and by none more than by Elizabeth, who granted many patents of monopolies for the purpose of raising money. As an instance of this, Elizabeth had granted to a certain person the sole making, importing, and selling of playing cards, which grant was declared void by the judges. (*Le Case de Monopolies.*)

It seems then that the word monopoly was never used in English law, except when there was a royal grant authorising some one or more persons only to deal in or sell a certain commodity or article.

By the act of 21 Jac. I., c. 3, all monopolies and all commissions, grants, licences, charters, and letters patent to any person or body politic or corporate, of or for the sole buying, selling, making, working, or using of anything, or of any other monopolies, &c., are declared contrary to the laws of the realm and utterly void and of none effect.

By the sixth section of the same statute the above provisions do not extend to letters patent and grants of privilege thereafter to be granted for fourteen years or under, of the sole working or making of any new manufacture to the true and first inventor thereof, which others at the time of making such letters patent and grants shall not use, so as also such letters patent be not contrary to the law, or mischievous to the state, or generally inconvenient. This section is the foundation of the present law as to patents for inventions. [PATENTS.]

Copyright and patents are now generally placed among monopolies by legal writers, but not correctly. The original legal sense of the term monopoly has been already explained; and the power of the crown to grant patents is now limited and defined, as well as the several formalities to be observed in obtaining them. Any patent not obtained in due form is void; and the term monopoly, as above explained, has legally ceased to exist.

There is still a vulgar and common use of the term monopoly which is incorrect, inasmuch as it has not the sense which monopoly had.

If a number of individuals were to unite for the purpose of producing any particular article or commodity, and if they should succeed in selling such article very extensively, and almost solely, such individuals in popular language would be said to have a monopoly. Now, as these individuals have no advantages given them by the law over other persons, it is clear they can only sell more of their commodity than other persons by producing the commodity cheaper and better. Such so-called monopoly then is neither the old legal monopoly, nor does it rest on any legal privilege. There would however be no objection to calling it a monopoly in the antient sense of that term, if the word were not now used in a bad or unfavourable sense, which probably dates from the time when real monopolies were granted by the crown, and were very injurious to the nation. Between a monopoly as it once existed, and a monopoly as it is now vulgarly understood, there is this difference—the former was only derived from a grant of the crown, and was often injurious to all persons except the patentee; that which is now vulgarly called a monopoly is nothing more than the power which an individual or a set of individuals acquire, by means of capital and skill, of offering something to everybody cheaper and better than they had it before, and it is therefore an advantage both to the so-called monopolists and to everybody else. The abusive application of the term at present is founded on the jealousy which people of small capital feel towards those who have large capital and carry on a successful business.

The case of a number of persons combining to produce and sell, or to buy and sell, a thing, has been taken, as being one which is the most striking and oppressive kind of monopoly, in the vulgar sense of that term. An individual however may, in this sense, become a monopolist: as if a man should buy up all the tallow in Russia, and so make candles as dear as he pleased, or rather as dear as he could, for his price must be limited in a measure by people's ability to buy; or (to take a case which would appear a still greater act of monopoly, as being more sensibly felt) as if a man should buy all the corn in a country, and so make bread as dear as he could. Without discussing the question as to the advantages and disadvantages to a nation of this kind of monopoly, it is enough to put it upon those who disapprove of such wholesale buying, to say how far, and to what amount, they will allow a man to use his capital and exercise his commercial skill; for it is incumbent on those who would deprive a man of such liberty to say exactly how far such liberty should go.* Further, if such persons wish to be exact in their language, they should use another word than monopoly, which had once a particular meaning, as above explained, and signified a different thing from that which they call a monopoly. And if they will apply this word monopoly to a person or persons who, by industry and skill, and the judicious employment of capital, make and sell or buy and sell much more of a thing than anybody else, they should consider whether—inasmuch as buying and selling are free to all, and as all people wish to buy as cheap as they can and as good as they can—they will apply this word in an invidious sense to any person or persons who can only command customers because the customers like to go to them, or because the customers can get the thing nowhere else, owing to no other persons having provided themselves with the commodity for sale.

A new kind of monopoly, as it would be called according to the incorrect use of the term monopoly, is growing up in England. The Parliament empowers a number of individuals to make railroads from one place to another, and for that purpose to take what land and other private property is required for the purposes of the railway. The greater cheapness and convenience of railway carriage put an end to other modes of conveyance to a certain extent; but only because the railway travelling is cheaper and more convenient. Still it is possible that a railway company might raise prices so high, after they had driven all other competitors from the

* At Athens there was a law which limited the amount of corn that a man could buy. (Lysias, κατὰ τῶν σιτοπωλῶν.) [CORN TRADE, ANTIENT.]

roads, as to deprive the public of some of the advantages of railway conveyance, though they might also deprive themselves of some profit. For it is not easy to revive other modes of conveyance after they have been disused, and nobody would like to venture on the attempt to revive them, because the enterprise might fail by the company again lowering their charges, simply to destroy competition, and then raising them again. Also, when a railway between two places is established, the Parliament, as a general rule, would not empower another association to make another railroad between the same two places, and in the same or nearly the same line, and so they would in effect have given a kind of monopoly or exclusive privilege to the original company. These are not reasons against the granting of railway privileges, but they are reasons for the legislature regulating the conduct of railway companies by general rules, whenever the public interest shall require such regulation.

If the government of any country lay a tax on any imported article, such a tax creates what may be called a monopoly in favour of those who produce the article at home. Such tax "raises the price, deteriorates the commodity, and impoverishes artificers and others." It is not however a monopoly in the technical sense, because it is not a grant from the Crown, but is imposed by a law. It is a great deal worse however for the community than a real monopoly, for a real monopoly is illegal and may be got rid of by legal means.

That kind of monopoly or sole-selling or dealing which is given by the law of copyright, and by patents, is in effect a kind of property created by law for the benefit of an author or inventor, and which he could not effectually acquire or secure without the aid of the law. It is not however a monopoly in any sense in which that term has ever been used. Whether it is profitable or injurious to the community is a question that concerns legislation. [COPYRIGHT.]

MONT DE PIE'TE' (MONTE DI PIETA', in Italian), a benevolent institution which originated in Italy in the fifteenth century, the object of which was to lend money to necessitous people at a moderate interest. The Jews, who were the great money-lenders in that age, exacted an enormous interest, and as much as 20*l.* to 25*l.* per cent. The papal government and other Italian governments established a kind of bank, which lent money upon pledges, for a fixed term, at a low rate of interest, intended chiefly to defray the unavoidable expenses of the establishment; at the expiration of which term, if the capital lent and interest were not repaid, the pledges were sold, and the surplus money, after paying the debt incurred, was restored to the owners. In most instances, however, the term might be renewed by merely paying the interest. The difference between these establishments and those of the ordinary pawnbrokers seems to have been that they were intended mainly for the benefit of the borrowers, and not for the profit of the lenders, and that every reasonable facility was afforded to the former. The administration of the Monte di Pietà was therefore conducted upon economical and strictly equitable principles, and it was under the inspection of the government as a public benevolent institution. This at least was the original principle, although it may occasionally have been deviated from in after-times, in consequence of the cupidity or necessities of the governments themselves. In times when capital was more scarce or less generally diffused than it is now, and when loans of money were difficult to be got, the Monte di Pietà was a most useful institution. Leo X., some say Paul III., sanctioned the first establishment of a Monte di Pietà at Rome, which was under the direction of a society of wealthy persons, who, having contributed the necessary funds, lent upon pledges small sums not exceeding thirty Roman scudi, a little more than six pounds sterling, to each person. The money was lent for a term of eighteen months. The establishment was under the inspection of the treasurer of the Apostolic Chamber. Large storehouses were annexed to the office, which stood in the district della Regola, near the banks of the Tiber. (Richard, *Description de l' Italie*, vol. v.) Other establishments of a similar nature existed at

Milan, Florence, Naples, and most other towns of Italy. That of Padua is one of the oldest on record, having been established in 1491, when the Jewish banks, which lent at usurious interest, were shut up. (Scardeoni, *De Antiquitate Urbis Patavii.*)

This institution was introduced into other countries, especially into the Netherlands, and Monts de Piété were established at Brussels, Antwerp, Ghent, and other places. In Spain there were also similar establishments at Madrid and some other large towns, but in no country were they so generally spread as in Italy, the original country of benevolent institutions during the middle ages.

When the French under Bonaparte invaded Italy in 1796–7, they plundered the Monti di Pietà of Milan, Modena, Parma, and most other towns. At Rome, Pope Pius VI., being pressed by the French to pay an enormous sum for war contributions, was obliged to seize upon the richer pledges in the Monte di Pietà, for the repayment of which he gave bonds; but these bonds lost all value in the subsequent invasion of Rome by the French in 1798. The Monti di Pietà have been re-established in most Italian cities.

The Monti Frumentarii, in several parts of Italy, are storehouses of corn, which is lent to poor cultivators on the same principle as money is by the Monti di Pietà.

MORTGAGE. A general notion of a mortgage may be collected from the following passage in Littleton (§ 332), who treats of Mortgages, as then in use, under the general head of estates upon condition.

"If a feoffment be made upon such condition, that if the feoffor pay to the feoffee, at a certain day, 40*l.* of money, that then the feoffor may re-enter, &c.,—in this case the feoffee is called tenant in mortgage, which is as much to say, in French, as *mortgage;* and in Latin, *mortuum vadium.* And it seemeth that the cause why it is called mortgage is, for that it is doubtful whether the feoffor will pay, at the day limited, such sum or not: and if he doth not pay, then the land, which is put in pledge upon condition for the payment of the money, is taken from him for ever, and so dead to him, upon condition, &c. And if he doth pay the money, then the pledge is dead as to the tenant," &c.

The money thus agreed to be paid by the feoffor must be supposed to be money borrowed from the feoffee, or the amount of a debt due from the feoffor to the feoffee, though Littleton does not expressly say so. According to the terms of this contract, if the feoffor, or the feoffor's heir did not pay the money at the time appointed, the land became the absolute property of the feoffee.

The mortuum vadium of Glanville (book x.) is evidently a different thing from the mortuum vadium of Littleton, and Glanville's explanation of the term seems more applicable to his mortuum vadium, than Littleton's is to the mortgage which he describes. "When an immovable thing," says Glanville, "is put into pledge, and seisin of it has been delivered to the creditor for a definite term, it has either been agreed between the creditor and debtor that the proceeds and rents shall in the meantime reduce the debt, or that they shall in no measure be so applied. The former agreement is just and binding; the other unjust and dishonest, and is that called a mortgage, but this is not prohibited by the king's court, although it considers such a pledge as a species of usury." (Beames' *Transl.*)

Littleton describes the old and strict law of mortgage; but the courts of equity gradually introduced such modifications as to convert a mortgage from its ancient simplicity into a very artificial and complicated arrangement. A mortgage is a contract, and therefore requires two persons at least, one of whom borrows and the other lends money. The borrower is the owner of land, or has some interest in land, which he conveys or transfers as a security to the lender of the money; the borrower is called the mortgagor, and the lender is called the mortgagee. The whole transaction is properly termed a mortgage; but the name is sometimes applied simply to the debt.

The mortgage deed varies in its terms according to the estate or interest in the lands which the mortgagor conveys to the mortgagee, and according to the spe-

cial agreement of the parties. By the execution of the deed, the estate of the mortgagor in the lands mortgaged is conditionally transferred to the mortgagee, but the mortgagor's estate is not forfeited till he makes default in payment of the money borrowed and interest at the time named in the deed. The money borrowed is however seldom paid at the time agreed on, the consequence of which is that the mortgagor's estate is forfeited by his not fulfilling the condition, and the mortgagee becomes the absolute legal owner of the land, or of such estate in it as was conveyed to him. He can then bring an action of ejectment against the mortgagor, if the mortgagor is in possession of the land, without giving him notice; and he can do this even before default in payment, unless it is agreed by the mortgage-deed that the mortgagor shall remain in possession till he makes default, and a clause to this effect is commonly inserted in the deed.

From the time of default being made, the several interests of the mortgagor and the mortgagee in the land must be considered as chiefly belonging to the jurisdiction of equity. When the mortgagee, by default of the mortgagor, has become the absolute legal owner of the lands, the mortgagor possesses what is called the equity of redemption. This equity of redemption is considered by courts of equity as an estate in the land; it may be devised by the mortgagor, and, in case of his intestacy, it will descend to his heir; it may be sold, or it may be mortgaged; it is subject both to dower (in equity, by 3 & 4 Wm. IV. c. 105) and curtesy; and it may be settled like a legal estate.

By a recent statute (1 Vic. c. 28), made for the purpose of explaining the statute of limitations (3 & 4 Wm. IV. c. 27), it is enacted, That any person entitled to or claiming under any mortgage of land (as defined by the last-mentioned act) may make an entry or bring an action at law or suit in equity to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued. This act was passed to protect the mortgagee who allows the mortgagor to continue in possession of the land or in the receipt of the rents and profits; and it secures to him his rights for twenty years after the last payment of principal or interest by the mortgagor. By the 3 & 4 Wm. IV. c. 27, when a mortgagee has got possession of the land or receipt of the profits, the mortgagor, or the person claiming through him, can only bring a suit to redeem the lands within twenty years next after the commencement of such possession or receipt, or within twenty years from the time when the mortgagee or the person claiming through him last acknowledged in writing to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, his title of mortgagor or right to redemption. The mortgagor, or the person claiming under him, may therefore, at any time within the limits above named, tender to the mortgagee his principal money and interest, and claim a reconveyance of the lands; and if the mortgagee will not accept the tender and reconvey, the mortgagor may compel him by filing a bill in equity for the redemption of his lands.

A mortgagee can transfer his mortgage to another. The transfer or assignment, as it is generally called, consists of two parts expressed in one deed, the transfer of the debt, and the conveyance of the land, which is the security for the debt. If the mortgagor is not a party to the assignment, the assignee takes the mortgage exactly on the terms on which the assignor held it at the time of the assignment. If therefore the mortgagor should happen to have paid the whole or any part of the debt, the assignee, in coming to a settlement with him, must submit to allow such payment in diminution of the original debt which the assignor affected to assign to him.

Though the mortgagee, after the mortgagor's default in payment of the principal money and interest, has the absolute legal estate, he is still considered by courts of equity only to hold it as a security for his debt. The legal estate in the land will descend to the mortgagee's heir, or will

pass by his will, if duly executed; but the heir or devisee takes only the legal estate in the land, and the money or debt (as a general rule) belongs to the mortgagee's administrator or executor.

If the principal money and interest are not paid at the time agreed on, the mortgagee may file a bill of foreclosure against the mortgagor. By such bill the mortgagee calls on the mortgagor to redeem his estate forthwith, by payment of the principal money, interest, and costs; and if the mortgagor does not do this within the time named by the decree of the court (which is generally within six months after the master in chancery has made his report of what is due for principal, interest, and costs), he is for ever foreclosed and barred of his equity of redemption, and the mortgagee becomes the owner of the land in equity, as he was before at law. If the money is paid at the time named, the mortgagee must reconvey the land, and deliver up to the mortgagor all the deeds and writings in his possession relating to the land.

When the mortgagor has mortgaged his equity of redemptiom (which he may do as often as he pleases), every new mortgagee has his claim on the land as a security for his debt, according to the order in which his mortgage stands. This is the general rule; but it is subject to various exceptions, which depend on particular circumstances. Thus a mortgagee of the equity of redemption will be postponed, as to his security, to a subsequent mortgagee who has advanced his money without notice of the prior mortgage, if such subsequent mortgagee should be able to obtain the legal estate.

If a second mortgagee obtains the title-deeds of the estate, this will not give him a preference over a prior legal mortgagee, unless the prior mortgagee has parted with or failed to get possession of the title-deeds for fraudulent purposes, or through gross negligence. But though the second mortgagee has no priority, when there is neither fraud nor negligence, he will not be compelled to give up the title-deeds to the first mortgagee, unless the first mortgagee pays him his debt and interest.

A legal mortgage is effected by an instrument which transfers the legal estate. When a mortgagor makes a second mortgage, and uses the form of a legal conveyance, this also is called a legal mortgage, though there is no transfer of any legal estate, for the legal estate is already conveyed to another person. This kind of mortgage may be called a mortgage of an equity of redemption, by way of distinguishing it from the equitable mortgage next mentioned. An agreement in writing to transfer an estate as a security for the repayment of a sum of money, is called an equitable mortgage, because it gives the intended mortgagee a right to have a legal mortgage, and in a court of equity gives him in fact all the rights of a legal mortgagee. A deposit of the title-deeds of an estate, or of the copy of court roll, as a security for a debt contracted at the time of the deposit, or previously to the deposit, constitutes an equitable mortgage. An equitable mortgagee by deposit of title-deeds, has a preference over a subsequent purchaser or mortgagee who obtains the legal estate with notice of the equitable mortgage.

If the mortgagor is not seised in fee, but has only a limited interest in land, as a lease for years, the mortgagor, by taking an assignment of the lease, becomes liable for the rent, and to the covenants contained in the lease, though he has never taken possession of the premises included in it. The same rule was for a time held to apply to an equitable mortgagee by deposit of title-deeds; but in a very recent case it has been decided that the equitable mortgagee is not liable to such covenants (*Moore* v. *Choat*, 8 Sim., 508): and so the matter stands at present.

The preceding remarks apply to mortgages of land only, in which there are many peculiarities which arise from the condition of legal ownership of land in this country. But other kinds of property may be mortgaged, such as chattels personal, a life-interest in a sum of money, or a policy of insurance, or a ship, or shares in a ship. The subject of pawning or pledging of goods is treated under PLEDGE, and also the rules of the Roman law as to Hypotheca and Pignus. The equitable lien on land, which is classed among mortgages by some writers, is

briefly noticed under LIEN; and mortgages of ships under SHIP.

The English law of mortgage has been chiefly formed by the decisions of courts of equity, and it now forms a very important and often complicated part of the law of property and contracts. As it is a matter of general interest that every reasonable facility should be given to the sale of property, so it is equally a matter of general interest that the means of borrowing money upon the security of property should be rendered easy, and the rules of law relating thereto as clear and certain as the nature of the transaction will allow. The borrowing and lending of money upon good security is one of the most direct means of rendering capital productive. Those who lend receive the value of their money in the shape of interest, and those who borrow are enabled to employ their industry, fixed or moveable capital and skill, more effectually than they could without this aid. Though the amount of mortgage transactions is very great, they might be still further increased if those who are the cultivators of land had such an interest in it as would enable them, either alone or in conjunction with their landlords, to borrow money for the improvement of land. But this cannot be done prudently either on the part of the lender or the borrower, so long as farms are let on the present terms. The introduction of a good system of leasing would certainly be followed by increased application of capital to land, which in many cases can only be done by borrowing on the security of the land. [LEASE.] There is an act 3 & 4 Vict. c. 55 (altered and amended by 8 & 9 Vict. c. 56), which is "to enable the owners of settled estates to defray the expense of draining the same by way of mortgage." These acts apply to England and Ireland.

MORTMAIN. By the 9 H. III. c. 36 (Magna Charta), it was declared that it should not be lawful for the future for any person to give his land to a religious house, so as to take it back again and hold it of the house; and any such gift to a religious house was declared to be void, and the land was forfeited to the lord of the fee. The reason of this provision is obvious, if we consider the nature of the feudal tenure; and indeed it is distinctly expressed in the preamble of the statute of the 7 Edward I., sometimes entitled 'De Religiosis,' as follows: "Whereas of late it was provided that religious men should not enter into the fees of any without the licence and consent of the chief lords (capitalium dominorum) of whom such fees are immediately held; and whereas religious men have entered as well into fees of their own as those of others, by appropriating them to their own use and buying them, and sometimes receiving them of the gifts of others, by which means the services due from such fees, and which were originally provided for the defence of the realm, are unduly withdrawn, and the chief lords lose their escheats of the same," &c. The statute then forbids any religious person or any other to buy or sell lands or tenements, or under colour of a gift or term of years, or any other title whatever, presume to receive from any one, or by any other means, art, or contrivance, to appropriate to himself lands or tenements, so that such lands and tenements come into mortmain in any way (ad manum mortuam deveniant), under pain and forfeiture of the same. The statute then provides, that if it is violated, the lord of whom the lands are holden may enter within a year; or, if he neglect to enter, the next lord may enter within half a year; and if all the chief lords of such fees, being of full age, within the four seas, and out of prison, neglect to enter, the king may enter.

The general notion of mortmain may be collected from the words of this statute, the term being used to express lands belonging to any corporate body, ecclesical, or sole or aggregate. Various explanations have been offered as to the reason why lands of this description were said to be in mortmain, or in mortua manu, that is, in a dead hand. Under the feudal system, lands held by any corporate body or person might not inappropriately be said to be in a dead hand as to the lord of the fee; for as a corporation has perpetual continuance and succession, the lord lost the profits in his lands which, under the strict system of tenures, he derived either from the services of the

tenant, while alive, or from the death of the tenant and other circumstances. Accordingly, the best explanation of the meaning of this term seems to be that offered by Coke, that "the lands were said to come to dead hands as to the lords, for that by alienation in mortmain they lost wholly their escheats, and in effect their knights' services for the defence of the realm, wards, marriages, reliefs, and the like, and therefore was called a dead hand, for that a dead hand yieldeth no service." Similarly, the old mortuum vadium seems to have been so called, because the land in pledge was, for the time, dead to the pledger. [MORTGAGE.]

Before the 9th Hen. III. c. 36, was passed, a man might give or sell his lands to religious as well as any other persons, unless it was forbidden in the gift of the lands to himself; and accordingly, the great lords, on making a grant of land, used to insert a clause preventing the sale or gift to religious persons and also to Jews: Licitum sit donatorio rem datam dare vel vendere cui voluerit, exceptis viris religiosis et Judeis. (Bracton, fol. 13.)*

This statute of Edward I. prevented gifts and alienations between corporate bodies or persons and others, but it was eluded by a new device, apparently invented by the clergy, and probably most used by the religious houses. These bodies, pretending a title to the land which they wished to acquire, brought an action for it by a Præcipe quod reddat against the tenant, who collusively made default, upon which the religious house had judgment, and entered on the land.

The statute of the 13 Edward I. (Westminster, 2), c. 32, provided against these recovery of lands obtained by collusion; for it was enacted, that after the default made, it should be inquired whether the demandant had any right in his demand or not; and if the demandant were found to have no right, the land was declared to be forfeited to the lords mediate and immediate, similarly as was provided by the previous statute of Edward I. Another provision of this statute (c. 33) furnishes curious evidence as to the devices practised for the purpose of eluding the statutes of mortmain. The words of the enactment will best explain the allusion:—"Forasmuch as many tenants set up crosses, or permit them to be set up on their tenements, to the prejudice of their lords, in order that the tenants may defend themselves by the privileges of Templars and Hospitallers against the chief lords of the fees, it is enacted, that such tenements be forfeited to the chief lords, or to the king, in the same way in which it is enacted elsewhere with respect to tenements alienated in mortmain" (de tenementis alienatis ad mortuam manum).

Various other statutes were passed in the reign of Edward I. and Edward III. relating to mortmain; but the next important statute is that of the 15 Richard II. c. 5. As corporations could not now acquire lands by purchase, gift, lease, or recovery, they had contrived another new device, said to be mainly the invention of, or mainly practised by, ecclesiastical bodies or persons. The device consisted in this: the lands in question were conveyed to some person and his heirs to the use of the ecclesiastical body or person and their or his successors. In this way the legal estate was not in the possession of those who could not legally hold it, but in a person who had such legal capacity; and the use or profit of the land, the beneficial interest in it, was secured to the ecclesiastical body or person, contrary to the spirit of the previous statutes, though not contrary to their expressed provisions. The statute of Richard, after declaring that this use was also mortmain, further declared all such conveyances to be void, and that the lords might enter on lands so conveyed, in the manner provided for by the statute De Religiosis. This distinction of the ownership of land into the legal and beneficial, was undoubtedly derived by the clergy from the like distinction in the Roman law between Quiritarian and Bonitarian ownership, which is briefly and distinctly explained by Gaius (ii. 40).

Though the statute De Religiosis was in its terms comprehensive enough to in-

* Viner (art. 'Mortmain'), quoting Coke, who writes this passage "Licitum sit *donatori*," says, "Quære if it should not be *donato*, donee." Such a blunder might have been avoided by looking at the original, or might have been corrected even without doing so.

clude all alienations to corporate bodies or persons, it is clear that this statute was mainly directed against the clergy, both regular and secular. The ecclesiastical corporations were more numerous than any other, and had been more active in getting lands into their hands. This statute of Richard II. however expressly extends the statute De Religiosis to lands purchased to the use of guilds or fraternities; from which it has been inferred that the doctrine of mortmain had not, before the date of this statute, applied to guilds or fraternities. The statute De Religiosis is by this statute of Richard II. expressly declared to apply also to what we now call municipal corporations, and the statute places such bodies in all respects on the same footing, as to the purchase of lands, with "people of religion." If such bodies as these had been considered within the statute De Religiosis, it seems clear from the statute of Richard II. that their acquisitions of land had only recently become of such magnitude as to make it seem expedient to make a special declaration by statute as to them.

A statute of Henry VIII. (23 Henry VIII. c. 10), commonly called an act against superstitious uses, is perhaps hardly a statute against mortmain in the strict sense of the term. The statute enacted that feoffments, fines, recoveries, and other estates, made of lands and hereditaments to the use of parish churches, chapels, guilds, fraternities, commonalties, &c., erected and made of devotion or by common consent of the people without any corporation, or to uses for perpetual obits, or a continual service of a priest, were declared to be void as to such gifts as were made after the 1st of March in the year in which the statute was passed, for any term exceeding twenty years from the creation of such uses. From the words, "by common consent of the people, without any corporation," it can hardly be inferred that a number of individuals could take in perpetual succession without being incorporated, as some writers suppose; for "to take by perpetual succession without being incorporated" involves a contradiction. Nor can the statute be construed as admitting by implication such a power of perpetual succession in unincorporated individuals. The statute destroys all such estates and interests in land as in any way or by any persons were held to the use of the establishments or collections of individuals mentioned and described in the statute.

The subsequent statutes passed in the reign of Henry VIII. (27 H. VIII. c. 28; 31 H. VIII. c. 13; 37 H. VIII. c. 4), together with the statute passed in the first year of Edward VI. (1 Edw. VI. c. 14), put an end to religious houses and many other establishments which had been the special objects of the statutes of mortmain and superstitious uses. The consideration of what are now legally called superstitious uses, properly comes under the head of USES, SUPERSTITIOUS AND CHARITABLE.

The king could always grant a licence to alien in mortmain, or, more correctly speaking, he could remit the forfeiture consequent upon alienation, so far at least as concerned himself; but such remission could strictly only affect his own rights, and not those of the mesne lords, unless they also consented. It was the practice, before the king granted his licence, to sue out a writ of *ad quod damnum*, in order that inquiry might be made and the king informed what damage himself or others might sustain from the licence. This practice, however, fell into disuse long before the statute of the 7 & 8 Will. III. c. 37, which authorises the king to grant to any person or persons, corporate or not, licence to alien in mortmain, and to purchase and hold in mortmain any lands or hereditaments, and that such lands shall not be subject to forfeiture. When a licence to hold lands in mortmain is granted, it generally specifies the amount in value of the lands to be held by the corporation to which it is granted; and if the corporation should be ever found to acquire lands beyond this value, such lands are forfeited to the lord.

Until the statute of 9 Geo. II. c. 36, presently mentioned, though lands could not be aliened in mortmain, yet certain gifts to corporate bodies were held good. Thus, if a feoffment was made to a dean and chapter to perform a charitable use (within the 43 Eliz., c. 4), it was good, though they could not be seised to

another's use; and a device to a college to a charitable use within this statute was also good. (Hob. 136; 1 Lev. 284.)

The statute of the 9 Geo. II. c. 36, is now commonly, though not correctly, called the Statute of Mortmain. It applies only to England and Wales. It is entitled 'An Act to restrain the Disposition of Lands, whereby the same become inalienable.' The provisions and object of this enactment cannot be otherwise expressed than by stating the first section at full length:—"Whereas gifts or alienations of lands, tenements, or hereditaments, in mortmain, are prohibited or restrained by Magna Charta and divers other wholesome laws, as prejudicial to and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called charitable uses, to take place after their death, to the disherison of their lawful heirs: for remedy whereof be it enacted, that from and after the 24th day of June, 1736, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned, or appointed, or any ways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise for any estate or interest whatsoever, or any ways charged or encumbered by any person or persons whatsoever, in trust or for the benefit of any charitable uses whatsoever, unless such gifts, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate (other than stocks in the public funds), be made by deed indented, sealed, and delivered, in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor (including the days of execution and death), and be enrolled in His Majesty's High Court of Chancery within six calendar months after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor (including the days of the transfer and death); and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him." The act provides that what relates to the time before the grantor's death or sealing the deed and making the transfer shall not extend to any purchase to be made really and bonâ fide for a full and valuable consideration, actually paid at or before the making of such conveyance or transfer without fraud or collusion. The two universities of Oxford and Cambridge, and the colleges within them, were excepted from the operation of the act; and the colleges of Eton, Winchester, and Westminster, but in favour of the scholars only, were also excepted. This act limited the numbers of advowsons which any college or house of learning (before referred to in the act) could hold; but this restriction was removed by the 45 Geo. III. c. 101. By the 5 Geo. IV. c. 39, the British Museum is excepted from the statutes of mortmain; and various other public bodies have been in like manner excepted by act of parliament. The judicial interpretation of this act, called the Mortmain Act, has prevented a large amount of property from being given to charitable uses. A bequest of money for charitable purposes, to arise from the sale of land, is void; or of money due on mortgages; or of money to pay off the mortgage on a chapel; or of money to build a chapel, unless some land already in mortmain is distinctly pointed out by the terms of the bequest; or of mortgages both in fee and for years; or of money to be laid out on mortgage security. This act can only be called a Mortmain

Act with any propriety so far as it relates to corporate bodies, and even with regard to them with no strict propriety, inasmuch as the Mortmain Acts were intended to prevent corporate bodies holding lands to their own use, or to prevent other persons holding them to the use of corporate bodies. The act is in fact intended to limit the power of giving property for charitable purposes to any person or persons, and is very improperly called a Mortmain Act, if we consider that many gifts of land for charitable purposes were not considered, before the passing of this act, as within the old statutes of mortmain.

The history of mortmain is intimately connected with the ecclesiastical and civil history of this country. The jealousy which all mankind feel against rich and powerful bodies of men, who are combined in a perpetual brotherhood and fraternity, and the constantly increasing wealth and power of the ecclesiastical bodies in this country, doubtless contributed strongly to the passing of the enactments called the statutes of mortmain; and this, independently of the solid reasons against such bodies having large possessions, so long as the strict system of tenures continued. In modern times, when the lord can lose nothing by land being conveyed to a corporation or to a charitable use, except the remote contingency of escheat, a new notion lies at the foundation of the restraints upon such transfers or gifts of land, which, as as Lord Hardwicke expressed it, was this:—

"The mischief which the legislature had in view in the Mortmain Act (as appears from the recital, and which is agreeable to the title) was to restrain the disposition of lands whereby they become inalienable." In another place he observes that "the particular views of the legislature were two: first, to prevent locking up land and real property from being aliened, which is made the title of the act; the second, to prevent persons, in their last moments, from being imposed on to give away their real estates from their families."

It will be perceived that the provisions of the act very imperfectly correspond with this explanation of its object. Thus money may be given by will (if unaccompanied with a direction to lay it out in land) to an eleemosynary corporation which is empowered to hold land in mortmain, and it may be laid out in land, or, if necessary, a licence may be obtained from the crown for that purpose. The judicial exposition, that money given by will, to arise from the sale of lands, is within the act, involves a direct contradiction; it being expressly provided by the mode of donation, in the case just mentioned, that the land shall *not*, so far as the donor can prevent it, come into hands in which it will be inalienable.

The act, which is a clumsy contrivance, and the exposition of it, are in fact directed against gifts for charitable uses; though it is probable that the notion of the impolicy of allowing lands to be for ever set apart, or "locked up," had also some influence on the legislature. If this, however, had been the leading idea, a repeal of the statute which allows the crown to grant a licence to hold lands in mortmain would have been a proper addition to the act. But the legislature or the promoters of the act were apparently anxious to find out some reason or excuse for passing such an act in a country where gifts for charitable uses have been so long established and approved by popular opinion. The exceptions made in this act in favour of the universities of Oxford and Cambridge and the colleges in those places also show that there was a party in the legislature strong enough to prevent the operation of this act being extended to those corporate bodies.

Various acts have been passed since the 9 Geo. II. c. 36, as already stated, for exempting various bodies from the operation of that act. These acts chiefly apply to the Established Church. In 58 Geo. III. c. 45, amended by 59 Geo. III. c. 134, and 2 & 3 Wm. IV. c. 61, are intended to promote the building of new churches in populous places in England and Wales. The 43 Geo. III. c. 107, was passed to exempt decrees and bequests to the governors of Queen Anne's Bounty [BENEFICE].

There is no doubt that the Mortmain

Act of George II. has been productive of benefit; and it would be better for its provisions to be made stricter instead of being relaxed, especially in the case of ecclesiastical bodies and persons. The acquisition of lands by corporate bodies, except such as are established for purposes of general interest, is an evil in any country, especially in a country where the land is so limited in amount as in England. Facilities for sale and transfer are rather wanted than facilities for giving land to bodies which cannot sell, and from the nature of their constitution present obstacles to the improvement of land and its productive employment.

It should be borne in mind that the terms charities and charitable uses have a legal meaning very different from the popular meaning of the term charity.

The great amount of property in England and Wales which is appropriated to charitable uses, and the importance of many of those establishments which are supported by such property, render it necessary to give some exposition of the nature and administration of charities in this country, which is most conveniently done under the head of USES, CHARITABLE.

The term *Mortification* in Scotland expresses pretty nearly what mortmain does in England.

According to Stair (book ii. tit. iii. 39, ed. Brodie), "infeftments of mortified lands are those which are granted to the kirk or other incorporation having no other *reddendo* than prayer and supplications and the like: such were the mortifications of the kirk lands granted by the king to kirkmen, or granted by other private men to the provost and prebendars of college kirks founded for singing; or to chaplainries, preceptories, altarages, in which the patronage remained in the mortifiers." The act of 1587, c. 29, passed in the eleventh parliament of James VI., began by reciting that the king "and his three estaites of parliament perfitely understood the greatest part of his proper rent to have bene given and disponed of auld to Abbaies, Monasteries, and utheris persons of Clergie," &c.: it further recited that "his Hienes, for the great love and favour quhilk he bearis to his subjectes, was nawaies minded to greeve them with unprofitable taxations, specially for his royal support." The act then went on to declare that it was "founde maiste meete and expedient that he sall have recourse to his awin patrimonie disponed of before (the cause of the disposition now ceasing) as ane helpe maist honorable in respect of himselfe and least grievous to his people and subjectes." The act then proceeded to unite and annex to the crown (with the exceptions after specified in the act) all the lands, &c., belonging to the ecclesiastical and religious personages therein mentioned. This act was in effect more extensive than the similar acts of Henry VIII. in England.

Since the Reformation, lands given in Scotland for charitable purposes are given to the trustees of the charity, to be held either in blanch or feu holding. (Bell's *Dict. of the Law of Scotland.*)

MUNICIPAL CORPORATIONS. The term Municipal is derived from the Latin adjective Municipalis, which signifies appertaining to a Municipium. The word Municipium had several early historical significations among the Romans, which it is not necessary to explain here. We use the Roman term Municipal to indicate the corporation of a town, but our municipal corporations resemble the Italian cities in the later period of the Republic. After the Social War, B.C. 90, the Italian towns became members of the Roman state; they were subject to Rome, but retained their own local administration. Both the original Roman colonies in Italy and the Municipia (not colonies), as they were called, enjoyed this free condition. A municipal constitution was the characteristic of these Italian towns. The notion of an incorporated body, as applied to a community, was familiar to the Romans, and their several municipalities were accordingly considered and called republics (Res Publicæ). The Roman colonies in Italy had a popular assembly and a senate, as Rome had; the people chose their own magistrates, and they had legislative power in their own concerns. The chief magistrates were sometimes two (duumviri) and sometimes four (quatuorviri):

their principal duties were the administration of justice. Their office was annual. The history of these Italian municipalities is traced by Savigny, in his History of the Roman Law in the Middle Ages (vol. i.). The Romans had colonies, in their sense (Coloniæ, COLONY, p. 559) also in the provinces, in Africa, Spain, France, and Britain. All these colonies had a mucipal organization. They were subjects of Rome and under the general law of Rome, but they managed their own internal administration as corporate bodies. As these communities existed wherever the Romans formed a provincial government, it is all but historically demonstrated that the town communities of our country, and of other parts of Europe where they exist, have either been directly transmitted from the Roman town-communities as they existed under the empire, or have been formed on that model. London itself, though never a Roman colony, in the strict sense of that term, was a place of considerable trade under the empire, and as England was then a Roman province, we may assume that this flourishing Municipium would have a local administration like that of other large towns within the Roman provinces. The Romans had also colonies in England, in the proper sense of that term; and the word Colonia always implies a local administration. It cannot be proved that the Saxons brought with them to England such a system of town-communities; nor was their mode of settlement of such a character as to lead us to suppose that they could have established them at first. They certainly found them existing in the chief towns of the kingdom, and it is probable that this Roman institution has continued without interruption from the first reduction of England to a Roman province to the present time.

Some writers however are of opinion that our municipal corporations are of Saxon or Teutonic origin; and the remarks which follow are made in conformity to that opinion. The Anglo-Saxon terms *byrig*, *byrg*, *burh*, &c. the various old forms of *borough*, like the German *burg* of the present day, was the generic term for any place, large or small, fortified by walls or mounds. The municipal organization of the Anglo-Saxons was not, however, confined to their towns. Their boroughs were only parts of one great municipal system, extending over the whole territory. But the boroughs by distinction, the boroughs in political estimation, were those towns (apparently all the considerable ones) which had each, under the name usually of *burgh-reve* or *port-reve*, an elective municipal officer exercising functions analogous to those of the elective-reve of the shire or *shire-reve*. Of this local organization enough is discoverable to show most clearly that it had never been moulded by a central authority, but, on the contrary, that the central authority had been, as it were, built up on the broad basis of a free municipal organization.

For a clear exposition of the essentially republican basis of all the public institutions of the Anglo-Saxons we would refer to Mr. Allen's 'Inquiry into the Rise and Growth of the Royal Prerogative in England,' 8vo., 1830. The *cyne* or *kin* of the Saxons was synonymous with *nation* or *people*; and *cyn-ing* or *kin-ing* (by contraction, *king*) implied, as Mr. Allen remarks, that the individual so designated was, in his public capacity, not, as some modern sovereigns have been willing to be entitled, the *father* of the people, but their *offspring*. In the introduction and use of the modern word *kingdom*, we trace a still more remarkable perversion. The Anglo-Saxon *cyne-dom* or *kin-dom* denoted the extent of territory occupied and possessed by the *kin* or nation—an import diametrically differing from that of *kingdom*, which, in the decline of the Norman tongue as the language of the government implanted by the conquest, was substituted for the Norman *royaulme* (in modern English *realm*)—as the word *king* itself, with as little regard to its etymological derivation, was substituted for the Norman *roy*. Thus it is manifest that the difference of meaning between *kin-dom* and *king-dom* is as wide as that between the principle which recognized the nation at large as the original proprietor of the soil, and that which vests such absolute proprietorship exclusively in the crown—a distinction which it is most important to perceive and to bear in mind.

Under the Anglo-Saxon government the revenue of the king, or rather of the state, had been collected in each shire by the shire-reve, and in each municipal town by the borough-reve or port-reve. But in the one case, as in the other, this officer was the elective head of the municipality; for the shire itself was no other than a certain extent of territory municipally organised. But after the Conquest, instead of the elective Saxon reve, there was placed over each shire a Norman *viscount*, and over each municipal town a *bailiff*, both appointed by the Norman king. It would have been vain for the burgesses to appeal to the mercy of the king, but they found means of appealing to his cupidity. He discovered that their eager desire to rid themselves of the royal bailiff, urged them to offer him a higher sum to be collected from and by themselves, and transmitted directly to his exchequer, than he could farm their town for to an individual; and hence the frequent charters which we soon find issuing to one borough after another, granting it to the *burgesses* in *fee-farm*, that is, in permanent possession so long as they should punctually pay the stipulated crown-rent.

The interference of a royal provost in their internal concerns being thus withdrawn, the towns returned naturally to their former free municipal organization. They had once more a chief administrator of their own choice; though in few cases was he allowed to resume either of the old designations, *borough-reve* and *port-reve*. In all cases he now acted as *bailiff* of the Norman king; accounted at the exchequer for the farm or crown-rent of the borough: in most, he received the Norman appellation of *mayor*, which, denoting in that language a municipal chief officer, was less odious to the Saxon townsmen than that of bailiff; though in some he received and kept the title of bailiff only.

The charters of the Norman kings were constantly addressed to "the citizens," "the burgesses," or "the men" of such a city or borough; and the sum of the description of a burgess, townsman, or member of the community of the borough, as Madox in his 'Firma Burgi' observes, was this:—"They were deemed townsmen who had a settled dwelling in the town, who merchandized there, who were of the hans or guild, who were in lot and scot with the townsmen, and who used and enjoyed the liberties and free customs of the town." The municipal body, in short, consisted of the resident and trading inhabitants, sharing in the payment of the local taxes and the performance of the local duties. This formed substantially a household franchise. Strangers residing temporarily in the town for purposes of trade had no voice in the affairs of the borough, nor any liability to its burdens, which, at common law, could not be imposed upon them without admission to the local franchise. The titles to borough freedom by birth, apprenticeship, and marriage, all known to be of very remote antiquity, seem to have been only so many modes of ascertaining the general condition of established residence. The title by purchase was a necessary condition for the admission of an individual previously unconnected with that particular community, in those days when such admission conferred peculiar advantages of trading; and the right of bestowing the freedom on any individual by free gift, for any reason to them sufficient, was one necessarily inherent in the community, for the exercise of which they were not responsible to any authority whatever. The freemen's right of exclusive trading too had some ground of justice when they who enjoyed it exclusively supported the local burdens. Edward III.'s laws of the staple authorized the residence of non-freemen in the staple towns, but at the same time empowered the community of the borough to compel them to contribute to the public burdens; and under these regulations it is that the residence of non-freemen appears first to have become frequent.

The progress of wealth, population, and the useful arts produced, in many of the greater towns, the subdivision of the general community into *guilds* of particular trades, called in many instances since the Norman æra *companies*, which thus became avenues for admission to the general franchise of the municipality. In

their greatest prosperity these fraternities, more especially in the metropolis, became important bodies, in which the whole community was enrolled; each had its distinct common-hall, made by-laws for the regulation of its particular trade, and had its common property; while the rights of the individuals composing them, as members of the great general community, remained the same.

But for several centuries after the Conquest, any select body forming within a municipal town a corporation, in the modern sense of the term, was entirely unknown. When the men of a town became answerable to the crown for a *ferm* or other payment due from their community, then the barons of the exchequer, the king's attorney, or his other clerks and officers, charged, impleaded, and sued the townsmen collectively, by any name by which they could be accurately designated, and they answered by one or more of their number, deputed for that purpose by the rest. There was also a method of summoning a community to appear in the king's courts of law, by six or some other number of "the better and more discreet" inhabitants, to be nominated by the rest. The duties of the boroughs to the king were rendered entirely by their executive officers, elected yearly by the whole community. Generally it was granted to them to elect a single chief magistrate, bearing, as already observed, the Norman title of mayor, who became answerable to the crown for all things in which the bailiff or bailiffs were previously responsible, and the officers bearing the latter title declined to an inferior rank. The executive officer, thus elected, it was always necessary to present to the king, or some one appointed by him, to be accepted and sworn faithfully to discharge his duties both to the crown and to the community; and to receive these presentations, accept the officer elected, and take his oath, became a part of the duties of the treasurer and barons of the exchequer. To these, when the citizens or burgesses had made their election, it was notified by letters under their common seal, and the mayor elect was presented to them at the exchequer by two of his fellow-burgesses. The same proceeding was observed with regard to *sheriffs*, which some of the larger cities and towns acquired power to elect as counties of themselves; and for the like reason, because of the duties they had to render to the king. In course of time communities acquired by charter the privilege of taking the oaths of their own officers, or they might be tendered to the constable of the nearest royal castle. If such officer performed any official duty without being duly sworn, it was deemed a contempt, and the liberties were liable to be seized into the king's hands, unless redeemed by fine or a valid excuse.

But the sole legislative assembly in every municipal town or borough was originally the Saxon *folk-mote*, or meeting of the whole community, called in many places the *hundred*, and where held within doors, the *hus-ting* or the *common hall*. This assembly was held for mutual advice and general determination on the affairs of the community, whether in the enacting of local regulations, called *burgh-laws* (of which some persons suppose *by law* to be a contraction), the levying of local taxes, the selling or leasing of public property, the administration of justice, the appointment of municipal officers, or any other matter affecting the general interests. In this assembly, held commonly once a week, appeared the body of burgesses in person, to whom, together with their officers, whom they elected annually, every general privilege conveyed by the royal charters was granted; and however vested in later times, every power exercised in the antient boroughs has derived its origin from the acts of this assembly. The increase of population and extension of trade in the larger towns led naturally to the introduction of the representative principle in local legislation, &c., and to an aristocratic organization. Next, as the distinction of *race* became lost in the fusion of blood and the rise of the modern English tongue, other circumstances sprung up, tending to create and perpetuate a distinction of civic *classes*. The progress of individual wealth, as commercial property became more secure against exactions by arbitrary power, and the commercial resources of the country became deve-

loped, was among the most powerful of these causes. In London, as early as the close of Henry III.'s reign, the aldermen, and those calling themselves "the more discreet of the city," made an attempt to elect a mayor, in opposition to the popular voice; which, however, ended in the triumph of the latter, in a general folk-mote held at St. Paul's Cross.

The richest and most influential persons, however, being generally chosen by the inhabitants at large to the highest places in the municipal councils, were often tempted to seek the perpetuation of their authority without the necessity of frequent appeals to the popular voice, and even to usurp powers which it had not delegated at all. Such usurpations however were often vigorously resisted by the community at large; and the contests were sometimes so violent and obstinate as to lead to bloodshed. But in course of time, the crown itself, so long indifferent to the details of municipal arrangements, found sufficient motives for encouraging these endeavours of internal parties to form close ruling bodies, irresponsible to the general community.

We find faint indications of this policy in several of Henry VII.'s charters; as in one to Bristol in 1499, establishing a self-elective council of aldermen; who yet, though justices, had no exclusive power of municipal government. But the fierceness of religious dissension, which divided the whole nation at the close of the following reign, made the management of the House of Commons an object of primary importance to either Catholic or Protestant successor to the crown. This therefore was the æra of the most active exercise of the prescriptively discretional power of the sheriffs to determine within their several bailiwicks, in issuing their precepts for a general election, which of the municipal towns should, and which should not, be held to be parliamentary boroughs. To arbitrarily omit any of the larger towns, or even of the smaller ones, which in public estimation had a prescriptive right to be summoned, was too open an attack on the freedom of parliament to be now ventured upon. The calling of this right into action in boroughs wherein it had lain dormant from the beginning, or, though once exercised, had fallen into disuse from alleged poverty, decay, or other causes, was a more plausible course of proceeding; and notwithstanding the evident partiality with which it was conducted, was permitted to pass without legislative interference. [COMMONS, HOUSE OF.]

Accordingly we find in the reigns of Edward VI., Mary, and Elizabeth, besides seventeen boroughs *restored* to parliamentary existence, forty-six now first beginning to send members, making altogether an addition to the former representation (as no places were now *omitted*) of sixty-three places returning 123 members. But the most important feature in this policy of the crown at this period—that which mainly contributed to attain the object of that policy—was its novel assumption of the right of remoulding, by *governing charters*, the municipal constitution of these new or revived parliamentary boroughs. Most of these charters expressly vested the local government, and sometimes the immediate election of the parliamentary representatives, in small councils, originally nominated by the crown, to be ever after self-elected.

This was the first great step on the part of the crown in undermining the political independence of the English municipalities. The successful working of the application of this novel principle to the new or restored parliamentary boroughs, encouraged the Stuarts not only to continue this system of erecting close boroughs, but to make a second and a bolder advance in the same direction, by attacking the constitutions of the prescriptively parliamentary municipalities themselves.

In the twelfth year of James I., it was declared that the king could, by his charter, incorporate the people of a town in the form of select classes and commonalty, and vest in the whole corporation the right of sending representatives to parliament, at the same time restraining the exercise of that right to the select classes; and such was thenceforward the form of all the corporations which royal charters created or remodelled. After

this fashion it was that, under James I. and Charles I., seventeen more parliamentary boroughs were revived; and that James created four, making a total addition to the borough representation of forty-one members, besides the four members for the two English universities, which James first introduced.

After the reign of James II., no attempt was made to recur to the Stuart measures against such of the corporations as still retained in whole or in part, a popular constitution; yet "the charters which have been granted since the Revolution are framed nearly on the model of those of the preceding era: they show a disregard of any settled or consistent plan for the improvement of municipal policy corresponding with the progress of society. The charters of George III. do not differ in this respect from those granted in the worst period of the history of these boroughs." (Report of Commissioners of Corporation Inquiry.)

The abuses existing in Municipal Corporations had thus, for more than two centuries, been a matter of constant and nearly universal complaint. Any general remedy was however impracticable, while abuses in the representation of the people in Parliament were to be maintained. The rotten and venal boroughs, of which the franchise was abolished or amended by the Reform Act, were the chief seats of corporation abuse: and the correction of the local evil would have been the virtual destruction of the system by which the ruling party in the state retained its political power. Every borough having the privilege of returning a member to Parliament, was indispensable to one or the other of the leading political parties, and in these boroughs the greatest abuses naturally prevailed, because impunity in the neglect of duty and in the maladministration of the funds of the community, was the cheapest and most convenient bribe by which the suffrage of the corporators could be purchased. Impunity being thus secured and perpetuated in the most corrupt of the Parliamentary boroughs, it would have been too hazardous an experiment on the toleration of the people to have undertaken to reform the comparatively insignificant abuses of the non-parliamentary boroughs. The greater abuse thus served to shelter the lesser, until the passing of the Reform Act, which, in destroying the importance of the corrupt Parliamentary corporations, rendered certain the speedy re-organization or the abolition of the whole, as the respective cases might require.

Accordingly, in about a year after the passing of the 'Act to amend the Representation of the people in England and Wales,' the king issued (July, 1833) a Commission under the Great Seal to twenty gentlemen "to proceed with the utmost dispatch to inquire as to the existing state of the Municipal Corporations in England and Wales, and to collect information respecting the defects in their constitution—to make inquiry into their jurisdiction and powers, and the administration of justice, and in all other respects; and also into the mode of electing and appointing the members and officers of such corporations, and into the privileges of the freemen and other members thereof, and into the nature and management of the income, revenues, and funds of the said corporations."

The commissioners thus appointed divided the whole of England and Wales into districts, each one of which was, in most cases, assigned to two commissioners. Their reports on individual corporations occupied five folio volumes; abstracts of information relative to important matters occupied a portion of a sixth (the first printed), and the results of the whole inquiry were presented in a general Report signed by sixteen of the commissioners, who thus conclude their observations:—

"Even where these institutions exist in their least imperfect form, and are most rightfully administered, they are inadequate to the wants of the present state of society. In their actual condition, where not productive of positive evil, they exist, in the great majority of instances, for no purpose of general utility. The perversion of municipal institutions to political ends, has occasioned the sacrifice of local interests to party purposes, which have been frequently pursued through the corruption and demoralization of the electoral bodies.

"In conclusion, we report to your Majesty, that there prevails amongst the inhabitants of a great majority of the incorporated towns a general, and, in our opinion, a just dissatisfaction with their municipal institutions, a distrust of the self-elected municipal councils, whose powers are subject to no popular control, and whose acts and proceedings, being secret, are unchecked by the influence of public opinion—a distrust of the municipal magistracy, tainting with suspicion the local administration of justice, and often accompanied with contempt of the persons by whom the law is administered—a discontent under the burthens of local taxation, while revenues that ought to be applied for the public advantage are diverted from their legitimate use, and are sometimes wastefully bestowed for the benefit of individuals, sometimes squandered for purposes injurious to the character and morals of the people. We therefore feel it to be our duty to represent to your Majesty that the existing municipal corporations of England and Wales neither possess nor deserve the confidence or respect of your Majesty's subjects, and that a thorough reform must be effected before they can become, what we humbly submit to your Majesty they ought to be, useful and efficient instruments of local government."

Two of the commissioners, Sir Francis Palgrave and Mr. Hogg, dissented from the views presented in the Report. Their protests were urgently called for by the opponents in Parliament of the reform proposed by the ministers, and they were accordingly printed; but no great weight was attached by any party to their contents after they were made public.

On the 5th of June, 1835, Lord John Russell brought in a bill to remedy the defects complained of; and on the 9th of September, the royal assent was given to "an act to provide for the regulation of municipal corporations in England and Wales." (5 & 6 Wm. IV. c. 76.) We shall here briefly notice the principal features of this measure.

I. The LIMITS to which the provisions of Lord John Russell's bill extended, included in round numbers a population of about two millions. This number was not materially altered by the modifications introduced in the bill in its passage through parliament. The number of boroughs originally proposed to be directly included in the operation of the bill, was 183. This number was reduced to 178. The names of these boroughs are enumerated in two schedules appended to the act; to those more important boroughs contained in schedule A, amounting to 128 in number, a commission of the peace is assigned by the act, while those contained in schedule B, amounting to 50, were only to have a commission of the peace granted on application to the crown, as will be hereafter explained.

Many boroughs, on account of their small importance, are not included in the operation of the act. London was to be made the subject of a special measure, which, however, has never been introduced.

The application of the act to the boroughs in schedules A and B, is determined by the fact of the places having been before subject to the government of municipal corporations. The objects of such government are equally important and necessary for *all* inhabited districts, whether rural or urban. The rural districts are, however, now subject to the jurisdiction of justices of the peace of counties, and the divisions of counties. The existence of prejudices supposed to be based on the different interests of the two populations may be an obstacle, but it must be admitted that the keeping the two populations separated in all that concerns the administration of government is a very effectual means to perpetuate their mutual independence and estrangement.

The boundaries of the individual boroughs were settled as follows, by the act for corporation reform. Those in the first part of schedule A amounting to 84, and those in the first part of schedule B, amounting to 9, being parliamentary boroughs, their parliamentary boundaries were taken as settled by the boundary act (2 & 3 Wm. IV. c. 64) until altered by parliament. In the remaining boroughs the municipal boundaries remained as before, until parliament should otherwise direct.

The division of the boroughs into wards was also effected for electoral purposes. The number of wards in each individual borough is pointed out in schedules (A and B). The bounds of these wards and the number of councillors to be elected by each, were settled by barristers shortly after the passing of the act. Liverpool is divided into 16 wards; smaller boroughs into 12, 10, or fewer wards; and the smallest boroughs are not divided into wards at all.

II. The OBJECTS of municipal government in England have been usually confined to the appointment and superintendence of the police, the administration of justice both civil and criminal, the lighting of the district to which their jurisdiction extended, and the paving of the same, and in a few cases the management of the poor. These objects are of unquestionable importance, and although the number of useful objects of municipal government might be extended, the act does not attempt to do so, but is confined to the improvement of the means by which the objects of the old corporations are proposed hereafter to be attained. The first section of the act repealed so much of all laws, statutes, and usages, and of all royal and other charters, grants, and letters patent, relating to the boroughs to which the act more immediately extends, only so far as they are inconsistent with the provisions of the act, and thus left untouched the whole of the substance of those local laws which relate merely to the objects of municipal government, with the exception merely of the administration of justice, which is considerably modified by the act.

But as those objects had hitherto failed to be obtained, as far as could then be determined through the want of responsibility of the functionaries to those for whose benefit they were presumed to be appointed, the Municipal Reform Act is in consequence almost wholly confined to the attempt to render the functionaries of the municipalities eligible by, and responsible to, the persons whose interests they are appointed to watch over and protect.

In providing a more responsible and effective municipal organization, it was necessary as well to change the constituency as the functionaries; for it was usually by the smallness of the constituency, or by their accessibility to corruption, that the impunity of the functionaries had been secured.

III. The constituency of our corporations are usually known by the name of the freemen. So inapplicable to the circumstances of modern times, and so at variance with the principles of representation were the greater number of these institutions, that the freemen (the constituency itself) were nominated and admitted by the ruling body, which was in turn to be elected by the freemen. There were, however, several other modes by which the freedom of these corporations was obtained, as by birth, or by marriage with the daughter or widow of a freeman, or by servitude or apprenticeship. In London,* Shrewsbury, and many other towns, a previous admission into certain guilds or trading companies was required in addition, which admission was procured by purchase.

The rights of freedom, or citizenship, or burgess-ship, being privileges confined to few persons, were in many cases of considerable value to the possessor, particularly when they conferred a title to the enjoyment of the funds derivable from corporation property, or of exemption from tolls or other duties. These valuable privileges had been often purchased by considerable sacrifices. The expectations founded on the past enjoyment of such privileges, were a proper subject of consideration for the legislature. It was accordingly provided that although the public interests were to be insured by the prospective abolition of all the privileges and exemptions in question, the individuals already interested in them should not have their personal expectations thereby destroyed. On this principle the act reserved the respective rights of the freemen and burgesses, their wives and widows, sons and daughters, and of apprentices, to acquire and enjoy the same share and benefit in the lands and other property, including common lands and

* Previous admission into a City Company is not now necessary.

public stock of the borough or corporation, as well as in property vested for charitable uses and trusts, as fully and effectually as might have been done if the act had not been passed (§ 4). Provision was made against the continuance of the abuse by which the payment of the just and lawful debts of corporations had been heretofore postponed to the claims of the persons whose rights were now in question. As these claims, so tenderly reserved by the legislature, began in wrong, there could be no comparison made between them and the rights of a lawful creditor, who were accordingly to be paid before the freemen could claim the benefit of his privileges. Besides these rights to the enjoyment of the property of the municipality, the exemptions from tolls or other duties were continued to every person who on the 5th of June, 1835, was entitled to such exemption, or even if he could on that day claim to be admitted to such exemption, on payment of the fines or fees to which he might have been liable.

The act also reserved the right to vote for members of parliament to every person who, if the act had not been passed, would have enjoyed that right as a burgess or freeman by birth or servitude. These persons' names are to be inserted by the town-clerk on a list to be entitled the "Freemen's Roll." The right of voting as a freeman for members of parliament can only be acquired by birth or servitude, but a person can claim to be put upon the "Freemen's Roll," for the exercise of municipal privileges, in respect of birth, servitude, or *marriage*.

Having protected the personal interests of those in favour of whom much of the abuse of the municipal system had operated, the act provided against the future existence of such interests, by enacting (§ 3) that no rights of burgess-ship or freedom should be acquired by gift or purchase, and more effectually still by creating the constituency which was to replace the freemen. And the 13th clause provided that after the passing of the act no person should be enrolled a burgess in respect of any other title than that enacted by the act. The constituencies of a municipality now consist of every male person of full age, who on the last day of August in any year shall have occupied premises within the borough continuously for the three previous years, and shall for that time have been an inhabitant householder within seven miles of the borough, provided that he shall have been rated to the poor rates, and shall have paid them and all borough rates during the time of his occupation.

The occupiers of houses, warehouses, counting-houses, and shops (the premises which confer the qualification), who at the same time contribute to the rates, are nearly all those who are pecuniarily concerned in the administration of the funds of the town. They are, however, very far from constituting the whole of those interested in the administration of justice and in the efficiency of the police. As, however, the whole number of such occupiers is reduced by requiring the qualification of three years' residence, the number of the constituency may at any time be expected to be very far short of the persons actually contributing to the funds of the corporation, and still more so of those interested in the good government of the borough.

The grounds of a property qualification are perfectly clear, when the rights of the person, of life and limb, and reputation, in which all men are nearly equally interested, are not concerned, and when on the other hand the administration of a fund subscribed to only by persons having the possession of the qualifying property is the sole object of the government. In the municipalities, however, other interests are concerned than the raising of funds and the administration of them for the purposes of protecting property; and these interests, many of them of personal importance exceeding that of property, such as are involved in the administration of police and criminal justice, may appear not to be represented where property alone is the ground of qualification. Nevertheless, the possessor of property cannot divest himself of these other interests; and whenever property is represented, these interests are likewise in some measure represented. The chief justification of property qualification appears to have been, in the present case, that the

numbers who would have the franchise would be too numerous to be easily influenced by sinister interests, while on the other hand, as the chief contributors to the fund, they would be most interested in its proper administration, as they would be the persons who must chiefly bear the expenses and the evils of any abuse of it. They would, therefore, if they had the power to do so, most effectively resist any mal-administration, and would most strenuously support those improvements by which they would be in the largest degree benefited. Considering the close connexion of the interests of all classes with one another, it can scarcely be conceived that the interests in good government of the constituencies created by this act, are not nearly identical with the general interests of the communities amongst whom they live. The policy of restraining the suffrage by requiring a three years' residence is undoubtedly more questionable. It is true that it has often occurred that immense numbers of freemen have been created to serve a particular purpose of the ruling body. Whenever there was a general election the number of freemen admitted was increased. In 1826 the number of freemen admitted in 128 cities and towns was 10,797, and in the previous year only 2655; in 1830 the admissions were 9321, and in the year preceding only 1433. In 1826 about 1000 freemen were admitted at Maldon during an election. The deliverance from the systematic corruption of a numerous but venal and fluctuating constituency is decidedly one of the greatest benefits conferred on the country by the act.

Provision is made by sections 11 to 24 for the registration of the burgesses by the overseers of their respective parishes, for the correction and publication of the burgess lists by the town-clerk, and for the revision of such lists by barristers the first year, and thenceforth by the mayor and assessors: which latter are officers created for the purpose by the act. The machinery for the registration of the constituency is modelled on that of the Reform Bill, with such modifications as were found desirable, and were required by the very different circumstances to which the two acts apply.

Excepting that of election and control of its officers, the constituency has none of those exclusive privileges conferred on them which have been usually enjoyed by the freemen. One of the most pernicious of these was the privilege of trading within the limits of the municipality, exclusively conferred on those who might be free of the borough or of certain guilds, mysteries, and trading companies. By the 14th section of the Municipal Act, it is enacted that "every person in any borough may keep any shop for the sale of lawful merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft, for hire, gain, sale, or otherwise, within any borough." But London, as already observed, is still excepted from the operation of this act, and the corporation of London has often made the attempt to compel persons to take up their freedom.

IV. The functionaries, together with the constituency, complete the body of the corporation. Both have borne the most various denominations hitherto—the whole body now, in all municipalities, bear the name of "the mayor, aldermen, and burgesses," and they are constituted corporations; that is, they are empowered to do all legal acts as a body, and not as individuals; they may sue and be sued by the corporate name, and they transmit the rights they acquire as corporators to their corporate successors.

The 25th clause provided for the election in every borough of a "mayor," of a certain number of persons to be the "aldermen," and of a certain number of other fit persons to be the "councillors."

The councillors, who are collectively called "the council" of the borough, are the body amongst whom the mayor and aldermen are chosen, and of whom those functionaries continue after their election to constitute a part. The council collectively is intrusted with the whole of the deliberative and administrative functions of the corporation. They appoint the town-clerk, treasurer, and other officers for carrying into execution the various powers and duties vested in them by the act. They may appoint as many committees either of a general or special nature for any purposes which in their

judgment would be better regulated and managed by such committees. The acts of every committee must be submitted to the whole council for approval, lest the borough should be governed by a small knot of persons, whose appointment as a committee would thus become as much a matter of favour, contest, and corruption, as that of the old municipal governing bodies. The council execute all the offices previously executed by the corporate bodies whom they superseded. They appoint from their own body a watch committee, of which the mayor is, by virtue of his office, the head; and this committee appoints a sufficient number of effective men to act as constables and preserve the peace by day and night.

The Council may take on themselves the powers of inspectors (a species of officers appointed under the 3 & 4 Wm. IV. c. 90), as far as relates to the lighting of the whole or any part of the borough, provided that no local act already exists for the lighting of the borough; in which case they are empowered to bring those parts of the borough to which the local act may not apply under its operation, as fully as if such parts had been originally included in such act (§§ 88, 89). They have also a power of making such by-laws as to them may seem proper for the good rule and government of the borough; for the prevention and suppression of all such nuisances as are not already punishable in a summary manner; and to appoint by these by-laws such fines, not exceeding 5*l.*, as they may deem meet for the prevention and suppression of offences. This power of minor legislation is most important and it is properly guarded by rendering it necessary that two-thirds at least of the council should be present at the making of the by-law, and by requiring that a delay of forty days shall intervene, after a copy has been sent to one of the Secretaries of State, before it shall come into operation. Her Majesty may disallow any by-law within that period, or may enlarge the time within which it shall not come into operation.

The Council have the control of the borough fund; any surplus in which, after payment of all necessary expenses and of all just demands, they are to apply for the public benefit of the inhabitants and improvement of the borough. If the fund be insufficient, they are to order a borough rate, in the nature of a county rate, to make up the deficiency, for which special purpose alone they have the powers of justices of peace given to them for assessing, collecting, and levying it. They have powers of leasing buildings and land proper for building. But to prevent the practice of partial and fraudulent transactions, very common in the old corporations, these powers are subject to very considerable restrictions. They have also a power to set aside collusive sales and demises of corporate property made since the 25th June, 1835; many of which were threatened by the refractory corporations (§§ 94, 95). They have also a power, if they think it requisite that one or more salaried police magistrates should be appointed, to fix the amount of such magistrates' salary, and upon their application her Majesty is empowered to appoint the number of magistrates required. To meet the case of delay in any borough, no new appointment by her Majesty is to take place after any vacancy, until the council make a fresh application.

When a commission of the peace is granted to a borough, the council provide the requisite police officers. Other subsidiary and occasional powers are vested in the council, which is thus seen to be effectually the governing body of the corporation.

These powers of the council comprise the whole of the strictly municipal powers affected by the act, and the council will thus be seen to be the whole of the effective machinery of corporation government. Their power is carefully limited: the most important check, however, to the renovation of corporation abuses is contained in the provision for the management of the borough fund, the periodical audit of accounts, and their subsequent publication. The frauds by the officers of the old corporations, the division of the funds for the interest of the governing body, their application to the corruption of the freemen in every shape in which money could be applied, formed

the chief heads of accusation against those bodies; and the uncontrolled and irresponsible disposition of funds by the new councils would in the very nature of things eventually lead to the use of them for the benefit of these bodies, however well they might in other respects be constituted, and the past history of corporations would infallibly be repeated. The Municipal Act, however, provides for the appointment of AUDITORS, persons qualified to be councillors, but not actually of that body, lest identity of interest might lead to partiality in the exercise of their functions. The accounts are to be audited half-yearly, on the 1st of March and the 1st of September, and the Treasurer is, after the September audit, to make out and cause to be printed a full abstract of the accounts for the year, a copy of which is to be open to all the rate-payers; and copies are to be delivered to such rate-payers as apply for them, on payment of a reasonable price.

If the constituency be sufficiently large and have interests identical with that of the community, and if the duties of the governing body be well defined and subject to effective checks, the mode of election is of minor importance. Nevertheless it was important that the mode in which the functionaries were to be elected, should be calculated to give to the constituency the utmost opportunity to exercise effectively the franchise with which they are invested.

The qualification of a councillor is chiefly a property qualification, varying in boroughs according to their amount of population. In this it may again appear that property was too exclusively regarded, for when security was provided for a constituency qualified by property, it might have been presumed that in their choice of officers, if it were left completely free, they would not, when all other qualifications of candidates were equal, prefer the candidate without property. It may, it is presumed, be left to people of property to choose amongst all classes of persons, without fear that they will choose those whose circumstances or opinions would prompt them to place the tenure of property in danger. The bill was introduced without the provision of a qualification for councillors, which was inserted after the bill left the Commons. This qualification renders necessary the enactment of penalties for serving without being qualified. No person is eligible as councillor unless entitled to be on the burgess list, nor unless seised or possessed of real or personal estate, or both, as follows: in all boroughs divided into four or more wards, 1000*l.*, or rated to the poor upon the annual value of not less than 30*l.*; and in all boroughs divided into less than four wards, or not divided into wards, of 500*l.*, or rated to the poor at 15*l.* No minister of religion is capable of being elected a councillor (§ 28).

One-third of the council is to be elected annually on the 1st of November, when one-third of the members, those longest in office, go out. This provision was made, in order that a majority of experienced officers might always remain in the council. The practice combining the advantages of an annual infusion of officers recently approved by the constituency, and thus indicating its sentiments, as well as that of securing experience and acquaintance with the detail and routine of business, has in every case, where it has been tried under fair circumstances, been found most salutary.

Practically, the determination of the constituency, and of the functions of the council, and the checks on their exercise, comprise the whole of the material provisions of the act, the rest is merely incidental to these. Accordingly, the rest of the officers and their functions will be rapidly enumerated.

The *Mayor* is elected from the councillors, and when elected must serve, or pay a fine of 100*l.* His qualification is that of a councillor, but if he acts, not being qualified, he is liable to a fine of 50*l.* He presides at the meetings of the council, and has precedence in all places within the borough, but he has few other exclusive functions or privileges. With the assessors he revises the lists of the constituency, which he must sign in open court. He also presides with the assessors at the election of councillors. He is during his continuance in office a justice of peace for the borough, and continues such for the succeeding year. In bo-

roughs returning members to parliament, he is made the returning officer at their election. He is also rendered capable of doing in such borough any act which the chief officer in any borough may before lawfully do, so far as the same may be consistent with the provisions of the present act.

The *Aldermen* are officers introduced into the new corporations by the amendments made in the bill by the Lords. Their duties are undefined, and indeed they seem to be little more than councillors having a title of precedence. They are elected by the council itself from the councillors, or persons qualified to be councillors. They consist of one-third of the number of councillors. They cannot be elected coroner or recorder, and are exempted from serving on juries. They hold office six years, one half going out every three years. And it is therefore provided that during the respective offices of the mayor and aldermen they are to continue members of the council, notwithstanding the provisions as to the councillors going out of office at the end of three years. [ALDERMAN.]

The *Town-Clerk* acts in obedience to the directions of the council, and for which the latter will be responsible. Besides the general and implied duties of the office, such as preserving minutes of the transactions of the council, some special duties are cast on him by the act; these are chiefly that of making out the 'Freemen's Roll,' keeping and publishing the 'Burgess List,' and making out 'Ward Lists' of the same. He is made responsible for the safe keeping of all charter deeds and records. He is subjected to various fines in case of neglect of duty, and is disqualified to act as auditor. He is bound to submit accounts of all money and matters committed to his charge, at such times and in such manner as the council may direct.

A *Treasurer* is required to be appointed by the council, of which he is not to be a member. He is to give security for the proper discharge of his duties. He is to keep accounts of all receipts and disbursements, to be open to the inspection of aldermen and councillors. He is to pay no money except by order, in writing, of the council, and is to submit his accounts with vouchers half-yearly to—

The *Auditors*, who are to be two in number, elected by the burgesses annually, on the 1st of March, in a similar manner as councillors are elected, and from the persons qualified to be councillors. No actual councillor, however, nor the town-clerk, nor treasurer, each of whose accounts he examines, can be elected auditor. His duties sufficiently appear from what has been before stated. [AUDITOR.]

The *Assessors* are two officers to be appointed in every borough, in like manner as auditors. Their duties are to act in conjunction with the mayor in revising the burgess lists at the election of councillors. [ASSESSOR.]

Such is the list of officers necessarily existing in each borough under the provisions of the Act 4 & 5 Wm. IV. c. 76. Other officers may be appointed either for general municipal purposes, or under certain circumstances, for the special purpose of the administration of justice.

With regard to the *administration of justice* in boroughs, the Corporation Reform Act made several alterations. In the boroughs named in schedules A and B, the Queen is empowered to appoint as many persons as she may think proper to be *Justices of the Peace*, who are not required to have any qualification by estate. The council also of any borough may, if they think it necessary that one or more *salaried Police Magistrates* should be appointed, make a by-law fixing the amount of salary, and thereupon the queen may appoint such person as she may think fit, so that the person be a barrister of five years' standing. The appointment is given to the Crown in order that the administration of justice may be above the suspicion of being tainted by party or local interests, a suspicion which might be incurred, and even deserved, were the appointment made by the council. The justices of the peace may appoint a clerk, with respect to whom some useful provisions will be found in § 102.

In boroughs where the council shall signify their desire to that effect by petition, setting forth the grounds of their

application. the state of the gaol, and the salary which they are willing to pay, the Crown may appoint a Recorder for any one such borough, or for any two or more boroughs conjointly. The Recorder must be a barrister of not less than five years' standing. He is, by virtue of his office, a justice of the peace of the borough, and is to have precedence within the borough next after the mayor. Such boroughs will have separate courts of Quarter-Sessions of the Peace, which is to be a court of record having cognizance of all crimes, offences, and other matters cognizable by any court of quarter-sessions for counties, the recorder being enabled to do all things necessary for exercising such jurisdiction, notwithstanding his being the sole judge.

The council appoint the clerk of the peace, when a separate court of quarter-sessions is granted.

Towns which are not incorporated may obtain a charter of incorporation by petition to the Privy Council. (1 Vict. c. 78, § 49.) Manchester, Birmingham, Sheffield, and Bolton have been incorporated under this regulation.

By § 139 all advowsons, rights of presentation or nomination to any benefice or ecclesiastical preferment in the gift of the corporate body were required to be sold under the direction of the Ecclesiastical Commissioners; the proceeds to be vested in government securities and the annual interest carried to the account of the borough fund.

The management of charitable trust funds was taken from municipal bodies by § 71: the administration of such funds is now placed in the hands of trustees who are appointed by the Lord Chancellor.

Ireland.—The borough system of Ireland may be described in general as an immediate branch from that of England, and the mode of incorporation adopted by the crown in erecting the modern boroughs, presents little more than a parallel to the course it was pursuing in England. The completion of the territorial conquest, while it relieved the ancient boroughs from the danger of external attack from the unsubdued native Irish population, rendered their internal freedom more liable to attack from the English crown. Since the permanent establishment of the Church of England reformation, there has been the difference not of *races*, but of *creeds*. James I. sent presidents or military governors through the Irish provinces for the immediate enforcement of the statutes relating to the crown's supremacy and to the uniformity of common prayer, especially in the corporate towns. On arriving at these towns they called before them the mayors and other principal corporate officers, and, after some further proceedings, deposed them, imprisoned them during his majesty's pleasure, imposed on them heavy pecuniary penalties, and for payment of these had their goods sold in the public streets. The leading municipal officers being thus ejected, others, of known pliancy, were substituted in their places; and these persons readily resigned the rights and liberties of their towns into the king's hands, and took out new charters of incorporation. And here it was that the leading object of the crown was accomplished. To the several ancient boroughs new charters were soon issued, so framed as to leave but a very small share of municipal power to the great body of the inhabitants. In these charters individuals were expressly nominated to fill the offices of mayor, sheriff, recorder, &c.: the members of the governing council of the corporations were in most instances nominated in like manner, with exclusive power to appoint their successors; so that the inhabitants at large were almost wholly deprived of that share in their local government, which, under the original constitutions of these boroughs, they had enjoyed for upwards of four centuries.

The spirit of absolute exclusion prevailing in the Irish municipalities was mitigated in some degree by the Act of Explanation, which empowered the Lord Lieutenant and Council, within seven years, to make rules, orders, and directions, for the better regulation of all cities, walled towns, and corporations. By virtue of this power, the Lord Lieutenant and Council, in 1672, issued what are called the "New Rules." That part of these New Rules which tended to re-

store the ancient basis of the municipal franchise, was a provision that all resident "foreigners, strangers, and aliens, being merchants, or skilled in any mystery, craft, or trade," were entitled to their freedom. Thus, in spite of the exclusive system then in operation, every resident trader in the corporate towns of Ireland was enabled to become a freeman; though still, except by special dispensation, he could not fill the higher municipal offices, unless by taking the oath of supremacy and giving the other tests then required. But after the Revolution of 1688 the spirit and intention of this portion of these rules were wholly disregarded.

The inquiry into the state of the municipal corporations of Ireland, commenced in 1833, was a branch of the general municipal inquiry which naturally followed the passing of the parliamentary Reform Acts. The Irish Commissioners took as the basis of their local investigations the 117 places which sent representatives to the Irish parliament. Their report showed that in Ireland the total inadequacy of the basis of municipal constituency was yet more universally glaring and more injuriously operative than it was in the unreformed system of England. They especially pointed to the excessive abuse of the unlimited power of admitting non-residents into the local constituency. In 1747 the political spirit of the time induced the legislature, by statute 21 Geo. II., chap. 10, sec. 8, of the Irish parliament, to dispense with residence as a qualification for corporate offices in all but a very few of the Irish corporations. The effect of this enactment was to deprive a large proportion of the corporations of a resident governing body. In some cases, a few, very rarely a majority, of the municipal council, were inhabitants of the town; while in others, the whole chartered body of burgesses became composed of non-residents, some of whom attended, *pro formâ*, at elections of the corporate officers and of the parliamentary representatives, or on occasion of the disposing of corporate property, though taking no other part in the local government. In addition to so many other fertile sources of perversion, some charters gave a direct control in the corporate elections to the lord of the manor or landed proprietor of the town in which the corporation was established; while in others, the powers given to a small self-elected body became naturally centred in its most influential member. With few exceptions, the influence once acquired by persons of rank or property in the corporations was easily perpetuated by the powers of self-election in the governing councils, until by degrees the corporate bodies became, as many of them had long been, composed almost exclusively of the family or immediate dependents and nominees of the individual recognised as the "patron," or "proprietor;" acting solely according to his dictation and for his purposes, in the election of the municipal officers, the administration of the corporate affairs and property, and the returning of the members of parliament for the borough. The influence thus acquired came to be regarded as absolute property, and transmitted as part of the family inheritance: in some instances it was made the subject of pecuniary purchase; in some, as in the case of Waterford, partitioned, by agreement, between contending interests; and when the legislative union between Great Britain and Ireland deprived many of the corporate towns, or rather their patrons or proprietors, of the power of returning members to parliament, this species of property was formally recognised as a subject of national compensation.

The Commissioners of Inquiry remark, in relation to the return of members of parliament, that in far the greater number of the close corporations the persons composing them were the mere nominees of the "patron" or "proprietor" of the borough: while in those apparently more enlarged they were admitted and associated in support of some particular political interest, most frequently at variance with that of the majority of the resident inhabitants. "This system," they observe, "deserves peculiar notice in reference to your majesty's Roman Catholic subjects. In the close boroughs they are almost universally excluded from all corporate privileges. In the

more considerable towns they have rarely been admitted even as freemen; and, with few exceptions, they are altogether excluded from the governing bodies. In some—and among these is the most important corporation in Ireland, that of Dublin—their admission is still resisted on avowed principles of sectarian distinction. This exclusive spirit, the commissioners added, operates far more widely and more mischievously than by the mere denial of equal privilege to persons possessing perfect equality of civil worth; for in places where the great mass of the population is Roman Catholic, and persons of that persuasion are, for all efficient purposes, excluded from corporate privilege, the necessary result is, that the municipal magistracy belongs entirely to the other religious persuasion; and the dispensation of local justice and the selection of juries being committed to the members of one class exclusively, it is not surprising that such administration of the laws should be regarded with distrust and suspicion by the other and more numerous body.

The evils of the Irish municipal system have been mitigated by the Act for Parliamentary Reform in Ireland, and by an act passed in 1840 (3 & 4 Vict. c. 108), "for the regulation of municipal corporations in Ireland." The existing corporations were placed in schedules and dealt with in the following manner. Schedule A contained the following ten places: Belfast, Clonmel, Cork, Drogheda, Dublin, Kilkenny, Limerick, Londonderry, Sligo, and Waterford; which are all continued as corporations, subject to the provisions of the Act, under the title of mayor, aldermen, and burgesses (in Dublin the title of Lord Mayor is retained). Schedule B contained thirty-seven places, which were classed in two divisions, namely, those corporations (19) which possessed estates or funds producing not less than 100*l.* a-year, and those (18) which were not possessed of property to the above amount. All these thirty-seven boroughs were dissolved, but the act provided that any of them which had a population exceeding 3000 might obtain a charter of incorporation similar to that of the charters enjoyed by the ten boroughs in Schedule A, upon petition by a majority of the inhabitant rate-payers to the Queen in council. In the other towns in Schedule B another arrangement was adopted; in some of these towns commissioners for lighting, cleansing, watching, &c. had been elected under 9 Geo. IV. c. 82, and in this case the corporate property was vested in the commissioners, to be applied by them in aid of the rates levied, and for the public benefit of the inhabitants. The places where the 9 Geo. IV. c. 82, had not been adopted, and where, consequently, no commissioners existed, were arranged in two schedules, and in the towns in the first schedule a board of commissioners was to be elected in the proportion of one commissioner for every 500 inhabitants, in whom the corporate property was to be vested, subject to the trust already mentioned; and in the towns in the second schedule the corporate property was to be vested in the guardians of the poor of the union in which such borough or the larger part of it was situated. But if any of the boroughs in these two schedules elect commissioners under 9 Geo. IV. the corporate property is to be vested in them; or if they obtain a charter of incorporation, then in the corporation. Schedule I contained twenty boroughs, the corporations of which were dissolved by the act, and the corporate property vested in commissioners under 9 Geo. IV., or in the poor-law guardians as already detailed.

The persons qualified to vote for corporate officers, or for municipal commissioners in the towns in schedule B, are, each male of full age who on the last day of August in any year is an inhabitant householder, and has been resident for six calendar months preceding within the borough, or within seven statute miles thereof, and who shall occupy any house, warehouse, counting-house, or shop, which, separately or jointly with any land occupied by him therewith as tenant or as owner, shall be of the yearly value of not less than 10*l.* ascertained according to the directions of the act. Several of the provisions of the act resemble the provisions of the English Municipal Reform Act.

MURDER. In the earlier periods of English jurisprudence, murder, *murdrum*, was a term used to describe the secret destruction of life, witnessed and known by none besides the slayer and any accomplices that he might have. *Murdrum* was also the name of a pecuniary penalty imposed, until the reign of Edward III., upon the county or district in which such a secret killing had taken place. One of the modes of escaping from this penalty was, a presentment of Englishry; in other words, a finding by the coroner's inquest, upon the statement of the relations of the deceased, that he was an Englishman; the sole object of the amercement having been the protection of Danes, and afterwards of the Normans, from assassination by the English. (Glanville; Reeves.) By the grant of 'murdra,' which is commonly found in ancient charters of franchises, the right to receive these amercements within the particular districts, passed from the crown to the grantee. Amercements for non-presentment of Englishry were abolished in 1340, by 14 Edw. III. st. 1, c. 4.

As the law formerly stood, every destruction of human life, not effected in this secret manner, with whatever circumstances of malignity and cruelty it might be accomplished, was treated as simple homicide. As the law now stands, murder is the destruction of human life, accompanied with an intention to kill, or do great bodily harm, or wilfully to place human life in peril; or resulting from an attempt to commit some other felony; or occurring in the course of resistance offered to ministers or officers of justice, or others rightfully engaged in carrying the law into execution. All other cases of culpable homicide, in which death is produced involuntarily, but is occasioned by want of due caution; or where, though death is produced voluntarily, the crime is extenuated by circumstances; or where a minister or officer of justice is killed, but sufficient authority did not exist, or was not communicated to the party before the fatal blow was given; or where any other circumstances essential to the crime of murder are wanting—amount only to simple felonious homicide, or, as it is commonly called, without regard to the age or sex of the party killed, Manslaughter.

In the modern law of England the crime of murder is characterised by having been committed with malice aforethought, or, as it is sometimes called, malice *prepense*. But the term "malice aforethought" is frequently applied to a state of things in which there is no malice in the ordinary sense of the term, but is only malice in a legal sense. If A shoots at B with intent to kill him, but by mere accident kills C, this is a killing from implied malice. If A, by throwing a heavy stone from the roof of a house into the street in which he knows that people are continually passing, kills B, a mere stranger, this also is a killing from implied malice.

Implied malice is however very loosely defined in the law of England, if it can be said to be defined at all. It is stated, that the existence of implied malice is a pure question of law, or a conclusion of law to be drawn from all the circumstances of the case; and it is in some cases made to depend upon a very abstruse technical doctrine. The existence or non-existence of a criminal intention, even where that intention has no reference to any personal injury, but happens to be accompanied with a killing which is altogether accidental, is made to constitute the distinction between the higher and lower species of culpable homicide; and in other cases the existence of such criminal intention brings even an accidental killing within the scope of manslaughter.

Every homicide is presumed to be malicious until the contrary be shown. But circumstances may extenuate the offence, and reduce it from the crime of murder to that of manslaughter; or the act may appear to amount either to justifiable or excusable homicide. In cases of justifiable homicide, and, according to modern practice, in cases of excusable homicide, the party causing the death is discharged from responsibility.

To constitute legal homicide, the death must result from injury to the *person* (as contradistinguished from causes operating upon the *mind*) occasioned by some act done by, or some unlawful omission

chargeable upon, the party to whom such homicide is imputed. The terms "wilful omission" apply to every case of non-compliance with a legal obligation which the party may be under, to supply food, clothing, or to furnish any other assistance, or to do any other act, for the support of life or for the prevention of injury to it. It is not homicide unless death take place within a year and a day after the injury; or, in other words, it is not considered homicide when the party injured survives a whole year, exclusive both of the day of the injury and of the day of the death; nor where the death is to be attributed to unskilful treatment, or other cause not resulting from or aggravated by the injury sustained.

The law of homicide applies to the killing of aliens, except alien enemies killed in war; to felons, except when executed according to law; and to persons outlawed, whether on civil or on criminal process. But a child *in venter sa mere* (in its mother's womb) is not a subject of homicide, unless, subsequently to the injury, it be born alive, and die, within a year and a day from its birth, from the injury received whilst unborn.

Criminal homicide is one of three kinds, murder, manslaughter, and self-murder or suicide.

I. Murder is committed by:—

1. Voluntary homicide, without circumstances of justification, excuse, or extenuation.
2. Involuntary homicide, resulting from the commission of a felony, or from an attempt to commit felony.
3. Homicide, whether voluntary or involuntary, committed in unlawfully resisting officers or ministers of the law, or other persons lawfully acting for the advancement or in the execution of the law.

II. Manslaughter consists in:—

1. Voluntary but extenuated homicide, committed in a state of provocation, arising from a sufficient cause.
2. Involuntary homicide, not excused as being occasioned by mere misadventure.

This second class may be subdivided into:—

1. Involuntary homicide, resulting from some act done, or from the wilful omission to do some act, with intent to occasion bodily harm.
2. Involuntary homicide, resulting from some wrongful act done to the person.
3. Involuntary homicide, in committing, or in attempting to commit, an offence attended with risk of injury to the person.
4. Involuntary homicide, resulting from some act done without due caution, or from the unlawful omission to do some act.

Homicide not criminal is:—

1. Justifiable, as done for the advancement or in the execution of the law; or
2. Excusable, as done for the defence of person or property; or because it has, without the fault of the party, become necessary for his preservation.

The offence is extenuated where the act, being done under the influence of sudden provocation, or of fear, or of alarm, which may, for the time, suspend or weaken the power of judgment and self-control, is attributable to transport of passion or defect of judgment so occasioned, without any deliberate intention to kill or do great bodily harm; regard still being had to the nature and extent of violence used by the party inflicting the injury which causes death, as compared with the cause of provocation. The offence is not extenuated where the cause of provocation is slight, and the killing cannot be attributed to mere heat of blood arising from the provocation given.

Homicide is neither justified nor extenuated by reason of any consent given by the party killed, as in duels. [DUEL.]

Homicide is justifiable where the act is done in a lawful manner, by an officer or other person lawfully authorized in execution of the sentence of a court of competent jurisdiction.

Homicide is justifiable where an officer of justice, or other person duly authorized to arrest, detain, or imprison for any felony or for any dangerous wound

given, and using lawful means for the purpose, cannot, otherwise than by killing, overtake the party in case of flight, or prevent his escape from justice; provided the officer knew, or had reason to believe, that the party attempting to escape was aware that he was pursued for such felony or wound given.

Also, where any officer of justice, or other person lawfully executing in a lawful manner any civil or criminal process, or interposing in a lawful manner for the prevention or suppression of any breach of the peace of other offence, is unlawfully and forcibly resisted, and using no more force than is necessary to overcome such resistance, happens to kill the party resisting; or being, by reason of the violence opposed to him, under reasonable fear of death if he proceed to execute his duty, and because he cannot otherwise both execute his duty and preserve his life, kills him who so resists—in either of these cases the homicide is justifiable.

Homicide is also justifiable when necessary for preventing the perpetration of any felony attempted to be committed by violence or surprise against person, habitation, or property; and where one, in defence of moveable property in his lawful possession, using no more force than is necessary for the defence of such property against wrong, happens to kill the assailant; or being, from the violence of the assailant, under a reasonable and *bonâ fide* apprehension that he cannot otherwise both defend his property and preserve his life, kills the assailant; also where one in lawful possession of house or land, after requesting another, who has no right to be there, to depart, is resisted, and using no more force than is necessary to remove such wrong-doer and retain his possession, happens to kill such wrong-doer; or being, from the violence with which such wrong-doer endeavours to deprive him of possession, under reasonable and *bonâ fide* apprehension that he cannot otherwise both maintain possession and preserve his life, kills such wrong-doer.

Homicide is excusable, when a man is involuntarily placed in such a situation that he is under the necessity of killing another in order to save his own life; as where, in a shipwreck, A pushes B from a plank which can save one only.

Homicide is not criminal when it occurs in the practice of any lawful sport or exercise with weapons not of a deadly nature, and without intent to do bodily harm, and where no unfair advantage is intended or taken. But it amounts to manslaughter where weapons are used the use of which is attended with probable danger; or where, in case of friendly contest, without the use of such weapons, death results from any unfair advantage taken, either as regards the nature of the instrument, the mode of using it, the want of due warning given previously to violence used, or from any want of due caution.

The statute of 9 Geo. IV. c. 31, § 3, enacts, that every person convicted of murder or of being accessory before the fact to murder shall suffer death; and that every accessory after the fact to murder shall be liable, at the discretion of the court, to be transported for life, or to be imprisoned, with or without hard labour, for any term not exceeding four years. By an act passed in 1752 (25 Geo. II. c. 37) the bodies of persons executed for murder were directed to be delivered to surgeons to be dissected, or to be hanged in chains. [ANATOMY ACT.] The 2 & 3 Wm. IV. c. 75, required that such persons should be hung in chains, or buried within the precincts of the prison. The 4 & 5 Wm. IV. c. 36, § 1, has taken away one part of the alternative, and the mode of burial is the only circumstance which distinguishes sentence upon a conviction for murder from those pronounced in other capital cases. Formerly the murder of a bishop, abbot, or prior, by a person owing him canonical obedience, of a master or mistress by a servant, or of a husband by his wife, was denominated petty treason, and punished with greater severity than other murders. The party was drawn to the place of execution; and if the offender was a woman, burning was, as in the case of high treason, substituted for hanging; but by the 9 Geo. IV. c. 31, § 2, petty treason is treated as murder only.

The offence of manslaughter is punishable with transportation for life, or for

not less than seven years, or with imprisonment with or without hard labour, not exceeding four years, with fine, by 9 Geo. IV. c. 31, § 9. (Foster; East; *Fourth Report of Criminal-Law Commissioners.*) [LAW, CRIMINAL.]

MUTINY ACT, the, is a series of regulations which, from year to year, are enacted by the Imperial Parliament of Great Britain for the government of the military force of the country.

Laws have, at various times, been made by the authority of the crown for the maintenance of discipline in the army when in garrison, on a march, and in the presence of an enemy; these may be seen at length in Grose's 'History of the English Army' (vol. ii.); but the code which is now in use is one of the first-fruits of the Revolution in 1688. Previously to that event the crown, except during the Civil Wars and the subsequent Protectorate, had, at least practically, the supreme power over the militia (that is, over the whole military force), which, with or without the consent of the nation, might be called out and employed as long as pay and quarters could be obtained for the troops. But the efforts then recently made to maintain and extend the power in the crown, joined to the increasing jealousy of the people for their civil and religious liberties, led the two houses of parliament to take the earliest opportunity, after the new king had been called to the throne, of expressing in some act of legislation their authority over the regular troops of the nation; and an opportunity almost immediately presented itself, on a serious act of mutiny taking place in the army. The Royal Scotch and Dumbarton's regiments, under Marshal Scomberg, in their progress to the coast for the purpose of being embarked for Holland, being quartered at Ipswich, a large body of men, refusing to proceed to their destination, disarmed their officers, seized the military chest, and, with four pieces of cannon, began their march for Scotland. Being pursued by General Ginckel, with three regiments of Dutch dragoons, they surrendered at discretion; but, in consequence of this event, an Act was immediately passed (April 12th, 1689) by which the army was put under the control of the law with respect to discipline, and under its protection with respect to pay and quarters.

The enactments of this bill were particularly directed against mutiny and desertion, for which the bill was immediately required; but the Act itself begins by laying down as maxims that the raising or keeping a standing army in the country in time of peace, unless it be with the consent of parliament, is against law; and that no man can be forejudged of life or limb, or subject to any kind of punishment, in any other manner than according to the established laws of the realm. It then states that it is judged necessary by their majesties and their parliament, during the present time of danger and for the defence of the Protestant religion, to continue and augment the forces which are now on foot.

Avoiding the acknowledgment that any power exists in the crown for the appointment of courts-martial, the act authorises their majesties to grant commissions to general officers to assemble such courts for the purpose of trying and punishing such offences as mutiny and desertion. Provisions are also made that nothing in the Act shall exempt an officer or soldier from the ordinary processes of law; that it shall not concern the militia troops, and that it shall only continue in force till the 10th of November in the same year. The Act has ever since, with one exception, been annually renewed; after the bill which passed in April, 1697, for one year as usual, had expired, no other was passed till March, 1702; and on a few occasions, the bill has been suffered to expire for several days before the following one received the royal assent.

The Mutiny Act has varied in many particulars from that which was first passed, but it has been uniform in all its principal points; such as the dependence of a standing army on the consent of parliament, and the subjection of military men to all the processes of ordinary law. Instead however of the original formula above mentioned, by which the reason of keeping up a military force was expressed,

the Act now asserts that it is judged necessary by the crown and parliament to continue a body of forces (the number being exactly specified) for the safety of the United Kingdom and the preservation of the balance of power in Europe. In all the Acts which passed down to the commencement of Queen Anne's reign the articles were few in number, and some of them were very ill defined. But in Anne's reign many new articles were inserted; others have since been added, as the want became apparent; and the Mutiny Act may now be considered as a good general code of law, in which are defined strictly but briefly all military offences of the higher class, and, as precisely as possible, nearly all those of minor importance. The military offences of the higher class, thirteen in number, consist in a commissioned or non-commissioned officer, or a soldier, exciting mutiny, or not using his best endeavours to suppress it; in misbehaving before an enemy; abandoning or delivering to the enemy any garrison, fortress, or post; compelling or using means to induce the governor of such garrison to do so; quitting his post without leave, or sleeping at his post; holding correspondence with the enemy, or entering into terms with the enemy without licence; striking a superior officer, or disobeying his lawful commands; and, finally, in deserting the service. For all these offences the Act perscribes "death, or such other punishment as a general court-martial shall award." A clause of the Act enumerates the military offences of minor importance which may be tried before a district or garrison court-martial: these consist in a non-commissioned officer or soldier wilfully maiming himself, or tampering with his eyes; malingering, or feigning disease; stealing government stores; stealing from an officer or a comrade; procuring false accounts; embezzling public money; and, lastly, in any fraudulent or disgraceful conduct. For these offences may be awarded corporal punishment, imprisonment, forfeiture of the additional pay to which, for length of service, the individual might be entitled, and forfeiture of pension on being discharged. And in another clause it is stated that imprisonment, with or without hard labour, or solitary confinement, may be awarded by regimental courts-martial for drunkenness, or insubordination on parade or on the line of march.

Beside the above laws, which relate particularly to the discipline of the army, the Act defines the constitution and powers of courts-martial; it contains clauses relating to the enlistment of recruits, the issue of pay and marching money, the quartering of soldiers, and the supplying of carriages for the conveyance of troops and baggage The Act moreover contains a repetition of the original clause in which it is declared that the ordinary course of law is not to be interfered with when a soldier is accused of a capital crime; and it states that a man cannot be taken from the service for a debt under 30*l.*

The Mutiny Act is declared to be applicable to all persons employed in the recruiting service; to the forces of the East India Company while in any part of the United Kingdom, and till their arrival in the territories of the Company; to the officers and men employed in the service of the artillery and engineers; in the corps of sappers and miners; to the military surveyors and draughtsmen in the ordnance department; and to foreign troops serving in any part of the British dominions abroad. Its provisions are also stated to extend to the islands of Guernsey, Jersey, Alderney, Sark, and Man. In one of the clauses it is expressly mentioned that nothing in the act extends to any of the militia forces, or yeomanry, or volunteer corps in Great Britain or Ireland; it is understood, however, that its provisions are applicable to the corps of marines when on shore, and also to officers holding rank by brevet, though not to such as are on half-pay. An effort was made in 1749, when the bill was introduced as usual into parliament, to subject officers of this class to martial law, but the clause was abandoned by the minister. Before the union of Ireland with Great Britain there was a separate Mutiny Act for the former country, but now the same act applies to both. The officers and

troops of the East India Company are subject to their own Mutiny Act, which, however, agrees exactly with that of the government forces.

Previously to the year 1750 the members of courts-martial were bound by an oath not to disclose the ground on which they gave their votes; but in that year the act was so far mitigated as to release them from such oath when required to give evidence in any court of justice or court-martial. The power of disclosing, in that case only, the votes or opinions given is implied in the forms of the oaths which are now taken by the judge-advocate and members of the court-martial, and which are printed among the schedules to which the act refers. The act of the same year also contains a clause, in which it is stated that no sentence pronounced by a court-martial, and signed by the president, shall be more than once revised; previously to that time a general officer had power to order the revisal of any sentence as often as he pleased, and thus he might retain in confinement a man who had been acquitted on a fair trial.

The gradual extension of the provisions of the Mutiny Act to those military offences which may be considered as secondary in the scale does not seem to have been noticed on behalf of the crown further than by the occasional reservation of its right to make Articles of War for the better government of the forces, which is expressed in the acts passed during the reign of Queen Anne. In the first year of George I. this right of the crown was formally allowed; and the clause containing it has been repeated in all subsequent mutiny acts, with the provision that no person within the United Kingdom and British Isles shall be subject to transportation, or to any punishment affecting life or limb, for crimes specified in the Articles of War, except such as by the Mutiny Act itself are liable to the same punishments.

The Articles of War which are at present in force, and which have from time to time been promulgated, are divided into twenty-four sections. Many of these correspond exactly to clauses in the Mutiny Act; others, though relating to subjects in the latter, define the particulars of the crime and the punishment applicable to it with more precision; and there are articles which have no counterparts in the act. The first section of the Articles of War relates to divine worship, frequent attendance on which is prescribed, and punishments are awarded for profaning the places in which it is celebrated, as also for scandalous or vicious behaviour in a chaplain. The seventh section contains fifteen articles relating to quarrels and the sending of challenges; and the fourteenth contains twenty-one articles concerning the duties of troops in quarters or in the field. Many of these articles prescribe for the offence "death, or such other punishment as a court-martial may award;" and two of them prescribe death, without leaving any discretion to the court. The first of the crimes here mentioned is that of doing violence to persons bringing provisions to the camp, and the other is that of ill-treating a person to whom a *safe conduct* has been granted; the army in both cases being on service in foreign parts. The fifteenth section settles the relative rank of officers in the regular army; and the twenty-second the rank of officers in the royal army and in that of the East India Company, when serving together. The twenty-third section appoints that officers and soldiers while employed on board any ships having a royal commission shall conform to the laws and regulations established for the government and discipline of the navy.

The above articles, being made by the crown as head of the army, or by the commander-in-chief, are to be obeyed as being the commands of a superior officer; but the writers on military law observe that the legality of the articles may itself become the subject of examination in a court-martial, whereas the Mutiny Act must be obeyed without inquiry. In this particular therefore the Articles of War are to be distinguished from the Act; and whatever case may occur, the letter only of the law, as contained in the Act must be followed in awarding the punishment due to a crime affecting life.

The bill on which are founded the Articles of War for the Navy was passed

in the 22nd Geo. II., and this consolidated all the laws previously made for the government of the ships and vessels bearing royal commissions, as also of the forces at sea. Among the offences which in the Act constitute the crime of mutiny, are the running away with the ship, or with any ordnance, ammunition, or stores belonging to the same; neglect of duty, joining in or using means to produce any mutinous assemblage of persons, uttering mutinous or seditious words, or concealing any mutinous intention, and striking an officer or disobeying his lawful commands. Of the thirty-six articles, nine relate to crimes for which the punishment of death, without discretion in the court-martial, is awarded; and there are twelve to which are assigned "death, or such other punishment as the nature and degree of the crime shall be found to deserve." Two of these were originally in the former class, and the qualifying clause was added in the 19th Geo. III. Except this alteration, none has been made in the navy act since it was passed.

N.

NATIONAL ASSEMBLY. [STATES-GENERAL.]

NATIONAL DEBT. If we bring into account the wealth possessed by her citizens individually, England is the richest country in Europe. The amount of her public debt, on the other hand, so infinitely beyond the debt of any other state, would seem to indicate that, considered apart from that individual wealth, England is the poorest of nations. But the national debt is owing by the aggregate of the people—*by the nation*—for whose benefit, real or supposed, it was contracted. It suits the general convenience, including that of the public creditor, that the nation, in its aggregate sense, should thus continue to exhibit signs of poverty in contrast with the evidences of enormous wealth; but if it were otherwise—if the public convenience, still more if the public safety, demanded such a course, the same authority which sanctioned the contracting of the debt could also oblige each individual in the country to contribute according to his means towards its extinction. It would be difficult to imagine any circumstances that could render such a course expedient, and the position has been here advanced solely with the object of explaining, in a familiar way, the nature of the debt, and the manner in which the obligation to bear the burthen and contribute towards upholding the national faith presses upon every individual. Every one is interested in forming a correct idea concerning a matter which exercises an influence upon every circumstance that affects his social position and progress. Yet it is by no means uncommon to find persons who suppose the national debt to be a fund, a deposit of treasure, a sign of national riches; anything in short opposed to that which it really is, namely, a drawback upon the national wealth, a mortgage of the national industry for the payment of a perpetual annuity in return for capital advanced to meet the national exigencies, and which has been consumed for national objects. It has been said that as this debt, or by far the largest part of it, is owing among ourselves, it cannot have any prejudicial action upon the national interest, since that which a body owes to its own members cannot be considered a debt. It is true that the public expenditure, including its debt, has been furnished by its own citizens, and that our future industry is therefore not mortgaged to strangers, but the portion of its fruits which must be set apart for the public creditors is so much capital which may be productively employed. It will nevertheless easily be made apparent how the successive absorption of private capital for public purposes must prove injurious to a country, if we consider what must have been the condition of England, if, instead of thus absorbing a part only, the whole of the disposable wealth of her individual citizens had been so expended. It might still have been said, that as what was taken from all in the form of taxes was returned to a part in the form of dividends, the money did not leave the country; and that although of course it must affect the condition of individuals, it would not affect the condi-

tion of the aggregate. But, it must be asked, where, in the case supposed, would have been the capital that must set industry in motion and enable the payment of taxes? It is indeed evident that in such case the country must have long ago become bankrupt, and have been unable to hold any rank among independent nations.

The real difference between a private debt and the public debt called the national debt consists in the compound character of the creditors, who as members of the nation are legally and morally bound to contribute towards the maintenance of the public faith, while they have each a personal interest in its preservation. There is also this further distinction between the debts of the nation and those of individuals, that the state has at all times the right to pay off its creditors at par, while the creditors have no right to demand repayment of the principal money, but must content themselves with receiving half-yearly the amount of their annuity.

Another fallacy has been often broached of late years by a small party in the country, namely, that the general prosperity of the state would be advanced by the abolition (unsatisfied) of the public debt; and as in all matters of public policy the prosperity of a great majority should be considered before that of a part, a sound policy requires that faith should no longer be kept with the public creditor. The proposition is here put in plainer terms perhaps than its advocates would use, but this is the substance of their argument.

It has been shown that the money in respect of which the claims of the public creditors have arisen is spent, and that most of those creditors being part of ourselves, living and expending their incomes among us, the evil effects of the debt are limited to the loss of the capital which otherwise would have formed part of the national wealth, and would have been productively employed. But the capital thus lost has all been advanced in times of necessity, in full faith that the conditions promised would be performed by the borrowers; and it would indeed be a day of disgrace that should sanction the securing of any advantage, however great, through the dishonest breach of those conditions. But would any such advantage as has been supposed follow from so dishonest a step? Those who contend that the great majority of the nation would be benefited by the unsatisfied extinction of the national debt, and would urge its extinction on this ground, as being precisely the same ground on which many enactments are made, ought to show that the loss occasioned by such extinction will be confined to the immediate losers, to the comparatively small number of public creditors. But it is easy to show that the loss would not be confined to the immediate losers; and this being the case, it is impossible to prove that such extinction will really benefit a great majority. It might happen that it would in its results benefit only a small minority of the actual generation, or even nobody at all; and the allegation of this possible result is a sufficient answer to the assumption made by the advocates of unsatisfied extinction, that the loss incurred would be confined to the immediate losers, and that there would be a real gain to the great majority of the nation. Such an unsatisfied extinction would in effect be a dissolution of innumerable contracts, on the faithful performance of which depends the happiness of many persons who are not public creditors. It is hardly necessary to remark that the nation would not afterwards find it easy to borrow money from individuals on any reasonable terms for any purpose, however generally useful, or any public necessity, however urgent.

The contracting of the National Debt cannot be said to have been begun before the Revolution of 1688. Even for some few years after the accession of William and Mary the borrowings of the government were for short periods only. The first transaction of this kind of a permanent character arose out of the chartering of the Bank of England in 1693, when its capital of 1,200,000*l.* was lent to the public at 8 per cent. interest. A power of repayment was reserved on this occasion by the crown, but there was no corresponding right of demanding payment on the part of the bank.

So cautious was the parliament in those days of burthening future generations for the exigencies of the present moment, that when the annual income was inadequate to meet the charges of the foreign wars in which the country was engaged, and it became necessary to borrow the deficiency, annuities were granted, not in perpetuity, but for lives and terms of years, the produce of certain duties being mortgaged for their discharge.

This cautious proceeding could not be long continued. The expensiveness of the wars in which the nation was engaged at the end of the seventeenth century made it necessary to incur debts beyond the means of their prompt redemption, and at the peace of Ryswick, in 1697, the debt amounted to 21½ millions. During the next ten years, although the country was again involved in a continental war, its amount was reduced to little more than 16 millions, and the greatest efforts were made to raise money without imposing any lasting burthen on the people. These efforts indeed soon found their limit, and at the accession of George I. in 1714, the debt had accumulated to the amount of 54 millions, an amount which excited great uneasiness and caused the House of Commons to declare itself under the necessity of making efforts for its reduction. In 1717 the debt amounted to 48½ millions, and the annual charge in respect of the same to 3,117,296*l.* A great part of this debt consisted of annuities granted for 99 years, the money obtained for which had varied from 15 to 16 years' purchase.

In the year 1720 the South-Sea Act was passed, authorising the company to take in, by subscription or purchase, the redeemable and unredeemable debts of the nation, the object being to reduce all the debts under one head of account at one uniform rate of interest. In the accomplishment of this scheme the projectors only partially succeeded, while the disgraceful frauds by which the proceedings of the company at that time were marked led to a parliamentary investigation which caused the disgrace of some of the ministers, the chancellor of the exchequer being expelled the House, and committed to the Tower for his share in the plot. This scheme was attempted at the same time with the equally famous Mississippi scheme, which, with a similar object, was projected in France by John Law, under the sanction of the Regent Duke of Orleans.

In 1736 the public debt of England amounted to about 50 millions, but the annual charge had been reduced below two millions. At the peace of Aix-la-Chapelle, in 1748, the national debt exceeded 78 millions, but in the following year the public obtained some relief from the burthen through the lowering of the rate of interest. Little else was done in the way of alleviation at this time, and at the breaking out of the Seven Years' War, in 1756, the debt still amounted to 75 millions. A public writer of some repute, Mr. S. Hannay, says, at that date, "It has been a generally received notion among political arithmeticians, that we may increase our debt to 100,000,000*l.*, but they acknowledge that it must then cease by the debtor becoming bankrupt."

When the Seven Years' War was ended by the peace of Paris, the debt reached 139 millions and the annual charge was 4,600,000*l.* During the twelve following years, a period of profound peace, only 10,400,000*l.* of the debt was discharged. The war of the American Independence raised the debt from 129 to 268 millions, and the annual charge in respect of the same to 9,512,232*l.* So little was done in the way of liquidation during the following ten years, that at the beginning of the war of the French Revolution the debt still amounted to 260,000,000*l.* and its annual charge to 9,437,862*l.* But between 1793 and the peace of Amiens the addition made to the capital of the debt amounted to 360 millions and the annual burthen was increased from 9,437,862*l.* to 19,945,624*l.* Between the recommencement of the war in 1803 and its termination after the battle of Waterloo in 1815, there were added 420 millions to the capital of the debt, which then amounted, including the unfunded debt, to 885 millions, and the annual charge upon the public exceeded 32 millions of money.

A plan for the gradual extinction of the national debt by the establishment of

a Sinking Fund was proposed and partially applied in 1716 by Sir R. Walpole. The scheme for that purpose proposed under the same name by Mr. Pitt in 1786 had a greater show of reality about it. By this scheme the sum of one million was annually set apart from the income of the country towards the extinction of its debt. Other sums were rendered available for the same purpose, and it was supposed that at the expiration of 28 years the annual income of the sinking fund would amount to four millions, a part of which might then be applied towards relieving the burthen of the public. So far the project bore the stamp of reasonableness and prudence: had the fund of one million annually assigned to commissioners been an actual surplus of income over expenditure, its operation must speedily have been highly advantageous to the country. The fallacy consisted in this, that the sums devoted to it were borrowed for the purpose. The only real advantage secured by this means arose from the unfounded confidence which it imparted to the public, under which they willingly bore a higher rate of taxation than might have been tolerable but for the expectation of future relief through its means. Now that the absurdity is acknowledged of borrowing in order to pay off debt, which absurdity would in the case of an individual always have been apparent, it is difficult to account for the blindness with which the whole nation clung to this so called fund as the certain means of extinguishing the debt, which in effect it contributed to augment through the less advantageous terms upon which the money was borrowed than those upon which an equivalent amount of debt was afterwards redeemed. The difference between the average rates at which money was borrowed and at which purchases were made by the Commissioners who managed the sinking fund between 1793 and 1814 was such, that through the operations of the fund, upon which such confident hope of relief was placed, the country owed upwards of 11 millions more at the end of the war than it would have owed but for those operations. At the period just mentioned the annual income of the sinking fund amounted to 13,400,000*l.*, arising from dividends on stock purchased by the commissioners with funds borrowed at a higher rate of interest for the purpose. It was impossible, however, during a time of peace to raise by means of taxes so large an amount, in addition to the actual current expenditure of the country and the interest upon the unredeemed portion of the debt. During the war, when the deficiency of income was covered by yearly loans, the fallacy was not quite so apparent as it now soon became, for a few years after the peace the deficiency in the public income was borrowed from the sinking fund commissioners by parliament, a course which served to render the absurdity only the more apparent, and in 1824 the plan of keeping up a large nominal sinking fund in the absence of actual surplus income was abandoned.

The amount of the national debt unredeemed on the 5th of January, 1816, was stated to be as follows in the fourth Report of the select committee of the House of Commons on public income and expenditure:—

3 per cent. stock .	£580,916,019
3½ ,, .	10,740,013
4 ,, .	75,725,504
5 ,, .	148,930,403
Perpetual annuities	816,311,939
Terminable annuities, 1,894,612*l.*, equal to an estimated capital of	30,080,347
Unfunded debt . .	38,794,038
Total of unredeemed debt	£885,186,324

The annual charge upon which was:—

Interest upon perpetual annuities	£28,278,919
Terminable annuities .	1,894,612
Interest on unfunded debt	1,998,937
Charge for management paid Bank of England	284,673
Total annual charge	£32,457,141

Experience has now proved that the only important relief from the pressure of debt to be obtained, even during a profound and long-continued peace, will probably be derived from the lowering of

the rate of interest. The price of 5 per cent. stock at the beginning of 1822 was advanced to 6 or 8 per cent. above par, and advantage was taken of this circumstance to induce the holders to exchange each 100*l.* of 5 per cent. annuities for 105*l.* of 4 per cent. annuities. On this occasion 140,250,828*l.* of 5 per cent. stock was cancelled, and 147,263,328*l.* of 4 per cent. stock was created, the annual charge being by this means reduced by the sum of 1,122,000*l.* In 1824 a further saving of 381,034*l.* per annum was effected by reducing to 3½ per cent. the interest payable on 76,206,882*l.* of 4 per cent. stock; and in 1830 a further abatement of one-half per cent. was effected on the 4 per cent. stock created in 1822, whereby the sum of 700,000*l.* per annum was saved to the public.

Some little progress has been made since 1816 in the reduction of debt by the employment for that purpose of actual surplus revenue. An addition was on the other hand made to the debt by the grant of 20,000,000*l.* voted by parliament for compensation to the owners of slaves in the British colonies who were emancipated by the act of 1833. The unredeemed funded and unfunded debt which existed on the 5th January, 1845, and the annual charge thereon, were as follows:—

3 per cent annuities .	£519,303,960
3¼ ,, .	248,701,379
3½ ,, .	2,630,769
5 ,, .	433,749
Perpetual annuities	771,069,858
Terminable annuities, 4,025,210*l.*, equal to an estimated capital of	67,509,670
Unfunded debt . .	18,404,500
Total of unredeemed debt	£856,984,028

The annual charge upon which was:—

Interest on perpetual annuities	£23,719,148
Terminable annuities .	4,025,210
Interest on unfunded debt	552,135
Charge for management	94,886
Total charge	£28,391,379

The following tables show the state of the National Debt at different periods since 1827:

1. Unredeemed Funded Debt and Terminable Annuities in each of the following years, exclusive of the loan raised for compensating the Colonial slave-holders:

1827	£777,476,892	£2,610,754
1830	757,486,996	3,297,375
1834	743,675,299	4,028,777
1840	746,200,100	4,012,146

2. Amount and charge of the Public Debt, supposing the Terminable Annuities were converted into equivalent Perpetual Annuities:

	Capital.	Interest.
1827	£822,778,347	£27,085,877
1830	811,278,253	25,984,893
1834	799,583,378	25,560,285
1840*	815,250,634	25,994,702

3. Funded and Unfunded Debt; also Funded and Unfunded Debt including the value in capital of the Terminable Annuities.

	Funded and Unfunded Debt.	Debt and Capitalised Annuities.
1827	£805,023,742	£850,325,198
1830	784,758,646	838,549,903
1834	773,201,900	829,109,978
1840	788,642,775	837,521,684
1845	789,474,358	856,984,028

4. Annual Interest of the Unredeemed Funded Debt.

1827	£25,500,326
1830	24,102,200
1834	23,603,502
1840	24,283,940
1845	23,719,148

The diminution of the annual burthen in the course of twenty-three years, from 1816 to 1839, was 3,150,710*l.*, at which rate the total extinction of the debt would not be effected until the year 2053. The slow progress made in this direction stands in striking contrast to the rapidity with which the load was accumulated, the entire diminution effected during twenty-three years of peace being scarcely equal to the additions made during some of the

* Excluding the Slave Emancipation Loan, the Debt and Annuities would have been 793,686,885*l.* and the Interest 25,314,971*l.*

individual years of the war. In 1844 a portion of the National Debt which amounted to 248,701,379*l.* on which 3½ per cent. was paid, was converted into a 3¼ per cent. stock. This rate of interest is guaranteed until 1854, after which period 3 per cent. interest is guaranteed for twenty years. The immediate saving amounted to 625,000*l.* per annum. After 1854, the annual saving will amount to 1,250,000*l.*

It will be seen on comparing the above statements for 1815 and 1845, that the terminable annuities increased from 1,894,612*l.* to 4,025,210*l.* By the act 48 Geo. III. and several subsequent acts, the commissioners for the reduction of the National Debt were empowered to grant annuities, either for lives or for certain terms of years, the payment for such annuities being made in equivalent portions of permanent annuities, which were therefore to be given up and cancelled. By this course, which it will be seen has been acted upon to some extent since the peace, some future relief will be obtained at the expense of a present sacrifice. This plan, provided it be not carried so far as to interfere with the onward progress of the country, through an overload of taxation, appears to be dictated by sound prudence. A part of the terminable annuities (1,294,179*l.*) will expire in 1860; in 1867 a further portion amounting to 585,740*l.* will also expire; and after that time portions will rapidly fall in. "If," says Lord Congleton ('Financial Reform,' p. 204) "all the loans which have been raised since the beginning of the war of 1739 had been borrowed in annuities for ninety-nine years, their extinction would already have commenced." Dr. Price observes, that an annuity for one hundred years is nearly the same in value as a perpetual annuity.

If the above course of proceeding is justly characterised as prudent, what must be said of the scheme of a directly opposite tendency which was brought forward and partially carried into effect by the government in 1822? When the measure for commuting the half-pay and pensions usually denominated the "dead weight" was adopted in that year, the annual charge to which those obligations amounted was about five millions. From year to year the public would have been relieved from a part of this burthen through the falling in of lives, until, according to the most accurate computation, the whole would have ceased in forty-five years. The measure above alluded to was an attempt to commute these diminishing payments into an unvarying annuity of forty-five years certain; and the calculation which was made assumed that by the sale of such a fixed annuity of 2,800,000*l.* funds might be procured enough to meet the dimishing demands of the claimants. Only a part of this annuity was sold. The Bank of England purchased an annuity, payable half-yearly until 1867, for 585,740*l.*, and paid for the same between 1823 and 1828, in nearly equal quarterly instalments, the sum of 13,089,419*l.* For the sake of obtaining a partial relief during those six years, to the amount of 9½ millions, we have thus had fixed upon the country for thirty-nine subsequent years an annual payment of 585,740*l.* It is not possible to allow that both the courses, so directly opposed to each other, could have been wise. Without inquiring further into the matter, it may be said that the plan of taking a larger burthen upon ourselves, that we may relieve those who come after us, has at least the recommendation of being the most generous; and considering that our successors will have had no hand in the contracting of the debts, the burthen of which they will have to bear, it might also be said that such a course is the most just.

Some saving has been effected since 1816 in the charges of management. This saving was part of the bargain made by the government with the Bank of England on the renewal of its charter in 1833 and 1844, and may be considered as a part of the price paid by that establishment for the prolongation of certain of its privileges. [BANK, p. 267.] The functions intrusted to the Bank of England with reference to the National Debt do not extend to the transaction of any matter connected with its reduction. Such business is placed under the control of a body of commissioners, who act *ex officio*

under the provisions of an act of parliament. This board is composed of the speaker of the House of Commons, the chancellor of the exchequer, the master of the rolls, the lord chief baron of the Court of Exchequer, the accountant-general of the Court of Chancery, and the governor and the deputy-governor of the Bank of England. The greater part of these commissioners do not take any part in the management of the business, the details of which are attended to by permanent officers, viz. a secretary and comptroller-general, and an actuary, with an adequate establishment of assistants and clerks: the ultimate control is exercised by the chancellor of the exchequer for the time being, assisted by the governor and deputy-governor of the Bank of England.

The Unfunded Debt consists chiefly of Exchequer Bills, and their use is explained under the head UNFUNDED DEBT.

NATIONS, LAW OF. [INTERNATIONAL LAW; LAW, p. 175.]

NATURALIZATION, from the Latin *Naturalis*, natural. "If an alien be naturalized," says Coke (Co. Lit., 129, *a*), "he shall be to all intents as a natural subject, and shall inherit as if he had been born within the king's legiance." [ALLEGIANCE.] This rule however is subject to some limitations, which are stated in the article ALIEN, p. 102. The policy of naturalization is discussed in the article CITIZEN, p. 511.

Formerly there could be no naturalization except by act of parliament, but a new statute (7 & 8 Vict. c. 66) has facilitated naturalization, and made some other alterations in the law relating to aliens. The act repeals the clause of 1 Geo. I. c. 4, which enacted that every Naturalization Bill should contain clauses to the effect that no person naturalized should be a member of the Privy Council, or of either house of Parliament, or hold any office, civil or military, or be capable of holding grants from the crown, of lands, tenements, or hereditaments, either in his own name or by any person in trust for him. By the 7 & 8 Vict. c. 66, a person born out of her majesty's dominions, of a mother who is a natural-born subject of the United Kingdom, is rendered capable of taking real or personal estate, by devise, purchase, or inheritance; and an alien who is the subject of a friendly state may take and hold every species of personal property, except chattels real, as fully and effectually as natural-born subjects. The subject of a friendly state may also, for the purpose of residence or occupation, either by himself or his servants, hold lands, houses, or tenements for any term not exceeding 21 years; and may enjoy the same rights, remedies, exemptions, and privileges (except the right of voting at elections for members of parliament) as if he were a natural-born subject. An alien woman married to a natural-born British subject becomes naturalized by such marriage. Such of the provisions of the following Acts which are inconsistent with the Act 7 & 8 Vict. are repealed:—12 & 13 Wm. III. c. 2; 1 Geo. I. sess. 2, c. 4; 14 Geo. III. c. 84.

Under the Act 7 & 8 Vict. c. 66, an alien who comes to reside in the United Kingdom with a view of settling, may by the following course obtain nearly all the rights of a natural-born subject. He is required first to present a memorial to the secretary of state, containing a statement of his age, profession, trade, or other occupation; the length of time he has resided in this country, and the ground on which he seeks to obtain any of the rights of a British subject; and praying for a certificate, which must be granted before further steps can be taken. The certificate, granted by the secretary of state, recites such parts of the memorial as, after due investigation, are found to be true and material, and this instrument confers upon the applicant the rights and privileges of a British subject, except the capacity of being a member of the privy council, or a member of the houses of parliament, and except the rights and capacities (if any) specially excepted in and by such certificate. The certificate must be enrolled in the court of chancery, and within sixty days after its date the memorialist must take and subscribe an oath of allegiance. The course of proceeding to be adopted by aliens wishing to become naturalized

is left, so far as details are concerned, to the secretary of state, and the fees are fixed by the Lords of the Treasury. Persons who were naturalized before the passing of 7 & 8 Vict. c. 66, and who had resided in this country for five successive years, are declared to be entitled to all rights conferred by the Act.

The number of foreigners naturalized previous to the passing of 7 & 8 Vict. did not on an average exceed seven or eight a year, and the number who applied for letters of denization did not exceed twenty-five annually.

NATURE, LAW OF. [LAW, p. 175.]

NAVIGATION LAWS. [SHIPS.]

NAVY, BRITISH. The Saxons took advantage of the rich harvest opened to all who would attack the Roman provinces by sea, and ravaged the coast to such an extent as to oblige the Romans to establish a fleet in the English Channel to repel them. After the Saxons had been long in possession of England, they lost their naval arts, and in their turn became a prey to the constant attacks of the Sea-kings and other pirates. We have no record of the size or number of the vessels which sustained so many conflicts with the Danes in the ninth century. Alfred the Great was the founder of the English navy. He first perceived the necessity of a fleet to protect the coasts from the swarms of pirates in the northern seas. A slight advantage gained by some ships of his over the Danes, in 876, induced him to build long ships and galleys, which, as his countrymen were not competent to manage them, he manned with such piratical foreigners as he could engage. After he had driven out the Danes, he applied his talents to improve his ships, and built vessels higher, longer, and swifter than before, some rowing thirty pairs of oars, others more. Ethelred made a law that whoever was lord of 310 hydes of land should furnish one vessel for the service of the country.

William the Conqueror established the Cinque Ports, and gave them certain privileges on condition of their furnishing 52 ships for 15 days in case of emergency. King John claimed for England the sovereignty of the seas, and declared that all ships belonging to foreign nations which should refuse to strike to the British flag should be deemed fair and lawful prize. In the year 1293, an English sailor having been killed in a French port, war ensued, which it was agreed to settle by a naval action, which was fought in the middle of the Channel, and the English, being victorious, carried off above 250 sail. In 1340, when King Edward III. with 240 ships was on his voyage to Flanders, he fell in with and completely defeated, off Sluys, the French fleet of 400 sail, manned with 40,000 men. The same king blockaded Brest with 730 sail, containing 15,000 men. Many of the ships composing these fleets were Genoese and Venetian mercenaries, but they must have been very small, and the numbers of ships and men are probably exaggerated. The ships at this time were not royal ships. The several towns were required to furnish their contingent. In 1338 Edward III., wanting ships for the defence of the kingdom, commanded Bristol to furnish 24 vessels, and Liverpool one small one. In 1345 Bristol contributed 22 ships and 608 mariners, and London 22 ships and 662 mariners. Henry V. had something of a navy, for we find among the records in the Tower a grant under his hand of annuities to "the maistres of certaine of our owne grete shippes, carrakes, barges, and ballyngers." Henry VII., who succeeded in 1485, seems to have been the first king who thought of providing a naval force which might be at all times ready for the service of the state. He built the Great Harry, properly speaking the first ship of the royal navy; she cost 15,000*l.*, and was accidentally burnt in 1553. Henry VIII. perfected the designs of his father. He constituted the Admiralty and Navy Office, established the Trinity House, and the dockyards of Deptford, Woolwich, and Portsmouth; appointed regular salaries for the admirals, captains, and sailors; and made the sea service a distinct profession.

The ships of this period were high, unwieldy, and narrow; their guns were close to the water, and they had lofty poops and prows, like Chinese junks, insomuch that Sir Walter Raleigh informs us "that the Mary Rose, a goodly ship

of the largest size, by a little sway of the ship in casting about, her ports being within 16 inches of the water, was overset and sunk." This took place at Spithead in the presence of the king, and most of her officers and crew were drowned. The Henry Grace de Dieu, the largest ship built in the reign of Henry VIII., is said to have measured above 1000 tons. At the death of Henry VIII., the tonnage of the navy was 12,000 tons. Elizabeth increased the navy greatly. The fleet which met the Spanish Armada numbered 176 ships, manned by 14,996 men; but these were not all "shippes royal," for she encouraged the merchants to build large ships, which on occasion were converted into ships of war, and rated at 50 to 100 tons more than they measured. She raised the wages of seamen to 10 shillings per month. Signals were first used in this reign as a means of communication between ships. In 1603 the navy had 42 ships, measuring 17,000 tons. In the reign of James I. lived the first able and scientific naval architect, Phineas Pett, and the king had the good sense to encourage him. Pett introduced a better system of building, aud relieved the ships of much of their top-hamper. Before the civil wars broke out, Charles I. built the Sovereign of the Seas, of 100 guns, and measuring 1637 tons. In this reign the navy was first divided into rates and classes. Cromwell found the navy much reduced, but his energy restored it, and he left 154 sail, measuring 57,643 tons, of which one-third were two-deckers. Cromwell first laid before parliament estimates for the support of the navy, and obtained 400,000*l.* per annum for that purpose. The navy flourished under Charles II., with the Duke of York at its head, assisted by Samuel Pepys as secretary, until 1673, when the duke's inability to take the test oath caused his retirement, and the king's pecuniary difficulties leading him to neglect the navy, it fell into decay. The Duke of York was recalled to his post in 1684, and at his accession in the following year there were 179 vessels, measuring 103,558 tons. James II. on coming to the throne took active measures for the restoration of the navy; he suspended the Navy Board, and appointed a new commission, with which he joined Sir Anthony Deane, the best naval architect of the time, who essentially improved the ships of the line by copying from a French model. Four hundred thousand pounds per annum were set apart for naval purposes, and so diligent were the commissioners that at the Revolution the fleet was in excellent condition, with sea stores complete for eight months for each ship. The force was 154 vessels, carrying 6930 guns and 42,000 men, whereof nine were first-rates.

King William immediately on being placed on the throne went to war with France, whose navy was then very powerful; in 1681 it consisted of 179 vessels of all sorts, carrying 7080 guns, besides 30 galleys. An act was passed in his second year, for building 30 ships, to carry 60, 70, and 80 guns respectively. The dockyard at Hamoaze, out of which has since grown the considerable town of Devonport, which now returns two members to parliament, was then established. Queen Anne found at her accession the navy to consist of 272 vessels, measuring 159,020 tons, but this estimate includes hulks, hoys, and other vessels not carrying guns. All measures adding to the strength and efficiency of the navy were exceedingly popular during this reign. At the death of Anne in 1714, the number of ships was less, but the tonnage increased, being ships 198, guns 10,600, tons 156,640. The parliamentary vote of that year was 245,700*l.* and 10,000 seamen and marines. During the first four years of George I. large sums were voted for the extraordinary repairs which were required after the long war. A new establishment of guns also was ordered in this reign. The navy remained stationary till the year 1739, when hostilities commenced against Spain, and the navy was augmented, particularly in the smaller classes, and the dimensions of several classes were enlarged. War broke out with France in 1744, at which period there were 128 sail of the line. At this time all prizes taken by the king's ships were declared to be the property of the captors. In 1747 a naval uniform was first established. The navy increased

vastly during this war, in which 35 sail of the line were taken or destroyed by the English. George III. at his accession found the navy to consist of,

Ships of the line	127	measuring 321,104 tons.
Ships of 50 guns and under . .	198	

The vote for the year 1760 was 432,629*l.* and 70,000 seamen and marines. In the short war of 1762, 20 sail of the line were added to the navy, and at the end of the American revolutionary war it was composed as follows:—

Sail of the line.	174	about 500,000 tons.
Under	203	

The navy was kept in a high state of preparation, and when, on the 1st of February, 1793, the French republic declared war against England, this country was not unprepared. A period now commences in which the gigantic efforts made by England, and the protection necessary for a large mercantile marine, raised the British navy to such a height as to enable it single-handed to maintain the sovereignty of the seas against all other navies combined. Sir Charles Middleton, afterwards Lord Barham, had, when comptroller of the navy in 1783, established the regulation that a great proportion of stores, sails, &c. should be laid by for each ship in ordinary; so that in a few weeks after the declaration of war there were 54 sail of the line and 146 smaller vessels at sea. The vote for the service of the navy was 5,525,331*l.*, 85,000 seamen and marines. The navy of France had never been so powerful: it amounted to above 200 vessels, of which 82 were of the line and 71 in addition were immediately ordered to be built. The English had about 115 sail of the line fit for service, but the majority of the French ships were larger and finer, and carried heavier guns on their lower or principal battery. The following abstract will show the losses on both sides up to the peace of Amiens, exclusive of the casual losses:—

	Captured.	Destroyed.
British ships of the line .	5	..
Smaller vessels	37	9
Total	42	9
French ships of the line .	32	11
Dutch do.	18	0
Spanish do.	6	5
Danish do.	2	0
	58	16
French smaller vessels	266	44
Dutch do	62	6
Spanish do	57	10
Total . . .	443	76

This estimate does not include 807 privateers, chiefly French, taken and destroyed. Of the above, 50 sail of the line and 94 under that size were added to the British navy.

During the peace of Amiens preparations for war were actively continued on both sides, and the declaration on the part of England was made in the month of May, 1803, at which time the navy was of the following force, as compared with 1793:—

	Ships of line.	Under.	Tons.
1793 .	153 .	411 .	402,555
1803 .	189 .	781 .	650,976

Notwithstanding the apparent increase, there were not so many line-of-battle ships fit for sea at the latter as at the former period by about ten. The French force in serviceable line-of-battle ships in March, 1803, was 66, the British 111. During this war there were employed from 100,000 to 120,000 seamen and marines till 1810, when the number was increased to 145,000. There were about 100 sail of the line, 150 frigates, and above 200 sloops, besides small armed vessels, amounting in the whole to about 500 sail of pendants constantly employed. The following abstract shows the losses on each side during the war:—

	Captured.	Destroyed.
British—Ships of line .	0	0
Under . .	83	7
	83	7
Enemies'—Ships of line	55	14
Under . .	79	23
	134	37

of which 33 sail of the line and 68 under were added to the British navy.

In George III.'s reign the dockyard of Pembroke was established.

The following table will show the force of the British navy at three distinct periods: the breaking out of the French revolutionary war; a few years subsequent to the peace; and in 1839.

The Parliamentary votes for the navy for the year 1845-6 amounted to 6,936,196*l.* [MILITARY FORCE, p. 334]; and they are to be increased for 1846-7.

The parliamentary vote for the service of the navy, 1839–40, was as follows:—

			£
Officers	3,400	For the effective service	3,492,132
Petty do.	3,998	For the non-effective service	1,488,221
Seamen	12,846	Other departments, viz., convicts and transport of troops	217,158
	20,244		
Marines	9,000		
	29,244	Total charge	5,197,511

RATE.	1793.				1820.				1839.			
	In Commission.	In Ordinary.	Building.	Total.	In Commission.	In Ordinary.	Building.	Total.	In Commission.	In Ordinary.	Building.	Total.
First	1	2	2	5	2	14	7	23	4	14	6	24
Second	4	12	5	21	1	8	12	21	5	10	11	26
Third	21	70	5	96	11	69	3	83	15	31	2	48
Of the Line	26	84	12	122	14	91	22	127	24	55	19	98
Fourth	7	5	3	*15	7	7	7	21	2	15	2	19
Fifth	35	44	3	82	14	67	25	106	8	53	8	69
Sixth	15	20	..	35	14	7	18	39	21	3	4	28
Sloops	34	13	2	49	49	62	34	145	45	10	13	68
Steam-vessels	..	..	..	..	..	..	..	..	†30	4	10	44
Gun-brigs, Schooners, Cutters	18	..	..	18	15	10	2	27	‡45	9	12	66
Grand Total	135	166	20	321	113	244	108	465	175	149	68	392

The naval force of Great Britain and of other countries in 1845 is shown under MILITARY FORCE. On the 1st January, 1846, the number of ships of all classes and sizes in the British royal navy was 636, exclusive of revenue vessels, which were 72 in number. The number of all classes in commission was 234; 84 of which were steam-vessels. The horse-power of 8 steam-frigates exceeded 5000. The number of men and boys voted for the financial year 1845-6 was 29,000 seamen and boys, and 10,500 marines.

Until the Restoration there does not

* In 1793 the fourth-rates on two decks formed part of the line of battle.

† Of these steam-vessels only seven appear to be adapted for war; the remainder are employed in carrying despatches, troops, &c. There are besides 30 steamers, not entered here, which are employed in the packet-service in Great Britain.

‡ There are also 23 sloops fitted for foreign packets, whose station in 1839 was at Falmouth.

appear to have been any precise division into classes; nor have we any account of the armament of ships; at that time certain ships were ordered to be built to carry the following:—

Description of Guns.	1st Rate. 780 men.	2nd Rate. 660 men.	3rd Rate. 470 men.
Cannon=42 pndrs.	26	..	..
Demicannon=32 pounders	..	26	26
Culverins = 18 pounders . .	28	26	..
Demi do. = 12 pounders . . .	..	..	26
Sakers = 6 pndrs	28	26	..
Forecastle . .	4	..	4
Quarter-deck .	12	10	10
3-pounders . .	2	2	4
Total number of Guns . . .	100	90	70

There was, however, no uniformity preserved; and in 1745 a committee was appointed, which recommended certain changes in the rating and arming, which however were not adhered to any more than the former systems. At the peace the Board of Admiralty represented this to the Prince Regent in a memorial. The present establishment of rates and classes was fixed by order in council, February, 1817:—

Class I.—Rated ships:
First-rate, comprising all three-decked ships.
Second. One of Her Majesty's yachts, and all two-decked ships whose war-complements consist of 700 men and upwards.
Third. Her Majesty's other yachts, and all ships whose complements are from 600 to 700.
Fourth. Ships whose complements are from 400 to 600.
Fifth. Ships whose complements are from 250 to 400.
Sixth. Ships under 250.
Class II. Sloops and bomb-vessels. All such vessels as are commanded by a commander.
Class III. All other smaller vessels, such as are commanded by lieutenants or other inferior officers.

Great improvements have taken place in the size and form of the British ships, as well as in the arrangement of the materials composing them, especially during the present century. As France and Spain enlarged their ships, the English were obliged to do the same; while from many of their ships added to the English navy we greatly improved our models. The following view of the increase of the size of first-rates will demonstrate this point:—

Year.	Tonnage of First-Rates.
1677 . .	1500 to 1600
1720 . .	1800
1745 . .	2000
1795 . .	2350, the Ville de Paris.
1808 . .	2616, Caledonia.
1839 . .	3100, Victoria, and several others.

There is now a frigate, the Vernon, of greater tonnage than the first-rate of 1745, of 2080 tons, and 50 guns.

Sir Robert Seppings, late surveyor of the navy, introduced the circular bow and stern, the system of diagonal timbering or bracing, whereby the strength and durability of our ships are so immensely increased; the method of scarfing short pieces, by which the delay and difficulty often attendant on the procuring of crooked timber are avoided; the making frigate-timber applicable to the building of line-of battle ships, by the use of a circular coak, or dowel, instead of chocks, thereby effecting a saving of about 1000*l.* in the building of a 74-gun ship, and the use of iron knees, by which he effected an immense saving of timber and space.

Sir W. Symonds, the present surveyor, has effected a still further economy of space by removing the chocks behind the iron knees, and using metal diagonal braces instead of wood. In latter years the various naval architects, Sir R. Seppings, Captains Hayes and Symonds, R.N., and Professor Inman, have been permitted to try their respective systems in various experimental squadrons, composed of vessels built under their directions; and although many opinions are held as to the merits of each, there can be but one with regard to the general

advantage arising to the science of naval architecture, so long neglected. A school for shipwright apprentices was established at Portsmouth, which, after producing more officers than could be provided for, was broken up. Our ships, those at least built of oak—for we have not yet worn out a ship built of teak—do not seem to be as durable as in former times. The Royal William, of 100 guns, which bore the flag of Richard Bickerton at Spithead in 1813, and was shortly after broken up, was built in the year 1719. The Sovereign of the Seas, built in 1637, was repaired in 1684, when all the ancient timber was so hard that it was difficult to work it. It was the practice in the north of England, and in Staffordshire especially, to bark timber standing, and to let it remain in that state for a time to season. The Sovereign of the Seas was built of such timber. The Achilles, 60, was built by contract in 1757, of timber barked in the spring and felled in the next winter: she was docked in 1770, and found exceedingly sound, and was sold in 1784, because she was too small for the line-of-battle. The Hawke sloop was built in 1793. Half of this vessel was built of timber barked in 1787, and felled in 1790; the other half of timber felled in the usual manner from the same soil and neighbourhood. In 1803 she was so decayed that she was taken to pieces; both sides appear to have been equally decayed.

The government of the navy is vested in the lord-high-admiral, which office has been in commission since the Revolution, with the exception of two short periods, 1707-8 and 1827-8, when it was held respectively by Prince George of Denmark and William IV. when duke of Clarence. At present the Board consists of a First Lord, who is a member of the cabinet, and five junior lords. By their orders all ships are built, sold, or broken up; commissioned, employed, and paid off. All appointments and promotions are made or approved by them; all honours, pensions, and gratuities are granted on their recommendation. All orders for the payment of naval monies are made by them; they prepare the navy estimates, and lay them before parliament. The civil departments of the admiralty are directed by the surveyor of the navy, accountant-general, storekeeper-general, comptroller of victualling, and physician-general.

The navy is composed of two bodies of men—seamen and marines.

There are commissioned, warrant, and petty officers.

The commissioned officers are flag-officers, captains, commanders, and lieutenants.

Flag-officers are divided into the following classes, and rank and command in the order here following:—

Admirals of the fleet.

Admirals of the red, white, blue squadrons.

Vice-admirals of the red, white, blue squadrons.

Rear-admirals of the red, white, blue squadrons.

There are superannuated and retired rear-admirals, who enjoy the rank and pay, but do not rise.

The admiral of the fleet, when in command, bears the union flag at the main-top-gallant-mast. The other flag-officers bear a square flag of the colour of their squadron at the main, fore, or mizen top-gallant-mast, according to their rank.

The flag-officer holding the chief command of a fleet or squadron employed within certain geographical limits, termed a station, is called a commander-in-chief. He is responsible for the efficiency and conduct of the fleet under his orders; he disposes of the vessels composing it in such manner as will be most advantageous for the service; but without some especial necessity he is never to send one beyond the limits of his station. All vacancies in ships under his orders which are caused by death or dismissal from the service by the sentence of a court-martial, are in his gift. As to the various officers of the navy see ADMIRAL, CAPTAIN, &c.

On the 1st January, 1846, the number of officers of the royal navy was as follows:—Flag, 154; captains and retired captains, 769; commanders and retired commanders, 1137; lieutenants, 2528; marine officers, 741; masters, 432; medi-

cal officers, 970; pursers, 485; naval instructors, 46; chaplains, 97; mates, 172; second mates, 129; acting assistant surgeons, 59; qualified clerks, 216: total 7985.

The crew of a ship consists of petty officers, able seamen, ordinary seamen, landsmen, boys, and marines. In time of peace the whole crew are entered voluntarily; during war, men are liable to impressment. The following persons are exempt from it, and no seaman can be impressed except by an officer having a press-warrant:—

Masters of merchant vessels;

Mates of those above 50 tons;

Boatswains and carpenters of those of 100 tons and upwards;

Men belonging to craft of all kinds employed in the navy, victualling, ordnance, excise, customs, and post-office;

Watermen belonging to the insurance offices in London and Westminster;

All men above 55 or under 18 years of age;

Apprentices not having used the sea before the date of their indentures, and not more than three years from the said date;

Landsmen not having served at sea full two years;

Harpooners, line-managers, steerers, and all seamen and mariners who have entered the Greenland and southern whale-fisheries.

The best seamen are rated petty officers by the captain; they are of two classes, distinguished by a crown and anchor for the first class, and an anchor for the second, worked in white cloth upon the left arm; they have an increase of pay, and are not amenable to corporal punishment while holding that rank.

There is a supply of boys to the navy from the asylum at Greenwich and from the Marine Society, but many more are brought into the navy by volunteering. Every ship, according to her rate or class, bears a certain number of marines as part of her complement. [MARINES.]

For the due maintenance of discipline, the captain or commander of every ship or vessel is authorised to inflict corporal punishment on any seaman, marine, or boy, by warrant under his hand. Courts-martial are ordered by the Admiralty and commanders-in-chief.

The idea of establishing an hospital for infirm and disabled seamen originated with Mary, wife of William III., and Sir Christopher Wren was employed to build an additional wing to Greenwich Palace. The king granted 2000*l.* a year towards it, large subscriptions were added by noble and wealthy persons, estates were willed to it by individuals, all mariners were made to subscribe 6*d.* per month, forfeited and unclaimed prize-money, and various grants were given. The forfeited estates of the Earl of Derwentwater, the net rental of which is now between 30,000*l.* and 40,000*l.* a year, were given. The revenue of the hospital is about 150,000*l.* a year. The establishment consists of a governor, a lieutenant-governor (both flag-officers), four captains, and eight lieutenants, residing in the hospital. There are about 2710 in-pensioners, and 120 matrons and nurses, all of whom must be seamen's widows.

The following is the scale of pensions for officers and seamen wounded and worn-out in the service:—

	Per An. £. s.		Per An. £. s.
For an admiral, from	300 0	to	700 0
„ captain (wounds)	250 0	Loss of limb	300 0
„ commander „	150 0		200 0
„ lieutenant „	91 5		91 5
Marine officers, as in the army.			

Every mate, second master, assistant-surgeon, midshipman, master's assistant, naval instructor, clerk, and volunteer of the first and second class, from 1*s.* to 2*s.* 6*d.* a day, according to the nature and degree of the injury.

Boatswains, gunners, carpenters, and engineers, when unfit for further service, receive a superannuation allowance of 3*l.* a year for each year they served in a ship in commission, and 1*l.* a year each year in ordinary, and a further sum of from 1*l.* to 15*l.* a year may be added by the Admiralty. They retain besides any pension for servitude as a petty-officer to which they may be entitled, and for wounds from 15*l.* to 50*l.* a year in addition to all other pensions.

Every other petty officer, seaman, ma-

rine, and boy, shall receive for wounds from 6*d.* to 2*s.* a day*; and every able seaman for twenty-one years' servitude, reckoning from the age of twenty, from 10*d.* to 1*s.* 2*d.* a day; if discharged from infirmity after fourteen years' service, from 6*d.* to 9*d.* a day; and under fourteen years' service, if discharged from disability contracted in the service, from 3*d.* to 6*d.* a day, or a gratuity in lieu, of 1*l.* to 18*l.* If a man become totally blind, he shall have 3*d.* a day added to any of the above. Ordinary seamen receive three-fourths, landsmen two-thirds, boys half the able seamen's pension. Marines, as able seamen.

Certain petty and non-commissioned officers receive, in addition to the above, other allowances.

Persons discharged with disgrace, or by sentence of a court-martial, are not entitled to a pension. On a ship being paid-off, the captain may recommend any petty-officer or seaman, non-commissioned officer or marine, for the medal and gratuity for invariable good conduct; 15*l.* for first-class petty-officers and serjeants, if they have served as such ten years, 7*l.* to second-class petty-officers and serjeants who have served as such seven years, and 5*l.* to able seamen and marines.

The widows of officers who are left in distressed circumstances, receive pensions on the following scale, under the regulations and at the discretion of the Board of Admiralty:—

		Per Au.
The widow of a	Flag-officer	£120
	Retired rear-admiral	100
	Captain, three years' standing	90
	" under three years	80
	Commander	70
	Superannuated commander	60
	Physician	60
	Lieutenant	50
	Master	40
	Chaplain	40
	Surgeon	40
	Purser	40
	Assistant-surgeon	36

The amount paid in pensions to officers for wounds and good service, to widows of officers, widows and relatives of officers slain, and the out-pensioners of Greenwich Hospital, is 521,572*l.*

Abstract of Pensions paid to the Navy.

Good-service pensions	£4,350
Commissioned and warrant officers	81,619
Widows and relatives of officers slain	11,786
Widows of naval officers	172,381
Widows of marine ditto	10,356
Compassionate fund	14,000
Out-pensions of Greenwich Hospital	227,000
	£521,572

There is a Naval College at Portsmouth.

There are two schools at Greenwich, called the Upper and Lower Schools. The Upper School comprises two classes:

1st. One hundred sons of commissioned and wardroom warrant-officers of the Royal Navy and marines.

2nd. Three hundred sons of officers of the above or inferior rank, of private seamen and marines who have served or are serving her Majesty, and of officers and seamen of the merchant service.

They are admitted from eleven to twelve years of age, under certain regulations, and are subject to the same discipline, diet, education, clothing, and destination. The term of education is three years, at the expiration of which, or sooner if the course of education be completed, they are sent to sea in the queen's or merchant service, or otherwise disposed of, as may be determined on.

The Lower School consists of 400 boys and 200 girls, the children of warrant and petty officers, seamen, and non-commissioned officers and privates of marines, who have served or are serving, or have lost their lives in the service of her Majesty. They are admitted from nine to twelve years of age, and quit at fourteen, the boys being sent to sea, and the girls put to trades and household service; any unprovided for at fourteen are sent to their parents. Any boy may be removed from this to the Upper School on obtaining a presentation, if not more than twelve years old, and possessing character and abilities.

In 1744, as already observed, all prizes were declared to be the property of the captors; the scale of the distribution of prize-money was fixed by order in council, Feb. 3, 1836.

When any ship of the Royal Navy carries bullion or jewels on freight, the captain or commander is allowed a per centage, regulated by the queen in council, as compensation for the risk and charge, one-fourth part of which is given to Greenwich Hospital, one-fourth part to the commander-in-chief, if he shares the responsibility, and the other half to the captain.

Officers settling in the colonies are allowed a remission of the purchase-money, in amount from 100*l.* to 300*l.*, according to their rank and length of service. [EMIGRATION, p. 828.]

(Reference has been made to Derrick's *Memoirs of the Rise and Progress of the Royal Navy;* James's *Naval History;* Sir W. Raleigh's *Essay on the Invention of Shipping;* Sharon Turner's *Hist. Anglo-Saxons;* Barrow's *Life of Lord Anson;* and various official papers.)

NE E'XEAT REGNO, the name of a writ which issues out of Chancery on the application of a party complainant, to prevent his debtor from leaving the realm. The writ is directed to the sheriff of the county in which the debtor is; and after reciting that "it is represented to the king in his Chancery on the part of the complainant against the debtor, the defendant, that he the said defendant is greatly indebted to the said complainant, and designs quickly to go into parts beyond the seas (as by oath made on that behalf appears), which tends to the great prejudice and damage of the said complainant," commands him to "cause the said debtor to give sufficient bail or security, in the sum of , *l.*, that he will not go, or attempt to go, into parts beyond the seas, without leave of the said court;" and in case the said debtor shall refuse to give such bail or security, the sheriff is to commit him to prison until he shall do it of his own accord, &c.

The question which always arises on application to the Court of Chancery for this writ is nothing more than this: whether the plaintiff has made out a case which is conformable to the terms of the writ, as interpreted by the decisions of the court.

The writ cannot be applied for unless a bill is already filed; but a plaintiff may apply for it in any stage of a suit, whether the writ is prayed for by the bill or not. The plaintiff cannot have the writ if he is out of the jurisdiction of the Court of Chancery. There must be a debt in equity actually due at the time when the writ is applied for. The application for the writ must be accompanied with an affidavit swearing positively to the debt, except the bill is for an account, in which case it is sufficient if the plaintiff swear that he believes there is a balance in his favour; or except where there is other decisive evidence of the debt. The affidavit must also show that the defendant is going abroad, or it must show facts which prove that conclusion, and that the debt will be in danger if he quit the realm. The writ may be moved for ex parte, and it issues until answer and further order. A defendant may apply to discharge the writ on putting in his answer.

This writ is founded on the real or supposed prerogative of the king to restrain his subjects from departing from the realm. The "Natura Brevium" contains two forms of writs, one of which has for its object to restrain a clergyman from going abroad without the king's licence, and commands the sheriff to take security from him or commit him to prison; the other has for its object to prevent a layman from going abroad without the king's licence; but it requires no security from the party, and differs in several other respects from the other writ. These writs are both entitled De Securitate Inveniendа, &c., and seem to be in substance, though not in name, writs of Ne Exeat Regno. From the former of the two the present writ of Ne Exeat seems to be derived.

It is said that the object of this writ, as applied to clergymen, was to prevent them from having frequent intercourse with the Papal see. Whether the prerogative on which these writs were founded was a usurpation on the part of the crown or not, is a matter which has been somewhat discussed. The opinion that such a

power as that which is exercised by this writ "appears to have been unknown to the ancient common law, which, in the freedom of its spirit, allowed every man to depart the realm at his own pleasure" (Beames), is a vague surmise, expressed in language equally vague. This writ, which was originally designed solely for political purposes, has now been applied, as already explained, to the object of restraining a debtor from evading his creditor's demand by quitting the realm; this application has been sanctioned by long usage, the commencement of which is now unknown.

(*A Brief View of the Writ Ne Exeat Regno*, by Beames.)

NEUTRALITY. [INTERNATIONAL LAW; BLOCKADE.]

NEWSPAPERS. On the origin of newspapers much has been written, but the question is still unsettled. 'The English Mercury,' of 1588, which has till lately passed for the earliest printed newspaper, is shown to be a forgery by Mr. Thomas Watts, of the British Museum.

Mr. Watts observes that he has disposed of the claims of France and England to the invention of newspapers; and that apparently the question now lies between Italy and Germany, Venice and Nürnberg. In the reign of James I. packets of news were published in England in the shape of small quarto pamphlets occasionally. The earliest we have met with, preserved in the second volume of the series of newspapers purchased with Dr. Burney's library (also in the British Museum), is entitled 'News out of Holland,' published in 1619 for N. Newbery, followed by other papers of news from different countries in 1620, 1621, and 1622. There can be no doubt of the genuineness of these. In 1622, during the Thirty Years' War, these occasional pamphlets were converted into a regular weekly publication, entitled 'The News of the Present Week,' edited by Nathaniel Butler. This seems to have been the first weekly newspaper in England.

About this period newspapers began also to be established on the Continent. Their originator at Paris is said to have been one Renaudot, a physician, who obtained a privilege for publishing news in 1632. It would appear that not long after this time there were more newspapers than one in England.

Upon the breaking out of the civil war in Charles the First's time, great numbers of newspapers, which had hitherto been chiefly confined to foreign intelligence, were published and spread abroad by the different parties into which the state was then divided, under the titles of 'Diurnals,' 'Special Passages,' 'Intelligencers,' 'Mercuries,' &c., mostly in the size of small quarto, and treating of domestic matters. Nearly a score are said to have come out in 1643, when the war was at its height. Some papers were entitled 'News from Hull,' 'News from the North,' 'The Last-printed News from Chichester, Windsor, Winchester, Chester,' &c., and others too numerous to mention. We also find 'The Scots Dove' opposed to the 'Parliament Kite,' or 'The Secret Owl.'

In 1662 the 'Kingdom's Intelligencer' was commenced in London, which contained a greater variety of useful information than any other of its predecessors. It had a sort of obituary, notices of proceedings in parliament and in the law courts, &c. Some curious advertisements also appear in it. In 1663 another paper, called 'The Intelligencer, published for the satisfaction and information of the people,' was started by Roger (afterwards Sir Roger) L'Estrange, who warmly espoused the cause of the crown on all occasions, and infused into his newspapers more information, more entertainment, and more advertisements of importance than were contained in any succeeding paper whatever previous to the reign of Anne. L'Estrange continued his journal for two years, but dropped it upon the appearance of the 'London Gazette,' first called the 'Oxford Gazette,' owing to the earlier numbers being issued at Oxford, where the court was then holding and the parliament sitting, on account of the plague being then in London. The first number of what has still continued to the present time as the 'London Gazette,' was published at Oxford, February 4th, 1665. So numerous did these little *books of news* become, that between the years 1661 and 1668 no less

than seventy of them were published under various titles.

On the 12th of May, 1680, L'Estrange, who had then started a second paper, called the 'Observator,' first exercised his authority as licenser of the press, by procuring to be issued a "proclamation for suppressing the printing and publishing unlicensed news-books and pamphlets of news, &c." The charge for inserting advertisements (then untaxed) we learn from the 'Jockey's Intelligencer,' 1683, to be "a shilling for a horse or coach, for notification, and sixpence for renewing;" also in the 'Observator Reformed' it is announced that advertisements of eight lines are inserted for one shilling; and Morphew's 'Country Gentleman's Courant,' two years afterwards, says, that "seeing promotion of trade is a matter that ought to be encouraged, the price of advertisements is advanced to two pence per line." The publishers at this time however were sometimes puzzled for news to fill their sheets, small as they were; but a few of them got over the difficulty in a sufficiently ingenious manner. The 'Flying Post,' in 1695, announces, that "if any gentleman has a mind to oblige his country friend or correspondent with this account of public affairs, he may have it for two-pence of J. Salisbury, at the Rising Sun in Cornhill, on a sheet of fine paper, *half of which being blank*, he may thereon write his own private business, or the material news of the day." Again 'Dawker's News-Letter:' "This letter will be done upon good writing-paper, and blank space left, that any gentleman may write his own private business. It will be useful to improve the younger sort in writing a curious hand." Another publisher, when there was a dearth of news, filled up the blank part with a piece from the Bible.

It was not until the reign of Anne that the Londoners had a newspaper every day. The first was issued in 1709, and called 'The Daily Courant,' being published every day but Sunday. There were at this time seventeen others published thrice a week, and one twice. Among them was the 'British Apollo,' the 'General Postscript,' the 'London Gazette,' 'the Postman,' the 'Evening Post,' and the 'City Intelligencer.'

It may be sufficient to notice in few words two or three of the more remarkable journals only which have since succeeded. The 'Public Advertiser' was first printed under the title of the 'London Daily Post, and General Advertiser,' so far back as 1726, and assumed its later name only in 1752. 'Junius's Letters' were published in this paper. The 'St. James's Chronicle' is another of our oldest papers; at its first publication it was an amalgamation of two papers (the 'St. James's Post,' and the 'St. James's Evening Post'), both of which began in 1715. The 'North Briton,' edited by Wilkes, first appeared in 1762; and in the same year the 'Englishman' was established. The 'Englishman' attracted much notice about 1766, on account of the insertion of several satirical articles in it by Burke.

The earliest local provincial newspaper in England is said to have been the 'Norwich Postman,' published in 1706, at the charge of a penny, but "a halfpenny not refused;" followed by the 'Norwich Courant, or Weekly Packet,' in 1714, price three half-pence. Previous to 1720 the 'York Mercury' appeared, followed in that year by the 'York Courant,' which still exists. In this year also a 'Leeds Mercury' was established; and about the same time a 'Gloucester Journal.' In 1730 a 'Manchester Gazette' was published. The 'Derby Mercury' was begun in 1731; the 'Oxford Journal' in 1740; a 'Preston Journal' in 1745, and 'Billinge's Liverpool Advertiser' in 1765.

In Scotland the newspaper-press was first introduced during the civil wars in the seventeenth century. When a party of Cromwell's troops arrived at Leith in 1652, for the purpose of garrisoning the citadel, they brought a printer, named Christopher Higgins, to reprint a London diurnal, called 'Mercurius Politicus,' for their amusement and information. The first number was issued on the 26th October, 1653; and in November the following year, the establishment was transferred to Edinburgh, where this reprinting system was continued till the 11th

April, 1660. On the 31st December, 1660, appeared at Edinburgh, 'The Mercurius Caledonius,' purporting to comprise "the affairs in agitation in Scotland, with a survey of foreign intelligence." It was a small quarto of eight pages. The last number was dated March 22 to March 28, 1661. It was succeeded by 'The Kingdom's Intelligencer.' In 1669 an 'Edinburgh Gazette' was published by authority, followed in 1705 by the 'Edinburgh Courant,' which still exists. 'The Caledonian Mercury,' also still in existence, was first published on April 28, 1720. After Edinburgh, the next place at which the publication of a newspaper was attempted in Scotland was Glasgow, where the first number of the 'Glasgow Courant' appeared November 11, 1715.

In Ireland, as in England and Scotland, newspaper intelligence originated during civil commotion. As far back as 1641, at the breaking out of the Rebellion of that year, there was printed a news sheet, called 'Warranted Tidings from Ireland;' but from that time to the beginning of the eighteenth century, we have no notice of any other print of the kind, although it is not improbable that there may have been some. About the year 1700, a newspaper called 'Pue's Occurrences,' named after the proprietor, was established in Dublin, and maintained itself for more than half a century. This was the first newspaper published in the Irish capital. The next Dublin print was 'Falkener's Journal,' established in 1728—both were daily papers. Waterford appears to have followed Dublin in publishing news, by the establishment of a paper in 1729, entitled 'The Waterford Flying Post.' The oldest existing newspaper in Ireland is the 'Belfast News Letter,' started in 1737.

The newspapers of Great Britain have much improved within the last thirty years. In 1801 'The Leeds Mercury' contained 21,000 words; 80,000 words in 1835; 120,000 in 1845; and 179,000 words in 1846. Not only has a great increase been made in the size of the provincial papers, but their literary character has undergone a marked improvement, particularly since the close of the last war. Before that time few of them contained any original articles or essays beyond occasional or local paragraphs. Though nearly all the British newspapers may be considered as representing the opinions of some political party, or of some religious denomination, there are now several in which all the important questions on which opinions are divided are discussed with great ability, and particularly questions that relate to agriculture, manufactures, and commerce. By means of this conflict of opposing views, truth is often elicited in the end, and a public opinion is gradually formed upon the secure basis of complete investigation, and the comparison of contending arguments. The importance of newspapers in the actual state of our society can hardly be overrated. Much that is bad is widely diffused, but this is an evil inseparable from the Liberty of the Press, and no man doubts that society on the whole gains largely by the unrestrained publication of everything that affects the general interest and by the free expression of opinion. Political Liberty and the Freedom of Industry owe nearly everything to the press, and on the honesty and ability with which it shall continue to be conducted, our social progress will materially depend.

Newspapers are now as common in all the British dominions abroad as in England. In British India there are several newspapers published in the Bengal language. The first New Zealand Colony, which sailed in September, 1839, carried out the materials for printing a newspaper, of which the first number was printed in England, and the second number in the colony. The same course had been previously adopted in settling the colony of South Australia.

In Germany newspapers originated in the 'Relations,' as they were termed, which sprung up at Augsburg and Vienna in 1524, at Ratisbon in 1528, at Dillingen in 1569, and at Nürnberg in 1571, and which appeared in the form of letters printed, but without date, place, or number. The first German newspaper in numbered sheets was printed in 1612. In 1845 the number of journals

published in the States composing the German Confederation was 1836, of which 1017 were newspapers, and 819 scientific and literary. But many of these newspapers would not be called newspapers in England: many of them contain no political discussion of any kind. The number of journals in Prussia was 405; Bavaria, 96; Saxony, 94; Würtemberg, 48; Hanover, 24; German part of the Austrian States, 26. Newspapers are now common in every European country, from Russia to Spain. The state of the press in some of these countries is noticed under the head PRESS, LIBERTY OF.

In the United States the increase of newspapers has been more rapid than in England. In the year 1704 the first Anglo-American newspaper, called the 'Boston News-Letter,' was published at Boston. In 1719 the first newspaper was published in Pennsylvania; and in 1733 the first newspapers were published in New York and Rhode Island. Now there is hardly a petty town in any of the States without its newspaper, and in the large cities, such as New York, several are published daily. In Pennsylvania and Maryland a considerable number of newspapers are printed in the German language, and distributed among the numerous German settlers in those states. In Louisiana some papers are printed both in French and English. The total number of newspapers in the States exceeds 1200.

The largest collection of newspapers in England is in the British Museum. This collection was commenced by a considerable number being sent there, at the time when the Museum was established, with the library of Sir Hans Sloane. Another collection, of itself valued at 1000*l.*, was purchased in 1813 with the library of the late Dr. Charles Burney. At the end of two years from the time of publication, the commissioners of stamps now transfer to the British Museum, for public use, copies of all the stamped newspapers, both of town and country.

Before a person can commence the printing and publication of a newspaper he is required to execute the following instruments: 1. The Seditious Libel Bond, or Recognizance; 2. the Stamp-office Declaration; 3. the Advertisement Duty Bond.

The recognizance or bond is required by 60 Geo. III. c. 9, one of the objects of which was to make "regulations for restraining the abuses arising from the publication of blasphemous and seditious libels." This act was amended by 11 Geo. IV. c. 73, when the punishment of banishment for these libels was abolished, but the pecuniary penalties were increased. These acts enact that no person shall, under a penalty of 20*l.*, print or publish for sale any newspaper until he shall have entered into a recognizance before a baron of the Exchequer, if such newspaper shall be published in London, Westminster, Edinburgh, or Dublin; or if printed elsewhere, shall have executed in the presence of, and delivered to, some justice of the peace for the county, city, or place where such newspaper shall be printed, a bond to her Majesty, with two or three sufficient sureties, to the satisfaction of the said baron or justice of the peace, in the sum of 400*l.*, if printed in London, or within twenty miles, and in 300*l.* if printed elsewhere, and the sureties in a like sum on the whole. The conditions of the bond are, that the printer or publisher of the newspaper shall pay to her Majesty such fines and penalties as may be imposed upon conviction for printing any blasphemous or seditious libel; and also to pay to any plaintiff in any action for libel published in such newspaper all such damages and costs as may at any time be awarded. The penalties to be recovered in any one day are limited to 100*l.* The liabilities of printers and publishers to the law of libel have been modified by a recent act. [LIBEL.]

The declaration required by 6 & 7 Wm. IV. c. 76, is a document which must be delivered to the office of Stamps and Taxes, or to authorized officers of this department. It sets forth in writing the correct title of the newspaper to which the same shall relate, and the true description of the house or building wherein such newspaper is intended to be printed, and also of the house or building where such newspaper is intended to be published by or on behalf of the proprietor thereof, and setting

forth the true name, addition, and place of abode of every person who is intended to be the printer or to conduct the actual printing of such newspaper, and of every person who is intended to be the publisher thereof. If the number of proprietors, exclusive of the printer and publisher, does not exceed two, their names and places of abode, &c. must be inserted in the declaration; and if the number should exceed two, the names of those proprietors must be inserted whose shares are not less than the share of any other proprietor.

The Advertisement Duty Bond is required as security for the payment of the duties which may from time to time be payable for advertisements inserted in the newspaper. The persons required to enter into this bond are the printer or publisher of a newspaper, or the proprietor, or such one or more of the proprietors as the Commissioners of Stamps and Taxes or their officer may deem requisite, with two sufficient and approved securities. No specific sum is mentioned in the act, but it is left to the Commissioners of Stamps and Taxes, or their officer, to fix such a sum as may appear reasonable.

The stamp on newspapers was imposed by an act, 10 Anne, c. 19, passed in 1712. The amount was one half-penny on "half a sheet or less," and one penny "if larger than half a sheet and not exceeding a whole sheet." The consequence of this duty was, that many of the publications which came within the provisions of the act were discontinued. The duty was raised ½*d.* by 30 Geo. II. c. 19; another ½*d.* by 16 Geo. III. c. 34; by 29 Geo. III. c. 50, another half-penny was added; and by 37 Geo. III. c. 90, an addition of 1½*d.* was at once made, making a total of fourpence. A discount of 20 per cent. was first allowed by the act 37 Geo. III. By 6 & 7 Wm. IV. c. 76, the stamp duty on newspapers in Great Britain was reduced to 1*d.* without any discount. The quantity of letter-press on a sheet of paper bearing a stamp of 1*d.* is limited to 1530 square inches on one side. If it exceeds 1530 square inches, but does not exceed 2295, the stamp is 1½*d.*; above 2295, it is 2*d.* A supplement not exceeding 765 square inches of print on one side published with any newspaper, is chargeable with a duty of ½*d.* The stamp duty on newspapers printed in Ireland is 1*d.*, with an allowance of 25 per cent. discount. The title of every newspaper is now inserted on the stamp; and a newspaper can be printed only on the sheet specifically stamped for printing the same. For several years the number of stamps issued to each newspaper was published in the Parliamentary Returns; but when the notice was last given for printing the return the government objected, and there has been no return since 1843.

The duty on advertisements was reduced, after 5th July, 1833, from 3*s.* 6*d.* to 1*s.* 6*d.* in Great Britain; and to 1*s.* in Ireland. [ADVERTISEMENT.]

Newspaper Statistics. The number of stamps issued to newspapers in Great Britain and Ireland in the following years was as under:—

	Great Britain.	Ireland.
1827	27,659,270	3,545,846
1835	31,533,023	4,290,836
1840	54,560,513	6,057,795
1844	60,201,133	6,769,067

The number of stamps issued for each part of the United Kingdom in 1844 was as follows:—

	Stamps at 1*d.*	Stamps at ½*d.*
England	53,933,848	3,738,128
Wales	479,700	7,000
	54,413,548	3,745,128
Scotland	5,727,585	317,620
Ireland	6,769,067	249,550
Total	66,910,200	4,312,298

In 1835, the year before the reduction of the stamp duty took place, the number of stamps issued in the United Kingdom was 35,823,859. In Great Britain the increase in nine years has been 90 per cent.

The number of newspapers published in the United Kingdom in 1843 was 447: of this number 79 were printed in London; 212 in other places in England; 8 in Wales; 69 in Scotland; and 79 in Ireland. The sum annually expended in newspapers is estimated at 1,250,000*l.*,

while the estimated annual returns of the whole commerce of the press, including weekly publications which are not newspapers, monthly publications, &c., do not exceed 2,085,000*l.* [BOOK TRADE, p. 406.]

In 1843 the number of stamps issued to 79 London newspapers was 31,692,092, or rather more than one-half of the total number issued in Great Britain. The average sale of the daily and other London newspapers in the year 1838, and the number of advertisements, are shown in the following table:—

		Circulation.	Advts.
6 daily morning	total	32,574	1,225
5 daily evening	„	12,956	211
4 three times a week	„	8,617	45
3 twice a week	„	6,741	170
33 weekly . .	„	212,807	1,805
	Total	273,695	3,456

Within the last two or three years the 'Times' has issued daily a double paper, that is, eight pages of six columns each. The printed area of the whole paper (both sides) is more than 19½ square feet, or a space of nearly 5 feet by 4. The number of persons employed on such an establishment as the 'Times' is about one hundred, including editors, sub-editors, reporters, readers, clerks, and compositors. Correspondents are besides employed at all the great centres of politics and commerce throughout the world. In the months of September and October, 1845, in consequence of the pressure of railway advertisements, the 'Morning Herald' on several occasions issued three sheets, containing altogether 72 columns, and in the quantity of printed matter equal to a number of the 'Edinburgh Review.' As the stamp duty on each sheet was 1*d.*, and the newspaper was sold at 5*d.*, there was a loss sustained on each copy of the paper sold: and the larger the circulation of the paper, the greater would be the loss. The chief source of profit to the London daily newspapers is derived from advertisements. The activity of the London newspapers in procuring early intelligence is one of their most remarkable features. The 'Morning Chronicle,' in December, 1845, gave a full report of a free-trade meeting at Bradford in Yorkshire, which did not terminate until a late hour on the previous evening. The proprietors of the paper went to the expense of engaging a special engine to bring the report to London. Thus a town two hundred miles off is in some sort made a suburb of the metropolis. The close of the poll at the Sunderland election, in August, 1845, was brought to the 'Times' office in London, and a copy of the paper, containing the intelligence, reached Sunderland before noon the next day, the time in which the journey to and from Sunderland was accomplished being only about twenty hours. This rapidity of communicating intelligence is not without its political influence. Public opinion is developed with an energy and activity which at least have the effect of abridging the period that would otherwise be spent in political agitation.

The circulation of 220 English and Welsh provincial newspapers in 1843 was 17,397,556, or rather more than half the circulation of the London newspapers. The average circulation of each paper was 1576; but several papers have a circulation exceeding 5000. The 'Leeds Mercury' and 'Stamford Mercury' each circulate between nine and ten thousand copies; and a few of the provincial papers contain from two to three hundred advertisements weekly. With two exceptions, at Manchester, all the English provincial papers are published weekly.

The political character of the newspaper press of the United Kingdom at the close of 1842 is shown in the following table: the 'neutral' papers are chiefly trade circulars, and some contain only advertisements:—

	Conservative.	Liberal.	Neutral.
London . .	21	30	39
England, Provincial	89	105	13
Wales . .	3	5	..
Scotland . .	25	32	8
Ireland . .	35	38	4
British Islands .	8	9	..
	181	219	64

NEXT OF KIN. [CONSANGUINITY; ADMINISTRATION.]

NISI PRIUS. This phrase in English law is derived from an ancient writ continued in practice to the present day, in which the words occur. Previously to the time of Edward I., trials by assizes or juries could only take place in the curia regis wherever the king happened to be resident, or before the justices in eyre on their septennial circuits through the several counties of England. But by the stat. 13 Edward I., c. 30 (forming a part of that series of laws commonly called the statute of Westminster 2), the judges were directed to take certain assizes, and also to try certain inquests, by juries in every county not oftener than three times in every year; but the statute required that the day and place in the county in which an issue was to be tried by the judges should be mentioned in the judicial writ which assembled the jury. Instead therefore of the old form of the Venire facias, or writ for summoning the jury, which commanded the sheriff to bring them to Westminster to try the particular cause in which issue had been joined, the writ contained a clause of Nisi Prius, thus:—"We command you that you cause to come before our justices at Westminster on the morrow of All Souls, twelve lawful men, who," &c., unless before (nisi prius) that day, A. B. and C. D., our justices assigned for that purpose, shall come to your county to take the assizes there." It is always so arranged, therefore, that the day for the return of the jury at Westminster shall be more distant than the day for taking the assizes in the county according to the statute; and consequently the reservation or exception in the writ invariably takes effect by the justices of assize coming into the county and trying the cause before the sheriff can obey the writ by returning the jury to Westminster. [ASSIZE.] From this clause in the writ prescribed by the statute of Westminster 2, the phrase Nisi Prius came to be adopted as a general term descriptive of a large class of judicial business which is transacted before judges of the superior courts at the several assizes throughout the country. Thus the judges of assize are called judges of Nisi Prius; when sitting alone to try causes, they are said to be sitting at Nisi Prius; and the law relating to the various matters which arise before them is, somewhat indefinitely, called the law of Nisi Prius. It is commonly, but erroneously stated in our text books, that the judges on their circuits act under a commission of Nisi Prius. This is a common error, derived however from high authority, as it is so stated by Bacon in his 'Essay on the Use of the Law;' but in truth there is no such commission known to our laws, the authority of the judges of Nisi Prius being incidentally annexed to the commissions of assize in the manner above stated. In Middlesex the judges are empowered to sit at Nisi Prius by the statute 18 Eliz., c. 12; and the practice is regulated by several subsequent statutes. In London they sit at Nisi Prius by virtue of immemorial usage, probably continued with occasional variations from very early times, when the king or his chief justiciary distributed justice in the immediate neighbourhood of the royal residence.

NOBILITY, NOBLE. The term nobility is from the Latin Nobilitas, which was used to signify both the rank of a Noble and the whole body of Nobles. We also have the word Nobility in both senses. The original aristocracy of Rome were the Patricians. When the Plebeian body became eligible to the high offices of the state, which occurred in B.C. 366, in which year the first plebeian consul was elected, a new class or order of men arose. Those persons who obtained the consulship became Nobiles, which simply signifies Notables, men distinguished from those who had never enjoyed that honour themselves, or never had an ancestor who had enjoyed it. A person who had not become Nobilis, either in himself or by his ancestors, was called a Novus homo, or new man, a term which was applicable to Cicero before he became consul: after Cicero became consul he was Nobilis. The title which an ancestor thus acquired was transmitted to his descendants, who thus belonged to the order of Nobiles. It follows from what has been stated, that a Nobilis might still be a Plebeian; and that a

Patrician, if there was one whose ancestors had never held the consulship, might not be Nobilis, in this new sense. But probably there was no instance of a Patrician family not having produced a consul. In the later Republic the Patrician families had much diminished, and though the name of Patrician was still a great distinction at Rome, the order which formed the most powerful political body in the State was the order of the Nobility, by which term a certain class of men, as already defined, was contrasted with the Equites, who were also called an order, and with the Plebeians, who were not called an order. The Roman Nobiles had the right to have family busts or figures (imagines), which were kept with care; and they were very careful in preserving their genealogies. Under the later empire a great number of new offices were created, both for the purposes of administration, and in the imperial household. The term Nobilis, under the Republic, did not necessarily imply direct political power; for all the members of a family that had become ennobled were Nobiles, simply by virtue of their ancestors' distinction: but the Nobiles as a class possessed political power, for they mainly formed the Senate, which was the great administrative council, and they laboured to secure the election of their own members to the high offices in the State and to exclude New men. Nor did the possession of any title or office under the empire give political power, for it was a Monarchy. Most of the titles of nobility now in use are derived from the titles of officers under the lower empire, as Duke, and Count; or they are derived from officers that existed under the early Germanic Empire, as Marquis. [COUNT; DUKE; MARQUIS.]

The modern notion of Nobility is that of a title which is hereditary. There are orders of nobility both in Monarchical Governments, as in Russia, and under Republican Governments, as Great Britain. The term Nobility is not co-extensive with the term Aristocracy in any proper sense [ARISTOCRACY]; though the two terms are often confounded. In Great Britain and Ireland the nobility consists of Dukes, Marquises, Earls, Viscounts, and Barons: but it is only the head of the family for the time who has a proper title, though in common language all the members of his family are called noble. Those nobles who are also peers of England or peers of the United Kingdom have a seat in the House of Lords, which political status is transmitted by hereditary descent. Peers of Ireland and peers of Scotland who are not also peers of England, may sit in the House of Lords by election. [LORDS, HOUSE OF; PEERS.] Thus there is in the British empire a class of nobles who have political power by virtue of their nobility, and a class who have not political power by virtue of their nobility, but are on the same footing as other commoners. Also the children of peers of England are on the same footing as other persons so long as the head of the family lives; upon whose death the next heir alone succeeds to the title and the political privileges. The junior members of noble families receive by courtesy certain titles and distinctions of name, and wives of peers have some privileges. [PEERS.] In the British empire nobility is conferred by the king or queen regnant, though in fact the ministry for the time determine who shall receive this mark of royal favour. The present mode of conferring a title of nobility is by letters patent, which also declare the course in which the title shall descend. [PEERS.]

The peerage of England is constantly receiving new accessions, without which the body would, in the course of time, be much diminished, for most of the titles descend only to the heirs male of the body of the person ennobled. The honour may be conferred on any person, but the class of persons who have been hitherto ennobled as peers of England may be reduced to the following: peers of Scotland and Ireland; members of families already ennobled; persons of large landed property; distinguished lawyers, military and naval commanders, and persons who take an active part in political life; and some few who have acquired great wealth in commerce, and been active members of the House of Commons. Men distinguished as in-

ventors, and in science and literature, are rewarded by the crown with baronetcies, which do not confer nobility, though the title is hereditary; or with knighthood, of which there are various kinds. The title conferred by a baronetcy or knighthood consists in a "Sir" prefixed to the name of the person, and his wife is distinguished by the title of Lady. There is, we believe, no instance of nobility being conferred by the crown for any scientific or literary eminence.

A patent of English nobility confers both a title and political power; among other powers the power of voting on the making or repealing of all laws; and the noble may vote whether he is present or absent, whether he knows what he is voting about, or does not. [PEERS.] A man also votes, whether he is competent by talent and education to judge of the matter on which he votes, or whether he is not competent. The English nobility in fact exercise a power analogous to that of the crown, and the power goes by descent so long as there are heirs to whom it can descend. The order however is always receiving new vigour by the fresh creations, which bring into it new men (novi homines), who are generally among the most active members of the House of Lords. The sons of peers also frequently serve a kind of apprenticeship to political life, by obtaining seats in the House of Commons, where they become well acquainted with the business of administration. Many of them in this manner obtain as just views of the general interest, and are as well disposed to promote it, as any member whom the people may send to the House of Commons. This discipline which a peer may receive and often does receive in the House of Commons, and the introduction of new members into the English nobility out of the body of the people, are the two elements which have secured to the peers of England the power which they possess. Without this renovating process the political power of the English nobility would long since have died a natural death, or have been destroyed. The popular character of the English nobility is clearly shown by an examination into the titles of those who compose that body. Few of the old baronial families are now found among the nobles of England: the great mass are not a century and a half old, and a very great number do not go back half a century; a large part of them have sprung from men who were raised to nobility from low estate, for some great public service real or supposed, or for various other reasons, of which the political history of England readily supplies instances. There are many untitled families in England that have much higher claims to antiquity and illustrious descent, than one-half of the modern nobility.

When nobility is merely a title, it is a cheap mode of rewarding public services or conferring an honour as a favour. But such titles of honour are inconsistent with any form of government where there is not a king or other person with some like title at the head of the State. When nobility also confers political power, which is transmitted by hereditary descent, there is no other way of conferring it except by the gift of one who is at the head of the State by hereditary descent. The creation of a noble is a thing that cannot be conceived except under a form of government in which there is an hereditary head. Nobility may be and is conferred in England, both where the honour is deserved and where it is undeserved. But as the gift is not for life only, but is a descendible honour, if the first possessor of the honour should be willing to purchase it by unworthy means or should be undeserving of it, he who succeeds him in the honour may show himself more deserving of it, and may be an independent man. The crown on the whole cannot secure partizans by new creations. But in fact the crown has now no opposing interests to those of the nation: the king enjoys ample respect and an ample allowance to maintain the splendour of his exalted station; the prerogative is well ascertained, and the exercise of the royal authority, by the agency of responsible ministers, is kept within well-defined limits. The king of the British Empire is now not the mere head of a body of feudal nobles; he is the first person in rank of many millions of wealthy and industrious persons, who by their representatives share with him

and the peers of the realm the most important of the functions of government, and possess an almost unlimited control over the grant and application of money for public purposes. The English nobles still possess great political power, and they have interests, real or supposed, which are adverse to those of the body out of which most of them have sprung. To weigh with fairness in opposite scales the evil and the good that we now owe to the existence of this order, as a political body, would require a coolness of judgment and a degree of political discrimination which belong to few men. In forming such an estimate, the exclusive advantages, real and imaginary, which the order enjoys, must be left out; for in calculating the national value of any privilege given to a small number, such as patent privileges for invention, by way of instance, we do not estimate what the privileged individuals will get by the privilege, but what advantage the whole nation will get by it. If there were no general advantages derived from the grant of an exclusive privilege, there would be no reason for granting it or continuing it.

Nobility, which consists merely in title and certain claims of precedence and so forth, must be distinguished from Nobility which is accompanied with political privileges. There may be nobility without political privileges, as in the case of Scotch and Irish peers who are not peers of the realm; and there may be members of the House of Lords, who are not peers of the realm, and only sit in the House of Lords for life, as the representative peers of Ireland, and the bishops and archbishops of England; and of persons who sit for certain periods, as the representative peers of Scotland, and the bishops and archbishops of Ireland, who sit according to a certain established cycle. The members of the Lords' House thus consist of persons who are entitled to sit there by hereditary claim, of persons who are elected by their own peers, and of persons who are nominated by the crown to places which give them a seat for life or for certain periods.

There are modern communities, such as the United States of North America, in which there is and can be no nobility in any respect resembling that of Europe. Wealth of course gives some influence and importance to the possessor, but it is also an object of jealousy, which must always be the case, more particularly in democratic constitutions. Office, so long as it is held, gives greater distinction than wealth; but office is only held for a short time, and wealth, although it may be acquired by an individual, is seldom transmitted to a single person, but is usually distributed in moderate or small portions among several persons. Thus it has been observed, that in the United States a family seldom maintains any great wealth or importance for more than two generations. Names which have been made illustrious by an individual are remembered only because of him who first elevated them to distinction, and the descendants of the wealthy lose with their wealth the remnant of that importance which their ancestor acquired. Thus one family of distinction after another sinks into obscurity, and its place is soon filled by a name before unknown.

NOMINATION. [ADVOWSON; BENEFICE.]

NONCONFORMISTS. Nonconformity is the term employed to designate Protestant dissent from the Church of England. It was in the reign of Edward VI. that the English reformed church first received a definite constitution. During the time of Henry VIII. it remained in a great measure unsettled, and was subject to continual variation, according to the caprice of the king. As organised by Edward, while Calvinistic in its creed, it was Episcopalian in its government, and retained in its worship many of the Roman Catholic forms and observances. In the first of these particulars it resembled and in the last two it differed from the Genevan church. During the temporary restoration of the Roman Catholic faith under the administration of Philip and Mary, great numbers of the persecuted followers of the reformed faith sought refuge in France, the Netherlands, Switzerland, and other parts of the Continent. Of those who fled to Germany, some observed the ecclesiastical order ordained by Edward; others, not without warm disputes with

their brethren, which had their commencement at Frankfort, adopted the Swiss mode of worship, preferring it as more simple, and more agreeable to Scripture and primitive usage. Those who composed this latter class were called Nonconformists. The distinction has been permanent, and the name has been perpetuated. Queen Elizabeth's accession to the throne, in 1558, opened the way for the return of the exiles to the land of their fathers. It was natural for each of the parties of which they consisted, to advocate at home the systems of worship to which they had been respectively attached while abroad; and the controversy, which had been agitated by them in a foreign country, immediately became a matter of contention with the great body of Protestants in their own. It suited neither the views nor inclinations of Elizabeth to realise the wishes of the Nonconformists, or Puritans, as they began to be called, by giving her sanction to the opinions which they maintained, and assenting to the demands which they made. The plain and unostentatious method of religious service which they recommended did not accord with that love of show and pomp for which she was remarkable; and the policy of the early part of her reign, in which she was supported by the high dignitaries both in the church and state, was to conciliate her Roman Catholic subjects, who in rank, wealth, and numbers far exceeded the Nonconformists. The liturgy of Edward VI. having been submitted to a committee of divines, and certain alterations, which show a leaning to the Roman Catholic church rather than to Puritanism, having been made, the Act of Uniformity (1 Eliz. c. 2) was passed, which, while it empowered the queen and her commissioners to "ordain and publish such further ceremonies and rites" as might be deemed advisable, forbade, under severe penalties, the performance of divine worship except as prescribed in the Book of Common Prayer. By § 14 a penalty of 12*d.*, to be levied by the churchwardens, was imposed on persons who did not frequent the parish church. This penalty of 12*d.* is repealed, but only so far as dissenters are concerned. [LAW, CRIMINAL, p. 38.] The act was only partially carried into effect from the time of its being passed, in 1558, to 1565. But in 1565 it began to be rigidly enforced, and many of the Nonconformists were deprived of their preferments (for notwithstanding their sentiments, most of them had still remained in connection with the Established Church, being from principle averse to an entire separation); many also were committed to prison. The High Commission Court [ESTABLISHED CHURCH, p. 849] became still more severe in the exercise of its power. The act 23 Eliz. c. 1, § 5, provided that "every person above the age of fifteen who shall not repair to some church, chapel, or usual place of common prayer, but forbear the same contrary to 1 Eliz. c. 2, shall forfeit 20*l.* a month; and if any such person forbore to attend church for twelve months, he was to be bound with two sureties in 200*l.* at least, and so to continue bound until he conformed. In §§ 6 and 7 of this statute it is enacted that "if any person or persons, body politic or corporate, shall keep and maintain any schoolmaster which shall not repair to church as is aforesaid, or be allowed by the bishop or ordinary of the diocese, they shall forfeit 10*l.* a month;" and it was further provided that "such schoolmaster or teacher presuming to teach contrary to this act shall be disabled to be a teacher of youth and be imprisoned for a year." By another statute (29 Eliz. c. 6, §§ 4, 6), it was enacted that persons who had been once convicted of not attending divine service contrary to 23 Eliz. c. 1, were, for every month afterwards until they conformed, to pay into the Exchequer, without any other indictment or conviction, in every Easter and Michaelmas term, as much as should then remain unpaid at the rate of 20*l.* a month; and in default of payment, the queen might, by process out of the Exchequer, seize all the goods and two-thirds of the lands of such offenders. By 3 Jac. I. c. 4, § 11, the king might refuse the payment of 20*l.* a month, and take two parts of the offender's land at his option. Towards the close of Elizabeth's reign the offence of Nonconformity and its further progress was attempted to be stopped by another statute (35 Eliz.

c. 1), which provided (§ 1) that any person above the age of sixteen who obstinately refused to attend divine service, and who, by printing, writing, or speech, denied her majesty's power and authority in causes ecclesiastical, and who advised persons to abstain from church or from the communion or to be present at unlawful assemblies, conventicles, or meetings under colour or pretence of any such exercise of religion, shall be committed to prison until he shall conform to go to church and make submission. If a person who was convicted under this act did not conform within three months, he was then required to abjure the realm and all other the queen's dominions for ever, and he was compelled to depart out of the kingdom at some port assigned and within such time as the justices might appoint. A person who refused to leave the country under these circumstances, or who having left it returned to it again without the queen's licence, was guilty of felony without benefit of clergy. These provisions, though directed principally against the Roman Catholics, affected the Protestant Nonconformists with equal severity.

The Nonconformists, during the age of Elizabeth, are not to be regarded as an unimportant faction. Both among the clergy and the laity they were a numerous body; and they would have been powerful in proportion to their numbers, had they only been more closely united among themselves. A motion, made in 1561, at the first convocation of the clergy which was held in England, to do away with the ceremonies and forms to which the Puritans objected, was lost by a majority of only one, even though the queen and the primate Parker were well known to be opposed to such a change. In the Commons the Puritan influence was strong, and they might have expected that their remonstrances would be listened to, and their grievances redressed. Nor would it have been a difficult matter to yield to the claims of the Nonconformists. The moderate among them sought not the overthrow of the ecclesiastical constitution, but contended merely that certain rites and observances, which they regarded as departures from the purity and simplicity of Christian worship, should be dispensed with; and, generally, that matters commonly recognised as things indifferent should not be insisted on as indispensable. Doubtless many were less reasonable in their demands, and injustice and persecution tended much to increase their number. A party, at the head of which was Professor Cartwright, of Cambridge, desired a change, not only in the forms of worship, but in church polity also, and would have substituted Presbytery in the room of Episcopacy. Another party, the Independents, or Brownists, as they were then termed, wished the disseverment of the connection between church and state altogether. Still there is every reason to believe that slight concession to the demands of the less violent, and the display of a spirit of forbearance, would have satisfied many, would have allayed the dissatisfaction of all, and would have been the reverse of disagreeable to the country generally. Unfortunately an opposite course of policy in this and subsequent reigns was chosen; which ultimately conducted to a civil war, and the temporary subversion of the regal authority.

Queen Elizabeth died in 1603, and was succeeded by James VI. of Scotland. From one who like him had been the member of a Presbyterian church, and had on more than one occasion expressed his decided attachment to its principles and worship, the Nonconformists, not without reason, expected more lenient treatment than they had met with in the preceding reign. But their expectations were bitterly disappointed. In compliance with their petitions, a conference was indeed appointed and held at Hampton Court, at which nine bishops and as many dignitaries were present on the one side, and four Puritan ministers, selected by James, on the other. The king himself presided and took part in the debate. But no good results ensued. The Nonconformist representatives were loaded with insults, and dismissed in such a manner as might well give birth to the darkest anticipations regarding the fate of the party to which they belonged. Shortly after, a few slight alterations of the national rubric were made, and a

proclamation issued requiring the strictest conformity. In 1604 the book of canons was passed by a convocation, at which Bishop Bancroft presided. [CONSTITUTIONS AND CANONS, ECCLESIASTICAL; ESTABLISHED CHURCH, p. 848.] It denounced severe temporal and spiritual penalties against the Puritan divines, and was followed up by unsparing persecutions. By 3 Jac. I. c. 4, § 32, a penalty of 10*l.* a month was imposed on any person who maintained, relieved, kept, or harboured in his house any servant, sojourner, or stranger who, without reasonable excuse, forbore to attend the church for a month together. By 21 Jac. I. c. 4, § 5, it was enacted that actions against persons for not frequenting the church and hearing divine service might be laid in any county at the pleasure of the informer.

In spite, however, of all the means employed for its eradication, the cause of Nonconformity advanced. In the church itself there were many of the clergy who held the Puritan opinions, though they deemed it inexpedient to make a very open display of them, and who sighed for a change; and the number of such was largely augmented by the alteration which James made in his creed, from Calvinism to the doctrines of Arminius.

Charles I. adopted towards the Nonconformists the policy of his predecessors. His haughty temper and despotic disposition speedily involved him in difficulties with his parliament and people. In carrying into execution his designs against Puritanism, he found an able and zealous assistant in Archbishop Laud, under whose arbitrary administration the proceedings of the Star Chamber and High Commission Court were characterised by great severity. Many Puritans sought for safety and quiet in emigration; and the colony of Massachusetts Bay was founded by them in North America. But a proclamation by the king put a stop to this self-banishment; and thus even the miserable consolation of expatriation was denied. Hundreds of Puritan clergymen were ejected from their cures, on account of their opposition to the Book of Sports, published in the previous reign. Calvinism was denounced by royal authority, and severe restrictions laid on the modes and times of preaching. But a change was approaching. In 1644 Laud was declared guilty of high treason and beheaded; and about five years after, Charles shared the same fate. The parliament abolished Episcopacy and everything in the church that was opposed to the model of the Genevan church.

During the Protectorate, Presbytery continued to be the established religion. Independency, however, prevailed in the army, and was in high favour with Cromwell. Under his government the sects of the Quakers and Baptists flourished; and other sects, some of which held the wildest and most visionary tenets, sprung into existence. All were tolerated. Episcopacy only was proscribed; and the Nonconformists, in their hour of prosperity, forgetful of the lessons which adversity should have taught them, directed against its adherents severities similar to those of which they themselves had been the objects.

The Restoration, in 1660, placed Charles II. on the throne of his ancestors, and led to the restitution of the old system of church government and worship. Another Act of Uniformity (14 Car. II. c. 4) was passed in 1662, by which all who refused to observe the rites as well as subscribe to the doctrines of the Church of England were excluded from its communion, and in consequence exposed to many disadvantages and to cruel sufferings. During the same reign was passed the Conventicle Act (16 Car. II. c. 4), which subjected all who presumed to worship God otherwise than the law enjoined to fine and imprisonment, and punished the third offence with banishment; the Five-Mile Act (17 Car. II. c. 2), which banished to that distance from every corporate town where they had formerly preached the Nonconformist clergy, and forbade them to officiate as schoolmasters except on condition of their taking the oath of passive obedience; and the Corporation Act (13 Car. II. st. 2, c. 1), which, though directed against the Roman Catholics, pressed with equal severity against Protestant dissenters, and excluded from offices in municipal corporations those who refused to receive the eucharist ac-

cording to the rubric of the Church of England. This was followed by the Test Act (25 Car. II. c. 2), which required all persons who held any office under the crown, civil or military, to take the oaths of supremacy and allegiance, to subscribe a declaration against transubstantiation, and to take the sacrament of the Lord's Supper according to the usage of the Church of England. This act, although directed against the Roman Catholics, equally affected the Nonconformists. The act 22 Car. II. c. 1, for preventing and suppressing seditious conventicles, punished every person above the age of sixteen who was present at a conventicle by a fine of five shillings for the first, and of ten shillings for every subsequent offence; and the penalty for teaching or preaching in a conventicle was made 20*l.* for the first, and 40*l.* for each subsequent offence. Persons who suffered conventicles to be held in their houses were made liable under this act to a fine of 20*l.*, and justices of the peace were empowered to break open doors where they were informed conventicles were held, and take the offenders into custody.

In the reign of William III. the Toleration Act (1 Wm. III. c. 18) gave immunity to all Protestant dissenters, except those who denied the Trinity, from the penal laws to which they had been subjected. The preamble alleges that "Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their majesties' Protestant subjects in interest and affection," be it enacted that none of the following statutes: 23 Eliz. c. 1; 29 Eliz. c. 6; 1 Eliz. c. 2, § 14; 3 Jac. c. 4; 3 Jac. c. 5; nor any other law or statute of this realm made against papists or popish recusants (except the 25 Car. II. c. 2, and the 30 Car. II. st. 2, c. 1), shall be construed to extend to any person dissenting from the Church of England that shall take the oaths of allegiance and supremacy and make and subscribe the declaration against popery required by 30 Car. II.; and such persons shall not be liable to any pains or penalties or forfeitures mentioned in 35 Eliz. c. 1, and 22 Car. II. c. 1. But if any assembly of persons who dissented from the Church of England were held in any place for religious worship with the doors locked during any time of their meeting, they were liable to the penalties of all the foregoing laws recited in the act. By § 8 it was provided that "no person dissenting from the Church of England, in holy orders, or pretended holy orders, or pretending to holy orders, nor any teacher or preacher of any congregation of dissenting Protestants, that shall make and subscribe the declaration aforesaid and take the said oaths," "and shall also declare his approbation of and subscribe the articles of religion mentioned in the statute of 13 Eliz. c. 1 (except the 34th, 35th, and 36th, and these words of the 20th article, viz. 'the church hath power to decree rights or ceremonies, and authority in controversies of faith, and yet'), shall be liable to any of the pains and penalties of the 17 Car. II. c. 2, or the penalties mentioned in the said act of 22 Car. II. c. 1, by reason of preaching at any exercise of religion, nor to the penalty of 100*l.* by 13 & 14 Car. II. c. 4, for officiating in any congregation for the exercise of religion permitted and allowed by this act."

The benefits conferred by the Toleration Act were subsequently much abridged by the Occasional Communion Bill, which excluded from civil offices those Nonconformists who, by communion at the altars of the Church, were by the provisions of the Test Act qualified to hold them; and by the Schism Bill (repealed by 19 Geo. III. c. 24), which restricted the work of education to certificated churchmen. By 5 Geo. II. c. 4, it was enacted that if any "mayor, bailiff, or other magistrate" should go in his gown or attended by the ensigns of his office to any public meeting for religious worship, he should be disabled not only from holding such office, but any public office or employment whatsoever. By the repeal of the Corporation and Test Acts in 1828 (9 Geo. IV. c. 17) [ESTABLISHED CHURCH, p. 851], and by the passing of the acts relating to registration and marriage dissenters have been allowed the peaceable enjoyment of their religion.

By the act 52 Geo. III. cap. 155, it is

provided that any congregation of Protestants amounting to twenty shall be registered in the Diocesan's court and at the quarter-sessions of the peace, under a penalty not exceeding 20*l.* nor less than 20*s.* The cost of registering at the quarter-sessions is two guineas. Nonconformist places of worship may be registered for the solemnization of marriages on application to the register-general by certificate, which must be signed by twenty householders who have used such place of worship for one year. (6 & 7 Wm. IV. c. 85, § 18.) Persons who preach or teach religion in a nonconformist place of worship shall, when required by a magistrate, take the oath and make the declaration specified in 19 Geo. III., professing themselves to be Christians and Protestants, and that they believe the Scriptures to contain the revealed will of God, and to be the rule of doctrine and practice. A nonconformist preacher or teacher may require a magistrate to administer the above-mentioned oath and to give him a certificate thereof. This certificate exempts him from serving in the militia and certain civil offices, in case he follows no other secular occupation except that of schoolmaster. No congregation is allowed to meet with the door locked or otherwise fastened, under penalty of a sum not exceeding 20*l.* nor less than 40*s.* When the place of worship is duly registered and the preacher or teacher has obtained a certificate in the manner already mentioned, any person who wilfully disturbs the minister or any one of the congregation, is liable, on conviction at the quarter-sessions, to a penalty of 40*l.* Dissenters from the church are now in some respects in a better position than those who belong to it, for members of the established church are not within the benefit of the Toleration Acts. [LAW, CRIMINAL, p. 217.]

It would be a task of some difficulty to enumerate the various sects which may be classed under the general head of Nonconformists. The chief denominations are the Presbyterians, Independents, Baptists, Wesleyan and Calvinistic Methodists, and Quakers. Most of the minor sects of dissenters may be considered as only subdivisions of or included in the above denominations. The entire number of Protestant dissenters in England and Wales has been estimated at 2,500,000, including the Methodists, who may amount to about 1,200,000. The number of marriages which are not celebrated in conformity with the rites of the Established Church represent a population of about 1,160,000. [MARRIAGE, p. 325.] The most numerous classes of dissenters in Scotland originated in a separation from the established church in 1740. They are called generally Seceders, and are divided into Burghers, Anti-Burghers, Original Burghers, and Original Seceders. There are also the body of dissenters called the Relief Church, who separated from the establishment in 1758; and the Free Church, who separated in 1842. The only considerable body of Scottish dissenters of older standing, with the exception of the Episcopalians, are the Cameronians, or Reformed Presbyterian Synod, who are the representatives of the Covenanters of the seventeenth century. A few years ago Mr. Macculloch calculated the whole number of dissenters in Scotland (exclusive of about 140,000 Roman Catholics) at about 360,000 or 380,000 persons. In Ireland, exclusive of the Roman Catholics, who alone outnumber the adherents of the established church in the proportion of 7½ to one, the principal dissenters are the Presbyterians, who are mostly confined to the province of Ulster. The Irish Presbyterians amount to between 600,000 and 700,000, and are more than twenty times as numerous as all the other bodies of dissenters in that country put together.

NON COMPOS MENTIS. [LUNACY.]

NON-RESIDENCE. [BENEFICE, p. 348.]

NORROY. [HERALD.]

NOTARY. This word is derived from the Roman name *notarius*, a person who was so called from his taking down in notes or writing (notæ) the words of a speaker. The *notarii* were in fact shorthand writers, and it is clear from many passages of ancient writers that they used symbols of abbreviation. It may be sufficient to quote the two following passages:—

'Hic et scriptor erit felix cui litera verbum est,
Quique notis linguam superat cursumque loquentis,
Excipiens longas nova per compendia voces.'
Manilius, *Astronom.*

'Currant verba licet, manus est velocior illis,
Nondum lingua suum, dextra peregit opus.'
Martial, *Epig.* xii. 208.

It seems that they were also employed to take down a man's will in writing. The notarii were often slaves. The word is also sometimes used to designate a secretary to the princeps or emperor. (Ausonius, *Epig.*, 136; Gregor. Nazianz., in the letter inscribed τῷ Νοταρίῳ; Augustin, lib. ii., 'De Doctrina Christiana;' *Dig.* 29, tit. 1, sec. 40; Lampridius, *Alex. Sev.*, 28; see also the references in Facciolati, *Notarius.*)

In the fourth century the notarii were called Exceptores, and were employed by the governors of the Roman provinces to draw up public documents. But the persons mentioned under the later Roman law, who corresponded most nearly to the modern notary, are called tabelliones; their business was generally to draw up contracts, wills, and other instruments. The forty-fourth Novel treats specially of the tabelliones (περὶ τῶν συμβολαιογραφῶν); and they are spoken of in various other parts of the Novels, and in the Code. (*Cod.* xi., tit. 53, &c.) It appears clear that as the word notarius is the origin of the modern term notary, so the tabellio is the person from whom were derived the functions of the modern notary public.

It is impossible to say when persons under the name and exercising the functions of notaries were first known in England. Spelman cites some charters of Edward the Confessor as being executed for the king's chancellor by notaries. (*Gloss.* tit. *Notarius.*) "Notaries," are mentioned with "procurators, attornies, executors, and maintainours," in the stat. of 27 Edward III. c. 1. They were officers or ministers of the ecclesiastical courts, and may therefore have been introduced into this country at a very early period. It is generally supposed that the power of admitting notaries to practise was vested in the archbishop of Canterbury by the 25 Hen. VIII. c. 21, § 4. The term of service and the manner of admission to practise are regulated by the 41 Geo. III. c. 79, amended by 6 & 7 Vict. c. 90. The first of these acts prescribed that no person in England should act as a public notary or do any notarial act unless he was duly sworn, admitted, and enrolled in the court wherein notaries have been accustomarily sworn, admitted, and enrolled. By 41 Geo. III. à person must also have been bound by contract in writing, or by indenture of apprenticeship, to serve as a clerk or apprentice for seven years to a public notary, or to a scrivener using his art and mystery according to the privilege and custom of the city of London, and also being a notary, who has been duly sworn, admitted, and enrolled; but in the preamble to the act 6 & 7 Vict. it is stated that "whereas doubts have arisen whether a public notary, being also an attorney, solicitor, or proctor, can have and retain any person to serve him as a clerk or apprentice in his profession or business of a public notary, and also at the same time as that of an attorney, solicitor, or proctor, and whether such service is in conformity with the provisions of the said act" (41 Geo. III. c. 79); and it is then enacted that persons who have so served are not disqualified; but no public notary can retain a clerk unless in actual practice; and by 6 & 7 Vict. a term of five years is sufficient. An affidavit of the execution of the contract must also be made and filed, as the act prescribes, in the proper court, and the affidavit must be produced and read at the time of the person's admission and enrolment as a public notary, in the Court of Faculties, which is the proper court for admitting and enrolling notaries. The proper persons for taking and filing the affidavits are the master of the faculties of the archbishop of Canterbury, in London, his surrogates or commissioners. The Master of the Faculties is authorized by the act 6 & 7 Vict. to make rules requiring testimonials or proofs as to the character, integrity, ability, and competency of persons who apply for admission or re-admission; but from his decision there is an appeal to the Lord Chancellor. Persons who act as notaries for reward, without being properly admitted and

enrolled, are liable for every offence to forfeit and pay the sum of 50*l.*; but British consuls abroad are empowered to perform notarial acts (6 Geo. IV. c. 87, § 20). The licence or commission for acting as a notary in England requires a stamp duty of 30*l.*, and in Scotland one of 20*l.* An annual certificate is also required. Notaries public who practise within the jurisdiction of the incorporated Company of Scriveners of London must become members of and take their freedom of that company under the acts of the 41st Geo. III. and 6 & 7 Vict. Instead of the oath of office formerly taken, the act 6 & 7 Vict. requires, in addition to the oaths of allegiance and supremacy, a new oath* for the honest and faithful discharge of their duties; the oaths of allegiance and supremacy are dispensed with in cases provided for by law; and a declaration is substituted for an oath under similar circumstances.

The original business of notaries was to make all kinds of legal instruments: they are often spoken of in former times as the persons who made wills (Shepherd's *Touchstone*, vol. ii., 407, Preston's ed.); but the attorney and solicitor have now got possession of this part of their business. In practice their business is now limited to the attestation of deeds and writings for the purpose of giving them such authenticity as shall make them admissible as evidence in other countries, but principally such as relate to mercantile transactions. It is also their business to make protests of bills of exchange. They also receive and take the affidavits of mariners and masters of ships. Notaries are mentioned with serjeants-at law, barristers, solicitors, attorneys, and others (44 Geo. III. c. 98, § 13), as the persons who may, for fee or reward, draw or prepare conveyances or deeds relating to real or personal estate, or proceedings in law or equity. A recent act (5th & 6th William IV. c. 70, § 5) provides that in cases of such actions or suits being brought in any court of law or equity within any of the territories or dependencies of Great Britain abroad, as in the act mentioned, public notaries, with other persons named in the act, are authorized to receive solemn declarations in writing, in the form prescribed by the act; and such declarations, when certified under their signature and seal, and transmitted, shall be allowed in all such actions and suits to have the same force as if the persons making the declarations had appeared and sworn or affirmed the matters therein contained in open court, or upon a commission issued for the examination of witnesses.

NOTE AND BILL. [MONEY, p. 358.]

NOTES, BANK. [BANK; MONEY, p. 355.]

NOVELLÆ. [JUSTINIAN'S LEGISLATION.]

NUISANCE, or NUSANCE, is a term derived immediately from the French *nuisance*, and ultimately from the Latin *nocere* "to hurt;" it signifies an unlawful act or omission which occasions annoyance, damage, or inconvenience to others. Nuisances may either be illegal acts or omissions of legal duties, and are of two kinds, *common* or *public* nuisances, which affect all persons, and *private* nuisances, which injure individuals. Among common nuisances are, annoyances in highways, public bridges, or navigable rivers, which are produced by rendering the passage inconvenient or dangerous, either positively by actual destruction, or negatively by omitting to repair in cases where the law imposes the duty of repairing.

Noxious processes of trade or manufacture in towns are common nuisances by reason of the danger to the health of the inhabitants; and brothels, disorderly alehouses, gaming-houses, and unlicensed stage-plays are held to be common nuisances, both on account of the injury alleged to be done by them to public morals and of the danger to the public peace

* The oath is as follows:—"I, A. B., do swear, That I will faithfully exercise the office of a Public Notary; I will faithfully make contracts or instruments for or between any party or parties requiring the same, and I will not add or diminish anything without the consent of such party or parties that may alter the substance of the fact; I will not make or attest any act, contract, or instrument in which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a public notary, according to the best of my skill and ability."

by drawing together dissolute persons. The remedy for a public nuisance is by presentment or indictment; and the offender, upon conviction, may be punished by fine and imprisonment. It is said also that in the case of a positive obstruction to the free enjoyment of a public right, it may form part of the judgment that the offender shall remove the nuisance at his own cost; "and it seemeth to be reasonable," says Hawkins (book i., ch. 75, sect. 15), that those who are convicted of any other common nuisance should also have the like judgment."

Private nuisances are annoyances which affect individuals only. Thus, if my neighbour builds a house so near to mine that he obstructs my ancient lights, or throws the water from his roof upon my house or land, this is a private nuisance; so also if he keeps noisome animals, or sets up an offensive trade or hazardous manufactory so near to my dwelling-house that the free enjoyment of my property is interrupted either by injury to my health or comfort, or the apprehension of danger. The remedy for a private nuisance is an action upon the case, in which damages may be recovered according to the injury sustained.

The *abatement* of a nuisance is literally the *beating* down or destruction of a nuisance. A man may abate a nuisance, that is, remove it, if he commits no breach of the peace in abating it, and does no more injury to the thing which is a nuisance than is necessary for abating it. If a gate or other obstacle is placed across a public road, any man may abate it; and if a man builds a wall, for instance, which obstructs a man's ancient lights, he may pull down the wall, subject to the condition already mentioned.

NULLIFICATION. [UNITED STATES, CONSTITUTION OF.]

NULLITY OF MARRIAGE. [MARRIAGE, p. 326.]

NUN. [MONK, p. 365.]

NUNCIO (*Nunzio*, in Italian; *Nuntius*, in Latin) signifies a messenger, but is used more particularly to designate the ambassadors sent by the pope to foreign courts. The nuncio is generally a prelate of the court of Rome; if a cardinal, he is styled "legate." Previous to the Council of Trent, the papal nuncios in foreign countries acted as judges, in the first instance, of matters which were within ecclesiastical jurisdiction; but since that time they have acted as judges of appeal from the decisions of the respective bishops, in those countries only which are subject to the decretals and discipline of the council of Trent. In other kingdoms and states, such as France, Austria, Tuscany, &c., which, though Catholic, hold themselves independent of the court of Rome in matters of discipline, the nuncio has no jurisdiction whatever, and has merely a diplomatic character, like the minister of any other foreign power. [LEGATE.] (Père Richard, *Bibliothèque Sacrée*, art. "Nonce.")

NUNCUPATIVE WILL. [WILL.]

O.

OATH. Oaths have been in use in all countries of which we have any exact information, and it is probable that there is no nation which has any clear notion of a Supreme Being, or of superior beings, that does not make use of oaths on certain solemn occasions. An oath may be described generally as an appeal or address to a superior being, by which the person making it engages to declare the truth on the occasion on which he takes the oath, or by which he promises to do something hereafter. The person who imposes or receives the oath, imposes or receives it on the supposition that the person making it apprehends some evil consequences to himself from the superior Being, if he should violate the oath. The person taking the oath may or may not fear such consequences, but the value of the oath in the eyes of him who receives or imposes it consists in the opinion which he has of its influence over the person who takes it. An oath may be taken voluntarily, or it may be imposed on a person under certain circumstances by a political superior; or it may be the only condition on which the assertion or declaration of a person shall be admitted as evidence of any fact.

The form of taking the oath has varied

greatly in different countries. Among the Greeks, a person sometimes placed his hand on the altar of the deity by whom he swore; but the forms of oaths were almost as various as the occasions. Oaths were often used in judicial proceedings among the Greeks. The Dicastæ, who were judges and jurymen, gave their verdict upon oath. The Heliastic oath is stated at length in the speech of Demosthenes against Timocrates (c. 36). It does not appear that the oath was always imposed on witnesses in judicial proceedings; and yet it appears that sometimes witnesses gave their evidence on oath: perhaps the oath on the part of witnesses was generally voluntary. (Demosth., Πρὸς Ἀφοβον Ψευδ, c. 16; Κατὰ Κόνωνος, c. 10; and Meier and Schömann, *Att. Process.*, p. 675.)

In the Roman jurisprudence, an oath was required in some cases from the plaintiff, or the defendant, or both. Thus the oath of calumny was required from the plaintiff, which was a solemn declaration that he did not prosecute his suit for any fraudulent or malicious purpose. The offence of false-swearing was *perjurium*, perjury; but it was considered a less offence in a party to a suit when the oath was imposed by a *judex* than when it was voluntary. It does not appear that in civil proceedings witnesses were necessarily examined on oath; but witnesses appear to have been examined on oath in the judicia publica, which were criminal proceedings. The title in the *Digest*, 'De Testibus' (22, tit. 5), makes no mention of the oath, though it speaks of punishment being inflicted on witnesses who bore false testimony.

The law of England, as a general rule, requires all evidence or testimony for judicial purposes to be given on oath, and all persons may be sworn as witnesses who, being questioned on the occasion of taking the oath, will declare their belief in the existence of God, in a future state of rewards and punishments, and who will further declare their belief that perjury will be punished by the Deity. This rule permits all persons, of all religious persuasions, who profess to have the necessary belief, to be sworn as witnesses; and it excludes all other persons from being witnesses. A Jew, a Mohammedan, and a Hindu may be sworn as witnesses, but they must severally take the oath in that form which is sanctioned by the usage of their country or nation, and which they severally consider to be binding. It follows that a person who professes atheism, or who does not profess such belief as is stated above, cannot be sworn, and consequently cannot be admitted to give testimony for judicial purposes. Children also who are too young to understand the nature of an oath, and adults who are too ignorant or too weak in intellect to understand what is meant by an oath, cannot be sworn as witnesses. The offence of declaring what is false, when a witness is examined upon oath, constitutes Perjury. [LAW, CRIMINAL, p. 25.]

Declarations made by a person under the apprehension of immediate death are generally admitted as evidence in judicial proceedings, when properly verified; for it is considered that the circumstances in which the person is placed at the time of making the declaration, furnish as strong motives for veracity as the obligation of an oath. Quakers also, in all civil cases, were allowed by the statute 7 & 8 Wm. III. c 34, to give their evidence on affirmation; and now the affirmation of Quakers and Moravians is admissible in all judicial proceedings, both civil and criminal. When a defendant in chancery is entitled to privilege of peerage, or as a lord of parliament, he is required to give his answer to a bill upon honour only; and in the case of a corporation, the corporate body defendants put in their answer under their common seal. Other defendants are required to put in their answer upon oath. For other matters connected with judicial evidence see EVIDENCE.

An oath is required in England in a great many cases besides judicial proceedings, as for instance, on admission to places of public trust, and on a variety of other occasions. By an act of the 5 & 6 Wm. IV. c. 62, the lords of the Treasury are empowered to substitute a declaration in lieu of an oath, solemn affirmation, or affidavit, in a variety of

cases, such as relate to the revenues of Customs or Excise, the Post-Office, and other departments of administration mentioned in the second section of this act. This act also substitutes declarations in lieu of oaths, solemn affirmations, and affidavits, in various other cases enumerated in the act; for instance, where a person seeks to obtain a patent under the Great Seal. Justices of the peace and others are (§ 13) prohibited from administering or receiving oaths, affidavits, or solemn affirmations, touching any matter or thing whereof such justice or other person has not cognizance or jurisdiction by some statute in force at the time; with certain exceptions however, specified in the latter part of this section. The object of this section was to put an end to the practice of administering and receiving oaths and affidavits voluntarily made in matters not the subject of any judicial inquiry, nor in anywise pending or at issue before the person by whom such oaths or affidavits were administered or received. But this act does not extend or apply to cases where the oath of allegiance then was or thereafter might be required to be taken by any person who may be appointed to any office; nor does it extend or apply to any oath, solemn affirmation, or affidavit, which then was or thereafter might be made or taken, or required to be made or taken, in any judicial proceeding, in any court of justice, or in any proceeding for or by way of summary conviction before any justice of the peace. (§ 7.) Persons who wilfully and corruptly make or subscribe any declaration, under the provisions of this act, knowing the same to be untrue in any material particular, are declared (§ 21) to be guilty of a misdemeanor. The statute of 1 & 2 Vict. c. 77, provides the same privilege of solemn affirmation for persons who have been Quakers or Moravians, and have ceased to be such, but still entertain conscientious objections to the taking of an oath, as they would have enjoyed if they were still Quakers or Moravians.

As oaths may be either voluntary or may be imposed by a political superior, so they may be imposed either on extrajudicial or on judicial occasions. Oaths which are imposed on occasion of judicial proceedings are the most frequent in this country, and the occasions are the most important to the interests of society. The principle on which an oath is administered on judicial occasions is this: it is supposed that an additional security is thereby acquired for the veracity of him who takes the oath. Bentham, in his 'Rationale of Evidence,' on the contrary, affirms that "whether principle or experience be regarded, the oath will be found, in the hands of justice, an altogether useless instrument; in the hands of injustice, a deplorably serviceable one;" "that it is inefficacious to all good purposes," and "that it is by no means inefficacious to bad ones."

The three great sanctions or securities for veracity in a witness, or, to speak perhaps more correctly, the three great sanctions against mendacity in a witness, are, the punishment legally imposed on a person who is convicted of false swearing, the punishment inflicted by public opinion or the positive morality of society, and the fear of punishment from the Deity, in this world or the next, or in both. The common opinion is, that all the three sanctions operate on a witness, though they operate on different witnesses in very different degrees. A man who does not believe that the Deity will punish false swearing can only be under the influence of the first two sanctions; and if his character is such that it cannot be made worse than it is, he may be under the influence of the first sanction only. Bentham affirms that the third sanction only appears to exercise an influence in any case, because it acts in conjunction with "the two real and efficient sanctions," "the political sanction and the moral or popular sanction;" and that if it is stripped of those accompaniments, its impotence will appear immediately.

Bentham's chief argument is as follows: "that the supposition of the efficiency of an oath is absurd in principle. It ascribes to man a power over his Maker. It supposes the Almighty to stand engaged, no matter how, but absolutely engaged, to inflict on every individual by whom the ceremony, after having been performed, has been profaned,—a

punishment (no matter what) which, but for the ceremony and the profanation, he would not have inflicted. It supposes him thus prepared to inflict, at command, and at all times, a punishment, which, being at all times the same, at no time bears any proportion to the offence." Again: "either the ceremony causes punishment to be inflicted by the Deity, in cases where otherwise it would not have been inflicted; or it does not. In the former case the same sort of authority is exercised by man over the Deity, as that which, in English law, is exercised over the judge by the legislator, or over the sheriff by the judge. In the latter case the ceremony is a mere form without any useful effect whatever."

The absurdity of this argument hardly needs to be exposed. He who administers the oath, by virtue of the power which he has to administer it, and the political superior who imposes the oath, may either believe or not believe that the Deity will punish false swearing, and it is quite immaterial to the question which of the two opinions they entertain. That which gives the oath a value in the eyes of him who administers it, or of that political superior who imposes it, is the opinion of the person who takes the oath; and if the individual who takes the oath believes that the Deity, in case it is profaned, will inflict a punishment which otherwise he would not inflict, the object of him who enforces the oath is accomplished, and an additional sanction against mendacity is secured. It matters not whether the Deity will punish or not, nor whether he who enforces the oath believes that he will punish or not: if he who takes the oath believes that the Deity will punish false swearing, that is sufficient to show that the oath is of itself a sanction.

The fear of legal punishment is admitted by Bentham to be a sanction against mendacity. But the legal punishment may or may not overtake the offender. Legal punishment may follow detection, but the perjury may not be detected, and therefore not punished. Is the oath, or would a declaration without oath be, "a mere form without any useful effect whatever," because the legal punishment may not, and frequently does not overtake the offender? When a Greek or a Roman swore by his gods, in whose existence he believed, and who, being mere imaginations, could not punish him for his perjury, was not his belief in their existence and their power and willingness to punish perjury a sanction against mendacity? All antiquity at least thought so.

There are occasions on which oaths are treated lightly, on which he who imposes the oath, he who takes it, and the community who are witnesses to it, treat the violation of it as a trivial matter. Such occasions as these furnish Bentham with arguments against the efficacy of oaths on all occasions. Suppose we admit, with Bentham, as we do merely for the sake of the argument, that "on some occasions oaths go with the English clergy for nothing;" and this, notwithstanding the fact, which nobody can doubt, "that among the English clergy believers are more abundant than unbelievers." The kind of oaths "which go for nothing" are not mentioned by Bentham, but they may be conjectured. Now, if all oaths went for nothing with the clergy, or with any other body of men, the dispute would be settled. But this is not the fact. If in any way it has become the positive morality of any body of men that a certain kind of oath should go for nothing, each individual of that body, with respect to that kind of oath, has the opinion of his body. He does not believe that such oath, if broken, will bring on him divine punishment, and therefore such oath *is* an idle ceremony. But if there is any oath the violation of which he thinks will bring on him divine punishment, his opinion as to that kind of oath is not at all affected by his opinion as to the other kind of oath. Now, oaths taken on judicial occasions are by the mass of mankind considered to be oaths the violation of which will bring some punishment some time, and therefore they have an influence on the great majority of those who take them. Whether society will in time so far improve as to render it safe to dispense with this cere-

mony in judicial proceedings, cannot be affirmed or denied; but a legislator who knows what man now is, will require better reasons for the abolition of judicial oaths than Bentham has given.

How far the requisition of an oath may be injurious in excluding testimony in certain cases, and how far oaths on solemn and important occasions may be made most efficacious, and in what cases it may be advisable to substitute declarations in lieu of oaths, are not matters of consideration here. It is enough here to show that an oath is a sanction or security to some extent, if the person who takes it fears divine punishment in case he should violate it; and that this, and no other, is the ground on which the oath is imposed.

Indeed it is evident that in English procedure the professed opinion or belief of the person who takes the oath is the only reason for which courts of justice either admit or refuse to receive his evidence; and this is shown by the questions which may be put to a witness when he comes to deliver his evidence in a court of justice.

There is some difficulty in stating accurately how far oaths were required from witnesses in Roman procedure under the republic and the earlier emperors. In addition to what has been stated, the reader may refer to Cicero, *Pro Q. Rosc. Comoed.*, c. 15, &c.; and Noodt, *Op. Omn.*, ii. 479, 'De Testibus.' By a constitution of Constantine, all witnesses were required to give their testimony on oath; and this was again declared by a constitution of Justinian. (*Cod.* 4, tit. 20, s. 9, 16, 19.)

Many persons conscientiously object to the taking of an oath on religious grounds, and particularly with reference to our Saviour's prohibition (*Matth.* v. 33). On the subject of oaths in general the reader may consult Grotius, *De Jure*, B. & P., lib. ii, c. 13; Paley's *Moral Philosophy*; Tyler's *Origin and History of Oaths*; the *Law Magazine*, vol. xii.; and the work of Bentham already referred to.

OFFERINGS. [TITHES.]

OFFICE FOUND. By the common law of England, where the king is entitled, upon the occurrence of certain events, to take possession of real or personal property previously belonging to a subject, the facts upon which the king's title accrues must be first ascertained by an inquisition or inquest of office. This inquiry is executed by some officer of the crown, such as the escheator, coroner, or sheriff, or persons specially commissioned for the purpose, and the facts are ascertained by a jury of an indeterminate number, but consisting usually, though not necessarily, of twelve men. Such inquests were much more frequent before the abolition of military tenures, when inquisitions *post mortem* were instituted upon the death of any of the king's tenants, to inquire of what lands he died possessed, and of any other matters tending to establish the king's rights respecting the property of the deceased. [JURY.] When an inquisition of this kind has been executed and returned, it is said to be *an office found*. Thus where treasure has been discovered under circumstances which do not give it to the owner of the land, an inquest is held, and the king, upon office found, takes it; and where a person of illegitimate birth dies intestate, the king (if he is the immediate lord of the fee), upon office found, is entitled to all his land: in the latter case however the land is generally granted again to some person or persons who can make out the most reasonable claim to it. So also the verdict of a jury upon a coroner's inquest, declaring a person to have died *ut felo de se*, is an office found, upon which the king becomes entitled to take possession of the property of the deceased.

OFFICERS OF THE ARMY AND NAVY. [COMMISSION; AIDE-DE-CAMP; ADJUTANT; ADMIRAL; CAPTAIN; COLONEL; CORNET; ENSIGN; GENERAL, &c.]

OFFICIAL. [ARCHDEACON, p. 180.]

OLIGARCHY. [DEMOCRACY; GOVERNMENT.]

OPTION, ARCHBISHOP'S. [BISHOP, p. 379.]

ORDER IN COUNCIL. This expression is chiefly known in connection with the measures taken by the British

government in 1807 and 1809, in retaliation of the Berlin and Milan decrees of Napoleon, by which Great Britain and her colonies were declared in a state of blockade. The measure of retaliation had the effect of treating as enemies, not only France and its dependencies, but all who, either voluntarily or by compulsion, gave obedience to the decrees. A full account of the matter will be found under the head BLOCKADE. There has been much dispute as to the legality of these orders. The law of nations has acknowledged the blockading of lines of coast against the commerce even of neutral or friendly powers, when the object is to punish the state so blockaded, and the belligerent power has a force on the spot sufficient to make the blockade actual and physical. But where a belligerent power goes beyond this, and declares some place at which it has no armed force under a state of blockade, it simply issues an edict against the freedom of commerce, authorizes its cruisers to seize vessels which are not impeding any warlike operations, and covertly declares hostilities against the states affected by the fictitious blockade. The law of nations has never countenanced such a licence, and it came to be a question whether these orders in council, being thus not of an executive but of a legislative character, were legal, the Privy Council not having any legislative authority in this country, except in so far as it may be authorized by act of parliament. In favour of the orders, it was maintained that they were merely part of the execution of the royal prerogative of declaring and conducting war, and that they were methods of legitimate retaliation, by which individuals undoubtedly suffered, as individuals always must where warlike operations are conducted on a large scale. Analogy was taken from the exercise of the crown's prerogative during war, in prohibiting the supplying of the enemy with commodities contraband of war—an interference with the freedom of commerce justified by the necessity of the case. But these arguments did not satisfy the country generally that the measure, if it was a right one, should not have been accomplished by Act of Parliament instead of Order in Council.

It is difficult to draw the line between what may and what may not be accomplished by Order in Council. There have been various occasions on which, in cases of emergency, orders in council have been issued contrary to law, and those who have been concerned in passing, promulgating, or enforcing them have trusted to legislative protection, and taken on themselves the personal responsibility of the proceeding. In the year 1766, when there was a deficient harvest and the prospect of famine, an order in council was issued prohibiting the exportation of corn from the British ports. In the immediately ensuing parliament the act 7 Geo. III. c. 7, was passed for indemnifying all persons who had advised the order or acted under it, and for giving compensation to all who had suffered by its enforcement. The act in reference to the order declared, "which order could not be justified by law, but was so much for the service of the public, and so necessary for the safety and preservation of his majesty's subjects, that it ought to be justified by act of parliament." All orders restricting trade—unless when they are within the justification of the national war policy—and all orders suspending the operation of any act of parliament, would require an act of indemnity. There are some matters affecting trade and the revenue, as to which orders in council are specially authorized by act of parliament. Thus in the Customs' Duties Act, when there is any scale of duties to be paid by the subjects of a state having a treaty of reciprocity with Britain, it is enacted that the treaty of reciprocity, and consequently the right to import at the lower duties, shall be declared by order in council. By the International Copyright Act, 1 & 2 Vict. c. 59, the countries which, by their conceding a term of copyright to works published in Britain are to enjoy a similar privilege here, may be declared by order in council.

ORDERS OF KNIGHTHOOD. [KNIGHTHOOD.]

ORDINARY. This term commonly signifies the bishop of the diocese,

who is in general, and of common right, the ordinary judge in ecclesiastical causes arising within his jurisdiction. (Lindwoode's *Provinciale*, lib. i., tit. 3.) The term is also applied to the commissary or official of the bishop, and to other persons having, by custom or peculiar privilege, judicial power annexed to their offices or dignities. Thus an archdeacon is an ordinary. A bishop therefore is always an ordinary, but every ordinary is not a bishop.

The term is derived from the Canonists, and is in common use in several European countries. Since the Lateran Council, when the apostolic see assumed the power of presenting to benefices, the pope has sometimes been called by canonical writers "ordinarius ordinariorum." In England the probate of wills, the granting of letters of administration, the admission, institution, and induction of parsons, and several other authorities of a judicial nature, are vested in the ordinary. The judex ordinarius of the canon and of the later Roman law is a judge who has judicial cognizance in his own proper right, as such judge, of all causes arising within the territorial limits of his jurisdiction. He is opposed to the judex delegatus, or extraordinarius, whose jurisdiction extends only to such causes as are specifically delegated to him by some superior authority. (Ayliffe's *Parergon*, p. 309; Justin., *Novell.* 20, c. 3, and 112, c. 31.) With reference to this distinction, it became usual to apply the term "ordinary" to bishops, who, when acting in their judicial character in ecclesiastical causes, have strictly an ordinary jurisdiction; and we find it used in this sense by Bracton and the earliest writers upon English law.

OSTRACISM. [BANISHMENT, p. 252.]

OUTLAWRY. This term, which is derived from the Saxon *Utlagh* or *Uthlagh*, signifies an exclusion from the benefits and protection of the law. In English law it is a punishment consequent upon a flight from justice, or a contumacious neglect or refusal to appear and answer for a civil or criminal transgression, in obedience to the process of a court of competent jurisdiction. By the laws of the Anglo-Saxons, continued after the Conquest, an outlaw, who was also called *laughlesman* (lawless man) and *frendlesman* (friendless man), lost his *liberam legem*, and had no protection from the frankpledge in the decennary in which he was sworn. A boy under twelve years of age, not being sworn to his law in the decennary, could not be outlawed; and for the same reason a woman who contumaciously refused to appear could not be outlawed, but was said to be *waived* (derelicta), and incurred the same penal consequences as an outlaw.

For centuries after the Conquest an outlaw was said "Gerere caput lupinum," and might be lawfully killed by any one who met him. Bracton, who wrote about the end of the reign of Henry III., declares that an outlaw "might be killed by all, especially if he defended himself or ran away, so that it was difficult to take him; but that when once taken, his life and death were in the king's hands; and if any man then killed him he must answer for it as in the case of any other homicide." (Bracton, lib. iii. cap. 13.) That this practice and law prevailed in his time is further proved by another passage in Bracton (lib. iii. c. 14). Fleta, who wrote rather later than Bracton, mentions the same law, and justifies it. (Fleta, lib. i. cap. 27.) Lord Coke (Co. Lit., 128 *b*, where he refers to the 'Year Book,' 2 Ass., pl. 3) appears to be wrong in claiming for the judges in the reign of Edward III. the merit of abolishing this barbarous practice. The 'Year Book' as cited, and another report of the same case in Fitzherbert's 'Abridgement,' tit. Corone, 148, contain no such resolution, and the case from which it is obvious that Lord Coke derived the above statement, is clearly an authority to show the continuance of the old practice; indeed so late as the reign of Philip and Mary, Staunforde, in his 'Pleas of the Crown,' mentions the above case, and speaks of the law upon this subject as doubtful. However, though the technical quality of homicide so committed may have been question-

able, there is no doubt that the practice of killing outlaws like wild beasts had ceased long before Staunforde's time.

The consequences of outlawry are the forfeiture of goods and chattels universally. Where it takes place upon a prosecution for *treason or felony*, it amounts to a conviction and attainder of the offence charged, and therefore all the outlaw's real property, as well as his personalty, is forfeited. Where it takes place upon criminal prosecutions for misdemeanors, or upon civil actions, the profits only of the defendant's lands are, during his life, forfeited to the crown. The outlaw, having neither the privilege nor protection of the law, is incapable of maintaining any action real or personal; at the common law he could not be a juror, as he was not "liber et legalis;" and he is expressly excluded from acting as a juror by stat. 6 Geo. IV. c. 50, § 3.

No person can be outlawed without sufficient notice of the process of the court, and without satisfactory proof of his contumacy. It is therefore required, in the first place, that in all civil cases, and in all indictments for misdemeanors, and probably also for felonies not capital, three consecutive writs of capias, each issuing upon the return of the former one, should be directed to the sheriff of the county in which the proceeding is commenced. If upon all these writs the return is non est inventus, a writ of *exigent* or *exigi facias* is sued out, which requires the sheriff to cause the defendant to be called or *exacted* in five successive county courts, or in five successive hustings, if in London; and if he renders himself, to take him. But if he does not appear at the fifth county court or husting, judgment of outlawry is forthwith pronounced against him by the *coroners*, who are the judges for this purpose in the county-court, and by the recorder if the proceedings are in London (Co. Litt., 288 *b*; Dyer, 223 *a*, 317 *a*); and the fact of such judgment having been given is returned by the sheriff upon the exigent. Upon this return a writ of capias utlegatum may be issued into any county to arrest the defendant, and other process follows against his property. As an additional security that a man shall not be outlawed without notice of the process to which he is required to appear, the several statutes provide that a writ of proclamation shall issue at the same time with the exigent into the county where the defendant dwells, commanding the sheriff to make three proclamations of him in notorious places in the county a month before the outlawry shall take place.

The only difference between the proceedings in outlawry upon an indictment of treason or capital felony and those upon civil actions and prosecutions for inferior crimes, is that one capias is in the former case sufficient before the award of the exigent.

An outlawry may be reversed by writ of error, in which the party may avail himself of errors either of law or fact; and the slightest mistake in any part of the proceedings will avoid the outlawry. It was formerly necessary to procure a pardon from the crown, by which the outlaw was restored to his law, and became to all intents and purposes "inlagatus." In modern times it is the usual course for the courts to reverse outlawries upon motion, without obliging the parties to sue out writs of error or procure pardons.

OVERSEER, an officer appointed by justices of counties or boroughs, for parishes under the 43 Eliz. 2, and for townships under the 13 & 14 Car. II. 12. They cannot be less than two nor more than four for one parish or township. Churchwardens are ex-officio overseers of the poor, but an appointment of a churchwarden as overseer to act in both capacities is void. The duties of an overseer and of an assistant-overseer are identical, the latter being a paid officer, appointed under the 59 Geo. III. 12, where, on account of the amount of the population, the extent of the parish, or other difficulties, the services are onerous and troublesome. Assistant overseers to take the duties of five or six townships are also appointed by the Commissioners under the Poor-Law Act. Before the passing of the Poor-Law Amendment Act, it was the business of an overseer as well to appropriate and distribute as to make out

and collect the poor-rates. Where no select vestry existed, he was judge of the necessities of applicants for and receivers of parochial relief, an appeal in case of refusal lying before magistrates in petty sessions. We will now describe the present duties of an overseer in parishes subjected to the operation of the Poor-Law Amendment Act: 1, Relating to the management of the poor and to the board of guardians of the district; 2, With respect to returning lunatic lists (where the township for which he acts is not in union under the Poor-Law Act, but where it is in union the clerk of the Guardians by the 5th and 6th Vic. cap. 57, sec. 6, is to make out the lunatic lists), and jury lists; 3, With reference to the registration of voters.

1. The Poor-Law Amendment Act limited the authority of an overseer of the poor, by transferring to a board of guardians such portion of his duties as related to ascertaining fit objects for parochial relief, the amount of relief to be given, and the manner of giving it. With such services he has now little to do. His first business on entering upon his office is to possess himself as soon as he is able of the parish books and documents, including all old orders of bastardy under which money is payable; to collect outstanding arrears, if any; and to settle the balance with the outgoing overseer. He will probably be soon called upon to levy a rate, which must be made by a majority of parish-officers. On refusal by any party to pay the rate being sworn to by the overseer, a summons will be granted against the defaulter by a magistrate. An appeal may be carried by the rate-payer to the district petty sessions, on the ground of inequality, unfairness, or incorrectness, if at least seven days' notice be given to the collector or overseer under the hand of the party appellant; or to the quarter-sessions, on the ground that the property is not rateable. It is then the duty of the overseer to appear before the justices to support the validity of the rate. He must collect all arrears that he is able from the fathers of bastard children under the old law, and keep the weekly payments from them currently paid up. In cases of refusal to pay, or other difficulties, he should apply to the Board of Guardians for advice before taking the proceedings justified by law. He is only to give relief to the poor "in any case of sudden or urgent necessity;" and, as soon as he is able, is to report to the relieving-officer his having given such relief. The relief may not be given in money, but only in articles of absolute necessity. The orders of the Poor-Law Commissioners further set forth, that "If any overseer shall receive an order directing relief to be given to any person (duly certified, under the hand and seal of one of the signing justices, to be of his own knowledge wholly unable to work), without requiring that such person shall reside in any workhouse, he shall forthwith transmit the same to the relieving-officer of his township or place, to be laid before the Board of Guardians at their next meeting." At the end of each quarter the overseer will receive a notice from the auditor of the union or district auditor to attend him, that his accounts may be examined and audited, and the overseer's duties as to this are pointed out in the 33rd section of the 7 & 8 Vic. cap. 101. At these times he should take with him all his parish books, letters, and papers, to any of which reference may possibly be made. He is to manage and collect the rents of parish property; and at the end of the Michaelmas quarter he should make out a "terrier of the lands and tenements, and an inventory of stock, moneys, goods, and effects belonging to such parish or place, or given or applicable in aid of the poor-rates thereof." The accounts of overseers must be submitted to two magistrates for their examination within fourteen days after the 25th of March, in cases where district auditors are not appointed, but where that has been done the power of justices to audit is taken away by 7 & 8 Vic. cap. 101, sec. 37. The proceedings for the election of a guardian or guardians in their district are now conducted by the clerk to the guardians, and he must attend the clerk and render assistance. (See the 15th sec. of 7 & 8 Vic. cap. 101.)

By the 7 & 8 Vic. cap. 101, sec. 7, the overseer is not to interfere as to applications in bastardy, except in cases of the death or incapacity of the mother.

2. At their first petty-sessions after the 15th of August, the justices of the district issue their warrants to the overseers to return lists of all insane persons chargeable in their respective parishes. It is the duty of the overseer to make this return, as well as, in the case of any insane person becoming chargeable, to give notice within seven days to some magistrate acting for that division of the county, but this only applies to parishes and townships which are *not in union* under the Poor-Law Act. In July he will receive from the high constable of the division a precept, containing full information of his duty respecting the return of a list of persons liable to serve on juries. This return is to be made before the 1st of September.

3. With regard to registration, his business is as follows. On the 20th of June in each year, he will affix on the church door a notice, directing fresh claimants for votes to make formal claim in writing to the overseer on or before the 20th of July. His next step is to make out for each parish an alphabetical list of the names of all persons already in the register, together with those of all claimants. This list must be completed by the last day of July, and affixed on the church or chapel, and, if there be no church or chapel, in some conspicuous situation, on the two first Sundays in August. He must give copies of this list for a reasonable payment, if required. On or before the 25th of August, objections to votes may be received. An alphabetical list of objections is to be posted, as before, on the two Sundays next preceding the 15th of September. When the revising barrister holds his court, it will be the duty of the overseer to attend. His expenses arising from his duties connected with registration are defrayed from the poor-rate. So far with regard to registration of county voters. Overseers of a parish situated in a borough, by the last day of July, without any claims being made, must make an alphabetical list of persons having a 10*l.* qualification in respect of premises situated in their parish. A similar list of freemen must be made where freemen are entitled to votes. These lists must be fixed as above. Claims from persons omitted and objections are received on or before the 25th of August, and lists of these claims, &c. are to be posted on the two Sundays next preceding the 15th of September. The forms according to which overseers are to frame their notices are to be found in the acts of parliament whence their obligations arise, and are collected in a useful pamphlet, from which this article has been compiled, entitled 'The Duties of Overseers of the Poor, and Assistant Overseers,' by George Dudgeon, formerly Clerk to the Guardians of the Settle Union.

OWNERSHIP. [PROPERTY.]

OYER AND TERMINER. These words in ancient law French denote a commission which establishes a court of criminal judicature, the distinguishing character of which is described by them. The substance of the commission, or *writ*, as it was anciently called, is an authority given by the king to certain persons to *hear and determine* (oyer et terminer) certain specified offences. The commissioners of oyer and terminer are the most comprehensive of the several commissions which constitute the authority of the judges of assize on the circuits. On these occasions they are usually directed to the lord chancellor, several high officers of state, two judges of the courts of Westminster, the king's counsel, the serjeants-at-law, and the associates; but (excepting on the Northern Circuit, where all the commissioners but one are of the *quorum*) the judges, king's counsel, and serjeants are always of the *quorum*, so that the other commissioners cannot act without the presence of one of them. Justices of oyer and terminer at the assizes have, by the terms of their commissions, jurisdiction to inquire into the truth of all treasons, misprisions of treason, felonies, and misdemeanors committed within the several counties and places which constitute their circuits, and also to *hear and determine* the same on certain days and at certain places to be appointed by themselves. Besides these ordinary courts of oyer and terminer at the assizes, special commissions of oyer and terminer are sometimes issued upon urgent occa-

sions, where offences of a dangerous tendency have been committed in particular districts, and where the public peace and security require immediate inquiry and punishment. So also special commissions have been sometimes issued where from particular circumstances the incompetency of the ordinary tribunals would occasion a failure of justice. A remarkable instance of this kind occurred when Mr. Dunning, afterwards Lord Ashburton, was recorder of Bristol and sole criminal judge under the charters of the city. A forgery of Mr. Dunning's name to a bill of exchange having been committed in Bristol, he properly refused to try a case in which he was a party interested, and it was therefore necessary to issue a special commission for the purpose of hearing and determining the single offence. Upon special commissions of oyer and terminer the course of the proceedings is nearly the same as upon ordinary or general commissions.

P.

PARCENERS AND COPARCENERS. [DESCENT.]

PALACE COURT. [COURTS.]

PALATINE COUNTIES. Two of the English counties, Chester and Lancaster, are counties palatine. The county of Pembroke, in Wales, was also a county palatine; but its palatine jurisdiction was taken away by 27 Henry VIII., c. 26. The archbishop of York, previously to the reign of Elizabeth, claimed to be a count palatine within his possessions of Hexham and Hexhamshire, in Northumberland, and is so termed in some ancient statutes; but by the stat. 14 Eliz., c. 13, it was declared that this district had no palatine jurisdiction or privileges.

Counts palatine were of feudal origin; and a reference to their history will clearly explain the meaning of the title, and also many of the incidents of these territorial dignities in England. Selden says "the name was received here doubtless out of the use of the empire of France, and in the like notions as it had in that use" (*Titles of Honour*, part 2). In the court of the ancient kings of France, before the time of Charlemagne, there was a high judicial officer, called Comes Palatii, a kind of master of the household, whose functions nearly resembled those of the Præfectus Prætorio in the Roman empire. This officer had supreme judicial authority in all causes that came to the king's immediate audience. (Selden's *Titles of Honour*, part ii., chap 33.) When the seat of empire was transferred to France, this title and office still continued, but the nominal dignity as well as a degree of jurisdiction and power analogous to those of the ancient functionary were also given to a different class of persons. When the king chose to confer a peculiar mark of distinction upon the holder of a certain fief or province, he expressly granted to him the right to exercise the same rank, power, and jurisdiction within his fief or province as the comes palatii exercised in the palace. Hence he also obtained the name of Comes Palatii or Palatinus, and by virtue of this grant he enjoyed within his territory a supreme jurisdiction, by which he was distinguished from the ordinary comes, who had only an inferior and dependent authority within his district or county. This was the origin of the distinction between the Pfalzgraf and the Graf in Germany, and between the count palatine and the ordinary count or earl in England. Selden says that he had not observed the word "palatine" thus used in England until about the reign of Henry II.

The counts palatine in England had jura regalia within their counties, subject only to the king's general superiority as suzerain; or, as Bracton expresses it (lib. iii., cap. 8), "regalem habent potestatem in omnibus, salvo dominio Domino Regi sicut principi." They had each a Chancery and Court of Common Pleas; they appointed their judges and magistrates and law officers; they pardoned treasons, murders, and felonies; all writs and judicial proceedings issued and were carried on in their names; and the king's writs were of no force within the counties palatine. Many of these powers, such as the appointment of judges and magistrates, and the privilege of pardon-

ing, were abolished by 27 Henry VIII., cap. 24, which also provided that all writs and process in counties palatine should from that time bear the king's name. The statute however expressly stipulates that writs shall be always witnessed in the name of the count palatine.

The county of Chester is a county palatine by prescription, being commonly supposed to have been first given with regal jurisdiction by William I. to Hugh d'Avranches. (Selden's *Titles of Honour*, part ii.) It was annexed to the crown, by letters patent, in the reign of Henry III., and since that time it has always given the title of Earl of Chester to the king's eldest son, and is preserved in the crown as a county palatine when there is no Prince of Wales.

The county of Lancaster appears to have been first made a county palatine by Edward III., who in the twenty-fifth year of his reign, in his patent of creation of Henry the first duke, granted him the dignity of a count palatine, and afterwards, in the fiftieth year of his reign, granted the same dignity by letters patent to his son John, Duke of Lancaster. Henry IV. was Duke of Lancaster by inheritance from his father John of Gaunt, at the time of his usurpation, but he avoided the union of the duchy with the crown by procuring an act of parliament, which declared that the duchy of Lancaster should remain with him and his heirs for ever, in the same manner as if he had never been king of England. Upon the attainder of his grandson Henry VI., soon after the accession of Edward IV., the duchy became forfeited to the crown, and an act of parliament passed to incorporate the county palatine with the duchy of Lancaster, and to vest the whole in Edward IV. and his heirs, for ever. Another act of parliament passed in the reign of Henry VII., confirming the duchy to the king and his heirs for ever; and from that time it has continually been united to the crown.

Durham is a county palatine by prescription; but it is probable that the palatine jurisdiction did not exist long, if at all, before the Norman Conquest. (Surtees's *History of Durham*, Introd., p. 15.) "There is colour to think," says Selden (*Titles of Honour*, part ii., c. 8), "that the palatine jurisdiction began then in Bishop Walcher, whom King William I. made both episcopus and dux provinciæ, that he might frænare rebellionem gentis gladio, et reformare mores eloquio, as William of Malmesbury says." Durham continued as a county palatine in the hands of a subject till the year 1836, the bishop having been prince palatine, and possessing jura regalia till that time. By the stat. 6 & 7 Will. IV., c. 19, the palatine jurisdiction was separated from the bishopric and transferred to William IV., and vested in him and his successors as a franchise separate from the crown, together with all forfeitures, mines, and jura regalia. The jurisdiction of the courts was expressly excepted from the operation of the act.

PANDECT. [JUSTINIAN'S LEGISLATION.]

PANEL. This term denotes a small schedule of paper or parchment containing the names of jurors returned by the sheriff or other ministerial officer for the trial of issues in courts of common law. The enrolment of the names upon this schedule is called *impanelling* a jury; the ministerial officer is also said to *array* the names in the panel. The etymology of the term is doubtful: Sir Edward Coke says, "Panel is an English word, and signifieth a little part, for a *pane* is a part, and a panel is a little part.' (Co. Litt., 158 b.) Spelman derives the word from *pagella*, a little page, supposing the *g* to be changed to *n*. (Spelman's *Gloss.*, tit. 'Panella'). Both these etymologies seem to be incorrect. In the old book called 'Les Termes de la Ley,' *panel* is said to come from the French word *panne*, a skin; whence in barbarous Latin might come *panellus* or *panella*, signifying a little skin of parchment. This would denote the jury panel pretty accurately, and the history of its appearance as an expression in English procedure is consistent with its derivation from the French.

In the earliest records of the forms of jury-process, as given by Glanville, it appears that the sheriff was commanded by the writs in certain real actions to cause to be imbreviated (imbreviari facere) the

names of the jurors by whom the land in question was viewed. But at this time the word *panel* never occurs, nor is it used by Bracton, Fleta, or Britton, nor in any statute earlier than 20 Edw. III. c. 6. (1349), which forbids sheriffs from putting suspected persons in *arrays of panels*. This was precisely the period at which the French language began to be fully introduced into our law proceedings. (Luder's 'Tract on the Use of the French Language in our Ancient Laws.') This coincidence renders it not improbable that the word *panel*, from *panelle* and *panne*, may have been introduced with many other French terms about this period.

In Scotch criminal law, the accused, who is called a defender till his appearance to answer a charge, is afterwards styled the *pannel*. The etymology of this word also is doubtful. (Jameson's *Dictionary*.) But it is possible that it may have the same origin as our English word, as in Scotch proceedings a prisoner is sometimes said to be *entered in pannel* to stand trial. (Arnot's *Criminal Trials*, p. 12.)

PAPIST. [LAW, CRIMINAL, p. 217, &c.; PARENT; ROMAN CATHOLICS.]

PAR OF EXCHANGE. [EXCHANGE, BILL OF, p. 867.]

PARDON. According to the laws of most countries, a power of pardoning, or remitting the penal consequences of a conviction for crimes, is vested in some person. The utility of such a power has been doubted, upon the ground that it supposes an imperfect system of criminal law, and that every instance of its exercise is the proclamation of an error either in the law itself or in the administration of justice. (Beccaria, chap. 46.) There is no doubt that the nearer a penal system approaches to perfection, the fewer will be the occasions for resorting to extraordinary remissions of the executions of the law; but considering the numerous causes of erroneous decision, arising not only from the imperfection of laws themselves, but from the infinite sources of error in the instruments and means by which they are administered, it seems to be desirable that some power should exist which may by timely interference correct error in cases where it cannot be corrected by any appellate tribunal. At the same time it is evident that such a power should be circumscribed and defined, as far as its nature will admit, and exercised with the utmost caution. By the law of England, besides pardons by act of parliament, the power of granting pardons for crimes is exclusively vested in the king as a branch of his prerogative.

Formerly, Counts Palatine, Lords Marchers, and others who claimed *jura regalia* by virtue of ancient grants from the crown, assumed the authority to pardon crimes; but by the stat. 27 Henry VIII., c. 24, this power was entirely abolished, and the sole right of remitting the sentence of the laws was permanently vested in the king. The power of pardoning is applicable in all cases in which the crown is either concerned in interest or prosecutes for the public. The only exception to this rule is contained in the Habeas Corpus Act (31 Car. II., c. 2, s. 12), by which persons convicted of signing commitments of British subjects to foreign prisons are declared to incur the penalties of a *præmunire* and to be "incapable of any pardon from the crown."

The crown has however no power to pardon any offence in the prosecution of which a subject has a legal interest, a doctrine laid down by Bracton (lib. iii., p. 132). Thus in appeals of death, robbery, or rape, the king could not pardon the defendant, "because," says Sir Edward Coke, "it is the suit of the party to have revenge by death" (3 *Inst.*, 237). Upon the same principle, where an attaint was brought against a jury who had delivered a false verdict, and the party in whose favour it had been given was joined in the attaint, the king might pardon the *jury*, if convicted, because they were merely subject to an exemplary punishment; but he could not pardon the *party*, because he was liable to make restitution to the plaintiff who prosecuted the attaint. So also in indictments for common nuisances, where the public are interested as individuals or particular classes, or informations upon penal statutes, where the penalty or any part of it goes to the informer, or the party grieved,

the crown cannot pardon the offender. Formerly, the crown appears to have exercised without restriction the power of pardoning offenders impeached by the Commons in parliament (Blackstone's *Com.*, vol. iv., p. 400—Christian's *Note*); but the lawfulness of the exercise of this power during the proceedings was questioned by the House of Commons on the impeachment of the Earl of Danby in the reign of Charles II. (Howell's *State Trials*, vol. ii., p. 724); and by the Act of Settlement, 12 & 13 William III., c. 2, it was enacted "that no pardon under the great seal of England shall be *pleadable* to an impeachment by the Commons in Parliament." This statute however does not affect the power of the crown to pardon the offender after he has been found guilty upon the impeachment, and the proceedings are determined.

An effectual pardon from the crown must apply in express terms to the particular offences intended to be pardoned; and there must be no reasonable intendment, supplied by the recital in the pardon or otherwise, that the crown was deceived or misled as to any of the circumstances on which the grant was founded. Nor can any grant of a commission or protection by the king amount by implication to a pardon of any offence previously committed.

A pardon may be either absolute or subject to any condition which the crown may think proper to annex to it; and in the latter case, the validity of the pardon will depend upon the performance of the condition. Until the recent improvements in the criminal law of England, almost all felonies were nominally capital; and in the numerous cases where it was not intended that the sentence of death should be executed, the criminal obtained a pardon upon condition of his submitting to transportation or some other punishment. At the present day, where the crown interferes to mitigate or commute a sentence, the mode by which it is effected is by granting a conditional pardon.

It was formerly necessary that every valid pardon from the crown should be under the great seal; but by the stat. 7 & 8 Geo. IV., c. 28, s. 13, it is declared and enacted "that where the king's majesty shall be pleased to extend his royal mercy to any offender convicted of any felony, punishable with death or otherwise, and by warrant under his royal sign manual, countersigned by one of his principal secretaries of state, shall grant to such offender either a free or conditional pardon, the discharge of such offender in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal."

The effect of a pardon is not merely to prevent the infliction of the punishment denounced by the sentence upon the offender, but to give him a new capacity, credit, and character. A man attainted of felony can neither bring an action for damages nor be a witness or a juror in any legal proceeding; but upon receiving a pardon, all these legal disabilities are removed. In this respect a pardon by the law of England differs from the abolitio of the Roman law, to which in other points it bears a near resemblance. According to the latter, "Indulgentia, quos liberat, notat; nec infamiam criminis tollit, sed pœnæ gratiam facit." (*Cod.*, lib. ix., tit. 43.) By the English law a distinction is made as to the effect of a pardon where the incapacity is part of the legal sentence, and not merely a consequence of attainder, as in the case of perjury under the statute 5 Elizabeth, c. 9; where the incapacity or infamy is part of a statutory sentence, a pardon from the crown has been held not to restore the party, and in such a case nothing less than an act of parliament will have that effect. (Chitty's *Criminal Law*, vol. i. p. 776.) Some doubt has been expressed, and the point has not yet received a judicial determination, whether a royal pardon will fully restore a person convicted of a crime, such as perjury, which is considered infamous at the common law. This subject is elaborately discussed, and all the authorities carefully examined, in Mr. Hargrave's 'Argument on the Effect of the King's Pardon of Perjury.' (Hargrave's *Juridical Arguments*, vol. ii., p. 221; LAW, CRIMINAL, p. 223, 228.)

PARENT AND CHILD. This relation arises only from a legal marriage. The relation between parents and their illegitimate children is considered in the article BASTARD.

Parents are bound to maintain their legitimate children who are unable to maintain themselves owing to infancy or inability to work. This obligation extends to father and mother, grandfather and grandmother, if they are able to perform it. (43 Eliz. c. 2.) But such persons are only bound to furnish the children with the necessaries of life; and the penalty incurred in case of refusal is only 20s. per month. A husband is now (4 & 5 Wm. IV. c. 76) liable to maintain the children of his wife, born before marriage, whether they are legitimate or not, until they are of the age of sixteen, or until the death of his wife. If a parent deserts his children, the churchwardens and overseers may seize his goods and chattels, and receive his rents, to the amount mentioned in the justices' warrant, which must be obtained before such seizure is made.

If a Popish parent refuse to allow his Protestant child a suitable maintenance, with the view of compelling him to come over to the Roman Catholic religion, the lord chancellor is empowered to order the parent to make a proper allowance. (11 & 12 Wm. III. c. 7.) There are acts with similar provisions which apply to Scotland and Ireland. And if Jewish parents refuse to allow their Protestant children a maintenance suitable to the parent's fortune and the age and education of the children, the lord chancellor, on complaint being made, may make such order as he shall think proper. (1 Anne, st. i. c. 30.) The Commissioners on the Criminal Law recommend the repeal of the acts touching compulsory maintenance in the cases above mentioned. They observe that these laws "appear to be objectionable as interfering with the rights of property, as being very liable to abuse on the part of young persons, and as calculated to create dissension in families." ('Report on Penalties and Disabilities in regard to Religious Opinions.') The law does not make any provision in the case of a child who has become a convert from Protestantism or has renounced Christianity.

Parents are not bound to make any provision for their children after their death. Every man, and every woman who is capable of disposing of her property by will, may dispose of it as they please; a freeman of London is under some limitations as to the power of disposing of his personality by will, which limitations are in favour of his wife and children. [WIFE.] A parent and child may aid each other in a law-suit by paying fees, without being guilty of maintenance, if they have no expectation of repayment.

Parents are not legally bound to give any education to their children, nor are they under any restrictions as to the kind of education which they may give. Certain penalties were imposed by statute (1 Jac. I. c. 4; 3 Jac. I. c. 5) on a person who sent a child under his government beyond seas, either to prevent his good education in England or for the purpose of placing him in a Popish college or being instructed in the Popish religion; and further penalties and disabilities were imposed both on the person sending and the person sent, by the 3 Car. I. c. 2. These penal and disabling statutes are made of non-effect by the 31 Geo. III. c. 32, in favour of any Roman Catholic who took the oath therein prescribed; and probably these statutes may be considered as repealed.

The power of a parent over his children continues until the age of twenty-one, at which age they become emancipated; and if a parent die, leaving a child under age, he may appoint a guardian to such child till the age of twenty-one, by a will executed pursuant to 1 Vict. c. 26. A mother has no power over her children. A person under age, except a widower or widow, cannot marry without the father's consent, or such consent as is required by the Marriage Act. [MARRIAGE, p. 332.]

A child under age may acquire property by gift; and if a father is the trustee of his child's estate, he must account to the child when he comes of age, like any other trustee. So long as a child who is under age lives with and is supported by the father, the father is entitled to re-

ceive the reward of the child's labour. When a child has a fortune of his own, and the father is not able to maintain him suitably to such fortune, a court of equity will allow the father a competent sum for maintenance out of the child's estate; but a father is not entitled to any such allowance in respect of costs incurred by him for his child's maintenance before he obtains such order of court for maintenance.

A parent may maintain an action for the seduction of a daughter on the ground of loss of her services, if there is evidence of her acting in the capacity of servant, or living with the parent in such a manner that the parent had a right to her services. This action has been maintained by a father in the case of his daughter, a married woman above age, living separate from her husband, and with the father; and by an aunt for the seduction of a niece living with her, to whom she stood in the relation of parent. The foundation of the right to maintain such an action is the loss of the services to which the parent is entitled. In allowing such an action therefore in the case of a child above age or a married woman, the courts have departed from the legal principle which is the foundation of the right of action.

A father is legally entitled to the care and custody of his children, but he may be deprived of the care of them by the Court of Chancery, if his conduct is such as, in the opinion of the court, endangers the morals of the children. Percy Bysshe Shelley was, among other things, restrained by an order of the Court of Chancery from taking possession of the persons of his infant children, on the ground of his professing irreligious and immoral principles, and acting on them. W. P. T. L. Wellesley was also restrained by a like order from removing his children from the care and custody of their aunts, on the ground of his immoral conduct, and directions were given by the court for the custody and education of the children. But, except in such cases as these, the children cannot be taken from the care of the father and given into the custody of the mother or any other person.

Under a recent act (2 & 3 Vict. c. 54) a mother who is living apart from her husband may obtain by petition an order from a court of equity for access to her child which is in the sole custody of the father, or of any person by his authority, or of any guardian after the death of the father, subject to such regulations as the judge may think convenient and just; and if such child shall be within the age of seven years, the judge may order the child to be delivered into the custody of the mother until the child attains the age of seven years, subject to such regulations as aforesaid. But no mother is to have the benefit of the act against whom adultery has been established by judgment in an action at law, or by the sentence of an ecclesiastical court.

The relations between parent and child which are not founded upon the parental power, but arise in respect of gifts by the parent to the child on marriage or any other occasion, and in respect of purchases by the parent in the name of the child, belong to various heads or titles of the law of property, inasmuch as the rights and claims of other persons besides parent and child are involved in such cases.

A child who is under the parental power owes obedience to his parent, which the parent may enforce by his superior strength, provided he uses it with moderation. He may beat his child and restrain his liberty, but not in such a way as to injure his health. A child is legally bound to maintain his indigent father and grandfather, mother and grandmother, if he is able; the penalty in case of refusal is 20s. per month.

The Parental Power (patria potestas) among the Romans was a peculiar feature in their institutions. It was founded on a legal marriage, or on a legal adoption; the children of such marriage and such adopted children were in the power of the father; the mother had no power over the children. It followed from the principle of the patria potestas, which involved a right of property, that the children of a son, who was not emancipated, were also in the power of their grandfather. By the death of the grandfather the son became *sui juris*, and his children and

grandchildren, if any, fell into his power. The patria potestas was also dissolved by Emancipation. Originally the father's power was absolute over the child, who had no independent political existence, at least as a member of his father's family. He was a Roman citizen, but at home he was subject to the domestic tribunal. The notion of a Roman Family (familia) is that of a Unity, which unity among all the members of the family is a consequence of the paternal power. Within the family the father had originally a power of life and death, and could sell the son as a res mancipi, by way of punishment. The father also originally possessed the jus noxae dandi with respect to his son as well as a slave, a power which was a consequence of the principle of the father being answerable for the delicts of his son, and continued so long as that principle was in full vigour. The son who was in the power of his father could acquire no property for himself; all his acquisitions, like those of a slave, belonged to his father; but at the death of the father they might become his own property, a circumstance which distinguished the acquisitions of a son from those of a slave. Also, such a son could not make a testament, nor could there be any *in jure cessio* made to him. The father could marry his children, divorce them, give them in adoption, and emancipate them at pleasure. The effect of emancipation was that the son ceased to belong to his father's family; and this principle had many important legal consequences.

The strict notion of the patria potestas lies at the foundation of the Roman polity. Like other institutions however, which in the early history of a state form its essential elements, the strict character of the patria potestas became gradually relaxed and greatly changed. The history of such changes is a part of the history of Rome.

The patria potestas might be dissolved in other ways besides those mentioned. If a father or son lost his citizenship, the relation between them ceased, for this relationship could only exist between Roman citizens. If father or son was made a prisoner by an enemy, the relation was in abeyance (in suspenso), but was not extinct. If the son attained certain high offices in the state, either civil or religious, the patria potestas was thereupon dissolved.

Gaius, i. 55, 97, 127, &c.; Marezoll, *Lehrbuch der Instit. des Röm. Rechtes*, 1839; Savigny, *System des heutigen Röm. Rechts*, 1840; Böcking, *Institutionen*, i. 224, &c.)

PARISH. This word is probably derived into the English language from the French *paroisse*, and the Latin *parochia* or *paroecia*, and ultimately from the Greek *paroikia* (παροικία). At the present day it denotes a circumscribed territory, varying in extent and population, but annexed to a single church, whose incumbent or minister is entitled by law to the tithes and spiritual offerings within the territory. In the early ages of Christianity the term appears to have been used in some parts of Europe to signify the district or diocese of a bishop, as distinguished from the "provincia" of the archbishop or metropolitan. (Du Cange, *Gloss.*, ad verb. 'Parochia;' Selden's *History of Tithes*, chap. vi. sect. 3.) These large ecclesiastical provinces were gradually broken down into subdivisions, for which ministers were appointed, either permanently or occasionally, who were under the rule of the bishop, were paid out of the common treasury of the bishopric, and had no particular interest in the oblations or profits of the church to which their ministry applied. This was the state of things in the primitive times, which probably continued till towards the end of the third century. After that period proprietors of lands began, with the licence of the higher ecclesiastical authorities, to build and endow churches in their own possessions; and in such cases the chaplain or priest was not paid by the bishop, but was permitted to receive for his maintenance, and to the particular use of his own church, the profits or the proportion of the profits of the lands with which the founder had endowed it, as well as the offerings of such as repaired thither for divine service. This appears to be a probable account of the origin and gradual formation of parochial

divisions in almost all countries where Christianity prevailed; and Selden has satisfactorily shown that the history of parishes in England has followed the same course. Soon after the first introduction of Christianity into this country, the heathen temples and other buildings were converted into churches or places of assembly, to which the inhabitants of the surrounding district came to receive religious instruction from the minister, and to exercise the rites of Christian worship. As the members of the new religion increased, a single or occasional minister was insufficient for the purpose; and a bishop, with subordinate priests, began to reside in the immediate neighbourhood of the religious houses, having the charge of districts of various extent, comprehending several towns and villages, and assigned principally with a view to the convenience of the inhabitants in assembling together at the church. Within these districts, or *circuits*, as they were called, which were precisely analogous to the diocesan *parishes* in other parts of Europe, the ministering priests itinerated for the purpose of exercising their *shriving*, but they always resided with the bishop. By degrees other churches were built to meet the demands for public worship, but still at first wholly depending upon the mother-church, and supplied by the bishop from his family of clergy resident at the bishopric with ministers or curates, who were supported by the common stock of the diocese. For the fund or endowment in each of these districts was common; and whatsoever was received from tithes or the offerings of devotees at the different altars, or by any other means given for religious uses, was made into a general treasure or stock for the ecclesiastical purposes of the whole diocese; and was applied by the bishop in the first place to the maintenance of himself and the college of priests resident with him at the church, and afterwards for distribution in alms among the poor, and for the reparation of churches.

This community of residence and interest between the bishop and his attending clergy, who are often termed in the chronicles of those days *episcopi clerus*, constituted the notion of cathedral churches and monasteries in their simplest form. How long this state of things continued does not precisely appear, though Selden expresses an opinion that it was in existence as late as the eighth century. (*History of Tithes*, chap. ix. sect. 2.) It has indeed been asserted by Camden (*Britannia*, p. 160), and was formerly the commonly received opinion, that Honorius, the first archbishop of Canterbury, after Augustin, divided his provinces into parishes about the year 630; but Selden proves satisfactorily that Honorius could not have made a parochial division in the sense in which we now understand the term; and that, if made at all, it must have been such a distribution into districts, then called parishes, as is above described, and which was so far from originating with Honorius, that it must have been nearly as ancient as bishoprics.

It seems probable that the creation of parishes in England was the gradual result of circumstances, and was not fully effected till near the time of the Conquest. As Christianity became the universal religion, and as population increased, the means of divine worship supplied by the bishoprics and monasteries became inadequate, and lords of manors began to build upon their own demesnes churches and oratories for the religious purposes of their families and tenants. Each founder assigned a definite district, within which the functions of the minister officiating at his church were to be exercised, and expressly limited the burthen as well as the advantages of his ministry to the inhabitants of that district. As these acts of piety tended to the advance of religion, and were in aid of the common treasury of the diocese, they were encouraged by the bishops, who readily consecrated the places of worship so established, and consented that the minister or incumbent should be resident at his church, and receive for his maintenance, and for the use of that particular church, the tithes and offerings of the inhabitants, as well as any endowment or salary which the founder annexed to it. This endowment or salary usually consisted of a glebe, or

a portion of land appropriated to that purpose, the produce of which, and of the ecclesiastical profits which arose within the territory limited by the founder, became the settled revenue of the church, and annexed to it in perpetuity. The last concession made to the lay-founder was probably the patronage or right of presenting the clerk to the church, which, by the primitive constitution, belonged exclusively to the bishop; and when this was obtained, these limited territories differed in no material respect from our modern parishes. Indeed it can scarcely admit of doubt that our parochial divisions arose chiefly from these lay-foundations, the differences in extent being accounted for by the varying limits appointed for them at their origin. Their names were derived from some favourite saint, from the site, or the lordship to which they belonged, or from the mere fancy of the respective founders. Such appears to have been the origin of the lay parishes; and it is reasonable to conclude that as soon as this practice was established, the bishops and religious houses, in the districts or parishes in which they had reserved to themselves the right of presentation, followed the same course, by limiting the ecclesiastical profits of each church to the particular incumbent, and restricting the devotions as well as the offerings of the inhabitants to that church only.

The earliest notice of these lay foundations of parishes is by Bede, about the year 700 (*Hist. Eccl.*, lib. v. c. 4 and 5). By the end of the eighth century they had become frequent, as clearly appears from the charters of confirmation made to Croyland Abbey, by Bertulph, king of Mercia, in which several churches of lay-foundation are comprehended. In the laws of king Edgar (A.D. 970) there is an express provision that every man shall pay his tithes to the most antient church or monastery where he hears God's service; "which I understand not otherwise," says Selden, "than any church or monastery whither usually, in respect of his commorancy or his parish, he repaired; that is, his parish church or monastery." (*History of Tithes*, chap. ix. 1, 4.)

Although the origin of parishes generally in England is pretty clearly ascertained, the history of the formation of particular parishes is almost wholly unknown, and no evidence whatever can be produced on the subject.

However satisfactory this account of the origin of parishes may be with reference to country parishes, it furnishes no explanation of the origin of parishes in towns—a subject which is involved in great obscurity; and indeed the changes which the latter may be shown to have undergone within time of memory seem to point to a different principle of formation.

The country parishes appear to be nearly the same in name and number at the present time as they were at the time of Pope Nicholas's 'Taxation,' compiled in the reign of Edward I. (A.D. 1288); but in some of the large towns the number of parishes has very considerably decreased. Thus, in the city of London there are at present 108 parishes, though at the time of the 'Taxation' the number was 140; in like manner in Norwich the number has been reduced from 70 in the time of Edward I., to 37 at the present day. In other antient towns, such as Bristol, York, and Exeter, the number does not appear to have materially changed, but the names have been often altered. The particular causes of these variations it would be difficult to trace; but greater changes might reasonably be expected in towns than in the country parishes, in consequence of more frequent fluctuations of wealth and population in the former. Where a decrease has taken place in the number of town parishes in the three last centuries, it is probably to be accounted for by the great reduction since the Reformation in the amount of oblations and what are called *personal* tithes, which in cities were almost the only provision for the parochial clergy.

The size of English parishes varies much in different districts. In the northern counties they are extremely large, forty square miles being no unusual area for a parish; and, generally speaking, parishes in the north are said to average seven or eight times the area of the southern counties. (See Rickman's *Preface to Popula-*

tion Returns of 1831.) The boundaries of parishes in former times appear to have been often ill-defined and uncertain: but since the establishment of a compulsory provision for the poor by means of assessments of the inhabitants of parishes, the limits have in general been ascertained with sufficient precision.

It is not easy to ascertain the exact number of parishes in England and Wales; for although they have been enumerated on several occasions, the number ascertained has usually depended upon the object and purpose of the particular enumeration. Thus in the returns under the Poor Law Commission, a parish is generally considered as a place or district supporting its own poor, and from these returns it appears that the total number of such places is 14,490. But in this number are included many subdivisions of parishes, such as the townships in the northern counties, which by stat. 13 & 14 Car. II., c. 12, f. 21, are permitted to maintain their own poor, and also other places which by act of parliament, though not parishes, have the same privilege. Another difficulty, which has probably affected all the enumerations which have hitherto been made, is the large number of doubtful parishes. It is somewhat uncertain at the present day what circumstances constitute a parish church. In the Saxon times, and for some centuries after the Conquest, the characteristics which distinguished a parish church from what were called field-churches, oratories, and chapels, were the rites of baptism and sepulture. (Selden, *History of Tithes*, ch. ix. 4; Digge's *Parsons' Counsellor*, part i., chap. xii.) But in modern times this line of distinction would include as parish churches almost all chapels-of-ease, and also the churches and parochial chapels erected under the stat. 58 Geo. III., c. 45, "for building additional churches in populous places." The various views entertained of the constituents of a parish will in a great measure account for the different results of the several enumerations which have been made; and this is in fact one of the reasons assigned by Camden for the difference between the number of the parish churches in England and Wales stated to Henry VIII. in 1520, by Cardinal Wolsey, and that stated about a century after to James I., the former being 9407, and the latter 9284. (Camden's *Britannia*, 161-2.) The sum total of the parishes mentioned in Pope Nicholas's 'Taxation' above referred to, as nearly as can be ascertained, appears to be between these two accounts. Blackstone says that the number of parishes in England and Wales had been computed at 10,000, but gives rather a questionable authority for his statement. (*Commentaries*, vol. i., p. 111.) In the Preface to the 'Population Returns' of 1831, above referred to, the number of parishes and parochial chapelries in England and Wales is said to be 10,700, and in Scotland 948; but in the next page, where a summary of the number of parishes in the different dioceses is given, the total is stated as 11,077. Perhaps the number of parishes in England and Wales (meaning by the term simply a district annexed to a church whose incumbent is by law entitled to the perception of tithes in that district) may be taken to be about 11,000.

(See Holland's 'Observations on the Origin of Parishes,' in Hearne's *Discourses*, vol. i., p. 194; and Whitaker's *History of Whalley*, book ii., chap. 1.)

PARISH CLERK, a person whose duty it is to assist the parson in the rites and ceremonies of the church. He is generally appointed by the incumbent, and, as Blackstone states, according to the common law he has a freehold in his office, of which he cannot be deprived by ecclesiastical censures; but a recent statute has made an alteration in this respect. Parish clerks cannot enforce payment by legal process of the customary fees due to them. In churches or chapels erected under the Church Building Acts the clerk is appointed annually by the minister. In some places the parish clerk is chosen by the inhabitants. In small parishes the offices of parish clerk and sexton are united in one person. In 1844 an act was passed (7 & 8 Vict. c. 54) 'for better regulating the offices of lecturers and parish clerks.' Under this act a person in holy orders may be appointed or elected to the office of church clerk, chapel clerk, or parish clerk. He is to be licensed by the bishop, in the same manner as sti-

pendiary curates, and when appointed otherwise than by the incumbent is to be subject to his consent and approval. It is further provided that all the profits and emoluments of the office of clerk are to be enjoyed so long as the person in holy orders who holds it performs all such spiritual and ecclesiastical duties as the incumbent, with the sanction of the bishop, may require. The act expressly states that such person shall not have or acquire any freehold or absolute right to or interest in the said office of church clerk, chapel clerk, or parish clerk, but shall at all times be liable to be suspended or removed from such office by the same authority and on the like grounds as stipendiary curates may be removed. The act also enables any archdeacon or other ordinary to remove clerks not in holy orders who may be guilty of neglect or misbehaviour.

PARK. This term, in its legal signification as a privileged enclosure for beasts of the forest and chace, is at the present day nearly obsolete. Under the ancient forest-laws, the franchise of the highest degree was that of a forest, which was the most comprehensive name, and contained within it the franchises of chace, park, and warren. The only distinction between a chace and a park was, that the latter was enclosed, whereas a chace was always open, and they both differed from a forest, inasmuch as they had no peculiar courts or judicial officers, nor any particular laws, being subject to the general laws of the forest; or, as Sir Edward Coke maintains, to the common law exclusively of the forest-laws (4 *Inst.*, 314). A chace and a park differed from a forest also in the nature of the wild animals to the protection of which each was applied. The beasts of the forest, or beasts of venery, as they were called, were *tantum silvestres*, that is, as Manwood explains the phrase (*Forest Laws*, chap. iv., sec. 4), animals such as the hart, hind, hare, boar, and wolf, which "do keep the coverts, and haunt the woods more than the plains." On the other hand, the beasts of chace or park, were *tantum campestres*, that is to say, they haunted the plains more than the woods. According to the strict legal meaning of the term, no subject can set up a park without the king's grant, or immemorial prescription, which is presumptive evidence of such a grant. In modern times the term is little known, except in its popular acceptation as an ornamental enclosure for the real or ostensible purpose of keeping fallow deer, interspersed with wood and pasture for their protection and support. (Blackstone's *Commentaries*, vol. ii., p. 38.)

PARKS, PUBLIC. [PUBLIC HEALTH.]

PARLIAMENT, IMPERIAL, the legislature of the United Kingdom of Great Britain and Ireland, consisting of the king or queen [KING], the lords spiritual and temporal [LORDS, HOUSE OF], and the knights, citizens, and burgesses [COMMONS, HOUSE OF] in parliament assembled.

The word is generally considered to be derived from the French, 'parler,' to speak. "It was first applied," says Blackstone, "to general assemblies of the states under Louis VII. in France, about the middle of the twelfth century." The earliest mention of it in the statutes is in the preamble to the statute of Westminster, A.D. 1272.

Origin and Antiquity of Parliament.

The origin of any ancient institution must be difficult to trace, when in the course of time it has undergone great changes; and few subjects have afforded to antiquaries more cause for learned research and ingenious conjecture than the growth of our parliament into the form which it had assumed when authentic records of its existence and constitution are to be found. Great councils of the nation existed in England both under the Saxons and Normans, and appear to have been common amongst all the nations of the north of Europe. They were called by the Saxons *michel-synoth*, or great council; *michel-gemote*, or great meeting; and *wittena-gemote*, meeting of wise men —by the last of which they are now most familiarly known. The constitution of these councils cannot be known with any certainty, and there has been much controversy on the subject, and especially as to the share of authority enjoyed by the people. Different periods have been assigned for their admittance into the legis-

lature. Coke, Spelman, Camden, and Prynne agree that the commons formed part of the great synods or councils before the Conquest; but how they were summoned, and what degree of power they possessed, is a matter of doubt and obscurity. "The main constitution of parliament, as it now stands," says Blackstone, "was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons [BARONS] personally, and all other tenants in chief under the crown by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary; and this constitution has subsisted, in fact at least, from the year 1266, 49 Hen. III., there being still extant writs of that date to summon knights, citizens, and burgesses to parliament." A statute, also, passed 15 Edw. II. (1322), declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in parliament, by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, *according as had been before accustomed.*" In reference to this statute Mr. Hallam observes "that it not only establishes, by a legislative declaration, the present constitution of parliament, but recognises it as already standing upon a custom of some length of time." (1 *Const. Hist.*, 5.)

Constituent Parts of Parliament.

Of the king (or queen), the first in rank, nothing need be repeated in this place.

The House of Lords is at present composed of—

Lords Spiritual.

2 archbishops (York and Canterbury)
24 English Bishops
4 Irish representative bishops

Total, 30

Lords Temporal.

2 dukes of the blood royal
20 dukes
20 marquesses
115 earls
21 viscounts
200 barons
16 representative peers of Scotland
28 representative peers of Ireland

Total, 422

The number has been greatly augmented from time to time, and there is no limitation of the power of the crown to add to it by further creations. The introduction of the representative peers of Scotland and Ireland was effected on the union of those kingdoms, respectively, with England. The former are elected by the hereditary peers of Scotland descended from Scottish peers at the time of the Union, and sit for one parliament only; the latter are chosen for life by the peers of Ireland, whether hereditary or created since the Union. The power of the crown to create Irish peers is limited by the Act of Union, so that one only can be created whenever three of the peerages of Ireland have become extinct.

The present composition of the House of Commons is as follows:—

England and Wales.

159 knights of shires
341 citizens and burgesses

Total, 500

Scotland.

30 knights of shires
23 citizens and burgesses

Total, 53

Ireland.

64 knights of shires
41 citizens and burgesses

Total, 105

Total of the United Kingdom, 658. But this includes the borough of Sudbury disfranchised for gross corruption by 7 & 8 Vict. c. 53; and the two members which this borough formerly returned have not yet been transferred to any other place. A full view of the present system of representation is given in the article COMMONS, HOUSE OF.

The lords and commons originally were one assembly, but the date of their separation is not known. The following notice of this subject is taken from Mr. T. Erskine May's 'Law, Privileges, Proceedings, and Usage of Parliament,' p. 19. "When the lesser barons began to secede from personal attendance, as a body, and to send representatives, they continued to sit with the greater barons as before; but when they were joined by the citizens and burgesses, who, by reason of their order, had no claim to sit with the barons, it is natural that the two classes of representatives should have consulted together, although they continued to sit in the same chamber as the lords. The ancient treatise, 'De Modo tenendi Parliamentum,' if of unquestioned authority, would be conclusive of the fact that the three estates ordinarily sat together; but when any difficult or doubtful case of peace or war arose, each estate sat separately, by direction of the king. But this work can claim no higher antiquity than the reign of Richard II., and its authority is only useful so far as it may be evidence of tradition, believed and relied on at that period. Misled by its supposed authenticity, Sir Edward Coke and Elsynge entertained no doubt of the facts as there stated; and the former alleged that he had seen a record of the 30 Henry I., (1130) of the degrees and seats of the lords and commons as one body, and that the separation took place at the desire of the commons. . . . The enquiry however is of little moment, for whether the commons sat with the lords in a distinct part of the same chamber, or in separate houses as at present, it can scarcely be contended that, at any time after the admission of the citizens and burgesses, the commons intermixed with the lords, in their votes as one assembly. Their chief business was the voting of subsidies, and the bishops granted one subsidy, the lords temporal another, and the commons again a separate subsidy for themselves. The commons could not have had a voice in the grants of the other estates; and although the authority of their name was constantly used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the lords, and it is well known that down to the reign of Henry VI., no laws were actually written and enacted until after the parliament." . . . "Whenever this separation may have been effected, it produced but little practical change in the uninterrupted custom of parliament. The causes of summons are still declared by the crown to the lords and commons assembled in one house; the two houses deliberate in separate chambers, but under one roof; they communicate with each other by messages and conference; they agree in resolutions and in making laws, and their joint determination is submitted for the sanction of the crown. They are separated, indeed, but in legislation they are practically one assembly, as much as if they sat in one chamber, and in the presence of each other, communicated their separate votes."

Power and Jurisdiction of Parliament.

1. *Legislative Authority collectively.*—The authority of parliament extends over the United Kingdom and all its colonies and foreign possessions. There are no other limits to its power of making laws for the whole empire than those which are common to it and to all other sovereign authority, the willingness of the people to obey, or their power to resist them. It has power to alter the constitution of the country, for that is the constitution which the last act of parliament has made; and it may even take away life by acts of attainder.

Parliament does not in the ordinary course legislate directly for the colonies. For some, the queen in council legislates, and others have legislatures of their own, and propose laws for their internal government, subject to the approval of the queen in council; but these may afterwards be repealed or amended by acts of parliament. Their legislatures and their laws are both subordinate to the supreme power of the mother country. The constitution of Lower Canada was suspended in 1840; and a provisional government, with legislative functions and great executive powers, was established by the British parliament. Slavery was abo-

lished by an act of parliament in 1833 throughout all the British possessions, whether governed by local legislatures or not; but certain measures for carrying into effect the intentions of parliament were left for subsequent enactment by the local bodies, or by the queen in council. The House of Assembly of Jamaica, the most ancient of our colonial legislatures, had neglected to pass an effectual law for the regulation of prisons, which became necessary upon the emancipation of the negroes, and parliament immediately passed a statute for that purpose. The Assembly were indignant at the interference of the mother country, and neglected their functions, until an act was passed by the imperial parliament which suspended the constitution of Jamaica unless they resumed them.

The power of imposing taxes upon colonies for the support of the parent state was attempted to be exercised by parliament upon the provinces of North America; but this attempt was the immediate occasion of the severance of that country from our own.

There are some subjects indeed, upon which parliament, in familiar language, is said to have no right to legislate, such for instance as the Church; but no one can intend more by that expression than that it is inexpedient to make laws as to such matters. Parliament has made a new distribution of portions of Church property. The very prayers and services of the Church are prescribed by statute; and the Church Discipline Act is an instance of parliament regulating the conduct of the ministers of the Church. Parliament has changed the professed religion of the country, and has altered the hereditary succession to the throne. To conclude, in the words of Sir Edward Coke, the power of parliament "is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds."

2. *Distribution of Powers between King, Lords, and Commons.*—Custom and convenience have assigned to different branches of the legislature peculiar powers. These are subject to any limitation or even transference which parliament may think fit. The king swears at the coronation to govern "according to the statutes in parliament agreed upon," and these of course may be altered. Prerogatives of the crown which have ever been enjoyed might yet be taken away by the king, with the consent of the three estates of the realm. The king sends and receives ambassadors, enters into treaties with foreign powers, and declares war or peace, without the concurrence of lords and commons; but these things he cannot do without the advice of his ministers, who are responsible to parliament. Certain parliamentary functions are exercised by the king, which are important in the conduct of legislation.

Summons.—It is by the act of the king alone that parliament can be assembled. There have been only two instances in which the lords and commons have met of their own authority, namely, previously to the restoration of King Charles II., and at the Revolution in 1688.

The first act of Charles II.'s reign declared the lords and commons to be the two houses of parliament, notwithstanding the irregular manner in which they had been assembled, and all their acts were confirmed by the succeeding parliament summoned by the king; which however qualified the confirmation of them by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner the first act of the reign of William and Mary declared the convention of lords and commons to be the two houses of parliament, as if they had been summoned according to the usual form, and the succeeding parliament recognised the legality of their acts. [CONVENTION PARLIAMENT.] But although the king may determine the period for calling parliaments, his prerogative is restrained within certain limits; and he is bound, by statute to issue writs within three years after the determination of any parliament; and the practice of providing money for the public service by annual enactments renders it compulsory upon him to summon parliament every year.

There is one contingency upon which the parliament may meet without sum-

mons, under the authority of an act of parliament. It was provided by the 6 Anne, c. 7, that "in case there should be no parliament in being at the time of the demise of the crown, then the last preceding parliament should immediately convene and sit at Westminster, as if the said parliament had never been dissolved." By the 37 Geo. III., c. 127, a parliament so revived would only continue in existence for six months, if not sooner dissolved.

As the king appoints the time and place of meeting, so also at the commencement of every session he declares to both houses the cause of summons by a speech delivered to them in the House of Lords by himself in person, or by commissioners appointed by him. Until he has done this, neither house can proceed with any business.

The causes of summons declared do not make it necessary for parliament to consider them only, or to proceed at once to the consideration of any of them. After the speech, any business may be commenced; and both Houses, in order to prove their right to act without reference to any authority but their own, invariably read a bill a first time *pro formâ* before they take the speech into consideration. Other business is also done very frequently at the same time. New writs are issued for places which have become vacant during the recess, returns are ordered, and even addresses are presented on matters unconnected with the speech. In 1840 a question of privilege, arising out of the action of Stockdale against the printers of the house, was entertained before any notice was taken of her Majesty's speech.

Prorogation and Adjournment.—Parliament can only commence its deliberations at the time appointed by the king; neither can it continue them any longer than he pleases. He may prorogue parliament by having his command signified in his presence by the lord chancellor or speaker of the House of Lords to both houses, or by writ under the great seal, or by commission. The effect of a prorogation is at once to suspend all business until parliament may be summoned again. Not only are the sittings of parliament at an end, but all proceedings pending at the time, except impeachments by the commons, are quashed. A bill must be renewed after a prorogation, as if it had never been introduced, though the prorogation be for no more than a day. William III. prorogued parliament from the 21st October, 1689, to the 23rd, in order to renew the Bill of Rights, concerning which a difference had arisen between the two houses that was fatal to it. It being a rule that a bill cannot be passed in either house twice in the same session, a prorogation has been resorted to, in other cases, to enable a second bill to be brought in.

Adjournment is solely in the power of each house respectively. It has not been uncommon indeed for the king's pleasure to be signified, by message or proclamation, that both houses should adjourn. Either of them however may decline complying with what can be considered as no more than a request. Business has frequently been transacted after the king's desire has been made known, and the question for adjournment put in the ordinary manner.

Dissolution.—The king may also put an end to the existence of parliament by a dissolution. He is not however entirely free to define the duration of a parliament, for after seven years it ceases to exist under the statute of George I., commonly known as the Septennial Act. Before the Triennial Act, 6 Wm. and Mary, there was no limit to the continuance of a parliament, except the will of the king. Parliament is dissolved by proclamation, after having been prorogued to a certain day. This practice, according to Hatsell, "which has now been uniform for above a century, has probably arisen from those motives that are suggested by Charles I., in his speech in 1628, "that it should be a general maxim with kings themselves only to execute pleasing things, and to avoid appearing personally in matters that may seem harsh and disagreeable."

In addition to these several powers of calling a parliament, appointing its meeting, directing the commencement of its proceedings, determining them for an indefinite time by prorogation, and finally of dissolving it altogether, the crown has

the creation of one entire branch of the legislature; together with other parliamentary powers, which will hereafter be noticed in treating of the functions of the two houses. But though the name of the king or reigning queen is used on all the occasions above mentioned, the determination when and how the prerogatives of the crown shall be employed depends on the cabinet, to whom the king intrusts the administration of the government. [CABINET; KING.]

The judicial functions of the lords, and their power to pass bills affecting the peerage, which the commons may not amend, are the only properties peculiar to them, apart from their personal privileges.

Taxation.—The chief powers vested in the House of Commons are those of imposing taxes and voting money for the public service. Bills for these purposes can only originate in that house, and the lords may not make any alterations in them, except for the correction of clerical errors. On the opening of parliament, the king directs estimates to be laid before the house, but the amount may be varied by the commons at pleasure. Grants distinct from those proposed in the estimates cannot be made without the king's recommendation being signified. The commons will not allow the right of the lords to insert in a bill any pecuniary penalties or to alter the amount or application of any penalty imposed by themselves; but the rigid assertion of this rule was found to be attended with much inconvenience, and a standing order was made in 1831, directing the Speaker in each case to report whether the object of the lords appears to be "to impose, vary, or take away any pecuniary charge or burthen on the subject," or "only to relate to the punishment of offences, and the house shall determine whether it may be expedient in such particular case to insist upon the exercise of their privilege." In the present session (1846) also, the Commons have permitted certain railway bills to originate in the House of Lords, notwithstanding the rates and tolls which must necessarily be levied under their authority.

Right of determining Elections.—Another important power peculiar to the commons is that of determining all matters touching the election of their own members, and involving therein the rights of the electors. Upon the latter portion of their right a memorable contest arose between the lords and commons in 1704. Ashby, a burgess of Aylesbury, brought an action at common law against the returning-officers of that town for having refused to permit him to give his vote at an election. A verdict was obtained by him, but a judgment was given against him in the Queen's Bench, which was reversed by the House of Lords upon a writ of error. The commons declared that "the determination of the right of election of members to serve in parliament is the proper business of the House of Commons, which they would always be very jealous of, and this jurisdiction of theirs is uncontested; that they exercise a great power in that matter, for they oblige the officer to alter his return according to their judgment; and that they cannot judge of the right of election without determining the right of the electors, and if electors were at liberty to prosecute suits touching their right of giving voices in other courts, there might be different voices in other courts, which would make confusion, and be dishonourable to the House of Commons; and that therefore such an action was a breach of privilege." In addition to the ordinary exercise of their jurisdiction as regarded the right of elections, the commons relied upon an act of the 7 Wm. III. c. 7, by which it had been declared that "the last determination of the House of Commons concerning the right of elections is to be pursued." On the other hand, it was objected that "there is a great difference between the right of the electors and the right of the elected; the one is a temporary right to a place in parliament *pro hâc vice;* the other is a freehold or a franchise. Who has a right to sit in the House of Commons, may be properly cognizable there; but who has a right to choose, is a matter originally established even before there is a parliament. A man has a right to his freehold by the common law, and the law having annexed his right of voting to his freehold,

it is of the nature of his freehold, and must depend upon it. The same law that gives him his right must defend it for him, and any other power that will pretend to take away his right of voting, may as well pretend to take away the freehold upon which it depends." These extracts from the Report of a Lords' Committee, 27 March, 1704, upon the conferences and other proceedings in the case of Ashby and White, give an epitome of the main arguments upon which each party in the contest relied. The whole of this Report, together with another of the 13th March, may be read with great interest.

Encouraged by the decision of the House of Lords, five other burgesses of Aylesbury, now familiarly known as "the Aylesbury men," commenced actions against the constables of their town, and were committed to Newgate by the House of Commons for a contempt of their jurisdiction. They endeavoured to obtain their discharge on writs of *habeas corpus*, but did not succeed. The commons declared their counsel, agents, and solicitors guilty of a breach of privilege, and committed them also. Resolutions condemning these proceedings were passed by the lords; conferences were held, and addresses presented to the queen. At length the queen came down and prorogued parliament, and thus put an end to the contest and to the imprisonment of the Aylesbury men and their counsel.

The question which was agitated at that time has never since arisen. The commons have continued to exercise the sole power of determining whether electors have had the right to vote while inquiring into the conflicting claims of candidates for seats in parliament, and specific modes for trying the right of election by the house have been prescribed by statutes, and its determination declared to be "final and conclusive in all subsequent elections, and to all intents and purposes whatsoever."

Connected with the power of the commons to adjudicate upon all matters relating to elections, may be mentioned their power over the eligibility of candidates. John Wilkes was expelled, in 1764, for being the author of a seditious libel. In the next parliament (February 3, 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th February, "that having been in this session of parliament expelled this house, he was and is incapable of being elected a member to serve in this present parliament." The election was declared void, but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued. A new expedient was now used. Mr. Luttrell, then a member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election, and being defeated, petitioned the house against the return of his opponent. The house resolved that although a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the house declared that Mr. Luttrell was duly elected. The whole of these proceedings were severely condemned, and on the 3rd of May, 1782, the resolution of the 17th of February, 1769, was ordered to be expunged from the journals as "subversive of the rights of the whole body of electors of this kingdom." A resolution similar to that expunged had been passed in the case of the unfortunate Hall, in 1580, as part of the many punishments inflicted upon him, which we shall have occasion to mention.

Oaths.—The power of administering oaths exercised by the lords is not claimed by the House of Commons. They formerly endeavoured to attain the end supposed to be secured by the administration of an oath, by resorting to the authority of justices of the peace who happened to be members of their own body; but this and other expedients of the same kind have long since been abandoned, and witnesses guilty of falsehood are punished by the house for a breach of privilege. Election committees have power by statute to administer oaths, and witnesses who give false evidence

before such committees are guilty of perjury.

3. *Privileges.*—Both houses of parliament possess various powers and privileges for the maintenance of their collective authority, and for the protection, convenience, and dignity of individual members. At the commencement of each parliament, the Speaker, on behalf of the commons, has "laid claim to them of the king" since the reign of Henry VIII., but they appear to have been always enjoyed with equal certainty before that time. Some of them have been subsequently confirmed, modified, and even abolished by acts of parliament, but the petition of the Speaker remains unchanged, and prays for some which have been disallowed by law since the original form was adopted.

Commitment and Fines.—The power of commitment for contempt has always been exercised by both houses. It has been repeatedly brought under the cognizance of the courts, and allowed without question. Mr. Wynn in his 'Argument,' states that there are upwards of one thousand cases of commitment by the House of Commons to be found in their Journals since 1547. Breaches of privilege committed in one session may be punished by commitment in another, as in the well-known case of Murray, in 1751-2, who was imprisoned in Newgate for a libel until the end of the session, and on the next meeting of parliament was again ordered to be committed; but he had absconded in the meanwhile. Contempts of a former parliament may also be punished. The lords may commit for a definite period beyond the duration of the session or parliament; but a commitment by the commons holds good only until the close of the session.

The house of lords, in addition to the power of commitment, may impose fines. This privilege is no longer exercised by the commons; but amongst the most remarkable cases in which it was formerly used, we may mention that of Mr. Hall, a member who had incurred their displeasure, by publishing a work "very slanderous and derogatory to the general authority, power, and state of the house, and prejudicial to the validity of its proceedings in making and establishing laws," and was ordered to "pay a fine to the queen of five hundred marks." The house at the same time assumed a power not found to have been exercised in other cases. It committed Mr. Hall to the Tower, and ordered that he should remain there for "six months, and until he should make retraction of the book." This punishment was commitment for a time certain without reference to the continuance of the session, and, in the event of a refusal to retract the book, amounted to perpetual imprisonment. A practice still exists which partakes of the nature of a fine. There are certain fees payable by persons committed to the custody of the serjeant-at-arms, and it is usual on discharging them out of custody to attach the condition of the "payment of the fees." These fees are occasionally remitted under particular circumstances—as, for example, on account of the poverty of the prisoner.

Freedom of Speech.—Freedom of speech is one of the privileges claimed by the Speaker on behalf of the commons, but it has long since been confirmed as the right of both houses of parliament by statutes. It was acknowledged by an act in the reign of Henry VIII., by which the proceedings of the stannary court with respect to Richard Strode, a member, who was fined and imprisoned by that court for having proposed a bill to regulate the tinners in Cornwall, were declared illegal, and the repetition of similar encroachments upon the privilege of parliament provided against. The language however was thought ambiguous, and it was by limiting its operation to the case of Strode, that a judgment was obtained in the King's Bench against Sir John Elliot, Denzil Hollis, and Valentine, in the reign of Charles I. A true interpretation of the law was subsequently established by resolutions of both houses of parliament, and by a formal reversal of this judgment by the house of lords. The most solemn recognition of the privilege is contained in the Bill of Rights, which declares "that the freedom of speech and debates and proceedings in parliament ought not to be impeached

or questioned in any court or place out of parliament."

There are however certain legal incidents to this privilege which it is necessary to notice. The law presumes that everything said in parliament is with the view to the public good and necessary for the conduct of public business; but should the member publish his speech, he is viewed as an author only, and if it contain libellous matter, he will not be protected by the privilege of parliament. In 1795 an information was filed against Lord Abingdon for libel. His lordship had accused his attorney, in parliament, of improper conduct in his profession. He afterwards published his speech in several newspapers at his own expense. His lordship pleaded his own cause, and contended that he had a right to print what he had, by the law of parliament, a right to speak; but Lord Kenyon said "that a member of parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel." In 1813 a much stronger case of the same kind occured. Mr. Creevey, a member, had made a charge against an individual in the house of commons, and incorrect reports of his speech having appeared in several newspapers, Mr. Creevey sent a correct report to an editor, requesting him to publish it in his newspaper. A jury found Mr. Creevey guilty of libel, and the court of King's Bench refused an application for a new trial; on which occasion Lord Ellenborough said, "a member of that house has spoken what he thought material and what he was at liberty to speak, in his character as a member of that house. So far he is privileged: but he has not stopped there; but, unauthorized by the house, has chosen to publish an account of that speech in what he has pleased to call a corrected form, and in that publication has thrown out reflections injurious to the character of an individual."

Freedom from Arrest.—The Speaker's petition prays on behalf of the commons, "that their persons, *their estates, and servants*, may be free from arrests and all molestations." These words are not more extensive than the privilege as formerly enjoyed, and instances in which it has been enforced may be found in nearly every page of the earlier volumes of the Journals. This privilege has however been limited by statutes, the last of which (10 Geo. III. c. 50) states in the preamble that the previous laws were insufficient to obviate the inconveniences arising from the delay of suits by reason of privilege of parliament, and enacts that "any person may at any time commence and prosecute any action or suit, &c., against any peer or lord of parliament, or against any of the knights, citizens, or burgesses for the time being, or against any of their menial or any other servants, or any other person entitled to the privilege of parliament, and no such action shall be impeached, stayed, or delayed by or under colour or pretence of any privilege of parliament." Obedience to any rule of the courts at Westminster may be enforced by distress infinite, in case any person entitled to the benefit of such rule shall choose to proceed in that way.

The persons of members are still free from arrest or imprisonment in civil actions, but their property is as liable to the legal claims of all other persons as that of any private individual. Their servants no longer enjoy any privilege or immunity whatever.

The privilege of freedom from arrest has always been subject to the exception of cases of "treason, felony, and surety of the peace;" and though in other criminal charges each house may, if it see fit, prevent the abstraction of a member from his parliamentary duties, the case of Lord Cochrane, in 1815, will show how little protection the house of commons extends to its members in such cases. Lord Cochrane, having been indicted and convicted for a conspiracy, was committed to the King's Bench prison. He afterwards escaped, and was arrested by the marshal while sitting on the privy counsellor's bench in the house of commons, on the right hand of the chair, at which time there was no member present, prayers not having been read. The committee of privileges declared that by this proceeding of the marshal of the

King's Bench "the privileges of parliament did not appear to have been violated so as to call for the interposition of the house."

Courts of justice have committed privileged persons for contempt, and parliament has refused to protect them. By a standing order of the house of lords, 8th June, 1757, it was declared "that no peer or lord of parliament hath privilege of peerage or of parliament against being compelled by process of the courts of Westminster-hall to pay obedience to a writ of habeas corpus directed to him;" and in the case of Earl Ferrers, it was decided that an attachment may be granted if a peer refuses obedience to the writ of habeas corpus. There have been two recent cases, that of Mr. Long Wellesley in 1831, and that of Mr. Lechmere Charlton in 1837, in which members committed by the lord-chancellor for contempt have laid claims to privilege, which were not admitted by the house of commons.

Peers and lords of parliament are always free from arrest on civil process; and as regards the commons, their privilege is supposed to exist for 40 days after every prorogation and 40 days before the next appointed meeting.

Jurisdiction of Courts of Law in Matters of Privilege.—In connection with the exercise of privilege, an important point of law arises as to the jurisdiction of courts of justice. It is one of great interest and still greater doubt at the present moment, and has at various times been the occasion of much dispute and difficulty. Each house of parliament is acknowledged to be the judge of its own privileges. Sir Edward Coke affirms, "whatever matter arises concerning either house of parliament, ought to be examined, discussed, and adjudged in that house to which it relates, and not elsewhere." (4 *Inst.*) But again, in the disputes in the case of the Aylesbury men, which has been already referred to, the lords communicated to the commons at a conference a resolution, "that neither house of parliament have power by any vote or declaration to create to themselves new privileges not warranted by the known laws and customs of parliament," which was assented to by the commons. (14 *Commons' Journals*, 555, 560.) The degree of jurisdiction to be exercised by the courts and the proper mode of dealing with actions involving matters of privilege, it would indeed be difficult to determine, after the inconsistencies which have been shown in practice and the great variety of opinions expressed by learned men. No more than a concise statement of a few cases will be needed to show the difficulties in which the question is involved.

First, as to the right of courts to inquire into the existence and nature of privileges claimed by either House of Parliament. Coke lays it down that "judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but *secundum leges et consuetudinem parliamenti;* and so the judges in divers parliaments have confessed." (4 *Inst.*, 15.) When Paty, one of the Aylesbury men, was brought before the Queen's Bench on a writ of habeas corpus, Mr. Justice Powell said "this court may judge of privilege, but not contrary to the judgment of the House of Commons;" and again, "this court judges of privilege only incidentally: for when an action is brought in this court, it must be given one way or other." (2 Lord Raymond, 1105.) The opinions of other judges to the same effect, expressed at different times, might also be given. The words contained in the Bill of Rights, that the "debates and *proceedings* in parliament ought not to be impeached or questioned in any court or place out of parliament," are generally relied upon in confirmation of this doctrine. If this view were always taken of the question, little difference between parliament and the courts of law would arise. The course would be simple. Whatever action might be brought would be determined in a manner agreeable to the house whose privileges were questioned; and if the lords, in case of appeal, were to abide by the same rule, there would be no dissensions. But as such unanimity of opinion has not always existed, there has been a clashing of jurisdictions which nothing probably but a statute can prevent for the future.

A judgment was obtained against Sir W. Williams, the Speaker of the House of Commons, in the second year of James II., for having caused a paper entitled 'Dangerfield's Narrative' to be printed by order of the house. This the house declared to be "an illegal judgment," and against the freedom of parliament. A bill was also brought in to reverse the judgment, but it miscarried in three different sessions. (10 *Commons' Journals*, 177, 205.)

The denial of the exclusive jurisdiction claimed by the commons in 1704, in respect of the right of elections, as stated above, is another important occasion in which the privilege of the commons has clashed with the judgments of legal tribunals.

The only other case which need be mentioned in this place is that of Stockdale *v.* Hansard. Messrs. Hansard, the printers of the House of Commons, had printed, by order of that house, the Reports of the Inspectors of Prisons, in which a book published by Stockdale was described in a manner which he conceived to be libellous. He brought an action against Messrs. Hansard during a recess, but had a verdict against him upon a plea of justification, as the jury considered the description of the work in question to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the house, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report containing a libel against any man." In consequence of these proceedings, a committee was appointed, on the meeting of parliament in 1837, to examine precedents and to ascertain the law and practice of parliament in reference to the publication of papers printed by order of the house. The result of these inquiries was the passing of the following resolutions by the house:—

"That the power of publishing such of its reports, votes, and proceedings as it shall deem necessary or conducive to the public interests is an essential incident to the constitutional functions of parliament, more especially of this house as the representative portion of it.

"That by the law and privilege of parliament, this house has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion or decision before any court or tribunal elsewhere than in parliament, is a high breach of privilege and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon.

"That for any court or tribunal to assume to decide upon matters of privilege inconsistent with the determination of either House of Parliament is contrary to the law of parliament, and is a breach and contempt of the privileges of parliament."

Notwithstanding these resolutions, Stockdale immediately commenced another action. The Queen's Bench decided against the privileges of the house. A third action was then brought by Stockdale, and not being defended, judgment went by default, and the damages were assessed in the sheriff's court.

As yet the jurisdiction of the courts to inquire into the privileges of parliament and to give judgments inconsistent with its determination has alone been touched upon; the next question is as to the mode of dealing with actions involving privilege when brought in the courts. The practice has been extremely various and inconsistent, as a rapid view of it will show. An action had been brought against Topham, the serjeant-at-arms, for executing the orders of the House of Commons in arresting certain persons. Topham pleaded to *the jurisdiction of the court*, but his plea was overruled, and judgment was given against him. The house declared the judgment to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, the judges, to the custody of the serjeant. (10 *Commons' Journals*, 227.) In speak-

ing of this proceeding, Lord Ellenborough expressed his surprise "that a judge should have been questioned for having given a judgment which no other judge who ever sat in his place could have differed from."

In the case of Ashby and White so often referred to, the commons declared "that whoever shall presume to commence any action, and all attorneys, solicitors, counsellors, and serjeants-at-law soliciting, prosecuting, or pleading in any case, are guilty of a high breach of the privileges of this house." The effect of this resolution, if obeyed, would be to prevent the courts from coming to any decision at all upon matters of privilege, as an action would be stopped at its commencement; but the principle has not been adhered to.

When Sir Francis Burdett brought actions against the Speaker and the serjeant-at-arms, in 1810, for taking him to the Tower in obedience to the orders of the House of Commons, they were directed to plead, and the attorney-general received instructions to defend them. A committee at the same time reported a resolution "that the bringing these actions for acts done in obedience to the orders of the house is a breach of privilege," but it was not adopted by the house. The actions proceeded in the regular course, and the Court of King's Bench sustained and vindicated the authority of the house.

It has been already said that Stockdale's first action was brought when parliament was not sitting. Having no specific directions from the house, Messrs. Hansard pleaded to the action. On the general issue they proved the orders of the house, which were held to be no protection, but had judgment upon a plea which would have availed them equally had they printed the report complained of on their own account. Notwithstanding its resolutions, the house, on being acquainted with this action, instead of acting upon them when a second was commenced, reverted to the precedent of 1810, and directed Messrs. Hansard to plead, and the attorney-general to defend them. In this case nothing but the privileges of the House of Commons were relied upon in defence of Messrs. Hansard, and the Court of Queen's Bench unanimously decided against them. Still the House of Commons was reluctant to act upon its own resolutions, and instead of punishing the plaintiff and his legal advisers, "under the special circumstances of the case," it ordered the damages and costs to be paid. The resolutions however were not rescinded, and it was then determined that in case of future actions, Messrs. Hansard should not plead at all; and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person and for the same publication. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury in the sheriff's court at 600*l.* The sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they were anxious not to pay the money to Stockdale until they were unable to delay the payment any longer. At the opening of the session of parliament in 1840, the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, which had been carried on in spite of its resolutions, and in the first place committed Stockdale to the custody of the serjeant-at-arms. The sheriffs were desired to refund the money, and, on their refusal, were also committed. Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape with a reprimand. The sheriffs retained possession of the money until an attachment was issued from the Queen's Bench, when they paid it over to Stockdale. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence; and Messrs. Hansard were again ordered not to plead. Once more judgment was entered up against them, and a writ of inquiry of damages issued.

Mr. France, the under-sheriff, upon whom the execution of this writ devolved, having been served with the resolutions of the commons, expressed, by petition, his anxiety to pay obedience to them, and sought the protection of

the house. He then obtained leave to show cause before the court of Queen's Bench on the fourth day of Easter term why the writ of inquiry should not be executed. Meanwhile the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions. Mr. Howard's son, and his clerk, Mr. Pearce, having been concerned in conducting such actions, were committed for the contempt, and Messrs. Hansard, as before, were instructed not to plead. At length, as there appeared to be no probability of these vexatious actions being discontinued, a bill was introduced into the commons and passed, by which proceedings, criminal or civil, against persons for publication of papers printed by order of either house of parliament, are to be stayed by the courts, upon delivery of a certificate and affidavit to the effect that such publication is by order of parliament. (Act 3 & 4 Vict. c. 9.)

In executing the Speaker's warrant for taking Mr. Howard into custody, the messengers had remained some time in his house, for which he brought an action of trespass against them. As it was possible that they might have exceeded their authority, and as the right of the house of commit was not directly brought into question, the defendants were, in this case, instructed to plead; although a clause for staying further proceedings in the action was contained in the bill which was pending, at that time, in the house of lords; by whom however it was afterwards omitted: and the house of commons is still involved in litigation on account of the exercise of its privileges.

Mr. May remarks ('Law, Privileges, &c. of Parliament') that "The present position of privilege is, in the highest degree, unsatisfactory. Assertions of privilege are made in parliament, and denied in the courts; the officers who execute the orders of parliament are liable to vexatious actions, and if verdicts are obtained against them, the damages and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege, which does not stay the actions. If parliament were to act strictly upon its own declarations, it would be forced to commit not only the parties, but their counsel and their attorneys, the judges and the sheriffs; and so great would be the injustice of punishing the public officers of justice for administering the law according to their consciences and oaths, that parliament would shrink from so violent an exertion of privilege. And again, the intermediate course adopted in the case of Stockdale *v.* Hansard, of coercing the sheriff for executing the judgment of the court, and allowing the judges who gave the obnoxious judgment to pass without censure, is inconsistent in principle, and betrays hesitation on the part of the house, distrust of its own authority, or fear of public opinion" (p. 129, 130).

Forms of Procedure.

Meeting of Parliament: Preliminary Proceedings.—On the meeting of a new parliament it is the practice for the lord chancellor, with other peers appointed by commission under the great seal for that purpose, to open the parliament by stating "that her Majesty will, as soon as the members of both houses shall be sworn, declare the causes of her calling this parliament; and it being necessary a Speaker of the house of commons should be first chosen, that you, gentlemen of the house of commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your Speaker; and that you present such person whom you shall so choose here, to-morrow (at an hour stated) for her Majesty's royal approbation." The commons then proceed at once to the election of their Speaker. If any debate arises, the clerk at the table acts as Speaker, and standing up, points to the members as they rise. He also puts the question. When the speaker is chosen, his proposer and seconder conduct him to the chair, where, standing on the upper step, he thanks the house and takes his seat. It is usual for some members to congratulate him when he has taken the chair. As yet he is only Speaker elect, and as such presents himself on the

following day in the house of lords, when it has been customary for him to acquaint the lords commissioners that the choice of the commons has "fallen upon him," that he feels the difficulties of his high and arduous office, and that, "if it should be her Majesty's pleasure to disapprove of this choice, her majesty's faithful commons will at once select some other member of their house better qualified to fill the station than himself." It is stated by Hatsell, that there have been only two instances "in which neither this form, of having the royal permission to proceed to the election of a Speaker, nor the other, of the king's approbation of the person elected, have been observed. The first is the election of Sir Harbottle Grimstone, on the 25th of April, 1660, to be Speaker of the Convention Parliament which met at the Restoration; the other is the election of Mr. Powle, 22nd January, 1688-9, in the Convention Parliament at the Revolution." The only instance of the royal approbation being refused is in the case of Sir Edward Seymour in 1678. Sir John Topham indeed was chosen Speaker in 1450, but his excuse was admitted by the king, and another was chosen by the commons in his place. In order to avoid a similar proceeding on the part of the king, Sir Edward Seymour, who knew that it had been determined to accept his excuse, omitted the usual form. Of late years the speaker's address, upon this occasion, has been very considerably modified. (See May's 'Parliament,' p. 137.)

When the Speaker has been approved, he lays claim on behalf of the commons, "by humble petition, to all their ancient and undoubted rights and privileges," which being confirmed, the Speaker with the commons retires from the bar of the house of lords.

Both houses then proceed to take the oaths required by law. In the commons the Speaker takes them before any other member. Three or four days are usually occupied in this duty before the queen declares to both houses, in person or by commission, the causes of calling the parliament. From this time business proceeds regularly. The first thing usually done in both houses is to vote an address in answer to the speech from the throne.

Before any business is undertaken, prayers are read; in the house of lords by a bishop, and in the commons by their chaplain. The lords usually meet at five o'clock in the afternoon, the commons at four.

Conduct of Business, Divisions, &c.—In the house of lords business may proceed when three peers are present, but forty members are required to assist in the deliberations of the lower house. If that number be not present at four o'clock in the afternoon, or if notice be taken, or if it appear on a division, that less than that number are present, the Speaker adjourns the house until the next sitting day. In both houses all questions are decided by a majority, but in the lords proxies are counted, while in the commons none may vote but those present in the house when the question is put by the Speaker or chairman. When any question arises upon which a difference of opinion is expressed, it becomes necessary to ascertain the numbers on each side. In the lords, the party in favour of the question are called "content," and that opposed to it "not-content." In the commons these parties are described as the "ayes" and "noes." When the Speaker cannot decide by the voices which party has the majority, or when his decision is disputed, a division takes place. This is effected in the lords by sending the "contents" or "noncontents," as the case may be, to the other side of the bar, and leaving one party in the house. Each party is thus counted separately. The practice in the other house, until 1836, was to send one party forth into the lobby, the other remaining in the house. Two tellers for each party then counted the numbers, and reported them. In 1836 it was thought advisable to adopt some mode of recording the names of members who voted, and for this purpose several contrivances were proposed. The one adopted and now in operation is this:—There are two lobbies, one at each end of the house; and on a division the house is entirely cleared, one party being sent to each of the lobbies. Two clerks are stationed at each of the

entrances to the house, holding lists of the members in alphabetical order printed upon large sheets of thick pasteboard so as to avoid the trouble and delay of turning over pages. While the members are passing into the house again, the clerks place a mark against each of their names, and the tellers count the number. These sheets of pasteboard are sent off to the printer, who prints the marked names in their order; and the division lists are then delivered on the following morning together with the votes and proceedings of the house. This plan has been quite successful; the names are taken down with great accuracy, and very little delay is occasioned by the process.

In committees of the whole house, divisions are to be taken by the members of each party crossing over to the opposite side of the house, unless five members require that the names shall be noted in the usual manner; but practically no such distinction is now observed.

In addition to the power of expressing assent or dissent by a vote, peers may record their opinion and the grounds of it by a "protest," which is entered in the Journals, together with the names of all the peers who concur in it.

When matters of great interest are to be debated in the upper house, the lords are "summoned;" and in the house of commons an order is occasionally made that the house be called over, and members not attending when their names are called, are reported as defaulters, and ordered to attend on another day, when, if they are still absent and no excuse be offered, they are sometimes committed to the custody of the serjeant-at-arms.

The business which occupies nearly the whole attention of both houses (if we except the hearing of appeals by the lords and the trial of controverted elections by the commons) is the passing of bills; and the mode of proceeding with respect to them may be briefly described in the first place.

Bills, Public and Private.

Bills are divided into two classes—such as are of a public nature affecting the general interests of the state, and such as relate only to local or private matters. The former are introduced directly by members; the latter are brought in upon petitions from the parties interested, after the necessary notices have been given, and all forms required by the standing orders have been complied with.

With few exceptions, public bills may originate in either house, unless they be for granting supplies of any kind, or involve directly or indirectly the levying or appropriation of any tax or fine upon the people. The exclusive right of the commons to deal with all legislation of this nature affects very extensively the practice of introducing private bills into either house. Thus, all those which authorise the levying of local tolls or rates are brought in upon petition to the lower house. These compose by far the greater part of all private bills. All measures of local improvement, whether for enclosing land, lighting, watching, and improving towns, establishing police, or making roads, bridges, railways, canals, or other public works, originate in the commons. On the other hand, many bills of a personal nature are always sent down from the lords, such as bills affecting private estates, and for dissolving marriages. As a question of principle it is perhaps unavoidable that so large a proportion of bills must begin in one house, but much obstruction to business and a very unequal division of labour are the results of the practice, which will be relieved, in some measure, by the arrangement already referred to (p. 459) in regard to railway bills. Bills affecting the peerage must originate in the lords, and acts of grace with the crown, where the prerogative of mercy is vested.

Progress of Bills: Public Bills.—In the house of lords any member may present a bill; and in the commons motions for leave to bring in bills of a public nature are not very frequently refused. The more usual time for opposing any measure in its progress is on the second reading, when all the provisions are known, and the general principle and effect of them may be considered. When leave is given to bring in a bill, certain members are ordered to prepare it, who are the proposer and seconder of the motion,

to whom others are sometimes added. It is then brought in and read a first time, and a day is fixed for the second reading, which generally leaves a sufficient interval for the printing and circulation of the bill.

It has been already said that the second reading is the occasion on which a bill is more particularly discussed. Its principle is at that time made the subject of discussion, and if it meet with approval, the bill is committed, either to a committee of the whole house or to a select committee, to consider its several provisions in detail. A committee of the whole house is in fact the house itself, in the absence of the Speaker from the chair; but the rule which allows members to speak as often as they think fit, instead of restricting them to a single speech, as at other times, affords great facilities for the careful examination and full discussion of details. The practice of referring bills of an intricate and technical description to select committees has become very prevalent of late years, and might be extended with advantage. Many bills are understood by a few members only, whose observations are listened to with impatience, and thus valuable suggestions are often withheld in the house, which in a committee might be embodied in the bill. By leaving such bills to a select committee, the house is enabled to attend to measures more generally interesting, while other business, of perhaps equal importance, is proceeding at the same time; and it has always the opportunity of revising amendments introduced by the committee.

Before a bill goes into committee there are certain blanks for dates, amount of penalties, &c., which are filled up in this stage. Bills of importance are often recommitted, or in other words, pass twice, and even in some instances three or four times through the committee. When the proceedings in committee are terminated, the bill is reported with the amendments to the house, on which occasion they are agreed to, amended, or disagreed to, as the case may be. If many amendments have been made, it is a common and very useful practice to reprint the bill before the report is taken into consideration. After the report has been agreed to, the bill with the amendments is ordered to be engrossed previous to the third reading. A proposition was made not long since, but without success, for discontinuing the custom of engrossment upon parchment, and for using an examined copy of the printed bill, signed by the clerk of the house, for all the purposes for which the engrossed copy is now required.

The third reading is a stage of great importance, on which the entire measure is reviewed, and the house determines whether, after the amendments that have been made on previous stages, it is fit on the whole to pass and become law. The question, "that this bill do pass," which immediately succeeds the third reading, is usually no more than a form, but there have been occasions on which that question has been opposed, and even negatived. The title of the bill is settled last of all.

An interval of some days usually elapses between each of the principal stages of a bill; but when there is any particular cause for haste, and there is no opposition, these delays are dispensed with, and the bill is allowed to pass through several stages, and occasionally through all, on the same day.

This statement of the progress of bills applies equally to both houses of parliament. There is however a slight distinction in the title of a bill while pending in the lords, which is always entitled "an act," whether it has originated in the lords or has been brought up from the commons.

When the commons have passed a bill, they send it to the lords by one of their own members, who is usually accompanied by not less than eight other members. The lords send down bills by two masters in chancery; unless they relate to the crown or the royal family, in which case they are generally sent by two judges.

Some further information on this subject will be found under BILL IN PARLIAMENT.

Private Bills.—In deliberating upon private bills parliament may be considered as acting judicially as well as in its legislative capacity. The conflicting in-

terests of private parties, the rights of individuals, and the protection of the public have to be reconciled. Care must be taken, in furthering an apparently useful object, that injustice be not done to individuals, although the public may derive advantage from it. Vigilance and caution should be exercised lest parties professing to have the public interests in view should be establishing, under the protection of a statute, an injurious monopoly. The rights of landowners among themselves, and of the poor, must be scrutinised in passing an enclosure bill. Every description of interest is affected by the making of a railway. Land, houses, parks, and pleasure-grounds are sacrificed to the superior claim of public utility over private rights. The repugnance of some proprietors to permit the line to approach their estates—the eagerness of others to share in the bounty of the company and to receive treble the value of their land, embarrass the decision of parliament as to the real merits of the undertaking, which would be sufficiently difficult without such contentions. If a company receive authority to disturb the rights of persons not interested in their works, it is indispensable that ample security be taken that they are able to complete them so as to attain that public utility which alone justified the powers being intrusted to them. The imprudence of speculators is to be restrained, and unprofitable adventures discountenanced, or directed into channels of usefulness and profit. In short, parliament must be the umpire between all parties, and endeavour to reconcile all interests.

The inquiries that are necessary to be conducted in order to determine upon the merits of private bills are too extensive for the house to undertake, and it has therefore been usual to delegate them to committees. To prevent parties from being taken by surprise, the standing orders require certain notices to be given (to the public by advertisement, and to parties interested by personal service) of the intention to petition parliament. The first thing which is done by the commons on receiving the petition therefore is to inquire whether these notices have been properly given, and if all other forms prescribed by the standing orders have been observed. This inquiry is confided to a committee, who report their determination to the house. It will be necessary here to explain the constitution of this committee. Until very recently it was the practice for the Speaker to prepare "lists" of members who were to form committees on bills relating to particular counties, in such a manner as to combine a fair proportion of members connected with the locality, with the representatives of places removed from any local influence or prejudice. Each of these lists consisted of upwards of a hundred members, any five of whom formed the committee. This system was liable to many objections. The number of the committee was too great to allow any responsibility to attach to the members. They were canvassed to vote by each of the opposing parties without having heard the evidence or arguments on either side; and were sometimes induced to crowd into the committee-room and reverse decisions which had been arrived at after long and patient inquiry. These evils led to an entire alteration of the system. All petitions for private bills are now referred to the same select committee which is appointed at the beginning of each session, and is composed of members whose habits of business and practical acquaintance with this branch of legislation constitute them a tribunal in every respect superior to the old list committees. To facilitate these proceedings they divide themselves into four or six sub-committees.

The report which this committee makes to the house is simply whether the standing orders have been complied with or not. If it be favourable, leave is at once given to bring in the bill; if not, it is referred to another committee also appointed at the beginning of the session, and called the "committee on standing orders," whose province it is to inquire into the circumstances of the case, and report their opinion as to the propriety of dispensing with the standing orders, of requiring notices, or imposing new conditions. If this committee decide that the parties are not entitled to indulgence, it is still competent for the house to relax

its standing orders, as it does not by any means delegate its authority; yet in practice the report is final. Attempts are sometimes made to overrule it, but very rarely with success.

When nothing has occurred to obstruct the progress of the bill, it is read a first time; after which three clear days must elapse before the second reading, the bill being printed and delivered to members in the interval. The principle is now considered by the house, as in the case of public bills; and if the question for reading the bill be carried, it is then committed to a select committee. The constitution of committees on petitions has already been explained. While the list committees were resorted to, both the petition and the bill itself were referred to the same committee, but at present a new mode of appointing committees is in operation. It has been tried for a short time only, and must be tested by further experience before any decided opinion can be given upon its merits. The lists which have already been described are much reduced in number, and a committee of selection is appointed, to whom members upon the list must signify their intention to attend throughout the whole proceedings before they are permitted to vote. To these the committee of selection add a certain number of other members not locally interested, in such a proportion as they may think fit. Since 1844 committees upon railway bills consisting of five members only have been specially nominated by the committee of selection.

In committee, the bill, if opposed, undergoes a severe examination. Petitions against it are presented to the house and referred to the committee, who hear counsel and examine witnesses. The principle of the bill has been by no means established by the second reading, for the preamble is discussed in the committee, and if it be determined by them that it has not been proved, there is an end of the bill. The report is ordered to lie upon the table, and generally no further notice is taken of it. The house indeed seems to delegate its authority more entirely to the committee on a bill than to any other committee, as it allows them to decide against a principle in favour of which it has already declared an opinion; however it has sometimes interfered in a manner which will be best explained by briefly detailing the cases. In 1836 the committee on the Durham (South-West) Railway Bill reported, according to the usual form, that the preamble had not been proved to their satisfaction; upon which they were ordered to re-assemble for the purpose of reporting specially the preamble, and the evidence and reasons in detail on which they had come to their resolution. The detailed report was accordingly made, but the decision of the committee was not further questioned. In 1837 the bills for making four distinct lines of railway to Brighton had been referred to one committee. An unprecedented contest arose among the promoters of the competing lines; and at length it was apprehended that all the bills would be lost by the combination of three of the parties against each of the lines on which the committee would have to determine separately. This consequence was prevented by an instruction to the committee to "make a special report of the engineering particulars of each of the lines, to enable the house to determine which to send back for the purpose of having the landowners heard and the clauses settled."

If the committee allow that the allegations of the preamble have been proved, they proceed to consider the bill clause by clause. But before we quit the subject of the preamble, the modern practice concerning railway bills may be adverted to. There are so many grounds upon which the preamble may fail to be proved, and so many points on which the committee should be informed before a just decision can be given, that in 1836 a rule was established which obliges the committee to report in detail. On receiving the report, the house is now acquainted with the chief particulars from which the expediency of the measure may be collected. The length of the line,—the probable expense of the works, and the sufficiency of the estimates,—the revenue expected from passengers and from agricultural produce or merchandise, with the grounds of the calculation,

—the engineering difficulties,—the gradients and curves, are all distinctly stated. This system might be extended, with great advantage, to other classes of bills; but is confined at present to railway bills alone. Much attention has been paid of late to the improvement of the modes of conducting private business, and it is not improbable that detailed reports may form part of the future recommendations of committees, on whom the task of suggesting further improvements may be imposed.

It has been said that public bills are occasionally referred to select committees; these however must also pass through a committee of the whole house. Private bills are committed to select committees only. Bills for divorces, by a standing order, were committed, like public bills, to committees of the whole house, until the 11th February, 1840, when an order was made for referring them to a select committee of nine members.

It will not be necessary to pursue any further the progress of private bills, which differs only from that already described in respect of bills of a public nature, in the necessity for certain specified intervals between each stage, and for notices in the private bill office.

In the House of Lords, when a private bill is unopposed, it is committed to the permanent chairman of committees, and any other peers may attend; but when a bill is to be opposed, the committee on standing orders inquires whether the standing orders have been complied with, and if so, the bill is referred to a committee of five appointed by a standing committee of five peers, to whom is confided the duty of selecting all committees on opposed bills, according to the circumstances of each case.

In order to ensure a proper acquaintance with the provisions of private bills, some of which are very voluminous, the House of Commons have lately adopted a rule requiring breviates of the bills to be laid before them six days before the second reading, and breviates of the amendments made by the committee, before the house take the report into consideration. These are prepared by the examiner of election recognizances and counsel to the speaker.

Conferences between the two Houses.—The progress of bills in each House of Parliament having been detailed, it still remains to describe the subsequent proceedings in case of difference between them. When a bill has been returned by either house to the other, with amendments which are disagreed to, a conference is desired by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement; in order, to use the words of Hatsell, "that after considering those reasons, the house may be induced, either not to insist upon their amendments, or may, in their turn, assign such arguments for having made them, as may prevail upon the other house to agree to them. If the house which amend the bill are not satisfied and convinced by the reasons urged for disagreeing to the amendments, but persevere in insisting upon their amendments, the form is to desire another conference; at which, in their turn, they state their arguments in favour of the amendments, and the reasons why they cannot depart from them; and if after such second conference the other house resolve to insist upon disagreeing to the amendments, they ought then to demand a 'free conference,' at which the arguments on both sides may be more amply and freely discussed. If this measure should prove ineffectual, and if, after several free conferences, neither house can be induced to depart from the point they originally insisted upon, nothing further can be done, and the bill must be lost." An interesting occasion on which all these proceedings were successively adopted has recently occurred. A free conference had not been held since 1702, until a contest arose in 1836 upon amendments made by the lords to a bill for amending the Act for regulating Municipal Corporations.

Whether the conference be desired by the lords or by the commons, the lords have the sole right of appointing the time and place of meeting. The house that seeks the conference must clearly express in their message the subject upon which it is desired, and it is not granted as a

matter of course. There are many instances to be found in the Journals in which a conference has been refused, but not of late years. The reasons that are to be offered to the other house are prepared by a committee appointed for that purpose, who report them for the approval of the house. These reasons are generally very short, but in some cases arguments have been entered into at considerable length. The conference is conducted by "Managers" for both houses, who, on the part of the house desiring the conference, are the members of the committee who have drawn up the reasons, to whom others are occasionally added. Their duty is to read and deliver in the reasons with which they are intrusted to the managers of the other house, who report them to the house which they represent. At a free conference the managers on either side have more discretion vested in them, and may urge whatever arguments they think fit. A debate arose in the last free conference, to which we have just alluded, and the speeches of the managers were taken in short-hand and printed. While the conference is being held, the business of both houses is suspended until the return of the managers.

Amendments made to bills by either house are not the only occasions upon which conferences are demanded. Resolutions of importance, in which the concurrence of the other house is desired, are communicated in this manner. Reports of committees have also been communicated by means of a conference. In 1829 a conference was demanded by the commons to request an explanation of the circumstances under which a bill that had been amended by the lords had received the royal assent without being returned to the commons for their concurrence. The lords expressed their regret at the mistake, and stated that they had themselves been prepared to desire a conference upon the subject, when they received the message from the commons.

Conferences were formerly held in the Painted Chamber, but since the destruction of the houses of parliament by fire in 1834, that apartment has been appropriated to the sittings of the House of Peers, and conferences now meet in one of the lords' committee rooms.

Royal Assent to Bills.—The form of giving the royal assent to bills has already been described. [ASSENT, ROYAL.]

Committees.—Committees are either "of the whole house" or "select." The former are in fact the house itself, with a chairman instead of the lord chancellor or Speaker presiding. There is a more free and unlimited power of debate when the house is in committee, as members may speak any number of times upon the same question, from which they are restrained on other occasions. Select committees are specially appointed, generally for inquiring into particular subjects connected with legislation. It is usual to give them the "power to send for persons, papers, and records;" but in case of any disobedience to their orders, they have no direct means of enforcing compliance, but must report the circumstances to the house, which will immediately interfere.

In case of an equality of voices, the chairman, who is chosen by the committee out of its own members, gives the casting vote. Some misconception appears to have existed as to the precise nature of the chairman's right of voting. In 1836 the House of Commons was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and afterwards, when the voices were equal, of giving a casting vote as chairman, and that such practice had of late years prevailed in some select committees; when it was declared by the house that, according to the established rules of parliament, the chairman of a select committee can only vote when there is an equality of voices. (91 *Commons' Journals*, p. 214.) This error was very probably occasioned by the practice of election committees, which was however confined to them, and only existed under the provisions of acts of parliament.

In 1837 some regulations were made by the House of Commons for rendering select committees more efficient and responsible. The number of members on a committee was limited to fifteen. Lists of their names are to be affixed in some conspicuous place in the committee-

clerk's office and the lobby. Members moving for the committee are to ascertain whether the gentlemen they propose to name will attend. To every question asked of a witness, the name of the member who asks it is prefixed in the minutes of evidence laid before the house; and the names of the members present at each sitting, and, in the event of any division, the question proposed, the name of the proposer, and the votes of each member, are entered on the minutes and reported to the house.

Trial of Election Petitions.—The mode of proceeding in contested elections is explained in the article ELECTION COMMITTEES.

Impeachment.—Impeachment by the commons is a proceeding of great importance, involving the exercise of the highest judicial powers by parliament, and though in modern times it has rarely been resorted to, in former periods of our history it was of frequent occurrence. The earliest instance of impeachment by the commons at the bar of the house of lords was in the reign of Edward III. (1376). Before that time the lords appear to have tried both peers and commoners for great public offences, but not upon complaints addressed to them by the commons. During the next four reigns, cases of regular impeachment were frequent, but no instances occurred in the reigns of Edward IV., Henry VII., Henry VIII., Edward VI., Queen Mary, or Queen Elizabeth. The institution "had fallen into disuse," says Mr. Hallam, "partly from the loss of that control which the commons had obtained under Richard II. and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject." Prosecutions also in the Star-chamber during that time were perpetually resorted to by the crown for the punishment of state offenders. In the reign of James I. the practice of impeachment was revived, and was used with great energy by the commons, both as an instrument of popular power and for the furtherance of public justice. Between the year 1620, when Sir Giles Montressor and Lord Bacon were impeached, and the Revolution in 1688, there are about 40 cases of impeachment. In the reigns of William III., Anne, and George I. there were 15, and in George II. only one (that of Lord Lovat, in 1746, for high treason). The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

An outline of the forms observed in the conduct of impeachments may be briefly given. A member of the house of commons charges the accused of certain high crimes and misdemeanors, and moves that he be impeached. If the house agree to it, the member is ordered to go to the lords, and at their bar, in the name of the house of commons and of all the commons of the United Kingdom, to impeach the accused. A committee is then ordered to draw up articles of impeachment, which are reported to the house, and having been discussed and agreed upon, are engrossed and delivered to the lords. Further articles may be delivered from time to time. In the case of Warren Hastings the articles had been prepared before his impeachment at the bar of the house of lords. The accused sends answers to each article, which are communicated to the commons by the lords; to these, replications are returned if necessary. After these preliminaries, the lords appoint a day for the trial. The commons desire the lords to summon the witnesses required to prove their charges and appoint managers to conduct the proceedings. Westminster Hall has been usually fitted up as the court, which is presided over by the lord high steward. The commons attend with the managers as a committee of the whole house. The accused remains in the custody of the usher of the black rod, to whom he is delivered, if a commoner, by the serjeant-at-arms attending the house of commons. The managers should confine themselves to charges contained in the articles of impeachment. Mr. Warren Hastings complained of matters having been introduced which had not been originally laid to his charge, and the house resolved that certain words ought not to have been spoken by Mr. Burke. Persons impeached of

high treason are entitled, by statute 20 Geo. II. c. 30, to make their full defence by counsel, a privilege which is not denied to persons charged with high crimes and misdemeanors.

When the managers have made their charges and adduced evidence in support of them, the accused answers them, and the managers have a right to reply. The lords then proceed to judgment in this manner:—The lord high steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. The peers in succession rise in their places when the question is put, and standing uncovered, and laying their right hands upon their breast, answer "guilty," or "not guilty," as the case may be, "upon my honour." Each article is proceeded with separately in the same manner, the lord high steward giving his own opinion the last. The numbers are then cast up, and being ascertained, are declared by the lord high steward to the lords, and the accused is acquainted with the result.

(Coke's *Fourth Institute*, cap. 1; *The Soveraigne Power of Parliaments*, by W. Prynne, 1643; *Parliamentary Writs*, by W. Prynne, in four parts, 1659-1664; *Privileges of the Baronage of England when they sit in Parliament*, by John Selden, 12mo., 1642; *Modus tenendi Parliamentum*, by W. Hakewel, 1660; *Lex Parliamentaria*, by G. P., Esq., 12mo. 1690; *Constitution of Parliaments in England, deduced from the time of King Edward the Second*, by Sir John Pettus, 1680; *Original Institution, Power, and Jurisdiction of Parliaments*, by Sir M. Hale, 1707; republished by Hargrave, with preface, 1776; *Antient Right of the Commons of England*, by William Petyt, 1680; *Parliamentary and Political Tracts*, written by Sir Robert Atkins, 2nd edit., 1741; *History of the High Court of Parliament*, by T. Gurdon, 1731; *Manner of holding Parliaments in England*, by Henry Elsynge, Cler. Parl., 1768; *Free Parliaments*, by Roger Acherley, 1731; Blackstone's *Comm.*, book 1st; D'Ewes's *Journal; Lords' Journals; Commons' Journals; General Indexes and Calendars to Lords' Journals*, 1509-1819; *General Indexes to Commons' Journals*, 1547-1837; *Trial of Henry Lord Viscount Melville*, published by order of the House of Lords, fol., 1806; *State Trials; Parliamentary History;* Wynn's *Argument upon the Jurisdiction of the Commons to commit*, 1810; Hatsell's *Precedents*, new edit., 1818; *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament*, by Thomas Erskine May, Esq., Barrister at Law, Assistant Librarian of the House of Commons. May 2nd, 1844.)

PARLIAMENT OF IRELAND. In Ireland, as in England, from the conquest of the country by Henry II. in the latter part of the twelfth century, meetings of the barons were occasionally summoned to consult on public affairs, to which the old historians sometimes give the name of parliaments. But parliaments, in the modern sense, cannot be traced back in Ireland farther than to the latter end of the thirteenth century, or to a date about thirty years subsequent to that of the earliest parliament which is ascertained to have consisted both of lords and commons in England. Simon de Montfort's parliament, the first for which writs are extant summoning representatives of the counties and boroughs, met at Westminster in 1265, and the first Irish parliament to which, as far as is known, the sheriffs were directed to return two representatives for each county, was held in 1295. Representatives of boroughs in Ireland cannot be traced much farther back than to the middle of the fourteenth century. They first make their appearance in 1341, and in an act or ordinance of 1359 they are spoken of as forming an essential part of the parliament.

At this time however and down to a much lower date it was only the small portion of Ireland occupied by the English settlers that was represented in the legislature. Even in the reign of Edward III. only the province of Munster and a part of Leinster were considered as shireland: they were divided into twelve counties. But in the course of the fifteenth century the greater part of these districts had become independent of the English crown; and in the reign of Henry

VII. the English dominion and the parliamentary representation were alike confined to the counties composing what was called the Pale, that is, to those of Dublin, Louth, Kildare, and Meath (then comprehending both East and West Meath), with a very few seaports beyond these limits. The vigorous measures taken under Henry VIII. and succeeding kings however gradually extended the authority of the English institutions and laws. The possessors of some of the original Irish peerages, after maintaining for centuries an independence as complete as that of the native chieftains themselves, were induced to attend the house of lords, and many new peerages were conferred, some on Englishmen or persons of English descent, some on the heads of the old Irish families. The twelve ancient counties were all reclaimed in the reign of Henry VIII., and others were added by Mary, Elizabeth, and James, till, in the time of the last-mentioned king, the whole island was divided into thirty-two counties, as at present, each returning two representatives. Of these thirty-two counties however it is said there were seventeen in which there was not a single parliamentary borough, while in the remaining fifteen there were only about thirty. But either this account must be wrong or the common statement that James added only forty new boroughs must be an under statement, if, as appears, the entire number of the Irish commons in 1613 was 232. In this number however would be included the two representatives of Trinity College, Dublin. Subsequent new charters to boroughs augmented the house by the year 1692 to 300, at which number it remained stationary. In 1634 the number of peers was 122, and more than 500 Irish peerages were created between that date and the Union. Some however also became extinct.

It was only for a very short period of its existence that the Irish parliament was held to be a supreme legislature. Ireland being regarded as a conquered dependency, it was maintained that its parliament was in all respects subordinate to that of England, and subsequently to that of Great Britain, which might make laws to bind the people of the one country as well as of the other. The received legal doctrine used to be, that King John, in the twelfth year of his reign (A.D. 1210), ordained by letters-patent, in right of the dominion of conquest, that Ireland should be governed by the laws of England; in consequence of which both the common law of England and all English statutes enacted prior to that date were held to be of the same authority in Ireland as in England. With regard to English acts passed subsequently to that date, it was also held, in the first place, that Ireland was bound by all of them in which it was either specially named or included under general words. But further, inasmuch as one of the Irish acts called Poyning's Laws, passed in the tenth year of Henry VII. (A.D. 1495), in the lord-lieutenancy of Sir Edward Poyning, or Poynings, declared that all statutes "lately" made in England should be deemed also good and effectual in Ireland, it was held that this established the authority in Ireland of all preceding English statutes whatsoever; making those enacted since the 12th of John of the same force with those enacted before that date. This however was admitted to be the last general imposition of the laws of England upon Ireland. Of the English statutes passed since the 10th of Henry VII., it was allowed that those only were binding upon Ireland in which that country was specially named or included under general words.

The above-mentioned was only one of Poyning's laws. The substance of some others is given by Blackstone (1 *Com.*, 102); which prevented any laws from being proposed, except only such as were drawn up before the parliament which should pass them was in being; but by the 3 & 4 Philip and Mary, c. 4, it was provided that any new propositions might be certified to England for approval, even after the summons and during the session of parliament. Still this left to the parliament of Ireland nothing more than merely the power of rejecting any law proposed to it; it could neither initiate a new law nor repeal an old one, nor even amend or alter that which was offered for its acceptance. In practice however,

the letter of the statute was somewhat relaxed. Blackstone goes on to state that the practice in his day (some years after the middle of the last century) was, "that bills are often framed in either house, under the denomination of 'heads for a bill or bills,' and in that shape they are offered to the consideration of the lord-lieutenant and privy council, who, upon such parliamentary intimation, or otherwise upon the application of private persons, receive and transmit such heads, or reject them without any transmission to England." These heads of bills however really differed in nothing from bills or acts of parliament, except that, instead of the words "Be it enacted," the formal commencement of each paragraph or clause was, "We pray that it may be enacted;" and the motion for presenting them scarcely differed, except in form, from the motion in the English House of Commons for leave to bring in a bill, a motion necessary in all cases to be assented to or carried in the affirmative before the actual bringing in of any bill. And as for the consent of the crown or the government, which it was necessary to obtain before either house of the Irish parliament could take up the consideration of any proposed law, with a view to its enactment, that would in practice probably be found to operate much in the same way with the assent of the crown, which even in England was necessary to give validity to any bill after it had passed both houses. In the Irish as well as in the English parliament there was in fact an opportunity of discussing the proposition without the permission of the crown. An English as well as an Irish bill required the assent of the crown before it could become law. The practice of presenting heads of bills however was not introduced into the Irish parliament till after the Revolution of 1688.

But the dependence of Ireland upon the English crown, and the consequent subordination of the Irish legislature, were held to go still farther than to the establishment of the principle that laws might be made by the parliament of England to bind Ireland. The Irish House of Lords had entertained writs of error upon judgments in the courts of common law from the reign of Charles I., and appeals in equity from the Restoration. Nevertheless, in the year 1719, a judgment in the Court of Exchequer having been reversed by the House of Lords, the question was carried to the House of Lords of Great Britain, by which the judgment of the Court of Exchequer was affirmed.

On this the Irish House of Lords resolved that no appeal lay from the Court of Exchequer in Ireland to the parliament of Great Britain. But this resolution was immediately met by an act of the British parliament, the 5 Geo. I. c. 1, declaring that "the king's majesty, by and with the advice and consent of the lords spiritual and temporal of Great Britain in parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the people and the kingdom of Ireland; and that the House of Lords in Ireland have not nor of right ought to have any jurisdiction to judge of, reverse, or affirm any judgment, sentence, or decree given or made in any court within the said kingdom; and that all proceedings before the said House of Lords upon any such judgment, sentence, or decree are and are hereby declared to be utterly null and void to all intents and purposes whatsoever."

In this state the law remained till the year 1782. In that year the statute 5 Geo. I. c. 1, was repealed by the 22 Geo. III. c. 53; and the following year the 23 Geo. III. c. 28, declared the exclusive authority of the Irish parliament and courts of justice in all matters of legislation and judicature for Ireland. Finally, in 1800, by the Act of Union, the 39 & 40 Geo. III. c. 67, the Irish parliament was extinguished, and it was enacted that the United Kingdom should be represented in one and the same parliament, to be called the parliament of the United Kingdom of Great Britain and Ireland. [PARLIAMENT.]

The earliest Irish statutes on record are of the year 1310; but from that date there are none till the year 1429, from which time there is a regular series. The whole have been printed, and there are

also abridgments by Bullingbroke and Belcher, Hunt, and others.

(Lord Mountmorres's *History of the Irish Parliament;* Blackstone's *Commentaries;* Oldfield's *Representative History of Great Britain and Ireland;* Wakefield's *Account of Ireland, Statistical and Political;* Hallam's *Constitutional History of England.*)

PAROCHIAL REGISTERS. [REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.]

PAROL. This term, which signifies "a word," has been adopted from the Norman-French as a term of art in English law, to denote verbal or oral proceedings, as distinguished from matters which have been recorded in public tribunals or otherwise reduced to writing. Thus a parol contract is an agreement by word of mouth, as opposed to a contract by deed. Parol evidence is the testimony of witnesses given orally, as opposed to records or written instruments. This is the popular acceptation of parol, but, strictly speaking, everything, even in writing, is parol which is not under seal.

The formal allegations of the parties to a suit in the common law courts, called pleadings, which are now made in writing, were formerly conducted orally at the bar, and in the year-books are commonly denominated the parol. Hence in certain actions brought by or against an infant, either party may suggest the fact of the infancy, and pray that the proceedings may be stayed; and where such a suggestion was complied with, the technical phrase was that the "parol demurred" (demoratus), that is, the pleadings were suspended until the infant had attained his full age.

PARSON. [BENEFICE, p. 341.]

PARTNERSHIP. If two or more persons join together their money, goods, labour, and skill, or any or all of them, for the purpose of buying and selling, and agree that the gain or loss shall be divided among them, that is a partnership. The object of the partnership may be any thing that is lawful. Any agreement of partnership for an unlawful object is no agreement. The English law of partnership is founded on the common law, the so-called law of merchants, and the Roman law. By the common law a partner has no power to bind his copartner by deed. By the law of merchants he has power to bind his copartner by a bill of exchange, and there is no survivorship in the partnership stock. From the Roman law is derived the principle that a partnership (societas) is terminated by the death of a partner. (Gaius, iii. 155.)

No writing is necessary to constitute a partnership. The acts of the parties, when there is no partnership contract in writing, are the evidence of the contract. Partners may be either ostensible, nominal, or dormant. He whose name appears to the world as a partner is an ostensible partner. An ostensible partner may or may not have an interest in the concern; if he has no interest in the concern, but allows his name to appear as one of the firm, he is a nominal partner; if his name and transactions as a partner are purposely concealed from the world, he is a dormant partner. But if his name and transactions are actually unknown to the world, he is more properly termed a secret partner. Generally speaking, any number of persons may be partners, but there are some exceptions. [BANK; JOINT-STOCK COMPANY.]

Any person of sound mind and not under any legal disability may be a partner. An infant may enter into this, as into any other trading contract which may possibly turn out to his advantage. It may however be avoided by him on coming of age, though the person with whom he contracts will be bound. An alien friend may be a trader and sue in personal actions, and may therefore be a partner. But an Englishman domiciled in a foreign country at war with England, or an alien enemy, cannot be a partner with a person in this country; at least he cannot sue in this country for a debt due to the firm. Married women are incapacitated from entering into the contract of partnership; and although they are sometimes entitled to shares in banking-houses and other mercantile concerns, yet in these cases their husbands are entitled to such shares, and become partners. If parties share in the profit and

loss, they are partners, although one may bring into the trade money, another goods, and a third labour and skill, which was also the rule of the Roman law (Gaius, iii. 149); and where one party is sole owner of goods and another sole disposer or manager of them, if they share the profits, they are partners. Every man who has a share of the profits of a trade must also bear his share of the loss; for a right to a share of the profit implies a liability to bear a share of the loss. Yet one partner may stipulate with the other partners to be free from all liability to loss, and such stipulation will hold good between himself and his partners, which was also the rule of the Roman law, though he will still be liable to all those who have dealt with the firm of which he is a member. Persons who jointly purchase goods are not partners, unless they are jointly concerned in the profit or the produce arising from the sale of them. Partnership accordingly includes the notion of joint buying and joint selling for the purpose of making profit. The division of profits between or among partners may be in any proportions that they agree upon. To constitute a man a partner on the ground of sharing profits, he must have an interest in the profits, as a principal in the firm; if he only receive a portion of the profits, by way of payment for his labour, trouble, or skill as a servant or agent of the concern, he is not a partner. Sometimes there may be a difficulty in determining whether a person is such a sharer in profits, according to the legal meaning of that term, as will make him a partner and consequently liable to bear his share of any loss.

If persons share the profits of a trade, it is presumed that they are partners, and as such, liable to all who deal with the firm, whatever be the private agreement among themselves. But they may repel the presumption of partnership by showing that the legal relation of partnership among themselves does not exist. If a person allow his name to be used in a business or in any other way consent to appear as a partner, he will be so considered with respect to other persons, whatever may be his agreement with the firm; and he will be equally responsible to third parties with the other partners, although he may not receive or be entitled to receive any of the profits. The ground of this rule of law is clear and reasonable: a person must be considered bound by a contract, if he act in such a way as to make other contracting parties believe that he is a party to the contract; and such is the case with a man who allows his name to appear as a member of a firm, as to all contracts and dealings which are necessary for carrying on the business of the firm.

A partnership at will is one which continues as long as the parties live and are able and willing to continue it; a partnership for a fixed term continues for the term if the parties live and are of legal capacity to continue it. A partnership at will may be dissolved at any time by the expressed will of any member of it, a rule which is derived from the Roman law, and which is a necessary consequence of the nature of the partnership contract. In such case the partnership is dissolved immediately upon notice given by any of the partners. The effect of such dissolution is to stop all new partnership dealings or contracts; but the partnership still continues for the purpose of completing all contracts already made, and all dealings or undertakings already commenced. On such dissolution, any partner is entitled to have the whole partnership stock, and the interest in the premises on which the business is carried on, converted into money, and to receive his share of the produce. In all cases, by the natural death of a partner, the partnership is dissolved, a rule also derived from the Roman law, as already stated; it is also dissolved by a partner's civil death, as his outlawry, or attainder for treason or felony; and strictly speaking, the whole property is forfeited to the crown; for the king never becomes joint tenant, or tenant in common with the other partner, and he is entitled to the whole; but this right is seldom enforced against creditors or innocent partners. A marriage of a feme-sole trader is also a dissolution of a partnership at will. A partnership for a term may be dissolved before its expiration by the mu-

tual consent of the parties, by the decree of a court of equity, or by the bankruptcy, outlawry, or felony of any of the partners. A court of equity will in some cases dissolve a partnership on the ground of incurable insanity in one of the partnership. A partner may agree that upon his death the business may be carried on beyond the legal period of dissolution in the hands of his children or other third parties, but this is properly an agreement for a new partnership. Partners cannot be relieved from future liabilities to third parties without notice to them and to the world in general that the partnership has ceased; but in the case of a dormant partner, if none of the creditors know that he is a partner, no notice of his retirement from the firm is necessary; and if it be known to some, notice to such only will be sufficient. On the death of a partner, notice of the dissolution to third parties is unnecessary.

Partners are joint-tenants in the stock and all effects; yet upon the decease of a partner, his personal representatives become entitled to his share of the moveable stock and effects, and they thereupon become in equity, and, as it has been said, at law, tenants in common with the surviving partners. If, as is generally the case in the purchase of lands for the purposes of a partnership, they are conveyed to the partners as tenants in common, and one of the partners should die intestate, the legal estate in his share will descend to his heir, who will be tenant in common with the other partners. If the lands were conveyed to them as joint tenants, there will be no survivorship in equity; and it becomes then a question whether, upon the death of a joint trader, who, with his partners, has so purchased lands for the purpose of the trade, his share will descend for the benefit of his heir or his next of kin; and the better opinion seems to be, although the point has never been decided, that although the legal estate in freehold property purchased by partners for the purposes of their trade will go in the ordinary course of descent, yet the equitable interest will be held to be part of the partnership stock, and distributable as personal estate. Purchased lands may be conveyed so as to be always held as real estate, and descend to the heirs of the several partners.

Any fraud on the part of one partner, either by misapplication of the partnership fund or in any other way, is a matter of which a court of equity will take cognizance. No partner has a right to engage in any business or speculation which must necessarily deprive the partnership of his time, skill, and labour, because it is the duty of each to devote himself to the interest of the firm. It is the duty of each partner to keep precise accounts, and to have them always ready for the inspection of his co-partner. Each partner is liable to the performance of all contracts of his co-partners, in the same manner as if entered into personally by himself, provided they relate to matters which are within the objects and purposes of the partnership. If the parties to the contract of partnership do not regulate it by express stipulation, the contract will be interpreted according to the established rules of law that are applicable to it. Though partners may have entered into a written agreement which specifies the terms on which the joint concern is to be carried on, yet if the partnership business be regularly conducted in any respect contrary to those terms, it is a legal conclusion that the partners have, so far as the change extends, changed their terms of agreement. For instance, if the agreement be that no partner shall draw or accept a bill of exchange in his own name, without the concurrence of all the others, yet if they afterwards adopt a practice of permitting one of them to draw or accept bills without the concurrence of the others, it will be held that they have so far varied the terms of the original agreement.

One partner may maintain an action of covenant against his co-partner, whether the covenant be for the payment of money or the performance of any act for commencing or establishing the partnership, or for the performance of any of the articles after the partnership has commenced; and if adequate compensation for the breach cannot be had at law, a court of equity will enforce a specific performance of the covenant itself. Courts of law do not allow actions of debt by one

partner against another for money due upon simple contract, as for money laid out by one partner for the purposes of the partnership. The partner who is aggrieved must therefore enforce his remedy by action of account, or by an application to a court of equity, by filing a bill for an account and a dissolution of the partnership. A partner cannot maintain an action of debt against his co-partner for work and labour performed, or money expended on account of the partnership; if therefore he has a claim upon a co-partner for a sum of money due on account of the partnership, but not constituting the balance of a separate account, or a general balance of all accounts, his only mode of recovering the amount is by an action of account, or by a bill in a court of equity praying for an account, and usually also for a dissolution. If it turn out that an undertaking is impracticable, as if a machine, for the working of which the partnership was entered into, will not answer the purposes intended, and so the object of the parties is frustrated, or if either party commit fraud or gross acts of carelessness or waste in the administration of the partnership, the party aggrieved has a right to a dissolution, and the same will be decreed in equity. A partner is also entitled to an account of the partnership assets against his co-partner, but it was formerly held that he could not have it pending the partnership. If therefore he filed his bill for an account, it was also necessary to pray for a dissolution. It is now considered that a partner may have such an account on stating a proper case, without asking for a dissolution; but considering the circumstances under which a partner files a bill for an account of partnership dealings, it will seldom happen that it will be his interest not to pray for a dissolution of the partnership. Where one partner has committed such breaches of duty as would warrant a decree for a dissolution, a court of equity will interfere summarily by injunction: as where one partner has involved the partnership in debt, or has himself become insolvent, the court will restrain him from drawing, accepting, or indorsing bills in the name of the firm, from receiving the partnership debts, and from continuing to carry on the business by entering into new contracts. It will also restrain an action brought by one partner against his co-partner on a separate and private account, upon payment by the latter of the money into court. So it will restrain the application of the partnership property to a use not warranted by the articles; or an execution against the partnership property for the separate debt of one partner. A court of equity will appoint a receiver where one partner excludes another from taking such part in the concern as he is entitled to take, and will do this even with a view to the continuation of the co-partnership, if it is for the benefit of the complaining partner, although such a step is usually taken with a view to a dissolution and winding up of the partnership affairs. Whether the party applying for a receiver wish a continuance or dissolution of the partnership, he must make out such a case to induce the court to interfere as would authorise a decree for a dissolution.

Generally speaking, one partner has an implied authority to bind the firm by contracts relating to the partnership, and he can do this by mere verbal or written agreements, or by negotiable securities, such as bills of exchange and promissory notes. One partner may pledge the credit of the firm to any amount; but there are some exceptions to this rule. A dormant partner is in all cases liable for the contracts of the firm during the time that he is actually a partner; and a nominal partner is in the same manner liable during the time that he holds himself out to the world as a partner. A partner will be liable in respect of a fraud committed by his co-partner, if committed in the capacity of partner, in contracts relating to the co-partnership, made with third persons. Thus if a partner purchase goods such as are used in the business, and fraudulently convert them to his own use, the innocent partner, provided there be no collusion between the seller and the buyer, is liable for the price of the articles. One partner has no implied authority to bind his co-partner by deed, yet if he execute a deed on behalf of the firm, in the presence of and with the consent of his co-partners, it will bind the

firm. It seems that a release by one of several partners to a debtor of the firm binds the firm; but if such release be fraudulent, it will be set aside by a court of equity; and even a court of law will interfere to prevent a fraudulent release from being pleaded.

Where no time is mentioned in the deed of partnership for its commencement, the liabilities of the firm will commence from the date of the deed; but in adventures, unless the parties have previously held themselves out as partners, the liabilities commence from the time fixed by the contract. An in-coming partner is not liable for debts contracted before he joined the firm, but if he pay any of the old debts or interest upon them, or do other special acts, he may render himself liable in equity. On the retirement of an ostensible partner, notice of his retirement must be given, or he will be liable to the creditors of the continuing firm for subsequent contracts made by them, and such notice is usually given in the 'Gazette;' but notice in the 'Gazette' will not bind creditors who are not shown to have seen the notice. Third persons have a claim against a dormant partner for contracts entered into by the firm while he was a partner. This claim is founded on such dormant partner being actually a partner; and therefore it is unnecessary, on the dissolution of a partnership between an ostensible and a dormant partner, to give notice of the dissolution to the creditors, in order to protect the latter from subsequent contracts: for when the dormant partner has ceased to be a partner, he is relieved from all future liability.

It is collected from the majority of cases that a partnership contract is joint (not joint and several) both at law and in equity. Upon the death of a partner, therefore, the legal remedy against him in respect to the joint contract is extinguished, and the creditor can maintain an action against the surviving partners only. But the rule of equity as applicable to partners with respect to third parties was considered to be that the joint debts should be satisfied out of the joint estate; if that were insufficient, then subject to the claims of their separate creditors out of their separate estates proportionally; and if any of them were insolvent, then out of the remaining separate estates proportionally. But the case of *Devaynes* v. *Noble* (1 Mer., 529), affirmed on appeal by Lord Brougham (2 R. & M. 495), has established the principle that a partnership contract is several as well as joint; and that a partnership creditor may have recourse for full payment to the estate of a deceased partner. And the same judge (Sir W. Grant) who decided that case, declared that a partnership debt has been treated in equity as the several debt of each partner, though at law it is only the joint debt of all. By this decision it appears that a joint creditor on the death of one partner obtains a more advantageous remedy against his estate than he would have had against his separate estate if living. But it seems doubtful whether this point can be considered as finally settled.

Notice of the decease of a partner to the creditors of the firm is not necessary to free his estate from future liability; but it is otherwise if one of the surviving partners be executor of the deceased. A deceased partner sometimes directs his executors to continue the trade; in that case his estate will be liable to the extent to which he directs his assets to be employed. If the executor exceed that limit, he becomes personally responsible.

In actions by partners, all the partners may, and all ostensible partners must, join as plaintiffs, unless the contract upon which the action is brought be in writing under seal, when only those partners who are included can sue thereon. But if a contract not under seal be made by some, for the benefit of themselves and others, those for whose benefit it is made, as well as those whose names appear on the contract, may sue. Persons who may legally be partners in foreign countries, as husband and wife, cannot sue here as partners, for by the law of England husband and wife are not permitted to sue as partners. On the other hand, partners trading abroad in such a manner as to make a partnership here, may sue as partners for consignments sent to this country, though they cannot sue as partners at the place of trading by reason of the particular law of that place. The construction of contracts is governed by

the laws of the country in which they are made; but remedies must be pursued by the means pointed out by the law of the country whose tribunals are appealed to. The laws of the country where the contract was made can only have a reference to the nature of the contract, not to the mode of enforcing it. If partners have occasion to prefer an indictment relating to the partnership property, such property may be stated in the indictment as belonging to one of them by name, and to another or others, as the case may be. But though it is not necessary to name all the partners, yet where there are other partners, that fact should appear in the indictment, or the prisoner must be acquitted.

A whole firm may become bankrupt, or some or one only of the partners may become so, whilst the remaining members may be solvent; but those only of the partners who have committed acts of bankruptcy are to be deemed bankrupts; and to constitute two or more bankrupts under a single fiat there must be evidence of joint trading. Upon the bankruptcy, the whole of the bankrupt's property vests absolutely in the assignees, who have the same remedy by action for the recovery of the debts due to the bankrupt, and for the redress of all civil injuries with respect to the property passing to them under the fiat, as the bankrupt would have had if no fiat had issued. Accordingly, when the bankruptcy is separate, the solvent partners join with the assignees in an action for the recovery of the joint debts. On the bankruptcy of one partner the solvent partners become tenants in common with the assignees of all the partnership effects. Upon the bankruptcy of one partner, under a separate fiat issued against him, his assignees take all his separate property and all his interest in the joint property; and if a joint fiat issue against all, the assignees take all the joint property, and all the separate property of each individual partner. Joint estate is that in which the partners are jointly interested for the purposes of the partnership at the time of the bankruptcy. Separate estate is that in which the partners are each separately interested at that time. Joint debts are those for which an action, if brought, must be brought against all the partners constituting the firm; in all cases therefore when a partner becomes liable for a debt contracted by his copartners, a joint debt is created, and the creditor is a joint creditor of the firm. Separate debts are those for which the creditor can have his remedy at law against that partner only who contracted them. (Collyer, *On Partnership.*)

On partnerships in banks and joint stock companies, see BANK and JOINT STOCK COMPANY. As to mines, a partnership for working a mine is considered by courts of equity in England like any other trade partnership. The mode in which property in ships is held by part owners is explained in SHIPS.

The fundamental rules of English partnership are the same as those of the Roman contract of partnership, the chief rules of which are contained in Gaius iii. 148-154; Dig. 17, tit. 2. The great extension of English industry and commerce has been accompanied by the growth of a large mass of law applicable to the contract of partnership, a great part of which has been made by the decisions of the courts on such cases as have been litigated. Accordingly the rules about partnership now form the subject of bulky treatises, the safest clue to the use of which is a clear conception of the fundamental notions of a contract of partnership.

PARTY WALLS. [BUILDING, ACTS FOR REGULATING.]

PASSENGERS' ACT. [EMIGRATION, p. 831.]

PASSPORT, a printed permission signed by the secretary of state of the home department of a country, which allows a subject of that country to leave it and go abroad. When he has obtained this, the bearer must have his passport signed by the minister or agent of the state to which he intends to proceed. A foreigner who wishes to leave a country where he has been residing, generally obtains his passport from the minister or agent or consul of his own state. Such a document states the name, surname, age, and profession of the bearer,

describes his person, and serves as a voucher of his character and nation, and entitles him to the protection of the authorities of other countries through which he may pass, and which are at peace with his own. On arriving at the outports or frontier towns of a foreign state, every traveller is obliged to show his passport, which is examined by the proper authorities before he is allowed to proceed on his journey. This ceremony is sometimes repeated at every garrison town which he passes on the road. Even the natives of most European states cannot travel twenty miles through their own country without being furnished with a passport.

The system of passports is old, but it has become much more rigid and vexatious during the last half-century. Passports are not required in the British Islands and the United States of North America; and the natives of those two countries, accustomed to the freedom of unobstructed movement, find the regulations as to passports when they travel on the continent of Europe to be rather irksome. The practice has been defended on the plea that it prevents improper and dangerous persons from introducing or concealing themselves; but numerous instances have proved that persons, however obnoxious, who have money and friends, can evade such restrictions. That every state may admit or refuse admittance to foreigners as it thinks fit, cannot be questioned; and in times of war especially, some sort of restriction may be required for the safety of the country; but the present vexatious system of passports, as enforced in many European states in time of profound peace, is useless and mischievous. It is a check upon travellers, to whom it causes much trouble and loss of time, while the advantages supposed to result from it are at least very dubious.

It is not easy to enforce the regulations respecting passports where railroads have become almost the only mode of travelling; and in Belgium an alteration has recently been made in the passport system in consequence of the difficulty of rigidly adhering to the old regulations.

PASTURE. [Common, Rights of; Inclosure.]

PATENT. This term is applied to certain privileges which are granted by the Crown by letters patent. [Letters Patent.] The object of such privileges is to encourage useful inventions. Before applying for a patent for an invention, two considerations are necessary: first, what is entitled to a patent; and next, whether the invention has the requisite conditions.

In the first place, the machine, operation, or substance produced, for which a patent is solicited, must be new to public use, either the original invention of the patentee, or imported by him and first made public here. A patent may be obtained for England, Ireland, or Scotland, although the subject of it may have been publicly known and in use in either or in both of the other two countries.

In the second place, the subject of the invention must be useful to the public, something applicable to the production of a vendible article, for this is the construction put upon the words "new manufacture" in the statute of James I. The discovery of a philosophical principle is not entitled to such protection: such principle must be applied, and the manner of such application is a fit subject for a patent.

Inventions entitled to patent may be briefly enumerated as follows:—

1. "A new combination of mechanical parts, whereby a new machine is produced, although each of the parts separately be old and well known.

2. "An improvement on any machine, whereby such machine is rendered capable of performing better or more beneficially.

3. "When the vendible substance is the thing produced either by chemical or other processes, such as medicines or fabrics.

4. "Where an old substance is improved by some new working, the means of producing the improvement is in most cases patentable."

If the inventor think that the machine, operation, or substance produced comes under any of these enumerations, and that it is new, and likely to be useful to

the public, he may enter a caveat at the Patent Office, and at the offices of the attorney-general and the solicitor-general, in the following form:—

"Caveat against granting letters patent to any person or persons for (here describe the invention in the most general terms), without giving notice to A. B., of , in the county of ."

(Date.)

These caveats stand good for twelve months, and may be renewed from year to year: the fee for entering such caveat is 5*s.* at each office.

As soon as the caveat is entered, the inventor may find it necessary to obtain the assistance of workmen or others, in order to carry his invention into effect; and if in doing this he should make known to them his invention, he will not thereby lose his right to a patent. Any communication which is necessary for carrying his ideas into effect is not considered such a publication as would of course vitiate his right. But though the inventor is thus protected in his experiments, and is safe while dealing with honest people, he is not protected against fraud. If a person in the secret should make such invention public, or cause it to be used by several persons between the time of entering the caveat and the next stage of proceeding, that of sending in the petition, no patent could be obtained, as the declaration that accompanies the petition could not be made, or, if made, would be untrue. Again, if such workman, instead of making it public, were to give to some other person the necessary information, the latter might apply for a patent for such invention as his own; and if he could succeed in concealing the source of his information by a false declaration, he might force the real inventor to allow him to participate in such patent, or to forego it altogether. The caveat can do no more than prevent any one from stealing the ideas of an inventor and appropriating them to his own use, to the exclusion of the inventor; and it will also ensure notice of any application for a patent for a similar invention, and in some cases prevent the expenditure of time and money upon a subject for which no patent could be obtained. If any one apply for a patent, the title of which is similar to that contained in the caveat, the attorney or solicitor general will send a notice of such application to the enterer of the caveat, who, if he should think such application likely to interfere with his invention, must, within seven days from the receipt of the notice, state in answer his intention of opposing such patent.

The attorney or solicitor general then summons the applicants to appear separately before him; and if he should be of opinion that the two patents will interfere with each other, or are virtually the same, the usual course is not to grant any patent except to the two claimants conjointly, though if priority of invention can be proved by either, he who is prior is entitled to the patent.

If the invention is of such a nature that it can at once be produced or put into operation, no caveat is needed; and indeed a caveat may be the means of exciting the very attention and opposition which it is intended to prevent. Where some experiments or operations which require assistance must be performed before a definite title can be given to the invention, as must be done in the declaration and petition, it is much better to avoid the caveat; and by getting the different parts of the machinery or operations performed by different persons, if possible, keep the invention a secret until the patent is secured.

The next step is to draw up a petition to the crown, before doing which however the title of the patent must be settled. To those who have not considered the subject this may not seem a very difficult matter, but in fact it requires the greatest care; for the least discrepancy between the title and the description contained in the specification will endanger the patent. (See the evidence of Mr. Farey and others before a committee of the House of Commons upon this subject, 1829.)

The title should set forth the subject of the patent in such terms that any one may see if a patent has been taken out or applied for in the case of any similar invention.

The titles of patents collectively should form an index of the inventions thus pro-

tected. It is a common practice however to make the title as obscure as it can be made without endangering the patent, in order that the real object of it may be kept secret. But this is a matter of great difficulty, and has often justly vitiated a patent. The law requires all patented inventions to be open to public inspection, and the enterer of a caveat may be cheated by a title, for although the subjects may be the same, a title may express the invention so faintly, or indeed so falsely, that the similarity of two inventions may escape the notice of the attorney-general, and injustice may be done by granting a patent to one party while priority of invention belongs to another. By the 5 & 6 Wm. IV. c. 83, a patentee is allowed to enter a disclaimer of any part of the title or specification, with the consent of the attorney-general or solicitor-general, who may order such disclaimant to publish his disclaimer. This act supplies a remedy for unintentional errors, but is ineffectual where the title is purposely made obscure. Besides this, the disclaimer does not operate retrospectively, so that if an action be commenced before the entry of the disclaimer, the title and specification must be adduced on the trial as they originally stood. A caveat may be entered against the granting of such disclaimer.

The following cases contain instances of patents being lost through defective titles:—King *v.* Metcalfe (2 Starkie, N. P. C., 249); Cochrane *v.* Smethurst (K. B., 1 Starkie, 205). In the case of Bloxam *v.* Elsee (6 Barn. and Cress., 169 and 178), the title of a patent which came in question was "A Machine for making Paper in Single Sheets, without seam or joining, from 1 to 12 feet and upwards in width, and from 1 to 45 feet and upwards in length." The specification however described a machine only capable of producing paper of one width or to a certain width. Now if an inventor who thought of taking a patent for a machine to make paper of a greater width than 12 feet had looked at the title only of this patent, he would have supposed that such a patent already existed; but if he had inspected the specification, he would have found that it did not bear out the title, as the machine therein described was not capable of making paper of a width greater than 12 feet. The patent then was invalid, as the title comprised more than the specification. This is the most common error that patentees fall into. Jessop's case, cited during the trial of Boulton and Watt against Bull, in 1795, by Mr. Justice Buller, is another instance. A patent was taken out for a "New Watch," whereas the specification only described a particular movement in a watch, which was the real invention, and the patent was therefore void.

An honest and valid title may be stated, in a few words, to be, a description of the precise object of the invention in the most simple language.

The title being settled, the petition must be drawn in the following form:—

"The humble petition of A. B., of , in the county of ,

"Showeth,

"That your petitioner hath invented (here insert the title which you intend the patent to bear), that he is the first and true inventor thereof, and that it has not been practised by any other person or persons whomsoever, to his knowledge and belief.

"Your petitioner therefore most humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent under the great seal of Great Britain for the sole use, benefit, and advantage of his said invention within England and Wales and the town of Berwick-upon-Tweed, *and also in all your Majesty's colonies and plantations abroad*, for the term of 14 years, pursuant to the statute in that case made and provided."

The passage in Italics must be omitted if the inventor does not intend to obtain a patent for the colonies. This petition, with a declaration annexed, must be left at the office of her Majesty's secretary of state for the home department. The declaration is in lieu of the affidavit which was required until the passing of the Act 5 & 6 Wm. IV. c. 62.

A few days after the delivery of the petition, the answer may be received; which contains a reference to the attorney

or solicitor general to report if the invention is deserving of letters-patent. If such report be favourable, it must be taken and left at the Home-office for the queen's warrant, which is addressed to the attorney or solicitor general, and directs the bill to be prepared. The bill is in effect the draft of the patent, and contains the grant with reference to the clauses and provisos in the letters patent. It is signed by the secretary of state for the home department, and by the attorney or solicitor general. If at this stage of the proceeding any person should wish to oppose the patent, a caveat may be entered in the manner already described, but the enterer is required to deposit 30*l.* at the office of the attorney or solicitor general to cover the patentee's expenses if he should succeed in establishing his right to patent. The bill, when prepared, must be left at the office of the secretary of state for the home department for the queen's sign manual. It must then be passed at the signet-office, where letters of warrant to the lord keeper of the privy seal will be made out by one of the clerks of the signet; and lastly, the clerk of the privy seal will make out other letters of warrant to the lord chancellor, in whose office the patent will be prepared, sealed with the great seal, and delivered to the patentee. Considering the number of offices through which a patent passes, it might be supposed that the inquiry into the validity of the claim is very rigid, and that, when once the patent is sealed, it is safe from opposition. But in reality the law officers through whose offices it is carried exercise no opinion upon the validity of the patentee's claim; the whole responsibility rests upon himself, as will be seen by perusing the following abstract of the form of letters patent:—

The first part of the patent recites the petition and declaration, and sets forth the title which has been given to the invention by the inventor.

The 2nd relates to the granting the sole use of the invention to the inventor for the space of fourteen years, whereby all all other persons are restrained from using the invention without a licence in writing first had and obtained from the patentee, and persons are restricted from counterfeiting or imitating the invention, or making any addition thereunto or subtraction therefrom, with intent to make themselves appear the inventors thereof. This clause also directs all justices of the peace and other officers not to interfere with the inventor in the performance of his invention.

The 3rd part declares that the patent shall be void, if contrary to law or prejudicial and inconvenient to the public in general, or not the invention of the patentee, or not first introduced by him into this country.

The 4th declares that letters patent shall not give privilege to the patentee to use an invention for which patent has been obtained by another.

The 5th relates to the manner in which letters patent become void, if divided into more than a certain number of shares. The number of such shares used to be five, but all patents sealed since May, 1832, allow the interest to be divided between twelve persons or their representatives. This part also relates to the granting of licences.

The 6th contains a proviso that a full and accurate description or specification shall be enrolled by the patentee in a specified time.

The 7th directs the patent to be construed in the most favourable manner for the inventor, and provides against inadvertency on the part of the clerk of the crown in enrolling the privy seal bill.

Letters patent then only grant the sole use of an invention for a certain time, provided that the statement in the declaration be true, that the title give a distinct idea of the invention, and that the specification be enrolled within a certain time mentioned in the patent, generally two months for England, four for England and Scotland, and six for the three countries together. This time depends on the attorney or solicitor general, a longer or shorter period being granted according to the extent or difficulty of the invention; in some instances two years have been allowed for specifying.

The object of the specification is twofold:—

First, it must show exactly in what the invention consists for which a patent has

been granted, and it must give a detailed account of the manner of effecting the object set forth in the title. It must describe exactly what is new and what is old, and must claim exclusive right to the former: the introduction of any part that is old, or the omission of any part that is new, equally vitiates the patent.

In the second place, a patent is granted for a certain number of years on the condition that such full and accurate information shall be given in the specification as will enable any workman or other qualified person to make or produce the object of the patent at the expiration of that term without any further instructions. A specification is bad if it does not describe the means of doing all that the title sets forth: it is equally bad if it describes the means of effecting some object not stated in the title: it is incomplete if it mentions the use of one substance or process only, and it can be proved that the inventor made use of another, or that another known substance or process will answer the purpose as well; and it is false if more than one substance or process is described as producing a certain effect, and it is found that any one of them is unfit to the purpose. Patentees frequently render their patents invalid by claiming too much; thus, after describing one substance or process which will answer a certain purpose, they often conclude by some such expression as "or any other fit and proper means." The following is an instance in which a patent was set aside by such an expression. In specifying a machine for drying paper by passing it against heated rollers by means of an endless fabric, the inventor, after describing one sort of fabric, the only one in fact which he used, went on to say that any other fit and proper material might be used. Now if he used any other means of effecting his object, such means should have been distinctly described. This alone rendered his specification incomplete; but, besides this, it was proved that no other fabric would answer the purpose, or rather, that no other was known, and the patent was annulled accordingly. The cases which have been already mentioned as instances of bad titles will, by supposing the title to be good, be converted into instances of bad specifications, as the invalidity arises from the title and specification not agreeing with each other.

The patentee may describe his invention just as he pleases, and he may illustrate such description by drawings or not; but he should be careful to use words in their most common acceptation, or if some technical use should have perverted their meaning, he should make it appear distinctly that he intends them to be taken in such perverted sense. Subjoined is the form of the other part of the specification:—

"To all to whom these presents shall come greeting, I the said (patentee's name and residence) send greeting. Whereas her most excellent Majesty Queen Victoria, by her letters patent under the great seal of Great Britain, bearing date at Westminster, the day of , in the year of her reign, did give and grant unto me, the said A. B., my executors, administrators, and assigns, her special licence, full power, sole privilege, and authority, that I the said A. B., my executors, administrators, and assigns, and such others as I the said A. B., my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times hereafter during the term of years therein mentioned, should and lawfully might make, use, exercise, and vend within England, Wales, and the town of Berwick upon Tweed, and also in all her said Majesty's colonies and plantations abroad (if such be the case), my invention of (here insert the title set forth in the letters patent verbatim); in such letters patent there is contained a proviso that I the said A. B. shall cause a particular description of the nature of my said invention, and in what manner the same is to be performed, by an instrument in writing under my hand and seal, to be enrolled in her said Majesty's High Court of Chancery within calendar months next, immediately after the date of the said in part recited letters patent, reference being thereunto had may more fully and at large appear. Now know ye, that in compliance with the said proviso, I the said A. B. do hereby declare the nature of my invention and the manner in which

the same is to be performed are particularly described and ascertained in and by the following description thereof, reference being had to the drawings hereunto annexed, and the figures and letters marked thereon, that is to say, my invention consists (here insert the description of the invention). In witness whereof I the said A. B. have hereunto set my hand and seal this day of , 1846.

(Name and seal.)

"Taken and acknowledged
by A. B. party hereto
the day of , 1846,
at ,

"Before me,
"B—— C——
"A master (or master extraordinary) in Chancery."

The specification being completed, it only remains to enrol it before 12 o'clock on the day of the expiration of the time allowed in the letters patent. All specifications are open to public inspection upon payment of a small fee, and books are kept at the Patent Office, Serle Street, Lincoln's Inn, which contain a list of all patents in force. These books may be inspected, by permission of the clerk, without any charge.

Extension of Term of Letters Patent.—If a patentee finds that the time allowed him by the patent is not sufficient to remunerate him for the trouble and expense of his invention and patent, he may apply for an extension of the term. This used to require a petition to parliament, but by the 5 & 6 Wm. IV. c. 83, the patentee, after advertising his intention to apply for an extension of his patent in the manner required by the act, may petition the king in council. Any person wishing to oppose the extension must enter a caveat at the Privy Council Office, and the petitioner and enterer of the caveat or caveats are heard by their counsel before the Judicial Committee, which reports to the king; and the king is authorised, if he shall think fit, to grant new letters patent for the same invention for a term not exceeding seven years after the expiration of the first term. The application must be made so as to allow time for the grant before the conclusion of the original term, according to 5 & 6 Wm. IV. c. 83; but this condition is somewhat modified by 2 & 3 Vict. c. 67. By the 7 & 8 Vict. c. 69, § 2, a patentee may obtain an extension of the term for any time not exceeding fourteen years, "subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said act of the sixth year of the reign of his late majesty" (5 & 6 Wm. IV. c. 83). This act contains also other enactments applicable to the extension of time where patentees have wholly or in part assigned their right.

Scotch and Irish patents are obtained by process similar to that described for England; the applications however are made to the respective law officers of each country.

The complicated nature of the proceedings in obtaining a patent has led to the establishment of a class of persons who make it their business to obtain patents for inventors; and in case of an intricate invention, it is far better for an inventor to employ one of these "patent agents" than to run the risk of the errors and loss of time which may be occasioned by his inexperience. The fee charged by the clerks of the Patent Office, who act also as agents, is ten guineas, exclusive of the drawings and descriptions, which of course vary according to the difficulties of the subject; a small sum comparatively, when the loss of time and risk of a faulty title or specification are taken into consideration.

The time necessary for obtaining a patent is seldom less than two months, and frequently much longer. This is justly considered a great grievance, as the inventor is not secure until the great seal is attached, and no reason can be assigned for this delay, except that the patent passes unnecessarily through a great number of offices. The expense also is very heavy, and may be stated on an average at 120*l.* for England, with 5*l.* additional for the colonies, 100*l.* for Scotland, and 125*l.* for Ireland.

It is evident that there are many inventions which will not bear this outlay of capital, and the consequence is that the number of patents is much smaller than it would be if the charges were less; and

the public lose by this. The inventor, if he procure a patent, will take care that although he may be the party inconvenienced at first by the outlay, the public shall pay for it eventually; but if he do not take out a patent, he will do all in his power to keep his invention secret for a longer time than the patent would have allowed. This circumstance has given rise to much of that jealousy which is so apparent among manufacturers; it has materially retarded the study of the arts, which are now fenced round with secrets and difficulties, and has been mainly instrumental in causing the great want which confessedly exists, of men conversant at once with the theory and the practice of mechanical operations.

The truth of these observations will be admitted by all who have been in any way connected with manufactures; but if any evidence be wanting to convince those who are not, the small number of patents taken out in England is quite conclusive. In 1837 the number of English patents was 254, and that of Scotch 132; the numbers in France and Prussia were much larger. Much has been said against the present law of patent, which in our opinion is unfounded in truth. There are difficulties connected with the title and specification which cannot perhaps be smoothed by any legislative enactments; but the obstacles which the law has placed in the way of inventors can be easily removed. There is nothing to prevent patents being granted in a quarter of the present time, and at a tenth part of the present expense. When this is done, the number of patents will rapidly increase; talent, which is inert for want of motive, will be called into action, and the workshop will no longer be closed against the philosophic inquirer.

PATENT LETTERS. [LETTERS PATENT.]

PATERNITY. [BASTARD.]

PATRIARCH. [BISHOP, p. 377.]

PATRICIANS AND PLEBEIANS. [NOBILITY; AGRARIAN LAWS.]

PATTERNS. [COPYRIGHT, p. 645.]

PATRON. [ADVOWSON; BENEFICE; PARISH; CLIENT.]

PAUPERISM. [POOR LAWS AND PAUPERISM; SETTLEMENT.]

PAWN. [PLEDGE.]

PAWNBROKERS. All persons who receive goods by way of pawn or pledge for the repayment of money lent thereon at a higher rate of interest than five per cent. per annum, are pawnbrokers. In pawning, the goods of the borrower are delivered to the lender as a security. [PLEDGE.]

The business of lending money on pledges is in many countries carried on under the immediate control of the government as a branch of the public administration; and where only private individuals engage in it, as in this country, it is placed under regulations. Thus in China, where pawnbrokers are very numerous, Mr. Davis says ('Chinese,' vol. ii. p. 438) they are under strict regulations.

The 12 Anne, stat. 2, c. 16, fixed the legal rate of interest at 5 per cent. per annum; but the interest which pawnbrokers are allowed to charge is regulated by a special statute, the 39 & 40 Geo. III. c. 99, passed 28th of July, 1800. This act fixes the rates of interest allowed on goods or chattels placed in the hands of pawnbrokers according to the following scale:—

For every pledge upon which there shall have been lent any sum not exceeding 2*s.* 6*d.*, the sum of ½*d.*, for any time during which the said pledge shall remain in pawn not exceeding one calendar month, and the same for every calendar month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired. If there shall have been lent the sum of 5*s.*, one penny; 7*s.* 6*d.*, one penny halfpenny; 10*s.*, two-pence; 12*s.* 6*d.*, two-pence halfpenny; 15*s.*, three-pence; 17*s.* 6*d.*, three-pence halfpenny; 20*s.*, four-pence; and so on progressively and in proportion for any sum not exceeding 40*s.*; but if exceeding 40*s.* and not exceeding 42*s.*, eight-pence; if exceeding 42*s.* and not exceeding 10*l.*, after the rate of three-pence for every 20*s.*, by the calendar month, including the current month, and so on in proportion for any fractional sum. Persons may redeem goods within seven days after the expiration of the first calendar month with-

out paying interest for the extra seven days; or within fourteen days on paying for one month and a half; after which time interest is charged for two calendar months.

Pawnbrokers are required by the act to keep books in which all goods taken in pledge must be entered and described, the sum advanced upon them, and the name and abode of the pledger, and whether he is a housekeeper or a lodger. They make out at the time two memoranda of these particulars, one of which is given to the pledger. This duplicate is given gratis in all cases where the sum advanced is under 5*s.*; when it is 5*s.* and under 10*s.*, one halfpenny is charged; 10*s.* and under 20*s.*, one penny; 1*l.* and under 5*l.*, two-pence; 5*l.* and upwards, four-pence. Articles pledged for sums above 5*s.* must be entered in the pawnbroker's books within four hours; and those on which 10*s.* or upwards have been advanced must be entered in a separate book and numbered, the first entry in each month commencing No. 1. The number and description of the pledge in the books and on the duplicate correspond with each other. Articles cannot be taken out of pawn without the production of the duplicate, the holder of which is assumed to be the owner; and accordingly duplicates are often sold by the pledger when he wants money, and they are transferred from one to another like any other saleable article. If a duplicate should be lost or stolen, the pawnbroker is required to give a copy of it to the person who represents himself as the owner of the articles pledged, with a blank form of affidavit, which must be filled up with a statement of the circumstances under which the original duplicate was lost, to the truth of which deposition an oath must be made before a magistrate. For this second duplicate the pawnbroker is entitled to demand one halfpenny, if the sum advanced does not exceed 5*s.*; from 5*s.* to 10*s.*, one penny; and afterwards in the same proportion as for the original duplicate.

The penalty against unlawfully pawning goods the property of others is between 20*s.* and 5*l.*, besides the full value of the goods pledged; and in default of payment, the offending party may be committed for three months' imprisonment and hard labour. Persons forging or counterfeiting duplicates, or not being able to give a good account of themselves on offering to pawn goods, are liable to imprisonment for any period not exceeding three months. Pawnbrokers or other persons buying or taking in pledge unfinished goods, linen, or apparel intrusted to others to wash or mend, are to forfeit double the sum advanced and to restore the goods. The act empowers police officers to search pawnbrokers' houses or warehouses when suspected to contain unfinished goods unlawfully pledged, and goods unlawfully pawned must be restored to the owner by the pawnbroker.

All pawned goods are deemed forfeited at the end of one year. If redeemed, the pawnbroker must endorse on his duplicate the charge for interest, and keep it in his possession for one year. Articles on which sums have been advanced of 10*s.* and not exceeding 10*l.*, if not redeemed, must be sold by auction, after being exposed to public view and at least two days' notice having been given of the sale. The catalogue of sale must contain the name and abode of the pawnbroker, the month in which the goods were received, and their number as entered in the books and on the duplicate. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, must be sold separate from other goods, on the first Monday in January, April, July, and October in every year. On notice not to sell given in writing, or in the presence of one witness, from persons having goods in pledge, three months further are allowed beyond the year for redemption. An account of sales of pledges above 10*s.* must be entered in a book kept by the pawnbroker, and if articles are sold for more than the sum for which they were pledged, with interest thereon, the owner is entitled to the overplus, if demanded within three years after the sale. Pawnbrokers' sale-books are open to inspection on payment of a fee of one penny. The penalty on pawnbrokers selling goods before the proper time, or injuring or losing them,

and not making compensation to the owner, according to the award of a magistrate, is 10*l.* They are required to produce their books on the order of a magistrate in any dispute concerning pledges, and are not to purchase goods which are in their custody. The act extends to the executors of pawnbrokers.

The Pawnbrokers' Act prohibits pledges being taken from persons intoxicated or under twelve years of age; and by the Metropolitan Police Act (2 & 3 Vict. c. 47), a fine of 5*l.* is inflicted upon pawnbrokers taking pledges from persons under the age of sixteen. Pawnbrokers are prohibited from buying goods between the hours of 8 A.M. and 7 P.M.; or receiving pledges from Michaelmas-day to Lady-day before 8 A.M. or after 8 P.M.; or for the other part of the year, before 7 A.M. or after 9 P.M., excepting on Saturdays and the evenings preceding Good Friday and Christmas-day, when the hour for closing is extended to 11 P.M. They are required to place a table of profits and charges in a conspicuous part of their places of business.

Pawnbrokers are required to take out an annual licence from the Stamp Office; and, to enable them to take in pledge articles of gold and silver, a second licence is necessary, which costs 5*l.* 15*s.* Those who carry on business within the limits of the old twopenny-post pay 15*l.* a year for their licence, and in other parts of Great Britain 7*l.* 10*s.* The licence expires on the 31st of July, and a penalty of 50*l.* is incurred if it is not renewed ten days before. No licence is required in Ireland, but those who carry on the business of a pawnbroker must be registered.

In 1833 the number of pawnbrokers in the metropolitan district was 368; 386 in 1838; and 383 in 1842; in the rest of England and Wales the number was 1083 in 1833; 1194 in 1838; and 1304 in 1842; in Scotland the number was 52 in 1833; 88 in 1838; and 133 in 1842: making a total of 1820 establishments in 1842, which paid 16,522*l.* for their licences, besides the licence which many of them take out as dealers in gold and silver. The increase in England is to a considerable extent chiefly in places where the business of a pawnbroker has not hitherto been carried on; and in Scotland, according to the 'New Statistical Account,' the extent of this change is remarkable. The business of a pawnbroker was not known in Glasgow until August, 1806, when an itinerant English pawnbroker commenced business in a single room, but decamped at the end of six months; and his place was not supplied until June, 1813, when the first regular office was established in the west of Scotland for receiving goods in pawn. Other individuals soon entered into the business; and the practice of pawning became so common that, in 1820, in a season of distress, 2043 heads of families pawned 7380 articles, on which they raised 739*l.* 5*s.* 6*d.* The capital invested in this business in 1840 was about 26,000*l.* Nine-tenths of the articles pledged are redeemed within the legal period. (Dr. Cleland's 'Former and Present State of Glasgow,' 1840.) There are no means of ascertaining the exact number of pawnbrokers' establishments in the large towns of England. A return of the amount and nature of the dealings of pawnbrokers would supply much valuable evidence of the condition and habits of the people. The only return of the kind which we have seen was supplied by a large pawnbroking establishment at Glasgow to Dr. Cleland, who read it at the meeting of the British Association for the Advancement of Science in 1836. The list comprised the following articles:—539 men's coats, 355 vests, 288 pairs of trowsers, 84 pairs of stockings, 1980 women's gowns, 540 petticoats, 132 wrappers, 123 duffles, 90 pelisses, 240 silk handkerchiefs, 294 shirts and shifts, 60 hats, 84 bed-ticks, 108 pillows, 262 pairs of blankets, 300 pairs of sheets, 162 bed-covers, 36 table-cloths, 48 umbrellas, 102 Bibles, 204 watches, 216 rings, and 48 Waterloo medals. It was not stated during what period these articles were received. There were at that time in Glasgow above thirty pawnbrokers. In the manufacturing districts during the prevalence of "strikes," or in seasons of commercial embarrassment, many hundreds of families pawn the greater part of their wearing-apparel and household furniture. (Paper read

in 1837 by Mr. Ashworth, of Bolton, 'On the Preston Strike in 1836.') The borough-reeve of Manchester stated on a late occasion (April, 1840) that a clergyman had shown him sixty-seven pawn-tickets from one family, and he said there were thousands in similar circumstances "going inch by inch," in consequence of the stagnation of industry. The practice of having recourse to the pawnbrokers on such occasions is quite a different thing from the habits of those who, "on being paid their wages on the Saturday, are in the habit of taking their holiday clothes out of the hands of the pawnbroker to enable them to appear respectably on the Sabbath, and on the Monday following they are again pawned, and a fresh loan obtained to meet the exigencies of their families for the remainder of the week." It is on these transactions and on such as arise out of the desire of obtaining some momentary gratification that the pawnbrokers make their large profits. It is stated in one of the Reports on the Poor-Laws, that a loan of

3*d.*, if redeemed the same day, pays annual interest at the rate of 5200 per cent.; weekly, 866 per cent.				
4*d.*	3900 per cent.;	weekly,	650	per cent.
6*d.*	2600	"	433	"
9*d.*	1733	"	288	"
12*d.*	1300	"	216	"

In a petition presented to parliament in 1839, it is stated, that on a capital of 6*d.* thus employed (in weekly loans) pawnbrokers make in twelve months 2*s.* 2*d.*; on 5*s.* they gain 10*s.* 4*d.*: on 10*s.* they clear 22*s.* 3¼*d.*; and on 20*s.* lent in weekly loans of sixpence, they more than double their capital in twenty-seven weeks; and should the goods pawned remain in their hands for the term of twelve months (which seldom occurs), they then derive from 20 to 100 per cent. The 'Loan Fund Societies,' which are protected by an Act of the Legislature, and advance small sums under 15*l.* at 5 per cent., are of no advantage to the habitual dependants upon the pawnbroker.

The 'Pawnbrokers' Gazette' is a stamped weekly publication, which contains advertisements of sales, and other information of use to the trade, amongst whom it exclusively circulates.

The act for the regulation of pawnbrokers in Ireland is the 28 George III. c. 43 (Irish statute). It requires pawnbrokers to take out licences and to give securities; appoints the marshal of the city of Dublin corporation registrar of licences; directs returns to be made to him monthly, upon oath, of sums lent; and allows the registrar a fee of one shilling on each return. The stamp duty on licences amounted to 2775*l.* in 1842.

In 1837 Mr. Barrington founded the Limerick Mont de Piété, as a means of providing funds for the public charities of that city. He erected buildings at his own expense, and sent competent persons to Paris to make themselves acquainted with the mode of conducting the Mont de Piété in that capital. A capital of 4000*l.* was raised on debentures, bearing interest at 6 per cent.; and the establishment was opened on the 13th of March, 1837, under the control of a committee. In the course of eight months 13,000*l.* had been lent on 70,000 pledges at a rate of interest amounting to one farthing per month for a shilling, no charge being made for duplicates. Six-sevenths of the amount advanced was in sums under 5*s.* Four months after the establishment was opened, the value of articles redeemed on Saturdays averaged about 140*l.*, the interest on which amounted to 3*l.* 3*s.* 6*d.*, while the pawnbroker's charge would have been 9*l.* Towards the close of the year 1839 Mr. Barrington published a short pamphlet showing the further progress of the institution. The capital had been increased to 15,350*l.*, and a clear profit of 1736*l.* had been realised since March, 1837. Small sums are lent to poor persons of known respectability of character on their personal security. This plan is attended with valuable effects upon the conduct and character of the poorer classes.

In Appendix E, 'Poor Inquiry (Ireland),' there is an account of the Ahascragh Loan Society, which shows that where individuals can be found to superintend the details, the ruinous plan of applying to pawnbrokers may be partially

obviated. This Society had borrowed 720*l.*, partly from the county Galway trustees, which sum had been disposed among 400 borrowers, and no loss had occurred during the two years in which the Society had been in operation, chiefly in consequence of the attention of the Rev. H. Hunt, the treasurer. In the evidence taken at an examination by the Commissioners of Inquiry in the county Leitrim (p. 93) it was stated that there were no pawnbrokers in the barony; but a class of men called usurers are to be met with in every direction, "and they bind both borrowers and sureties by solemn oaths to punctual repayment of the principal, and of the interest, which is exorbitant in proportion to the smallness of the sum lent." The witness, who was a magistrate, further stated, that a case had recently come before Lord Clements and himself, in which a man had bound himself to pay 12*s.* a year in quarterly instalments for the use of 15*s.* principal. Such facts show the expediency of affording every encouragement to establishments conducted under the immediate control of the law. In some instances in Ireland pawnbrokers keep spirit-shops under the same roof or in an adjoining house. The Report just quoted states that people were beginning to lose their reluctance to wear the forfeited property of their neighbours; and most of the poor persons examined stated that a few years ago they were ashamed to go to the pawnbrokers, but this feeling appeared then to have been much weakened. The scarcity of capital in Ireland occasions many individuals to have recourse to pawnbrokers for purposes unknown in England, such as obtaining the means of purchasing a pig or buying seed.

The Mont de Piété is an institution of Italian origin. [MONT DE PIETE.] In 1661 a project existed for establishing Monts de Piété in England. It is extremely doubtful whether a public institution for lending money on pledges would answer in London. Many branch establishments would be necessary, and they would scarcely be so economically conducted as the establishments belonging to private individuals. The rates of interest charged by pawnbrokers are high; but the average profits of their trade are not so great as might be inferred from a hasty glance at the preceding tables, which nevertheless fully prove that having recourse to pawnbrokers is an improvident mode of raising money. It is, however, a great convenience to many persons who could not raise money for temporary purposes in any other way. Those pawnbrokers who take out a licence to receive pledges in gold and silver do a considerable amount of business in that way, and of course not with the poorest classes. In 1838 a company was formed in London, called the 'British Pledge Society,' which proposed lending money at one-half the rate of interest allowed by the 39 & 40 George III. c. 99, and without making any charge for duplicates. This society also pledged itself to make good losses in case of fire, for which casualty pawnbrokers are not liable. The bill of incorporation, after being read a first time in the House of Commons, was abandoned.

There is a Mont de Piété at Moscow on a very extensive scale, the profits of which support a foundling hospital. They are numerous in Belgium. From a paper read by Rawson W. Rawson before the London Statistical Society in 1837, the following appear to be the terms of the Mont de Piété of Paris:—"Loans are made upon the deposit of such goods as can be preserved to the amount of two-thirds of their estimated value; but on gold and silver, four-fifths of their value is advanced. The present rate of interest is 1 per cent. per month, or 12 per cent. per annum. The Paris establishment has generally from 600,000 to 650,000 articles in its possession, and the capital constantly outstanding may be estimated at about 500,000*l.* The expense of management amounts to between 60 c. and 65 c. on each article, and the profits are wholly derived from loans of 5 francs and upwards. Articles not redeemed within the year are sold, subject however, as in England, to a claim for restoration of the surplus, if made within three years."

The statistical tables published by the French minister of commerce show the

operations of the Mont de Piété of Paris and those of the large towns in France during the year 1833. The number of articles pledged in Paris in 1833 was 1,064,068; average sum advanced on each, 14*s.* 11*d.* The number of articles redeemed was 844,861: on 178,913 articles the interest was paid and the duplicate renewed; 50,656 articles, on which the sum of 36,391*l.* had been advanced, were forfeited, being one-twentieth in number, but less than one-twentieth in value.

PECULIARS, COURT OF. [ECCLESIASTICAL COURTS, p. 803.]

PEDLAR. This word is said by Dr. Johnson to be a contraction from *petty dealer*, formed into a new term by long and familiar use; and a pedlar is defined by him to be "one who travels the country with small commodities." The same writer defines a *hawker* to be "one who sells his wares by proclaiming them in the street."

The legal sense of hawker is an itinerant trader, who goes about from place to place, carrying with him and selling goods; and a pedlar is only a hawker in small wares. In the various acts of parliament which impose duties upon them and regulate their dealings, they are always named in conjunction as hawkers and pedlars; and no distinction is made between them.

It has been for more than a century the opinion in England that the conduct of trade by means of fixed establishments is more beneficial to the public than that of itinerant dealers; and it cannot be denied that the local trader being better known and more dependent upon his character than one who continually travels from place to place, there is a greater security for the respectability of his dealings. Accordingly statutes have been made from time to time, which require hawkers and pedlars to take out licences and to submit to specific regulations and restrictions, which are supposed to protect the resident trader as well as the public from unfair dealing. These reasons, however, have been given subsequently to justify the laws; for the statutes which originally required licences for hawkers and imposed these duties appear to have merely contemplated a means of increasing the revenue; and that this was the object of the legislature appears from the fact of pawnbrokers and others having been also required to take out licences. (8 & 9 Wm. III. c. 25; and 9 & 10 Wm. III. c. 27.)

The provisions by which the licences to hawkers and pedlars are now regulated are contained in the statute 50 George III. c. 41. By that Act, the collection and management of the duties on hawkers and pedlars in England was given to the commissioners for licensing and regulating hackney coaches; but this duty has since been transferred to the commissioners of stamps by the 75th section of the statute 1 & 2 Wm. IV. c. 22. By the provisions of the latter statute, "all the powers, provisions, regulations, and directions contained in the statute 50 George III. c. 41, or any other act relating to the duties on hawkers and pedlars, are to be enforced by the commissioners of stamps; and all the powers, provisions, regulations, and directions, forfeitures, pains and penalties imposed by any acts relating to the management of duties on stamps, so far as the same are applicable to the duties on hawkers and pedlars, are declared to be in full force and effect, and are to be applied and put in execution for securing and collecting the last-mentioned duties, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully as if they were repeated and specially enacted in the statute 1 & 2 Wm. IV. c. 22." The duty of granting licences to hawkers and pedlars and enforcing the law against such persons is now therefore intrusted to the commissioners of stamps; the particular conditions and regulations under which such licences are to be granted are contained in the above-mentioned statute 50 George III. c. 41.

Before a licence is granted to a person desirous of trading and travelling as a hawker or pedlar, the applicant must produce to the commissioners of stamps a certificate, signed by the officiating clergyman and two householders within the parish in which he resides, attesting

that he is of good character and a fit person to be licensed. Upon this certificate being given, the commissioners grant the licence, which is only in force for one year, and the party who receives it is subject to a duty of 4*l.* per annum, and an additional duty of 4*l.* per annum for each beast if he travels with a "horse, ass, mule, or other beast bearing or drawing burthen;" and these duties are to be paid at the time of receiving the licence. The duties have not been altered since 1789. All persons who act as hawkers or pedlars without such a licence are liable to a penalty of 50*l.*

Among other regulations, the hawker or pedlar is required by the Act to "cause to be written in large legible Roman capitals, upon the most conspicuous part of every pack, box, bag, trunk, case, cart, or waggon, or other vehicle in which he carries his goods, and of every room and shop in which he trades, and likewise upon every handbill or advertisement given out by him, the words 'Licensed Hawker,' together with the number, name, or other mark of his licence;" and in case of his omission so to do, he is liable to a penalty of 10*l.*; and every unlicensed person who places these words upon his goods is liable to a penalty to the like amount. A hawker and pedlar travelling without a licence, or travelling and trading contrary to or otherwise than is allowed by the terms of his licence, or refusing to produce his licence when required to do so by inspectors appointed by the commissioners, or by any magistrate or peace-officer, or by any person to whom he shall offer goods for sale, is liable in each case to a penalty of 10*l.* A person having a licence, and hiring or lending it to another person for the purpose of trading with it, and also the person who so trades with another's licence, are each liable to a penalty of 40*l.* A hawker or pedlar dealing in or selling any smuggled goods, or knowingly dealing in or selling any goods fraudulently or dishonestly procured, forfeits his licence, and is for ever afterwards incapacitated from obtaining or holding a new licence. By the stat. 48 Geo. III. c. 84, s. 7, if any hawker or pedlar shall offer for sale tea, brandy, rum, geneva, or other foreign spirits, tobacco, or snuff, he may be arrested by any person to whom the same may be offered, and taken before a magistrate, who may hold him to bail to answer for the offence under the Excise laws.

By the provisions of the statutes 29 Geo. III. c. 26, § 6, and also of 50 Geo. III. c. 41, § 7, no person coming within the description of a hawker or pedlar can lawfully, either by opening a shop and exposing goods to sale by retail in any place in which he is not a householder or resident, or by any other means, sell goods either by himself or any other person by outcry or auction, under a penalty of 50*l.* Hawkers were not allowed formerly to sell goods in market-towns, except on a fair or market day; but this restriction was done away with by 35 Geo. III. c. 91.

It is further provided by the 18th section of the 50 Geo. III. c. 41, that if any person shall forge or counterfeit any hawker's or pedlar's licence, or travel with, or produce, or show any such forged or counterfeited licence, he shall forfeit the sum of 300*l.* Persons who hawk fish, fruit, victuals, or goods, wares, or manufactures made or manufactured by such hawkers, or by their children, are not required to take out a licence; nor are tinkers, coopers, glaziers, plumbers, harness-menders, or other persons usually trading in mending kettles, tubs, household goods, or harness of any kind. (Chitty's *Commercial Law*, vol. ii. p. 163; Burn's *Justice*, tit. 'Hawkers.')

The amount raised by these licences is too insignificant as an object of revenue. They are in fact a tax on the consumers, like all other licences. The true policy is to let a person sell his goods where and how he can. Competition will ensure the consumer here, as in other cases, the best and cheapest article. The pedlar carries his wares into districts where the people have not access to the best markets, and thus he tends to correct the dealings of the settled trader. He also carries his wares to people who would often not know of the existence them. The hawker is now one of the active instruments in diffusing cheap

books among the population, and a large part of the sale of the cheap periodicals is in his hands, particularly in the north of England and in Scotland. Thirty years ago, Francis Horner, writing to Dugald Bannatyne, of Glasgow, speaks of "that very remarkable traffic in books round Glasgow by itinerant retailers." The hawker is therefore employed in the diffusion of knowledge, and is a great benefactor to society, and as such should be free from all taxes that are imposed on him in addition to those which he and other dealers pay.

Amount of Revenue from Hawkers' Licences:—

	England.		
1800	£ 8,963	1830	23,392
1810	17,898	1840	32,512
1820	29,236	1843	27,100
	Scotland.		
1840	3,284	1843	2,092

Rate paid for each Licence:—

England.	at £4.	at £8.	at £12.	at £16.
1820	5369	912	36	2
1830	6630	832	14	3
1840	6020	1005	30	2
1843	4793	927	40	2
Scotland.				
1840	705	58		
1843	411	56		

PEERS OF THE REALM. This term is equivalent to Peers of Parliament, that is, those noblemen who have a seat in the House of Lords. The 'Realm,' that is, the 'Roiaume,' is the Kingdom of England. Scotland and Ireland have also their peers; but those who are simply peers of Scotland and Ireland are not Peers of the Realm, or Peers of Parliament, or Peers of the United Kingdom, for all these expressions are used to signify the same thing.

Without meaning to decide the question whether the lords spiritual are strictly peers of the realm, the persons who fall under this description are the dukes, marquesses, earls, viscounts, and barons [DUKE, &c.], and this without reference to the accident of age: an earl, for instance, is a peer of the realm, though a minor, but he does not sit or vote in the House of Lords till he is twenty-one. Women may also be peeresses of the realm in their own right, as by creation, or as inheritors of baronies which descend to heirs general, but they have no seat or vote in the house of lords. The wives of peers are peeresses.

On the remote origin of this order, and of the privileges belonging to it, especially that form of a house, in which, in concurrence with the spiritual lords, they consider every proposal for any change in the laws of the realm, and have an affirmative or a negative voice respecting it, and of being also the supreme court of judicature before whom appeal may be made from the judgment of nearly all inferior courts, great obscurity rests. The reports of the committee of the house of peers, which sat during several parliaments about the years 1817, 1818, and 1819, on the dignity of a peer of the realm, contain a great amount of information on these topics, but leave undecided some of the greater and more important questions connected with it.

Every peer of the realm, being of full age and of sound mind, is entitled to take his seat in the house of peers, and to share in all the deliberations and determinations of that assembly. He has privilege (perhaps not very distinctly defined) of access to the person of the king or queen regnant to advise concerning any matter touching the affairs of the realm. If peers of the realm are charged with any treason, felony, misprision, or as accessories, they are not subject to the ordinary tribunals, but the truth of the charge is examined by the peers themselves; they cannot be arrested in civil cases; they give their affirmation on honour when they sit in judgment, and answer bills in chancery upon honour; but when examined as witnesses they must be sworn. 'Words,' says Blackstone, (Book iii. c. 8) 'spoken in derogation of a peer, a judge, or other great officer of the realm, which are called *scandalum magnatum*, are held to be still more heinous; and though they be such as would not be actionable in the case of a private person, yet when spoken in disgrace of such high and respectable

characters, they amount to an atrocious injury, which is redressed by an action on the case founded on many ancient statutes; as well on behalf of the crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained.'

Peers are tried for misdemeanors in the same way as other people. The lords spiritual are also, in all cases, tried by the ordinary courts. Peeresses have the same privileges as peers, whether they are peeresses by birth, creation, or marriage; but if a peeress by marriage marry a commoner, she loses her privileges.

The crown may at its pleasure create a peer, that is, advance any person to any one of the five classes; which is now done either by writ or patent. [BARON; LETTERS PATENT; NOBILITY.] A peer cannot be deprived of the dignity or any of the privileges connected with it, except on forfeiture of the dignity by being attainted for treason or felony; and the dignity must descend, on his death, to others (as long as there are persons within the limitation of the grant), with all the privileges appurtenant to it, usually to the eldest son, and the eldest son of that eldest son in perpetual succession, and so on, keeping to the eldest male representative of the original grantee. Some deviation from this rule of descent, however, has occasionally occurred, special clauses having been introduced into the patent, which limit the descent of the dignity in a particular way, as in the case of the creation of Edward Seymour to the dukedom of Somerset, in the reign of Edward VI., when it was declared that the issue of the second marriage of the duke should succeed to the dignity in preference to the son of a former marriage. But generally, and perhaps universally for the two last centuries, the descent of a dignity (cases of baronies in fee, as they are called, being now for a moment excluded) has been to the next male heir of the blood of the person originally ennobled; sometimes with remainders to the next male heir of his father or grandfather.

The crown has sometimes granted the dignity of the peerage to a person, with remainder to the female issue or to the female kindred of the grantee and their heirs, as in the case of the Nelson peerage. In these cases it has generally happened either that the party had no male issue to inherit, and that the other males of the family were also without male issue, or that there was already a dignity inheritable by the male heir of the party on whom a new dignity was conferred to descend to his female issue. A pension has also sometimes been settled by Parliament on a person, at the time when he has been made a peer; the pension is granted by the Parliament on the recommendation of the crown.

The peers who possess what are called baronies in fee, are the descendants and representatives of certain old families, for the most part long ago extinct in the male line, but which had in their day summons to parliament as peers, and whose dignity it has been assumed descended like a tenement to a daughter, if only one daughter and heir, or to a number of daughters as coheirs, when there was no son. If A. die seised of a barony in fee, leaving B. a daughter and only child, and M. a brother, the dignity shall inhere in B. in preference to M., and shall descend on the death of B. to her eldest son. In case A., instead of leaving B. his only daughter, leave several daughters, B., C., D., &c. and no son, the dignity shall not go to M., but among the daughters; and since it is imparticipable, it is in a manner lost, as long as those daughters, or issue from more than one of them, exist. But should those daughters die with only one of them having left issue, and that issue a son, he shall inherit on the death of his aunts. This is what is meant by the dignity of a peer of the realm being *in abeyance:* it is divided among several persons, not one of whom possessing it wholly, none of them can therefore enjoy it. [ABEYANCE.] But the crown has the power of determining the abeyance; that is, it may declare its pleasure that some one of the daughters, or the eldest male representative of some one

of the daughters, shall possess the dignity, as would have been the case had there been a single daughter only; and in case of an heir thus entering into possession of the dignity, he shall take that precedence among the barons in the house of peers which belonged to the family of whom he is the representative. A female who is only a coheir of a coheir may also have the abeyance determined in her favour, as was lately the case with Mrs. Russell, now Baroness De Clifford. It is out of this privilege of the crown that the peerage cases arise, of which there are some before the house of lords in almost every session of parliament. A party sees reason to think that the crown may be induced to determine a certain abeyance in his favour, if he can only prove that he is the representative of one of the coheirs. This proof, which is often a troublesome and expensive process, inasmuch as it may be necessary to go back into the fourteenth or fifteenth century, is to be made to the satisfaction of a committee of privileges of the house of peers, and on the report of such committee that the claimant has shown himself in a satisfactory manner to be the proper representative of the blood of one of the coheirs of one of these ancient baronies, the crown has of late years often yielded to the reasonable request. In fact, without this, in a country like ours, where lands often descend to female heirs, it would be difficult to maintain a really ancient nobility.

Many of the peers who belong to the higher orders of nobility have baronies in fee inherent in them; so that if A., one of them, die, leaving a daughter being an only child, and a brother, the brother shall take the superior title, and the barony descend to the daughter and the heirs of her body. An eldest son of a peer enjoying a barony and a superior dignity is sometimes called to the house of peers in his father's barony. When this done, it is by writ of summons without a patent of creation (it not being in fact a creation of a new dignity, but only in anticipation of the son's possession of it), and this is the case also when a barony is taken out of abeyance.

Thus the English portion of the house of peers, or house of lords, for they are terms used in precisely the same sense, are the lords spiritual, that is, the archbishops and bishops, and the lords temporal, who are of one of the five orders (though many of the dukes possess dignities of the four inferior kinds also, and their ancestors may have long had seats in that house in those inferior dignities before the family was raised to the dukedom), and these are either persons who have been created peers by the crown—who have been admitted into the peerage by favour of the crown in virtue of the determination of an abeyance, or who have inherited the dignity from some ancestor on whom it had been conferred.

The fullest information on all points connected with the archæological part of this subject is to be obtained from the Reports of the Committee of the House of Lords before referred to. Biographical accounts of the more eminent of the persons who have possessed these dignities, are to be found in that very valuable book, Dugdale's 'Baronage of England.' In 1708, Arthur Collins, a London bookseller, published in a single volume, an account of the peers then existing and their ancestors, a work of great merit. The demand for it appears to have been great, as it was followed by other editions in quick succession. It assumed a higher character in 1734, when it appeared in four handsome octavo volumes, great additions having been made to every article. From that time there has been a succession of editions, each professing to be improvements on the preceding, and each bringing up the state of the peerage to the time when the work was printed. The best of these, which is in nine bulky octavo volumes, was published under the superintendence of Sir Egerton Brydges. But as titles become extinct, and, consequently, the families bearing them are left out of the peerage-books, those who wish to possess a complete account of those persons, must procure many of the earlier editions of the work, as well as that which, being the latest, will, for the most part, be called the best.

PEINE FORTE ET DURE. The "strong and hard pain," which is denoted by these words, was a species of torture used by the English law to compel persons to plead, when charged with crimes less than treason, but amounting to felony. It was applicable whenever the accused stood mute on his arraignment, either by his refusal to put himself upon the ordinary trial by jury, or to answer at all, or by his peremptorily challenging more than twenty jurors, which was a contumacy equivalent in construction of law to actually standing mute. This proceeding differed essentially from the torture which generally prevailed in Europe, and which, as connected with the royal prerogative, was also practised in England for several centuries, inasmuch as the object of the *peine forte et dure* was to force submission to the regular mode of trial prescribed by the law, and not to compel testimony or the confession of a crime.

The origin of this practice is uncertain. It appears from Fleta, and also from Britton (cap. 22), that the punishment in the reign of Edward I., when the first traces of it appear, consisted merely of severe imprisonment, with a diet barely sufficient to prevent starvation, until the offender repented of his contumacy, and consented to put himself upon his trial. Shortly afterwards, however, the practice of loading the sufferer with weights and pressing him to death appears to have become the regular course. In the 'Year Book,' 8 Henry IV., 1 (1406), the judgment upon persons standing mute, as approved by advice of all the judges, was "that the marshal should put them in low and dark chambers, naked except about their waist; that he should place upon them as much weight of iron as they could bear, *and more*, so that they should be unable to rise; that they should have nothing to eat but the worst bread that could be found, and nothing to drink but water taken from the nearest place to the gaol, except running water; that the day on which they had bread they should not have water, and *e contrà;* and that they should lie there till they were dead." There is no trace of any statute or royal ordinance, or of any authority besides this judicial resolution, to justify a change in the mode of proceeding so material as to affect the life of the party. The term by which it was denoted was also changed from *prisone* to *peine* forte et dure; and from this period, for more than three centuries, until it was virtually abolished by the stat. 12 Geo. III. c. 20 (1772), *pressing* to death continued to be the regular and lawful mode of execution for persons who stood wilfully mute upon their arraignment for felony. The press-yard at Newgate at the present day retains its name as derived from this barbarous practice.

Blackstone states that the peine forte et dure was rarely carried into practice (*Commentaries*, vol. iv. p. 328). It is probable that it was not of frequent occurrence, because, with this fearful punishment for contumacy before their eyes, men would naturally, for the most part (as Hale says), "bethink themselves and plead." It is, however, repeatedly mentioned in the Year Books as an existing proceeding; it is stated as the law by Staundforde, Coke, Hale, and Hawkins, in their several treatises on the Criminal Law, and the number of the recorded instances in which it is directly or incidentally mentioned, seem to show that it was much more prevalent than has been commonly supposed. The motive of the prisoner in standing mute and submitting to this heavy punishment was to save his attainder, and prevent the corruption of his blood and consequent forfeiture of his lands in case he was attainted of felony. In the 21st of Henry VI. (1442), Juliana Quicke, who was indicted for high treason, in speaking contemptuous words of the king, had the peine forte et dure because she would not plead (Croke's *Charles*, 118); in the margin of an inquisitio post mortem of Anthony Arrowsmith, in the 40th of Eliz. (1598), are the words "Prest to death" (Surtees's *History of Durham*, vol. iii. p. 271); and in 1659 Major Strangeways was tried for the murder of John Fussell, before Lord Chief Justice Glynn, and, refusing to plead, was pressed to death in Newgate. In the pamphlet which very minutely narrates

the particulars of this execution, it is stated that the prisoner died in about eight minutes, many people in the press-yard humanely casting stones upon him to hasten his death. (Barrington's *Antient Statutes*, p. 85, note.) In still more recent times, it appears from the Old Bailey Sessions Papers, that at the January Sessions in 1720 one Phillips was pressed for a considerable time, until he begged to stand his trial; and at the December Sessions, 1721, Nathanael Haws continued under the press, with 250 lbs., for seven minutes, and was released upon his submission. Mr. Barrington says that he had been furnished with two instances in the reign of George II., one of which happened at the Sussex assizes before Baron Thompson, and the other at Cambridge, in 1741, when Mr. Baron Carter was the judge. (Barrington's *Antient Statutes*, p. 86.) In these later instances the press was not inflicted, until by direction of the judges the experiment of a minor torture had been tried, by tying the culprit's thumbs tightly together with strings. It is said in Kelyng's *Reports*, p. 27, to have been the constant practice at Newgate, in the reign of Charles II., that the two thumbs should be tied together with whipcord, that the pain might compel the culprit to plead. The adoption of this course was no doubt dictated by merciful motives, and was intended by the judges to prevent the necessity of having recourse to the peine forte et dure; but it was wholly unauthorised by law. The practice was finally discontinued in consequence of the statute 12 Geo. III. cap. 20, which provides that every person who shall stand mute when arraigned for felony or piracy shall be convicted of the same, and the same judgment and execution shall be awarded against him as if he had been convicted by verdict or confession.

PENANCE (in Latin, Penitentia) is a censure or punishment, imposed by the ecclesiastical law, for the purgation or correction of the soul of an offender, in consequence of some crime of spiritual cognizance committed by him. Thus a person convicted of adultery or incest was adjudged to do penance in the church or market, bare-legged and bare-headed in a white sheet: and was required to make a public confession of his crime, and to express his contrition in a prescribed form of words. After a judgment of penance has been pronounced, the ecclesiastical courts may, upon application by the party, take off the penance, and exchange the spiritual censures for a sum of money to be paid and applied to pious uses. This exchange is called a commutation for penance; and the money agreed or enjoined to be paid upon such a commutation may be sued for in the ecclesiastical court. The peine forte et dure imposed upon a person who stood mute on his trial at the common law is often inaccurately termed penance. [PEINE FORTE ET DURE.]

PENITENTIARIES. [TRANSPORTATION.]

PENSION, a payment, generally made annually or at some other shorter and regular period.

Before the reign of Queen Anne, the kings of England alienated or encumbered their hereditary possessions at pleasure. By the 1 Anne, c. 7, the power of burthening the revenue of the crown by improvident grants, to the injury of the successors of the throne, was materially abridged. This statute, after reciting that "the necessary expenses of supporting the crown, or the greatest part of them, were formerly defrayed by a land revenue, which hath from time to time been impaired and diminished by the grants of former kings and queens of this realm," enacts that no grant of manors, lands, &c. shall be made by the crown from and after the 25th of March, 1702, beyond the term of thirty-one years, or for three lives, reserving a reasonable rent. As this clause applied only to the land revenue, it was enacted by another clause, that no portion of other branches of revenue, as the excise, post-office, &c., should be alienable by the crown beyond the life of the reigning king. On the accession of George III., in consideration of the surrender of the larger branches of the hereditary revenue, a civil list was settled on his majesty, amounting originally to 800,000*l.*, and afterwards increased to

900,000*l.*, on which the pensions were charged. There were no limits, except the Civil List itself, within which the grant of pensions was confined; and at various times, when debts on this list had accumulated, parliament voted considerable sums (Sir Henry Parnell, in his work on 'Financial Reform,' says "some millions") for their discharge. In February, 1780, during the administration of Lord North, Mr. Burke introduced his bill for the better security of the independence of parliament, and the economical reformation of the civil and other establishments. In this bill it was recited that the pension lists were excessive, and that a custom prevailed of granting pensions on a private list during his majesty's pleasure, under colour that in some cases it may not be expedient to divulge the names of persons on the said lists, by means of which much secret and dangerous corruption may be hereafter practised. Mr. Burke proposed to reduce the English pension list to a maximum of 60,000*l.*, but the bill, as passed, fixed it at 95,000*l.* This act (22 Geo. III. c. 82) asserted the principle that distress or desert ought to be considered as regulating the future grants of such pensions, and that parliament had a full right to be informed in respect to this exercise of the prerogative, in order to ensure and enforce the responsibility of the ministers of the crown. Mr. Burke's speech on introducing his bill is in the third volume of his 'Works,' ed. 1815.

Up to this time the Civil List pensions of Ireland, the pensions charged on the hereditary revenues of Scotland, and the pensions charged on the 4½ per cent. duties, had not been regulated by parliament.

In Ireland the hereditary revenue of the crown was used as a means of political corruption, the English act of 1 Anne, already cited, not being applicable to Ireland. In a speech of Mr. Hutchinson, secretary of state, made in the Irish House of Commons, in June, 1793, he stated that the gross annual hereditary revenue of Ireland amounted to 764,627*l.*, reduced by various charges to 275,102*l.* only: that the disposition of this revenue was in the hands of the king; that "his letters and seals were the only authority for using it, and the only voucher allowed by the Commissioners of Accounts, and by the House of Commons;" and that there was no Board of Treasury executing their functions under the authority of parliament. The Irish parliament, in 1757, had come to a unanimous resolution, "That the granting of so much of the public revenue in pensions, is an improvident disposition of the revenue, an injury to the crown, and detrimental to the people." The Irish pensions then amounted to 40,000*l.*: in two years after the above resolution was passed, an addition of 26,000*l.* was made to them; and in 1778 they were nearly double the amount at which they stood in 1757. In 1787 leave was refused to bring in a bill to limit the amount of pensions, and to disable persons holding pensions for a term of years, or during pleasure, from sitting and voting in parliament. Mr. Forbes, who moved this bill, stated that "it was a practice among certain members of the house to whom pensions had been granted, to carry them into the market and expose them for sale." In 1790 Mr. Forbes again moved resolutions, stating "that the Pension List amounted to 101,000*l.*, exclusive of military pensions; that the increase of pensions, civil and military, since February, 1784, had been 29,000*l.*; and that many of these pensions had been granted to members of parliament during the pleasure of the crown." These resolutions were not adopted. In 1793, when the whole policy of the Irish government was changed, among other beneficial measures introduced and recommended on the authority of the lord-lieutenant, was a bill to limit the amount of pensions and to increase the responsibility of the Treasury, which was passed into a law. By this act (33 Geo. III. c. 34, Irish statutes), the pensions on the Civil List in Ireland were limited to 80,000*l.*, allowing a sum of 1200*l.* only to be granted in each year, until such reduction was effected. Grants held during the pleasure of the crown, and converted into grants for life to the same parties and to the same amount, were exempted from the limitations of the

act. This act effected a surrender of the hereditary revenues for the life of the king, and the principle of appropriating money by parliamentary authority. These restraints on the crown were not, however, equal in efficiency to those contained in the English statute of Anne. At the time of the act 33 Geo. III. being passed, the Irish pensions amounted to 124,000*l.*, and the amount was not reduced to 80,000*l.* until 1814. By the 1 Geo. IV. c. 1, the Irish Pension List was further reduced to 50,000*l.*, no grants exceeding 1200*l.* to be made in any one year until the list was so reduced.

The statute of 1 Anne, having been passed prior to the Union, did not affect Scotland; and pensions were accordingly granted by the crown for life, or for lives, in possession or in reversion, without restriction in amount, or in the duration of the grant, other than the amount of the revenues, and the claims and burdens already upon them. By the 50 Geo. III. c. 3, the principle of parliamentary interference was established in reference to the hereditary revenues of Scotland, the amount of the pensions was reduced to 25,000*l.*, and no more than 800*l.* was to be granted in any one year, until such reduction was effected. At this period, the Civil List pensions of Scotland amounted to 39,379*l.* By the 1 Geo. IV. c. 1, the hereditary revenues of Scotland were placed to the account of the consolidated fund.

Certain duties, called the four and a half per cent. duties, were not withdrawn from the private control of the crown until 1830, when they were surrendered by William IV. for his life, the pensions then chargeable upon them continuing payable. On the accession of King William IV. there was nothing therefore to prevent the Pension Lists of England, Ireland, and Scotland being consolidated; and this was effected by 1 Wm. IV. c. 25, which also made provision for their reduction, on the expiration of existing interests, from an amount of 145,750*l.* net, to a future maximum sum of 75,000*l.* The Pension List for England was at this period 74,200*l.* net; Scotland, 23,650*l.*; Ireland, 47,900*l.*

In 1830 the ministry of the Duke of Wellington was overthrown, on the question of referring the Civil List (which comprises the Pension List) to a select committee, Sir Henry Parnell's motion to that effect being carried by 233 against 204.

In February, 1834, in order to define with greater precision the class of persons to whom the grant of pensions ought to be confined, Lord Althorp, chancellor of the exchequer (afterwards Earl Spencer), moved resolutions to the following effect, which were agreed to by the House of Commons:—"That it is the bounden duty of the responsible advisers of the crown to recommend to his Majesty for grants of pensions on the Civil List, such persons only as have just claims on the royal beneficence, 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."

On the accession of Queen Victoria, in 1837, the subject of pensions was again considered; and a select committee of the House of Commons, appointed to inquire into the Civil List, recommended—"That in place of granting a sum of 75,000*l.* for Civil List pensions, her majesty should be empowered to grant in every year new pensions on the Civil List to the amount of 1200*l.*, these pensions to be granted in strict conformity with the resolutions of the House of Commons, of February, 1834." These views were adopted by the House, and embodied in the 1 Vict. c. 2, the words of the resolution being introduced into the Act. [CIVIL LIST.] Since the accession of Queen Victoria, still greater force has been given to the spirit of the Act, in consequence of the recommendations of a select committee of the House of Commons, appointed in December, 1837, to inquire how far the pensions charged on the Civil List, as settled on the accession of William IV., ought to be continued, "having due regard to the just claims of the parties, and to economy in the public expenditure." This com-

mittee, after a searching inquiry into the merits of each case on the Pension List, recommended the immediate suspension of several pensions, to be regranted on the responsibility of the government, should the circumstances of the parties render it necessary; others they considered should determine at an earlier period than specified in the original grant; and for several pensions, they considered it unadvisable to make any future provision, that is, that they should be no longer paid. In their Report, dated July, 1838, the committee recommended that in the case of all future Civil List pensions, the reasons and motives of the grant should be set forth in the warrant of appointment; that in pensions granted for services to others than the individual by whom the services were rendered, care should be taken, if these pensions are granted for younger lives, that is, to the sons or daughters of the individual entitled to the pension, that no undue increase of charge should be made; and that such grants should be avoided, except under very peculiar circumstances: they recommended also that pensions for the relief of distress should be granted only on the condition of their ceasing when the circumstances of the parties no longer require their continuance; that all pensions should be held liable to deduction or suspension in the event of the parties being appointed to office in the public service; that under no circumstances should the mere combination of poverty with the hereditary rank of the peerage be considered as a justification of a grant of a pension. The committee also recommended that, in order to avoid any possible doubt or misconception hereafter, enactments should be made with respect to the Irish and Scotch revenue, analogous to those of the English act of 1 Anne.

It appears from the Report of the Committee on Pensions that the charge of pensions has been reduced as follow :—

	England.	Ireland.	Scotland.	4½ per Cents.	Total.
	£	£	£	£	£
1782	85,000	80,000	13,300	16,700	195,000
1820	74,200	67,300	37,100	34,300	212,900
1830	74,200	53,900	33,200	24,100	185,400
1838	The lists consolidated.				140,900

Mr. Finlayson, of the National Debt Office, calculated, in 1838, the amount of saving which will be derived from the new system, assuming the ratio of decrease to continue as in the three previous years, and that the average ages of persons to whom new grants of pensions are made will be the same as heretofore :—

	Old Pension.	New Pension.	Total.
	£	£	£
1839	132,632	2,384	135,016
1844	97,540	8,077	105,617
1849	59,258	13,398	72,656
1854	30,792	18,255	49,047
1858	13,161	21,716	34,877

Mr. Finlayson was furnished by the committee with the ages of 866 persons in the receipt of pensions; and in 828 of these cases the date of the grant was ascertained. The mean age at which pensions were granted to males he found to be 32, and to females 36; and out of every 1000*l.* payable, 257*l.* was paid to males and 743*l.* to females. Mr. Finlayson complains that "the females have understated their ages very considerably, and sometimes with a contempt of all probability, more than one lady having set down her age at 39, forgetting that she has been forty-five years in receipt of the pension, and this from an aversion to own the age of 40."

The following is an account of the total amount of pensions granted in each year, ending the 20th day of June, from 1829 to 1837 inclusive; soon after which period the act 1 Vict. c. 2, came into operation, and the power of granting pensions was restricted. [Civil List.]

1829	£1830	1834	£2878
1830	6353	1835	2748
1831	5401	1836	1310
1832	2638	1837	3230
1833	900		

Besides the pensions on the Civil List, the regulation of which at different periods has been referred to above, there are vast sums annually appropriated by parliament to the payment of pensions of another description. Thus every year the sum of about 1,350,000*l.* was voted on account of the pensioners of Chelsea Hospital; 245,000*l.* to the out-pensioners of Greenwich; 148,990*l.* to widows of

officers of land-forces; and to officers in each of the civil departments of the government large sums are annually paid in pensions and superannuation allowances. The half-pay to retired officers of the navy and army may also be considered in the light of a pension. In 1832 the charge on the public for pensions, superannuations, and half-pay amounted to 6,152,702*l.* (*Financial Reform*, p. 203, 4th edit.) "The operation of the superannuation, the grant of retired allowances, the naval and military pensions granted for good services, the pensions granted by the 57 George III. c. 65, for persons who have occupied high political offices, and the pensions for diplomatic and consular services, have to a great extent superseded one of the original purposes of the Pension List. These acts have also substituted a strictly defined and regulated system of reward, for a system which depended on the arbitrary selection of the crown or the recommendation of the existing government, exposed to the bias of party or personal considerations." (*Report on Pensions*, No. 218, Sess. 1838.) Sir Henry Parnell, in chapter xii. of his 'Financial Reform,' shows that there are many abuses to be remedied in reference especially to superannuations. "Nothing (he says) can be more extravagant and inconsistent with a proper guardianship of the public purse than the system of salaries and superannuations now in operation. The salaries are so much higher than they ought to be, that every officer and clerk has sufficient means of making a provision for infirmity and old age. But notwithstanding this fact, as to the sufficiency of salary, in the true spirit of profusion, a great superannuation allowance has been added." In 1830 there were nearly one thousand officers in the public service, with salaries of 1000*l.* a year and upwards, enjoying amongst them 2,066,574*l.*; and of these there were 216 persons whose salaries averaged 4429*l.*; and yet from the passing of the Superannuation Act in 1810 till 1830, the charge for civil superannuation was increased from 94,550*l.* to 480,081*l.* It was stated in the Third Report of the Finance Committee (Sess. 1828), that in not a few cases persons obtained superannuations, as unfit for the public service, who enjoyed health and strength long afterwards, and discharged the active duties of life in private business. In 1831 the treasury established some very important restrictions relative to superannuation allowances, which are given in a Parliamentary Paper (No. 190, 2nd Session, 1831).

For an account of pensions under the French monarchy the reader may refer to the *Encyclopédie Méthodique* (section 'Finances').

PERJURY (from the Latin *perjurium*), by the common law of England, is the offence of falsely swearing to facts in a judicial proceeding. To constitute this offence the party must have been lawfully sworn to speak the truth by some court, judge, or officer having competent authority to administer an oath; and, under the oath so administered, he must wilfully assert a falsehood in a judicial proceeding respecting some fact which is material to the subject of inquiry in that proceeding. In a legal sense, therefore, the term has a much narrower import than it has in its popular acceptation. A person may commit perjury by swearing that he *believes* a fact to be true which he *knows* to be false. It is immaterial whether the false statement has received credit or not, or whether any injury has been sustained by an individual in consequence of it. The offence of perjury is a Misdemeanor.

The history of this offence in the common law is entirely dependent upon the history of the trial by jury. Where perjury is mentioned by Bracton and Fleta, they exclusively allude to the offence of jurors in giving a wilfully false verdict; and as the jury appear to have been originally merely witnesses, speaking from their personal knowledge of the facts, and sworn to *speak the truth*, their misconduct in giving a false decision might be justly treated as perjury. [JURY.] There is no trace in the statutes or in the reported proceedings of the courts, of any penal law against perjury in witnesses, as distinguished from that of jurors, earlier than the reign of Henry VIII.; the date of the introduction of the witness's oath to speak the truth, in

use at the present day, is unknown, and no form of process for securing the attendance of witnesses (except where they were added to the jury) seems to have existed before the reign of Elizabeth. [JURY.] These facts tend to show that the offence of perjury has received its present definite character by the corresponding change in the functions of the jury. This change was complete in the time of Sir Edward Coke, as he defines perjury nearly in the same terms in which it is described in more modern text-books. (3 *Inst.*, 163.)

A defendant in equity is guilty of perjury by false swearing in his answer to a plaintiff's bill. The defendant is in fact also a witness, for he is bound to answer on oath to the matter contained in the bill, and the plaintiff may read the whole or any integral portion of the defendant's answer as evidence against such defendant. In the case of an answer in equity, the offence of false swearing falls exactly within the definition given at the head of this article.

The punishments of perjury by the common law were, discretionary fine and imprisonment; the pillory, which punishment was abolished (by 1 Vict. c. 23) in 1837; and a perpetual incapacity to give evidence in courts of justice. As to the penalties for Perjury, see LAW, CRIMINAL, p. 205. There are many statutes by which oaths are required as a sanction to statements of facts under a variety of circumstances, and otherwise than in judicial proceedings; and these statutes frequently declare that false swearing in such cases shall amount to perjury, and be punishable as such. The Commissioners on Criminal Law have pointed out the objections to provisions of this kind, and have suggested a mode of rendering the law upon the subject more precise by drawing a line of distinction between false testimony in courts of justice and false swearing to facts on other occasions. See *Fifth Report*, pp. 25 and 50.

By the 5 & 6 William IV. c. 62, declarations may now be substituted for oaths in many extrajudicial proceedings. [OATH.]

PERPETUATION OF TESTIMONY. A party who has an interest in property, but not such an interest as enables him immediately to prosecute his claim, or a party who is in possession of property and fears that his right may at some future time be disputed, is entitled to examine witnesses in order to preserve that testimony, which may be lost by the death of such witnesses before he can prosecute his claim, or before he is called on to defend his right. This is effected by such party filing a bill in equity against such persons as are interested in disputing his claim, in which bill he prays that the testimony of his witnesses may be perpetuated. This is the only relief that the bill prays. If the prayer of the bill is granted, a commission issues to examine the witnesses, whose depositions are taken in the usual way in suits in equity. The depositions, when taken, are sealed up and retained in the custody of the court which grants the commission. When they are required to be used as evidence, they can be so used, by permission of the court, by the party who has filed his bill or those who claim under him, and they can be read by the direction of the court as evidence on a trial at law, if it is then proved that the witnesses are dead, or from any sufficient cause cannot attend. If the witnesses are living when the trial takes place, and can attend, they must be produced. A defendant to such a bill may join in the commission, and may examine witnesses under the commission, and he is entitled to use their depositions as evidence in his favour at a future trial. (1 Mer., 434.)

A bill to perpetuate testimony may be filed by any person who has a vested interest, however small, in that thing to which he lays claim. The parties, defendants to such bill, are those who have some adverse interest to the plaintiff.

PERSONALTY AND PERSONAL PROPERTY. [CHATTELS.]

PETITION OF RIGHT. In the first parliament of Charles I., which met in 1626, the Commons refused to grant supplies until certain rights and privileges of the subject, which they alleged had been violated, should have been solemnly recognised by a legislative enactment. With this view they framed a petition to

the king, in which, after reciting various statutes by which their rights and privileges were recognised, they pray the king "that no man be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament,—that none be called upon to make answer for refusal so to do,—that freemen be imprisoned or detained only by the law of the land, or by due process of law, and not by the king's special command, without any charge,—that persons be not compelled to receive soldiers and mariners into their houses against the laws and customs of the realm,—that commissions for proceeding by martial law be revoked: all which they pray as their rights and liberties according to the laws and statutes of the realm."

To this petition the king at first sent an evasive answer: "The king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs or oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience obliged as of his own prerogative." This answer being rejected as unsatisfactory, the king at last pronounced the formal words of unqualified assent, "Let right be done as it is desired." (1 Car. I. c. 1.) Notwithstanding this, however, the ministers of the crown caused the petition to be printed and circulated with the first insufficient answer.

PETIT SERJEANTY. [SERJEANT.]

PEW. The word pew seldom occurs in writers upon ecclesiastical law, who almost invariably use the expression "church seat."

There were no pews in churches until about the period of the Reformation, prior to which the seats were moveable, such as chairs and benches, as we see at this time in the Roman Catholic churches on the Continent. Before that time no cases are to be found of claims to pews, although in the common-law books two or three claims are mentioned to seats in a church, or particular parts of a seat, which were probably moveable benches or forms.

"By the general law and of common right," Sir John Nicholl observed (in Fuller *v.* Lane, 2 *Add. Eccl. Rep.*, 425), "all the pews in a parish church are the common property of the parish; they are for the use *in common* of the parishioners, who are all entitled to be seated orderly and conveniently so as best to provide for the accommodation of all." The right of appointing what persons shall sit in each seat belongs to the ordinary (3 *Inst.*, 202); and the churchwardens, who are the officers of the ordinary, are to place the parishioners according to their rank and station; but they are subject to his control if any complaint should be made against them." (Pettman *v.* Bridger, 1 *Phill.*, 323.) A parishioner has a right to a seat in the church without any payment for it, and if he has cause of complaint in this respect against the churchwardens, he may cite them in the ecclesiastical court to show cause why they have not seated him properly; and if there be persons occupying pews who are not inhabitants of the parish, they ought to be displaced in order to make room for him. This general right however of the churchwardens as the officers of the ordinary is subject to certain exceptions, for private rights to pews may be sustained upon the ground of a faculty, or of prescription, which presumes a faculty.

The right by faculty arises where the ordinary or his predecessor has granted a licence or faculty appropriating certain pews to individuals. Faculties have varied in their form; sometimes the appropriation has been to a person and his family "so long as they continue inhabitants of a certain house in the parish:" the more modern form is to a man and his family "so long as they continue inhabitants of the parish" generally. The first of these is perhaps the least exceptionable form. (Sir J. Nicholl, 2 *Add.*, 426.)

Where a faculty exists, the ordinary cannot again interfere: it has however been laid down in the ecclesiastical court that where a party claiming by faculty ceases to be a parishioner, his right is determined. Sir John Nicholl states, "Whenever the occupant of a pew in the *body* of the church ceases to be a pa-

rishioner, his right the pew, howsoever founded, and how valid soever during his continuance in the parish, at once ceases." (Fuller *v.* Lane, 2 *Add.*, 427.) The same doctrine has been sanctioned by the Court of King's Bench. (Byerley *v.* Windus, 5 *Barn. and Cress.*, 18.) But in a case in the Court of Exchequer, chief-baron Macdonald was of a different opinion. The question there was whether there could be in law a prescription for a person living out of the parish to have a pew in the *body* of the church, and it was held that there might (Lousley *v.* Hayward, 1 *Y. and I.*, 583). As prescription presumes a faculty, these opinions seem to be at variance. Where a claim to a pew is made by prescription as annexed to a house, the question must be tried at law. The courts of common law in such cases exercise jurisdiction on the ground of the pew being an easement to the house (Mainwaring *v.* Giles, 5 *Barn. and Ald.*, 361); and if the ecclesiastical courts proceed to try such prescription, a prohibition would issue. In order to support a claim by prescription, *occupancy* must be proved, and also *repair* of the pew by the party, if any has been required. (Pettman *v.* Bridger, 1 *Phill.*, 325; Rogers *v.* Brooks, 1 *T. R.*, 431; Griffith *v.* Matthews, 5 *T. R.*, 297.) The above observations apply to pews in the *body* of the church. With respect to seats in the chancel, it is stated in the Report of the Ecclesiastical Commission, page 49, "the law has not been settled with equal certainty, and great inconvenience has been experienced from the doubts continued to be entertained. Some are of opinion that the churchwardens have no authority over pews in the chancel. Again, it has been said that the rector, whether spiritual or lay, has in the first instance at least a right to dispose of the seats; claims have also been set up on behalf of the vicar; the extent of the ordinary's authority to remedy any undue arrangement with regard to such pews has been questioned." (Gibson, 226; 3 *Inst.*, 202; 1 Brown and Goul., *Rep.*, 4; Griffith *v.* Matthews, 5 *T. R.*, 298; Clifford *v.* Wicks, 1 *B. and Ad.*, 498; Morgan *v.* Curtis, 3 *Man. and Ryl.*, 389; Rich *v.* Bushnell, 4 Hagg., *Ecc. Rep.*, 164.)

With regard to aisles or isles (wings) in a church, the case is different. The whole isle or particular seats in it may be claimed as appurtenant to an ancient mansion or dwelling-house, for the use of the occupiers of which the aisle is presumed to have been originally built. In order to complete this exclusive right it is necessary that it should have existed immemorially, and that the owners of the mansion in respect of which it is claimed should from time to time have borne the expense of repairing that which they claim as having been set up by their predecessors. (3 *Inst.*, 202.)

The purchasing or renting of pews in churches is contrary to the general ecclesiastical law. (Walter *v.* Gunner and Drury, 1 Hagg., *Consist. Rep.*, 314, and the cases referred to in the note, p. 318; Hawkins and Coleman *v.* Compeigne, 3 *Phill.*, 16.)

Pew-rents, under the church-building acts, are exceptions to the general law; and where rents are taken in populous places, they are sanctioned by special acts of parliament. Pew-rents in private unconsecrated chapels do not fall under the same principle, such chapels being private property.

PHYSICIAN. The first class of medical practitioners in rank and legal preeminence is that of the physicians. They are (by statute 32 Henry VIII.) allowed to practise physic in all its branches, among which surgery is enumerated. The law therefore permits them both to prescribe and compound their medicines, and to perform operations in surgery as well as to superintend them. These privileges are also reserved to them by the statutes and charters relating to the surgeons and the apothecaries. Yet custom has distinguished the classes of the profession. The practice of the physician is universally understood, as well by their college as the public, to be properly confined to the prescribing of medicines, which are to be compounded by the apothecaries; and in so far superintending the proceedings of the surgeon as to aid his operations by prescribing what is necessary to the general health of the patient, and for the purpose of counteracting any internal disease. It would be

impossible to enumerate here the legal qualifications required by all the different European universities; it will therefore be sufficient to mention those recognised in the British dominions.

In the university of Oxford, for the degree of Bachelor of Medicine, it is necessary that the candidate should have completed twenty-eight terms from the day of matriculation; that he should have gone through the two examinations required for the degree of bachelor of arts; that he should have spent at least three years in the study of his profession; and that he should be examined by the Regius Professor of medicine and two other examiners of the degree of M.D. in the theory and practice of medicine, anatomy, physiology, and pathology; in materia medica, as well as chemistry and botany, so far as they illustrate the science of medicine; and in two at least of the following ancient medical writers, viz. Hippocrates, Celsus, Aretæus, and Galen. After taking the degree of Bachelor of Medicine, a licence to practise is delivered to the candidate, under the common seal of the university.

For the degree of Doctor of Medicine, the candidate is required to have completed forty terms from the day of matriculation; and to recite publicly in the schools a dissertation upon some subject, to be approved by the Regius Professor, to whom a copy of it is afterwards to be presented.

At Cambridge a student, before he can proceed to the degree of Bachelor of Medicine, must have entered on his sixth year, have resided nine terms, and have passed the previous examination: the necessary certificates, &c. are much the same as those required at Oxford. A Doctor of Medicine must be of five years' standing from the degree of M.B.

Since the university of London has been chartered, in 1837, the degrees of Bachelor and Doctor of Medicine, among others, have been conferred there. The regulations under which these degrees are conferred are printed in the London University Calendar for 1845.

In Scotland the degree of doctor of medicine is conferred by the universities of Edinburgh, Glasgow, Aberdeen, and St. Andrews, from which last-named university a diploma can still be obtained without residence; the regulations at the others contain nothing particularly worthy of notice.

In Ireland the King and Queen's College of Physicians exercise much the same authority as the English college. The degrees of Bachelor and Doctor of Medicine conferred by Trinity College, Dublin, rank with the same degrees respectively from Oxford and Cambridge, and are never given without previous study in arts, which occupies four years. For the degree of M.D. five years must have elapsed since the degree of M.B. was conferred; the candidate is then to undergo a second examination, and write and publish a Latin thesis on some medical subject.

By the English law a physician is exempted from serving on juries, from serving various offices, and from bearing arms. He is (according to Willcock, p. 105) responsible for want of skill or attention, and is liable to make compensation in pecuniary damages (as far as such can be deemed a compensation) to any of his patients who may have suffered injury by any gross want of professional knowledge on his part.

In England physicians were once sometimes rewarded by the grant of church livings, prebendaries, and deaneries; and the names of some are preserved who were made bishops. The fee of a physician is honorary, and it cannot be recovered by an action at law; and every person professing to act as a physician is precluded from assuming a different character, as that of a surgeon or apothecary, for the purpose of recovering his fees, although he may in fact be a surgeon or apothecary, or a person who had no right to practise as a physician. It has likewise been determined that a custom in the defendant's neighbourhood to pay physicians at a certain rate is immaterial, and gives them no greater right to bring the action than in places where no such custom is known. (Willcock, p. 3.) A physician however of great eminence may be considered reasonably entitled to a larger recompense than one who has not equal practice, after

it has become publicly understood that he expects a larger fee; inasmuch as the party applying to him must be taken to have employed him with a knowledge of this circumstance. (*Ibid.*)

PHYSICIANS, ROYAL COLLEGE OF, was founded through the instrumentality of Linacre, who obtained, by his interest with Cardinal Wolsey, letters patent from Henry VIII., dated in the year 1518. This charter granted to John Chambre, Thomas Linacre, Ferdinand de Victoria, Nicholas Halsewell, John Francis and Robert Yaxley, that they, and all men of the same faculty of and in the city of London, should be in fact and name one body and perpetual community or college; and that the same community or college might yearly and for ever elect and make some prudent man of that community expert in the faculty of medicine, president of the same college or community, to supervise, observe, and govern for that year the said college or community, and all men of the same faculty, and their affairs, and also that the president and college of the same community might elect four every year, who should have the supervision and scrutiny, &c. of all physicians within the precinct of London. The statute (14 Henry VIII.) confirmed this charter, and further ordained, that the six persons above named, choosing to themselves two more of the said commonalty, should from henceforth be called and cleaped elects; and that the same elects should yearly choose one of them to be president of the said commonalty; and then provided for the election of others to supply the rooms and places of such elects as should in future be void by death or otherwise, which was to be made by the survivors of the same elects. The statute (32 Henry VIII.) provides that from thenceforth the President, Commons, and Fellows might yearly, at such time as they should think fit, elect and choose four persons of the said Commons and Fellows, of the best learned, wisest, and most discreet, such as they should think convenient, and have experience in the faculty of physic, to search and examine apothecaries' wares, &c. This last appointment is independent of the constitution of the body, the persons so appointed being officers for a special purpose; and it has been usual to select for this office the same four persons in whom the government of the physicians is reposed by the charter and statute of the 14th of that king.

The constituted officers then of this corporation are the eight elects, of whom one is to be president, and four governors, who have generally borne the name of censors. There is nothing to be gathered from the charter or statutes in any way tending to exclude any of the elects, except the president, from the office of censor; and as no duties are assigned to the elects, except those of filling up their own number, electing one of themselves to be president, and granting testimonials to country practitioners, they may be rather regarded as candidates for the office of president than as active officers of the corporation. The college is bound to choose four censors, for the purpose of discharging the duties confided in it, which are to be executed by these officers. It is also incumbent on the elects to preserve their number, so that there may at no time be less than five, including the president, as they would not, after a further reduction, be capable either of electing a president or choosing others to fill the vacancies in their own body. (Willcock, *On the Laws of the Medical Profession*, p. 32.) It is evident that the charter so far incorporated all persons of the same faculty, of and near London, that every person on the 23rd of September in the 10th year of the reign of Henry VIII. falling within that description, was entitled to be admitted into the association. Such of them as had availed themselves of this privilege, and others subsequently admitted, are the persons described by statute 32 Henry VIII. as 'Commons and Fellows' (quoted in Willcock, p. 13). But as to the persons who should afterwards enjoy that distinction, the original charter and all subsequent statutes are silent. James I. and Charles II. granted charters to this body. The first is silent as to the mode of continuing it; but the charter of Charles, after limiting the number of Fellows to forty, directed that when a vacancy should occur in that number, the remainder should elect one

of the most learned and able persons skilled and experienced in physic, then of the commonalty of members of the college. Each of these charters seems to have been granted with a view to the enactment of a bill to the same effect, as the kings respectively pledged themselves to give it the royal assent. No statute has been at any time passed in pursuance of this purpose; and it is very doubtful how far and in what manner the charters have been accepted by the college, though they have certainly been several times acted upon. (Willcock, p. 34.)

The licentiates of the college who may practise within the precincts of London and seven miles round it were (until 1836) of three orders, viz. Fellows, Candidates, and mere Licentiates. The last of these classes, generally denominated licentiates, are those who have only a licence to practise physic within the precincts above described. The second class was abolished in 1836. The first class are those who have received that licence, but whose licence also shows that they are admitted to the order of fellows. This licence has often been called a *diploma*, but as it confers no degrees, the word is not properly applied, according to its more strict signification.

The common law having given every man a right to practise in any profession or business in which he is competent, the effect of 14 Henry VIII. must be taken to be this; it has left to every man his common law right of practising in the profession of physic, as in any other profession, if competent, and has appointed the president and college to be judges of this competency. (Willcock, p. 38.) The mode of examination is wholly in the discretion of the college, which has confided the immediate direction of it to the censors. It has however also appointed that the doors of the censors' chamber shall be open to all fellows who may think proper to be present, and that they may take part in the examination, should they think fit; and that the fellows may have an opportunity of availing themselves of this right, it is appointed that all examinations shall take place at a court held at certain regular intervals. (*Ibid*, p. 41.)

The order of Candidates was abolished in 1836, as above stated, but there were reserved to students then in the universities of Oxford and Cambridge their *inchoate* rights.

The order of Fellows comprises those who are admitted into the fellowship, community, commonalty, or society of the college. The charter incorporated all physicians then legally practising in London, so that each of them who thought proper to accept it became *ipso facto* a member or fellow; but as all future practitioners, within the precincts of and seven miles round that city, were required to obtain the licence of the college, there soon arose two orders of the profession. The fellows attempted by various by-laws to limit their own number, but seem to have considered the licentiates as members of the college, or the commons, and themselves as forming a select body for the purpose of government. To this state of the society the statute 32 Henry VIII. seems to allude in speaking of the "commons and fellows." The charter of Charles II. expressly notices these orders as forming the body of the society, inasmuch as it directed that new fellows should be elected from among the commons of the society. (*Ibid.*, p. 44.) The by-laws that formerly existed as to the election of fellows have been repealed, and the following are the regulations published by authority of the college, by which it is now governed.

Regulations of the Royal College of Physicians of London.—The College of Physicians, having for some years past found it necessary from time to time to make alterations in the terms on which it would admit candidates to examination and license them to practise as physicians, has reason to believe that neither the character nor object of those alterations, nor even the extent of the powers with which it is invested, has been fully and properly understood.

The college therefore considers it right at this time to make public a statement of the means which it possesses within itself of conferring the rank and privileges of physician on all those who, having had the advantage of a liberal education, both general and professional, can prove their qualifications by producing

proper testimonials and submitting to adequate examinations.

Every candidate for a diploma in medicine, upon presenting himself for examination, shall produce satisfactory evidence, 1, of unimpeached moral character; 2, of having completed the twenty-sixth year of his age; and, 3, of having devoted himself for five years, at least, to the study of medicine.

The course of study thus ordered by the college comprises:—

Anatomy and physiology, the theory and practice of physic, forensic medicine, chemistry, materia medica and botany, and the principles of midwifery and surgery.

With regard to practical medicine, the college considers it essential that each candidate shall have diligently attended, for three entire years, the physicians' practice of some general hospital in Great Britain or Ireland, containing at least one hundred beds, and having a regular establishment of physicians as well as surgeons.

Candidates who have been educated abroad will be required to show that, in addition to the full course of study already specified, they have diligently attended the physicians' practice in some general hospital in this country for at least twelve months.

Candidates who have already been engaged in practice, and have attained the age of forty years, but have not passed through the complete course of study above described, may (under special circumstances to be judged of by the Censors' Board) be admitted to examination upon presenting to the censors' board such testimonials of character, general and professional, as shall be satisfactory to the college.

The first examination is in anatomy and physiology, and is understood to comprise a knowledge of such propositions in any of the physical sciences as have reference to the structure and functions of the human body.

The second examination includes all that relates to the causes and symptoms of diseases, and whatever portions of the collateral sciences may appear to belong to these subjects.

The third examination relates to the treatment of diseases, including a scientific knowledge of all the means used for that purpose.

The three examinations are held at separate meetings of the censors' board. The *vivâ voce* part of each is carried on in Latin, except when the board deems it expedient to put questions in English, and permits answers to be returned in the same language.

The college is desirous that all those who receive its diploma should have had such a previous education as would imply a competent knowledge of Greek, but it does not consider this indispensable if the other qualifications of the candidate prove satisfactory; it cannot however, on any account, dispense with a familiar knowledge of the Latin language, as constituting an essential part of a liberal education; at the commencement therefore of each oral examination, the candidate is called on to translate *vivâ voce* into Latin a passage from Hippocrates, Galen, or Aretæus; or, if he declines this, he is, at any rate, expected to construe into English a portion of the works of Celsus, or Sydenham, or some other Latin medical author.

In connection with the oral examinations, the candidate is required, on three separate days, to give written answers in English to questions on the different subjects enumerated above, and to translate in writing passages from Greek or Latin books relating to medicine.

The qualifications required for Extra-Licentiates, *i. e.* persons approved for practising physic out of the city of London and seven miles thereof, pursuant to statute 14 & 15 Henry VIII. chap. 5, sect. 3, are the same as those above stated for Licentiates or members.

Those who are approved at all the examinations receive a diploma under the common seal of the college.

The college gives no particular rules as to the details of previous education, or the places where it is to be obtained. It will be obvious however, from a reference to the character and extent of the study above described, the manner in which the examinations are conducted, and the mature age of the candidates, as

affording full time for acquiring the necessary knowledge, that there will be ample security afforded to the public and the profession, that none but those who have had a liberal and learned education can presume, with the slightest hope of success, to offer themselves for approval to the censors' board; and as the college trusts that, by a faithful discharge of its own duty, it can promise itself the satisfaction of thus continuing to admit into the order of English physicians a body of men who shall do it honour by their qualifications, both general and professional, it is prepared to regard in the same light, and address by the same appellation, all who have obtained its diploma, whether they have graduated elsewhere or not.

Much curious information respecting the antiquities of the College of Physicians is to be found in 'The Gold-headed Cane,' an amusing and interesting little volume by the late Dr. Macmichael. He tells us (p. 120) that its very first meetings immediately after its establishment, 1518, were held in the house of Linacre, called the Stone House, No. 5, Knight Rider Street, which still belongs to the college. About the time of the accession of Charles I. the college removed to another spot, and took a house of the dean and chapter of St. Paul's, at the bottom of Amen Corner. During the civil wars their premises were condemned as part of the property of the church, and sold by public auction; on which occasion Dr. Hamey became the purchaser, and two years afterwards, 1649, gave them in perpetuity to his colleagues. The great fire of London, 1666, consumed the college and the whole of the library with the exception of one hundred and twelve folio volumes. For the next few years the meetings of the fellows were generally held at the house of the president, while a new college was being built on a piece of ground that had been bought in Warwick Lane. This was completed in four years, and was opened, without any particular ceremony, on the 25th of February, 1674, under the presidency of Sir George Ent. Here the fellows continued to hold their meetings till within a few years, when (as Dr. Macmichael says) "the change of fashion having overcome the *genius loci*," the present new college, at the north-west corner of Trafalgar Square, was opened on the 25th of June, 1825.

PIEPOWDER COURT. [MARKET.]

PILLORY. The pillory was a mode of punishment for crimes by a public exposure of the offender, used for many centuries in most of the countries of Europe under various names. In France it was called *pillorie*, and in more recent times *carcan;* and in Germany, *pranger*. It was abolished in England in the year 1837, by the statute 1 Vict. c. 23.

In modern times the English pillory was a wooden frame or screen, raised several feet from the ground, and behind which the culprit stood, supported upon a platform, his head and arms being thrust through holes in the screen, so as to be exposed in front of it; and in this position he remained for a definite time, sometimes fixed by law, but usually assigned at the discretion of the judge who passed the sentence. The form of the judgment was, that the "defendant should be set *in* and *upon* the pillory." In a case which occurred in 1759, an under-sheriff of Middlesex was fined fifty pounds and imprisoned for two months by the Court of King's Bench, because, in executing the sentence upon Dr. Shebbeare, who had been convicted of a political libel, he had allowed him to be attended upon the platform by a servant in livery, holding an umbrella over his head, and to stand without having his neck and arms confined *in* the pillory. (Burrow's *Reports*, vol. ii. p. 791.)

The public exposure of the offender as a punishment is liable to many objections, besides the inequality of its operation; and the efficacy of all punishments which merely disgrace the offender, has been questioned by some of the most distinguished modern writers on criminal law. (Rossi, *Traité de Droit Pénal*, p. 483; Haus, *Projet de Code Pénal Belge*, vol. i. p. 143.) In consequence of the recent direction of public opinion to this subject, punishments of this kind have been lately expunged from most of the modern systems of penal

law in Europe. In England the pillory was abolished in 1837, by the statute above referred to; in France, the carcan was discontinued upon the revision of the Code Pénal in 1832; and in the numerous codes and schemes of codes which have appeared in the different states of Germany during the present century, punishments by public exposure of the person or otherwise tending generally to degrade the character have been omitted. (*Entwürfe für Würtemberg, Sachsen, Hannover, Baden*, &c.) It is remarkable that the Bavarian code of 1813, which is generally founded on just and enlightened principles of criminal law, and which formed the commencement of the series of improvements which have since taken place in Germany, contains the objectionable provision that a criminal capitally convicted shall, in certain aggravated cases, undergo a public exposure on the *pranger* for half an hour, previously to his execution. (*Strafgesetzbuch für Baiern*, art. 6.)

PILOT. [SHIPS; TRINITY HOUSE.]

PIOUS USES. [USES, CHARITABLE.]

PIPE-OFFICE, or more properly the Office of the Clerk of the Pipe, a very ancient office in the court of Exchequer. It was formerly at Westminster, but was removed to Somerset House towards the close of the last century, where the duties of the office were performed, and where the records belonging to it were kept, till the abolition of the office of clerk of the pipe, and with it that of the comptroller of the pipe, by the act 3 & 4 William IV. c. 99. By that act the records which had been accumulated in the performance of the duties of this office were transferred to the custody of the king's remembrancer of the exchequer.

The business of the office had been much reduced by an act of 52 George III., which transferred the management of portions of the land revenue of the crown to the office of woods and forests, and by acts of 1 & 2 George IV. c. 121, and 3 Geo. IV. c. 88, which transferred the duty of recording what were called the foreign accounts, or those of supplies granted by parliament, to the audit and tax offices.

Still in this office was made up year by year the record called the great roll of the pipe, or more correctly the great roll of the exchequer, in which was entered the revenue accruing to the crown in the different counties of the realm, for the charging and discharging the sheriffs and other accountants. Of this roll the deputy clerk of the pipe gives the following account in reply to the circular questions of the Commissioners on the Public Records in 1832:—"The ancient revenues here recorded were either certain or casual. The certain revenue consisted of farms, fee farms, castle-guard rents, and other rents of various kinds; the casual part was composed of fines, issues, amercements, recognizances, profits of lands and tenements, goods and chattels received into the hands of the crown on process of extents, outlawry, diem clausit extremum, and other writs and processes; wards, marriages, reliefs, suits, seignories, felons' goods, deodands, and other profits casually arising to the crown by virtue of its prerogative." (*Report of Commissioners of Public Records*, 1837, p. 198.)

Of these annual rolls there is a series commencing in the second year of King Henry II., in the year of our Lord 1155, and continued to the breaking up of the office in 1834. It is justly spoken of by Madox, the author of 'The History of the Exchequer,' as "a most stately record," and it is said that no country in Europe possesses any record that can be compared with it. Two only of these rolls have been lost. It approaches, as we see, in antiquity to about seventy years from the date of the preparation of the great survey of England by the Conqueror, known by the name of 'Domesday Book.' It abounds with valuable notices of the persons who are distinguished in English history through the whole of this period, and of the transactions of the time, recorded in every instance by a contemporaneous hand.

There is one roll of a still earlier date, which has evidently been saved by some fortunate chance when the other rolls of the same reign perished. It was formerly thought to be the roll of the 1st

of Henry II.; but the antiquaries of the seventeenth century, on an imperfect survey of its contents, determined that it belonged to the fifth year of King Stephen. Accordingly it has been regarded in the office as a roll of that reign, and as the roll of the 5th of Stephen it has been repeatedly quoted by historical writers, and especially by Dugdale, in his 'History of the Baronage of England,' and who, in numerous instances, has referred facts mentioned in it to the fifth year in the reign of Stephen. Madox also often quotes it as the roll of the 5th of Stephen, though he saw enough in it to lead him to refer it to the reign of Henry I. This roll has been printed and published by the late Commissioners on the Public Records, and Mr. Hunter, one of the sub-commissioners, prefixed to it a disquisition on the year to which it belongs, in which he has shown that it is the roll of the thirty-first year of the reign of King Henry I.: thus carrying it back into the reign of one of the sons of the Conqueror, from which scarcely any national record except this has descended, and removing at once all the great historical difficulties which have arisen from referring it to the reign of his successor Stephen.

The Commissioners on the Public Records have printed other portions of the early pipe rolls, but the volumes have not been completed.

Beside the great roll, there was a similar roll prepared by the comptroller of the pipe, which has been called the chancellor's roll. This series is far less complete than the other; and as it differed but slightly from the great roll, and was never consulted, and as it appeared desirable that access should be made easier to it than could be the case while it remained in the custody of the officers of the exchequer, the late Commissioners on the Public Records directed the removal of it to the British Museum.

As to the name of Pipe applied to this officer and to the great roll of the exchequer, one conjecture is, that the rolls are so called because in form they resemble pipes, another that they were transmitted through a certain pipe from one room of the exchequer to another. It may be considered an undecided question.

PIRACY, PIRATE (immediately from the Latin *pirata*, and remotely from the Greek πειρατής, which had the same signification as our word pirate).

The offence of piracy, by the common law of England, consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there. (4 Black., 72.)

By statute some other offences are made piracy, as by stat. 11 & 12 Wm. III. c. 7, if any natural-born subject commits any act of hostility upon the high seas against others of his majesty's subjects, under colour of a commission from any foreign power, or if any commander or other sea-faring person shall betray his trust, and run away with any ship, boat, ordnance, ammunition, or goods; or if he yields them up voluntarily to a pirate, or conspires to do these acts; or if any person assaults the commander of a vessel to hinder him from fighting in defence of his ship, or confines him, or makes or endeavours to make a revolt on board, he shall for each of these offences be adjudged a pirate. The commanders or seamen wounded, and the widows of such seamen as are slain, in an engagement with pirates, are entitled to a bounty not exceeding one-fiftieth part of the value of the cargo on board, which is to be equally divided; and seamen who are wounded are entitled to a pension from Greenwich Hospital.

By the stat. 8 Geo. I. c. 24, the trading with known pirates, or furnishing them with stores or ammunition, or fitting out any vessel for that purpose, or in anywise consulting, combining, confederating, or corresponding with them; or the forcibly boarding any merchant vessel, though without seizing or carrying her off, and destroying or throwing any of the goods overboard, shall be deemed piracy. (4 Blacks., 72, 269; and Abbott, *On Shipping*, 140, 141, 142, 239.) The dealing in slaves on the high seas is piracy, and subjects a person to transportation for life or not less than fifteen years, or to be imprisoned for not exceeding three years.

(5 Geo. IV. c. 113; 1 Vict. c. 91.) The 6 Geo. IV. c. 49, for encouraging the capture of piratical vessels, provides that officers, seamen, marines, and others, actually on board any king's ship at the taking or destroying any piratical vessel, shall receive the sum of 20*l.* for each pirate taken or killed during the attack, and the sum of 5*l.* for every other man of the crew, not taken or killed, who shall have been alive on board the pirate ship at the beginning of the engagement.

Persons guilty of piracy were formerly tried before the judge of the Admiralty court, but the stat. 28 Henry VIII. c. 15. enacted that the trial should be before commissioners of oyer and terminer, and that the course of the proceedings should be according to the law of the land. Further provision was made with respect to the trial of offences on the high seas by the statutes 39 Geo. III. c. 15; 43 Geo. III. c. 113; 46 Geo. III. c. 54; and now, by the stat. 4 & 5 Wm. IV. c. 36, § 22, the trial of offences committed on the high seas is in the Central Criminal Court. Piracy is in some cases punished with death, in others by transportation. [Law, Criminal, p. 189, 190.]

PIRATE. [Piracy.]

PIX, TRIAL OF THE. [Mint.]

PLEBEIANS. [Agrarian Laws.]

PLEDGE is a thing bailed (delivered for a temporary purpose) as a security to the bailee (receiver), for the performance of some engagement on the part of the bailor (the deliverer). When the pledge is for a debt, more especially where it is given to secure a loan at interest, it is commonly called a pawn. [Pawnbroker.] In bailments the degree of care required from the bailee varies according to circumstances. When the bailment is for the sole benefit of the bailee, he is bound to use the greatest care, and is excused by nothing but unavoidable accident or irresistible force. When the bailment is for the mutual benefit of bailor and bailee, the bailee is bound to take the same care of the thing bailed as a prudent man usually does of his own. When the bailment is for the sole benefit of the bailor, it is sufficient if the bailee keep the goods bailed as carefully as he does his own, however negligent he may be. Different writers on the law of bailments refer the contract of pledge to each of these divisions. Perhaps the conflicting opinions may, to a certain extent, be reconciled by distinguishing between the different objects which the pledge is intended to secure, and the engagements which it is intended to protect. First, the pledge is sometimes, though rarely, given for the sole benefit of the pledgee, as where, after a contract is completely made, one party gives to the other a pledge for its performance. Secondly, which is the ordinary case, the pledge may be for the mutual benefit of bailor and bailee, as in the case of a loan of goods on hire, or of money at interest, accompanied by a pawn, in which case the pawn gives security to the bailee and purchases credit for the bailor. Thirdly, the pledge may be given for the purpose of obtaining a gratuitous loan of goods or of money, or of procuring some other advantage to the bailor only. It would appear that in the first of these three cases the bailee would be liable for the consequences of slight negligence; in the second, for the consequence of the want of ordinary care; and in the third, for gross negligence only.

The pledgee is bound to return the pledge and its increments, if any, upon being requested so to do, after the performance of the engagement. This duty is extinguished if the pledge has ceased to exist by some cause for which the pledgee is not answerable. But he is responsible for all losses and accidents which happen after he has done anything inconsistent with his duty as pledgee, or has refused to do his duty. When the full amount of the debt or duty therefore is tendered and refused, and the pledge is detained, the pledge is at the sole risk of the pledgee: it is so if the pledgee misuse the pledge. In every case where the pledge has sustained injury from the wrongful act or default of the pledgee, the owner may recover damages to the amount of the injury, in an action on the case. By the act of pledging, the pledger impliedly warrants

that the property is his own, and such as he can rightfully pledge.

The contract of pledge may be extinguished by the performance of the engagement for which the pledge was given, or by satisfying the engagement in any other manner, either in fact or by operation of law, as by the acceptance of a higher security without an express stipulation that the pledge shall continue.

If the engagement, to protect which the pledge is given, be not performed within the stipulated time, the pledgee may sell, upon giving due notice to the pledgor. If no time be stipulated, the pledgee may give notice that he requires a prompt fulfilment of the engagement, upon non-compliance with which he may sell.

The possession of the pledge does not affect the right of the pledgee to enforce performance of the engagement, unless there be a special agreement, by which he has engaged to resort to the pledge only, or to look to it in the first instance.

Though the pledgee may sell, he cannot appropriate the pledge to himself upon the default of the pledgor; nor is he at liberty to use it without the permission of the owner, expressed or clearly implied. Such an implication arises where the article is of a nature to be benefited by or to require being used, in which latter case the use is not only justifiable, but indispensable to the discharge of the duty of the pledgee. (*Commentaries on Law of Bailment*, by Storey.)

As to the power of an agent to pledge, see FACTOR; and as to the making land a security for debt, see MORTGAGE.

PLEDGE (Roman). The English word formerly denoted a person who was a security for another; but it now denotes a thing which is a security, and generally for a debt.

The chief rules of English law as to mortgaging and pledging are derived from the Roman law, in which, however, there is no distinction among pledges, dependent on the nature of the thing pledged, whether it was a thing moveable or immoveable, corporeal or incorporeal; and a thing could not be the subject of pledge unless it could be the subject of buying and selling, for the power of selling a pledge was an important part of the creditor's security. A man might pledge a thing either for his own or another person's debt. The terms used in the Roman law to express pledging, and also the thing pledged, are Pignus and Hypotheca. It is properly hypotheca, where there is a bare agreement (nuda conventio) that a thing shall be a security to a creditor for a debt, and the thing remains in the possession of the debtor. The word hypotheca (ὑποθήκη) is Greek, and denotes a thing subjected to a claim or demand. When the thing was delivered to the creditor, it was called Pignus (Isid., *Orig.*, v., c. 25); and as moveable things would, for obvious reasons, be most frequently delivered, a notion got established among some Roman lawyers, aided by an absurd etymology (pignus appellatum a pugno, *Dig.*, 50, tit. 16, s. 238), that the term pignus was applicable only to a pledge of moveable things; and this notion has also prevailed in modern times. (Ryall *v.* Rowles, 1 Vez.) The true etymology of pignus seems to be the same as that of pactum. It is generally said that hypotheca corresponds to the English mortgage, and pignus to pawn or pledge; but this is not the case. No ownership was transferred by the Roman hypotheca. The term hypothecation in English law is still used to express the mortgage of a ship or its cargo.

Originally, when a man wished to borrow money on the security of a thing, he transferred the ownership of the thing to the lender by mancipatio, or in jure cessio, sub lege remancipationis, or sub fiducia; and the borrower could recover his ownership by usureceptio (Gaius, ii. 59, &c.) when the debt was paid, and in some other cases also. But this mode of giving security was found to be disadvantageous to the debtor, and subsequently the thing was merely put into the hands of the creditor with a power of sale in case the debt was not paid according to the agreement; but this gave the creditor no ownership, and consequently he had no actio in rem against any third person, and therefore no sufficient security for his debt. The prætor's edict found a

remedy for this by giving to the creditor a real action, called Serviana actio, against any person who was in possession of the thing pledged, for the purpose of recovering it; and the extension of this right of action, under the name of the quasi-serviana actio, also called hypothecaria, gave to the hypotheca the full character of the pignus.

Thus the Roman law recognised the pignus, which arose from the contractus pignoris, and the hypotheca, which arose from the pactum hypothecæ. But there were other cases which in the Roman law were considered cases of pignus.

The pignus prætorium arose when a creditor, by a judicial decree, was allowed to enter into possession (mittebatur in possessionem) either of the whole property of a debtor or any part of it; but there was no pignus till the creditor took possession. It has been conjectured that this kind of pignus owes its origin to the old pignoris capio. (Gaius, iv. 26, &c.)

There was also the tacit hypotheca, which was founded on certain acts. In the case of prædia rustica, the fruits of the ground were a pignus to the owner for the rent, even if there was no agreement to that effect, which is a case of the Scotch law of hypothec; and if a man lent money for the repairs of a house, the building became a pignus for the debt.

The creditor, though in possession of the pledge, could not use it or take the profits of it without a contract to that effect, which was called antichresis, or mutual use. If he took the profits, he had to render an account of them when his debtor came to a settlement with him; but he was entitled to an allowance for all necessary expenses laid out on the thing pledged, as, for instance, for the repairs of a house.

After the time agreed on for payment was passed, the creditor had the right of selling the pledge and of retaining his debt out of the produce of the sale. If the produce of the sale was not sufficient to discharge the debt, he had a personal action against the debtor for the remainder. Originally perhaps he could only have this right of sale by express contract, but subsequently the right to sell (jus distrahendi sive vendendi) was an essential part of the contract of pledge. Though the creditor was not the owner of the thing (dominus), still he could transfer ownership to the purchaser, a doctrine that is only intelligible on the supposition that he sold it as the attorney or agent of the debtor. But the creditor could only sell the thing in respect of the debt for which the thing was pledged, and not in respect of other debts due to him from the debtor, though he might apparently retain the surplus of the sale in his hands as a satisfaction for such other debts. The power of sale was to be exercised pursuant to the terms of the contract; and when there was no agreement as to the form and manner of sale, the law prescribed the mode of proceeding, which the creditor was bound to observe strictly. It was once usual to insert in the contract of pledge a Lex Commissoria, that is, a condition by virtue of which the thing pledged became the absolute property of the creditor, if the money was not paid at the time agreed on. But by a constitution of Constantine (*Cod.*, viii., tit. 35) it was forbidden to insert such a clause in the contract. If anything remained over after satisfying the creditor, it belonged to the debtor.

A thing might be pledged to several persons in succession, whose claims were to be satisfied according to their priority in time. But there were some exceptions to this rule introduced by special laws, which gave a preference to certain persons and claims, independent of the order of time; and the constitution of Leo gave a priority to a pledge which was contracted by a public instrument (instrumentum publice confectum), or by a private instrument attested by three witnesses, over every other pledge which was to be proved by any other evidence. This law was intended to prevent fraudulent agreements by which a pledge would be antedated.

When there were several creditors, he who had the priority over all was entitled to sell and pay himself; the surplus, if any, belonged to the creditor who was next in order, and so on till the whole was exhausted. If a creditor who was posterior in order of time, wished to

stand in the place of him who had the priority, he could do so by paying him his debt, and he then occupied (successit) the same place and had the same right as the prior creditor. This doctrine was founded on the assignable character of a pledge, for though the pledgee was not the owner of the thing, and could only sell it in the manner already mentioned, he could transfer his interest to an assignee, and could even transfer to a second pledger the jus vendendi when the second pledger was excluded from such right by special contract. (*Dig.*, 20, tit. 3, s. 3.) When a subsequent creditor advanced a sum of money which was applied to the preservation of the thing pledged, for instance, for the purpose of repairing a ship, he had a priority over creditors of earlier date, on the ground of his having by his loan secured the thing. (*Dig.*, 20, tit. 4, s. 5.) The same rule, perhaps somewhat more limited, prevails in our own law as to money lent on the security of a ship.

As the pledger remained the owner of the thing pledged, he could of course sell it, but the purchaser took the thing subject to the pledge. The creditor who was in possession of a pledge was answerable for any damage that befel it owing to dolus or culpa, that is, fraud or neglect, but he was not answerable for unavoidable loss.

A pledge was determined in various ways; by the destruction of the thing, by the creditor releasing the debtor, by the debtor paying the debt, and in other ways. When the debtor offered the money to his creditor, he was entitled to have the pledge restored to him. This might be obtained by an actio pignoraticia, which was an actio in personam, and also lay for damages done to or sustained by the thing, or for the surplus of the money if the pledge had been sold by the creditor. The creditor had a contraria pignoraticia actio against the debtor for expenses incurred as to the pledge, for any fraud in the matter of the pledge, as passing off base for better metal, and in some other cases.

The Roman law of pledges has been treated by various writers at great length. A compendious view of it is contained in Brinkmann's 'Institutiones Juris Romani,' Slesvici, 1822; in Marezoll, 'Lehrbuch der Instit. des Röm. Rechtes,' Leipzig, 1839; Puchta, *Cursus der Institutionen*, ii. 693, first ed., Leipzig, 1842; and in Ayliffe's 'Law of Pledges or Pawns,' London, 1732; see also 'Dig.,' 20, tit. 1, &c.; 13, tit. 7; 'Instit.,' iv., tit. 6; 'Cod.,' 8, tit. 14, &c.

PLENIPOTENTIARY. [AMBASSADOR.]

PLOUGHBOTE. [COMMON, RIGHTS OF.]

POACHING. [GAME LAWS.]

POLICE is that department of government which has for its object the safety and peace of the community.

Its primary object is the prevention of crime and the pursuit of offenders; but the police system also serves other purposes, such as the suppression of mendicancy, the preservation of order in great thoroughfares, the removal of obstructions and nuisances, and the enforcing of laws which relate to the public health.

In the Anglo-Saxon period the sheriff of each county, chosen by the freeholders in the folkmote, was the chief officer for the conservation of the peace; and in his half-yearly visitations to each hundred in the county, he inquired whether there was any relaxation in the efficiency of the means for effecting this object. The hundred originally consisted of ten divisions, each containing ten freeholders, mutually pledged to repress delinquencies within their district. All males above the age of twelve were obliged to appear at the sheriff's visitation, to state the district to which they belonged, and to be sworn to keep the peace. One out of every ten freeholders had precedency of his companions, and the whole were bound to bring delinquents to justice within thirty days on pain of being themselves liable to penalties. The population was thinly scattered; every man was known to his neighbours; and no man could depart from his dwelling without the consent of his fellow-pledges; and the consent of the sheriff was necessary to enable a man legally to go out of his own county. No man could enter a neighbourhood without being recognised as a stranger; and if there was any suspicion, a hue and cry was raised if th

stranger could give no good account of himself. [HUE AND CRY.]

After the Conquest, the advantages of the system were recognised by several of the Norman kings, particularly by William I., and by Henry I. in the early part of his reign. William I. ordered that every freeman should be under pledges, and Henry I. that views of frank-pledge should be taken in order that none might escape responsibility. But a great innovation was made in the Anglo-Saxon system, when the sheriff, instead of being elected by the freeholders, was appointed directly by the king; and the sheriff's "tourn," or half-yearly visitation, was soon neglected.

When Henry I. instituted the office of justices-itinerant, the functions of the sheriff became of still less importance. By the stat. Merton, c. 10, passed 20th Henry III. (1236), freemen who owed suit to the county or hundred court were allowed to appear by attorney. The stat. Marl., c. 10, c. 24, passed in the 52 Henry III. (1264), dispensed with the attendance of the baronage and clergy at the sheriff's court unless their attendance was specially required; and it also prohibited the justices-itinerant from amercing townships on account of persons above the age of twelve years not having been sworn in pledges for keeping the peace. By these various measures the ancient system was greatly impaired; and the new laws which were introduced from time to time for the purpose of repressing crime do not seem to have been very successful. In 1277, nine years after the passing of the statute of Marlborough, the absence of "quick and fresh pursuit" of felons is noticed as an evil which was increasing. To supply the energy and alacrity of the old system, fines and penalties were imposed by the stat. Westminster, prim., 3 Edward I., sec. 9, on all who neglected to pursue offenders. The statute directs that "all generally be ready and apparelled at the commandment and summons of the sheriffs, and at the cry of the county to pursue and arrest any felons when any need is." The statute of Winchester, 13 Edward I. (1285), endeavoured to maintain the spirit of the Anglo-Saxon laws by making the county or hundred responsible in case of a delinquent not being forthcoming, and the duty of apprehending him was cast upon all the king's subjects. This statute also regulated the office of constable, an officer who had succeeded the Anglo-Saxon hundred or tything man. [CONSTABLE.] The prevention of crime, as well as the pursuit of criminals, was also one of the primary duties of constables, and they were charged to make presentment at the assizes, sessions of the peace or leet, of all blood-sheddings, affrays, outcries, rescues, and other offences against the peace. The justices to whom these presentments were made in the first instance, reported directly to the justices-itinerant, or at once to the king or his privy-council; and the supreme executive made provision accordingly. At the same time the responsibility cast upon the hundred quickened the vigilance of the inhabitants; and this responsibility extended to individuals in many cases. The following extracts from the Year-Books of the Exchequer are instances of this: "16 Edward I., Sussex: murder and robbery—township of Tyndon amerced, because it happened by day, and they did not take the offender." "6 Edward II., Kent: manslaughter (upon a sudden quarrel) committed in the highway of Wrotham—three bystanders amerced because they were present when the aforesaid Robert killed the aforesaid John, and did not take him." And in the reign of Elizabeth the popular vigilance which this system had created leads a writer of that day to remark that "every Englishman is a serjeant to take the thief, and who showeth negligence therein do not only incur evil opinion therefore, but hardly shall escape punishment."

Instead of being almost entirely engaged in agriculture, as in the Anglo-Saxon period, and for several centuries after the Norman conquest, the population is now occupied in great diversity of employments. Persons so engaged, and the more numerous class who live by manual labour, cannot now follow up the "quick and fresh pursuit" of felons, at the cry of the hundred or county: such a duty is incompatible with their ordinary

pursuits. A pursuit at the call of the sheriff would now be quite ineffectual: an offender may have committed a robbery in Lancashire in the evening, and be concealed in the metropolis by the next morning. As a consequence of these various changes, it has not been possible to render the hundred responsible for the delinquencies committed within its limits, and the inhabitants being now, except in a few cases (7 & 8 Geo. IV. c. 31), free from such responsibility, they are careless respecting either the prevention of crime or the apprehension of criminals. While the disposition of the people to aid the public force in these duties was gradually diminishing, the duties of the constable became much more complicated, and required the whole of his time. The same necessity which had rendered a standing army, instead of a militia, a more useful division of employment, had become equally urgent in the case of those on whom devolved the duty of keeping the peace and watching over the security of the community. Instead however of the constabulary force being re-organised, and adapted to a new state of society, it was suffered to remain, with weaker powers, to cope with circumstances which demanded increased vigilance, activity, and intelligence. The office of constable remained still a yearly appointment, and one so obnoxious, that persons were thrust into it who were incapable of executing the duties. Under the most favourable circumstances, the loss of time and the scanty remuneration offered no inducement to exertion; and if the duties were performed with something like energy, by the farmer or small tradesman during his year of office, they were performed at the risk of injuring their private interests. A power so constituted cannot effectually prevent crime; and it is equally inefficient for the purposes of inquiry and presentment. The parish constable usually acts only when called upon by some private party, and the services of the constabulary force are only combined occasionally, when any evil has become so extensive as to excite loud complaint, and then the absence of general regulations and rules of discipline renders their services of comparatively little value. In the manufacturing districts when any disturbance is apprehended, such a force is useless, and the practice is either to swear in a large number of special constables, or to call in the aid of the military power. The special constables are deficient in the necessary discipline, and they are as timid in the performance of their duties as they are unwilling to undertake them. The appearance of controlling a district by military force is an evil which, under present circumstances, cannot always be avoided. The want of confidence in the old police force is also attested by the existence of numerous voluntary associations for the apprehension and prosecution of felons: their funds are expended in the prosecution of criminals, rather than in the prevention of crime. Some of these associations have rules which bind the members, as in the case of horse-stealing, to take horse and join in pursuit of the thief. Railway Acts bind the companies to maintain a police during the formation of the line. An Act was passed in August, 1840 (3 & 4 Vict. c. 50), entitled "An Act to provide for keeping the peace on canals and navigable rivers." Private watchmen are also extensively employed in docks and warehouses.

To correct the various evils incident to the constitution of the present rural constabulary, the magistrates of Cheshire, in 1829, made the first provincial attempt to improve the administration of police in their county, and they obtained an Act (10 Geo. IV. c. 97) which authorised them to appoint and direct a paid constabulary. A more successful attempt was made at Barnet by a voluntary association, which at first engaged two officers only to patrol a limited district. The plan was found so advantageous, that it was adopted in a more extensive circle. These isolated examples however render the adjacent unprotected districts in a worse state than they were before. The establishment of a new police force for the metropolis, in 1829, has done more towards exhibiting the advantages of employing a trained body of men for all the purposes for which the old constabulary was appointed, than any other circum-

stance. Viewed at first with suspicion and dislike, from its somewhat military organization, the clamour with which it was assailed has died away, and public opinion is now in its favour. Each parish had formerly managed its own police affairs; and before 1829, the total police force of the metropolis consisted of 797 parochial day officers, 2785 night watch, and upwards of 100 private watchmen: including the Bow-street day and night patrol, there were about 4000 men employed in the district stretching from Brentford-bridge on the west to the river Lea on the east, and from Highgate on the north to Streatham on the south, the City of London being excluded. The management of this large force was of varied and often of conflicting character. The act of parliament which created the new police force (10 Geo. IV. c. 44) placed the control of the whole body in the hands of two commissioners, who devote their whole time to their duties: they are immediately responsible to the home secretary of state. By the 2 & 3 Victoria, c. 47, the metropolitan police district may be extended to any parish or part of a parish situated within 15 miles of Charing Cross, the first act having limited its operation to a distance of twelve miles. The number of men of each rank serving in the metropolitan police force, at the present time (March, 1846), is as follows:—1 inspecting superintendent, salary 600*l.*; 18 superintendents, of whom 15 have salaries of 250*l.* and 2 have a higher and 1 a lower salary; 114 inspectors, 88 of whom have 118*l.* 6*s.* a year; 485 sergeants, of whom 474 have 63*l.* 14*s.*; 4131 constables, those of the first class (1071) have 54*l.* 12*s.*; second class (2013) 49*l.* 8*s.*; third class (1000) have 44*l.* 4*s.* The sergeants and constables are allowed clothing, and each married man of these two ranks is allowed 40 pounds weight of coals weekly throughout the year; each single man is allowed 40 pounds weight weekly during six winter months, and 20 pounds weight weekly for the remainder of the year.

The total number of the force in 1840 was 3486, and in 1846 the number was 4749. They are formed in divisions, and each division is employed in a distinct district. Every part of the metropolis is divided into "beats," and is watched day and night. The total disbursements on account of the force, for the year 1845, amounted to 230,042*l.*, one-fourth of which is paid by the treasury out of the public revenue, and the other three-fourths by the respective parishes. Since August, 1839, the horse patrol, consisting of 71 mounted men, who are employed within a distance of several miles around London, has been incorporated with the metropolitan police. The Thames police consists of 22 surveyors, each of whom has charge of three men and a boat when on duty: the number of constables is 27. The establishment is under the immediate direction of the magistrates of the Thames Police-office. The city of London still manages its own police affairs, which have been placed under a far more efficient system since the establishment of the metropolitan police force.

The police of the metropolis and the district within fifteen miles of Charing Cross (exclusive of the city of London) is regulated by the Acts 10 Geo. IV. c. 44, and 2 & 3 Vict. c. 47, and together they form the police code for nearly a seventh part of the population of England and Wales.

The officers and men of the metropolitan police have been at various times engaged in other places to protect the peace when the local force has been found incompetent. In nearly all the boroughs constituted under the Municipal Reform Act (5 & 6 Will. IV. c. 76) a paid police force has been established as nearly as possible on the same footing as the metropolitan police. In the metropolis, "when any burglary or serious offence is brought to the knowledge of the police, the superintendent or other officer of the division or subdivision where the offence has occurred immediately examines the circumstances, or makes a precognition and a report upon them and the measures taken in consequence. . . . . A daily report or presentment is made to the commissioners of all the chief occurrences which have taken place during the preceding twenty-four hours in every division of nearly two counties, upon which presentment such instructions are given as any special

circumstances may seem to require. Upon other reports, made at such intervals as to comprehend general results, if it shall appear that in any district there has been an influx of depredators, additional strength is directed upon it, or explanations are required if any marked evil appear to continue without abatement." Not only is the metropolitan police active night and day in preventing depredations and suppressing mendicancy, but its attention is directed to giving assistance in case of accidents, reporting nuisances and obstructions, and in keeping a vigilant eye upon the recesses of profligacy and crime. The same services are performed with more or less efficiency in the large towns which have the services of a trained body of men.

The expense of the eleven police courts of the metropolis, for 1845, amounted to 46,765*l.*, the greater part of which (35,329*l.*) was defrayed out of the Consolidated Fund. The salary of one magistrate (Bow-street) was 1200*l.* a year; and each of the others, 22 in number, received 1000*l.* The fees, penalties, and forfeitures received at the different courts amounted to about 8000*l.*

The difficulty of re-organising the rural constabulary has hitherto retarded the general improvement of this force, while the increased vigilance of the towns has rendered such a measure more imperative. In October, 1837, a commission was appointed under the crown "to inquire into the best means of establishing an efficient constabulary force in the counties of England and Wales;" and the commissioners having taken means to ascertain the opinions of the magistracy in each petty-sessional division in the country, it was found that, out of 435 divisions, the magistrates in 123 of them recommended the appointment of a paid rural police; in 13 divisions they recommended such a force, with a proviso that it be placed under their exclusive control; in 77 divisions the appointment of a patrol or of additional constables was recommended; in 16, the better remuneration of the present constables; in 37 divisions it was considered that further security was necessary; and in 122 divisions an opinion was given that no alteration was required. The evils of the present inefficient system are fully described in the Report of the Constabulary Commissioners (No. 169, Session 1839). Some of their recommendations involve questions of provincial organization, which render it very difficult to bring a uniform system of police administration into general operation. In a bill introduced into the House of Commons in 1839, an attempt was made to remove some of these obstacles, and a very clear and detailed account of the plan was printed with the bill (No. 71, Session 1839); but the measure was regarded as too elaborate, and introduced so many innovations as to occasion its ultimate rejection.

The following is a brief summary of the principal reasons which induced the Constabulary Commissioners to recommend the appointment of a paid police force in lieu of the present parish constables:—The want of organization in any existing force has encouraged crime, and each person living by depredations costs much more to the community than a paid constable. Besides the expenses of judicial establishments, a sum exceeding 2,000,000*l.* is paid annually in England for the repression of crime, while the means for the attainment of this object are imperfect and inefficient. Even the money at present contributed by voluntary associations for self-protection would, it is thought, go far towards obtaining an effective combined force; and there would be also the saving of time to several thousand persons now annually forced into almost useless service as constables, or a saving of money which is paid for substitutes. The extent of the force required is estimated at rather more than 8000 men, and the annual cost at a sum below 450,000*l.*, including expenses of management and other charges: the whole cost would not exceed 1½*d.* in the pound on the valuation of real property in England and Wales in 1815; and it is proposed that one-fourth of the annual cost be defrayed out of the consolidated fund, and the other three-fourths out of the county rate. The average number of commitments in England is upwards of 100,000 annually, which number, it is assumed, represents a total of 40,000

persons living wholly by depredation, to which must be added those who live partially by such means and escape detection, to meet which active body a trained force of 8000 men appears to be a moderate estimate. The commissioners recommended that a disposable force of 300 or 400 additional men be kept for extraordinary services. The patronage connected with a paid constabulary should be vested in those who are directly responsible for its efficiency; and local supervision and control might be made consistent with this arrangement. The success of such a force would of course depend to a great extent upon its being seconded by popular feeling, and, contrary to the opinion of many persons, it would be less likely to infringe upon personal liberty than a body of isolated individuals, for an acquaintance with legal duties forms part of the training of a combined force, which must in all cases have general rules for its conduct and government. Should a trained constabulary be established, the commissioners recommended that the men be changed from one district to another in the same manner as the officers of the Excise establishment.

The government has not thought proper to take any steps for the general establishment of a trained constabulary force in England and Wales; but in 1839 an act was passed (2 & 3 Vict. c. 93) which enabled the justices in quarter sessions to appoint county and district constables, and thus left the improvement of the police to their discretion. A report must be previously made to the secretary of state, showing the necessity of appointing additional constables. By 2 & 3 Vict. no more than one constable could be appointed to each one thousand of the population; but by 3 & 4 Vict. c. 88, this limitation is done away with. The expenses of the police force (rural police) are charged upon the county rate in the several divisions in which the force has been appointed. To secure unity of action and general uniformity, the secretary of state is empowered to frame rules for the regulation of the force. The men employed in it are not to exercise any other employment, nor allowed to vote at elections for a member of parliament. Under the provisions of these acts a rural police force has been appointed in several counties. The act 3 & 4 Vict. c. 88, contains provisions for the consolidation of the borough and county police in cases where the respective authorities desire to enter into such an arrangement.

In addition to the two acts above mentioned, there are other statutes which enable magistrates to obtain any additional police force which may be requisite to ensure the conservation of the peace. [CONSTABLE.]

The Irish constabulary partakes much more of a military character than the London police or the rural police of the English counties. They are stationed in barracks, have fire-arms, and are removed from one part of the country to another. In 1845 the Irish constabulary consisted of 9193 persons, under the command of an inspector-general, who has a salary of 1500*l.* a year. There are a deputy inspector-general with a salary of 1000*l.*, and a second deputy with a salary of 800*l.* There are 2 provincial inspectors, 18 paymasters, 35 county inspectors, 210 sub-inspectors; 260 head constables, 1458 constables, 6368 sub-constables, first class, and 1039 of the second class. Connected with the police system there are 60 stipendiary magistrates, with salaries of from 350*l.* to 1000*l.* a year, besides certain allowances. The total expense of the force in 1845 was 451,577*l.*, of which sum 180,080*l.* was borne by counties, cities, and towns, and 271,497*l.* was charged upon the Consolidated Fund. The prime minister, Sir Robert Peel, in his speech on the general policy of the country on 27th January, 1846, proposed to charge the whole expense of the Irish Constabulary Force upon the public income, partly with a view to the relief of landlords and partly in order that the executive may have a more complete control over the force.

POLICY and POLITY. Policy is generally used to signify the line of conduct which the rulers of a nation adopt on particular questions, especially with regard to foreign countries, and according to our opinion of that particular line of conduct we say that it is good or bad

policy. Polity has a more extended sense, being synonymous with the principles of government, and this is the sense of the Greek 'politeia' (πολιτεία), from which it is derived. Police, in an extended sense, is that branch of polity which is concerned with the internal economy of the state. In a more restricted sense it is a branch of preventive administration, distinct from the administration of justice, the object of which, among other things, is the punishment of crimes committed. [POLICE.]

POLICY. [INSURANCE.]

POLITICAL ECONOMY. The word Economy is from the Greek *oeconómia* (οἰκονομία), "house-management," or "household management," the notion of which is generally understood. It does not signify in the original language merely "saving" or "thrift," but the judicious and profitable management of a man's property; and this is the sense of the word in the treatise of Xenophon entitled *Oeconomicos* (Οἰκονομικός).

Political Economy or Public Economy should mean a management of a State analogous to the management of a private property. But this is not the sense in which the term is used; and the term itself is objectionable by reason of the false analogy which it suggests. It is however true that many governments have acted on the notion that the supreme power should direct the industry of individuals, and in some degree provide for their wants; and many persons still have an opinion that one of the functions of government is to regulate agriculture, manufactures, and commerce; not to prescribe exactly to every man how he shall employ himself, but to make regulations which shall to a considerable extent direct the industry of the members of the State. Adam Smith gave to his work the title of the 'Wealth of Nations,' a term which indicates much better than the term Political Economy the object of his investigations, which is, "to explain in what has consisted the revenue of the great body of the people, or what has been the nature of those funds which in different ages and nations have supplied their annual consumption." The word Wealth indicates that the inquiry is mainly conversant about material results, about the products which man by his labour produces for his necessities and his pleasures. The word Nations implies that the object of the inquiry is the aggregate wealth which any political society acquires; but this investigation further implies an examination into the conditions under which the individual members of a state labour for the production of a nation's wealth, and what they get for their labour; for the wealth thus acquired is not the wealth of a nation in the sense in which some things belong to a nation or to the public. The great mass of products are appropriated by individuals in accordance with the rules of property or ownership, that exist in some form or other in all nations, and the terms of contract between capitalists and labourers. All that is produced, except that part which the State produces as a State, or takes for the purposes of the general administration, is appropriated by individuals, and is either saved or consumed. The term Political Economy would have an exact meaning, if we understood it to express that economy or management which the State as a State exercises or should exercise for the benefit of all. It would comprehend all that the State should do for the general interest, and which individuals or associations of individuals cannot do as well; it would thus in a sense coincide with the term Government. Being thus defined, it would exclude all things that a State as a State should not do; and thus the inquiry into the Wealth of Nations would mean an inquiry into all those conditions under which wealth is produced, distributed, accumulated, and consumed or used by all the individuals who compose any given political community. But though the subject of Government is easily separated from the proper subject of Political Economy, everybody perceives that there is some connection between the two things; and this is the foundation of some of the false notions that have prevented Political Economy from attaining the form of an exact science. Everybody perceives that a Government can do much towards increasing or diminishing "the revenue of the great

body of the people;" but everybody does not see what a Government should do or should not do in order that this revenue may be the greatest and most beneficially distributed.

Those who at the present day maintain that agriculture should be protected, or, expressing the proposition in other terms, say that native industry ought to be protected, assume that a Government ought to regulate the manner in which a nation shall acquire its revenue. To be consistent they should go further: a Government should regulate the mode in which the revenue shall be distributed, accumulated, and used. In fact Governments by their acts, and mainly by the weight and kind of their imposts, do this in some degree, though their object may not be to do this. But to protect native industry is to regulate purposely and designedly part of the process by which a nation produces the sum total of that revenue of which all persons, landowners, capitalists and labourers, get some portion. This protection consists in excluding many articles of foreign produce, or laying heavy customs' duties on them, in order that those who produce such articles at home may get a better price for them. Thus he who has to buy the articles must give more for them than he would if there were no protection; and precisely to the amount of this higher price are his means directly diminished for buying anything else that he wants for productive use or simple enjoyment. The indirect consequences of such Government regulations also diminish his own productive powers.

The French Economistes, as they are termed, of whom Quesnay was the head, considered agriculture as the only source of wealth, and had other opinions about agriculture as distinguished from manufactures, which are not well founded; but they did not for that reason maintain that agriculture should have any exclusive protection: on the contrary, they maintained that all taxes should fall on land, and that trade in corn should be freed from the restrictions to which it was then subjected between one province and another in France.

It is not easy to make an exact classification of the subjects which writers on Political Economy discuss. The matters which they do discuss may be generally enumerated as follows:—The production of wealth and the notion of wealth, which comprehend the subjects of Accumulation, Capital, Demand and Supply, Division of Labour, Machinery, and the like. But all the matter of Political Economy is so connected, that every great division which we may make suggests other divisions. The Profits of Capital and the Wages of Labour, the Rent of Land, and the nature of the Currency, are all involved in the notions of Accumulation, Capital, and so forth. No treatise has perhaps yet appeared which has exhibited the subject of Political Economy in the best form of which it is susceptible.

The way in which "the Revenue of the great body of the people" is distributed, is an inquiry only next in importance to the mode in which it is produced; and the mode and proportions in which it is distributed re-act upon future production. He who receives anything out of the "Revenue" is, by the supposition, a person who has contributed to it, either as a landowner, a capitalist or a labourer. If he is neither a landowner, a capitalist nor a labourer, he is supported out of the public revenue either by alms, or by pensions, or by the bounty of parents or friends. Omitting these cases, a man's title to a part of "the Revenue of the great body of the people," if it is an honest title, is either the title which he has to the produce of land or capital, of which a portion has been appropriated to him in conformity to the rules which establish ownership, or it is the title of one who labours for hire and receives his pay pursuant to the terms of the contract. The owner of land and capital, if he does not employ it himself, lets others have the use of it in consideration of interest or rent or some fixed payment.

The use which a people shall make of their revenue is the last great division of the subject. The analogy here between Economy in its proper sense and the Economy of a People is pretty close. Judicious Economy is the making the best use of one's income; and the best use is to spend it on things of necessity first, on things which gratify the taste and the understanding next, but to put

by something as a reserve against contingencies, and as a means of adding still further to our enjoyments. The savings of individuals constitute the savings of the Nation: there is no saving by the Nation as a Nation; the national accumulation is the sum total of individual accumulations. The savings are made nearly altogether without concert or co-operation. Division of labour and combination of labour, which are in reality the same thing when properly understood, effect saving in production, and consequently they effect saving in consumption so far as they make anything cheaper; but this is not individual saving; it is an addition to the public wealth, by which addition all individuals, or some individuals, get more for their money than they otherwise would, or get the same thing cheaper than they otherwise would. The general revenue is always created by co-operation, in which each man receives his due portion. The use or consumption of any man's portion of "the revenue of the great body of the people" and the degree in which each man co-operates towards producing this revenue, are unconnected. Each man consumes, in the true and literal sense of consumption, by himself and for himself—he produces together with others and for others as well as for himself. It is true that he who consumes merely for consumption's sake does indirectly affect production; and this is the kind of consumption which is handled least completely by political economists, though it is in fact the chief element in the whole science. Malthus, in his 'Principles of Political Economy,' has hinted at this: "Adam Smith has stated that capitals are increased by parsimony, that every frugal man is a public benefactor ('Wealth of Nations,' b. ii. ch. 3), and that the increase of wealth depends upon the balance of produce above consumption (b. iv. ch. 3). That these propositions are true to a great extent is perfectly unquestionable. No considerable and continued increase of wealth could possibly take place without that degree of frugality which occasions annually the conversion of some revenue into capital, and creates a balance of produce above consumption; but it is quite obvious that they are not true to an indefinite extent, and that the principle of saving, pushed to excess, would destroy the motive to production. If every person was satisfied with the simplest food, the poorest clothing, and the meanest houses, it is certain that no other sort of food, clothing, and lodging would be in existence; and as there would be no adequate motive to the proprietors of land to cultivate well, not only the wealth derived from conveniences and luxuries would be quite at an end, but, if the same division of land continued, the production of food would be prematurely checked, and population would come to a stand long before the soil had been well cultivated. If consumption exceed production, the capital of the country must be diminished, and its wealth must be gradually destroyed, from its want of power to produce; if production be in a great excess above consumption, the motive to accumulate and produce must cease from a want of will to consume. The two extremes are obvious; and it follows that there must be some intermediate point, though the resources of political economy may not be able to ascertain it, whereby, taking into consideration both the power to produce and the will to consume, the encouragement to the increase of wealth is the greatest. The division of landed property presents another obvious instance of the same kind. No person has ever for a moment doubted that the division of such immense tracts of land as were formerly in possession of the great feudal proprietors must be favourable to industry and production. It is equally difficult to doubt that a division of landed property may be carried to such an extent as to destroy all the benefits to be derived from the accumulation of capital and the division of labour, and to occasion the most extended poverty. There is here then a point, as well as in the other instance, though we may not know how to place it, where the division of property is best suited to the actual circumstances of the society, and calculated to give the best stimulus to production and to the increase of wealth and population." (Malthus, Introduction.)

It is only by a close analysis of the

matter which all economical writers agree in considering as belonging to Political Economy, that we arrive at the more exact notion of the objects and limits of the science, or at such objects and limits as may be comprehended within *a* science. The head which is the last in the list, Consumption, may be either Consumption for the purpose of further production, or Consumption for the sole purpose of enjoyment. This Consumption for the purpose of enjoyment is a kind of consumption which some economical writers have scarcely thought of, though all the rest of the world are thinking of it and labouring for it. This Consumption for enjoyment may to some extent and in some cases coincide with or contribute to further production; but as *such*, as Consumption for enjoyment's purpose, it must not be confounded with any other kind of consumption. The true basis of all those investigations which are included under the name of Political Economy is this: That man desires to enjoy, and that he will labour in order to enjoy. The nature of his enjoyments will vary with the various states of society in which he lives, with his moral, social, and intellectual character. As he labours in order to enjoy, and as one man gives his labour in exchange for another man's labour, it follows that the exchargeable value of every man's labour will ultimately depend on the opinion of him who wishes to have the fruits of such labour.

It therefore concerns all who labour that they understand on what the value of their labour depends. It is not the value of a man's labour to himself which we have to consider here, but the value of it to others. A man may value his own labour as he pleases, but if he wishes to exchange it, he will find that it is other persons who then determine its value: the real value is what he can get for it. This fact is well known to all who produce anything to sell, or offer their labour for hire. The value of anything to him who has not the thing, but wishes to have it, is not measured by the opinion of him who has it to sell. The price of purchase is a result which is compounded of the wants of the buyers and the quantity or supply of the thing which they desire to have. There is no formula which can accurately express the numerical value of this result; nor would a numerical result be invariable. It depends on the supply of the things which purchasers desire, and also on their necessary wants, taste, and caprice. The wants of the buyers, their real efficient demands, imply ability or means to buy with; and this is a varying element. Thus there are two varying elements of selling price, the demand and the supply. Prices vary least in those things which are the primary necessaries, when trade is free from all restrictions; or they are at least not subject to the same variations of taste and caprice. One of the varying causes of price, opinion, is here pretty nearly constant; and the risk of variation is mainly in the supply, which depends on seasons and other accidents. When the value of a thing depends on an opinion that is liable to change, the supply will be less certain on account of the uncertainty of opinion. No man can say with certainty what will be the value of anything at a future time; but long experience has taught men the probable limits within which the selling prices of most articles of common use will vary, and a knowledge of these limits enables them to determine whether they can undertake to furnish the market with any given article so as to have a reasonable security for a profit. Profit is the condition without which things will not continue to be produced for sale. The cost that is expended upon a thing does not determine its value, by which is meant its selling price, but the selling price determines whether the thing will continue to be produced. In the case of many new articles, the production of them is a pure risk, and dear-bought experience alone in many cases teaches a man that he has laboured much to no purpose—that he has something to sell, which nobody wishes to buy. Articles of ordinary consumption are regulary produced, because the efficient demand combined with the quantity in the market secures a remunerating price If other articles take the place of those which have been in ordinary use, the old articles cease to be made. If the same articles, owing to improved processes, are

produced at less cost, the selling price is diminished, not because the labour bestowed on them is less, but because the supply of such articles is more abundant whenever there is free competition. That the labour expended on an article does not determine its exchangeable value is clear from the case supposed, for if there was no competition among producers, the purchasers would not get the thing a bit the cheaper, simply because it could be produced at less cost. The producer might be wise enough to lower the price, in order to get an increased sale, and an increased total profit; but in fact, the increased amount of production is that which lowers the price, and not the will of the seller. If he increases his production, he must sell or he will lose by his increased production, and he cannot prevent the price from falling, unless the demand increases quicker than his production.

The price of all labour, Wages or Hire, is also determined by the opinion of those who want it and have the means of paying for it, and the amount of the kind of labour that is in the market. The price is sometimes as low as nothing, which means that the thing is not wanted. This is true of all kinds of labour from the labour of him who sweeps the streets to the labour of him who produces the finest work of art or the noblest effort of intellectual power.

The notions that the value of every article produced by labour is determined by the cost of production, and that the price of labour is determined by the wants of the labourer or the prices of other things, are fruitful sources of misery. Every man can cite instances in which these doctrines are palpably false, and no man can cite many instances in which they are really true, though at first sight they may appear to be so. [PRICE.]

If we would investigate the economical condition of a country as to the production of wealth, its distribution, and its consumption, we must ascertain its population, the various kinds of employments, the amount of articles produced, the wages of the labourer, the profits of the capitalist, rate of interest, rent of lands and houses, and the various articles consumed, both articles the produce of the country and articles imported, of which the articles exported are the equivalents. We must ascertain the rate at which population increases in a given period, the rate at which permanent improvements, such as roads, houses, docks, and the like, increase, and all improvements of a permanent character. In such an investigation the economist may proceed on the supposition that man is acting free from all restraint, except the restraint which compels every man to respect his neighbour's property and person; that every man is labouring just as he pleases without constraint or direction, and that every man is enjoying what he produces or what he gets in exchange for his own production, with no other restraint than the law imposes for the protection of other men's property and persons. But such a state of things does not exist, and perhaps never did; and when the economist has investigated the actual state of a nation's wealth and its consumption, he will have to ascertain how and to what extent men are limited in their industry by positive law, by positive morality, and by anything else. It is his business to detect those artificial restraints which interfere with a man's industry and consequently with his enjoyment. In his inquiries he must never forget that consumption for consumption's sake is the end of all our labour; not such a consumption as shall destroy wealth, but such a consumption as is consistent with permanent and increased means of enjoyment, both for the actual generation and for an increased number in the succeeding generation. He therefore recognises saving, accumulation, and productive consumption as necessary means towards the end of increased enjoyment. But he acknowledges no real enjoyment, he does not admit that there is happiness, and he denies the possibility of improvement of the social condition of a people, unless the necessaries of life, such as the country and climate require, are possessed by all—food, raiment, and lodging. When these things can be had, and not before, a man has leisure and inclination to supply other wants that lie dormant while he is hungry, naked, and without shelter against the weather.

It will be discovered that there are

peculiar circumstances in most countries that affect the happiness of the people in different ways. It is the business of the economist to investigate these circumstances and to ascertain them, whether the circumstances may be the peculiar form of the government, the habits of the people, their ignorance, or any other cause. His problem is to trace to their causes all those conditions which interfere with the enjoyment of the necessaries of life, without a supply of which no man can be happy. Whatever he can prove to interfere with such a supply, to diminish such a supply, to make it less than it otherwise would be, is within the province of his investigation; whether it is arbitrary power in a monarch, ignorance in a constitutional government, heavy taxation, restrictions upon the free exercise of industry, or anything else, by whatever name it is called, that interferes with a man's industry, and consequently with his enjoyment. If he carries his inquiries beyond those necessities of life which all men want before they ask for anything else, he will find ample employment in investigating the causes which interfere with or limit the class of secondary enjoyments, those which a man craves for when he has satisfied the first. He will discover that the same kind of restraint or interference often limits the secondary enjoyments, and that their being limited operates upon the primary wants, and so limits the means of gratifying them also. He will thus approach the solution of a great question, and endeavour to determine whether the sovereign power should interfere with industry in any way, except to raise money by taxation for the necessary expenses of the administration; and he will endeavour to determine how the required amount of money may be raised so as to curtail each man's enjoyments in the least possible degree.

If the question of freedom from all restraint on industry, except such restraints as have been alluded to, is determined in favour of freedom, there will still be plenty for the economist to do. The greatest enemy to man is his own ignorance. The mode in which men shall so organize their labour that each shall get more out of the common stock by such organization than by any other mode, is the great question that concerns us all. Knowledge must guide our industry, or it may be fruitless, even though it has perfect liberty of action. Enjoyment is the end to which knowledge alone can lead us. Enjoyment implies the sufficient and reasonable satisfaction of the appetites, which must precede the enjoyment of the imagination and the intellectual faculties; the harmonious combination of the two enjoyments makes Happiness.

The field for the Political Economist is as extensive as Society itself; but his labour has certain limits. He may often determine when legislation is unwise, or when it is wanted: but he does not concern himself about the making of the law. He is satisfied if a bad law is repealed, or if, when useful, it is so framed as to accomplish the object. Nor does he concern himself about forms of Polity, or systems of religion or morals, or philosophy as *such*. But he does investigate the mode in which they operate upon industry directly or indirectly, and mainly their mode of operation on the primary wants, those wants which all men seek to satisfy, and which all must in some degree satisfy, or they must cease to live. The great test, the unerring test, of the condition of a nation, is the condition of those who labour for their daily bread. If these have sufficient, it is a certain deduction that others have more than sufficient, and that there may be improvement in the social and moral condition of all classes. But ignorance may prevent improvement. It will, therefore, be the province of the economist to show how, when the primary wants of a people are satisfied, they may secure, so far as it can be secured, so happy a condition, and also to show by what combinations the gratification of the secondary wants may be secured with the least trouble and expense. The fundamental principles of the economist are indeed, as it has been often remarked, very few; and it is equally true that very little can be deduced from them. They must be constantly applied, in the way of test and correction, and the matter to which they

must be applied is the experience of man. A wise man neither rejects nor overvalues the axioms of his science; but when his subject is "immersed in matters," to use an expression of Bacon, he knows better than to expect a few axioms, even if absolutely true, to solve problems to the whole or parts of which they will often not apply.

The Literature of Political Economy is very copious. Much that has been written is of little value for practice, but curious and useful as a history of opinion. An outline of this part of the subject is given in the 'Penny Cyclopædia,' under the title "Political Economy;" and in 1845 Mr. M'Culloch published a useful work entitled 'The Literature of Political Economy.' It is a classified catalogue of the principal works in the different departments of Political Economy, and is interspersed with historical, critical, and biographical notices.

A few years ago a Professorship of Political Economy was founded in the University of Oxford, by Mr. Drummond. Archbishop Whately has founded a similar professorship in the University of Dublin. There are unendowed professorships in the University of Cambridge, and in University College and King's College, London; but that of University College, London, has not been filled for several years.

POLYGAMY is the name of the custom according to which a man may have more than one lawful wife at a time, which custom prevails in several countries. Polygamy has existed in Asia from time immemorial, and Mohammedanism adopted and confirmed the custom. Montesquieu pretends that polygamy in the East is the consequence of the greater number of female births in that country; but this surmise is by no means proved. Another and a more plausible reason may be found in the premature old age of the female sex in some countries. Niebuhr, in his 'Travels in Arabia,' gives a curious conversation which he had with an Arab on the subject of polygamy. (*Reisebeschreibung*, ii. 253.)

Neither Greek nor Roman usage allowed a man to have more than one wife at a time. But divorce became so common among the Romans, that the frequent change of wife became almost a practical polygamy. However, this practice of divorce was probably confined to the rich and luxurious, who, when they have no regular occupation, are generally the most licentious members of society. The barbarous nations, on the contrary, that is to say, those who were not Greeks or Romans, practised polygamy, with the exception of the Germans, "who alone," says Tacitus, "among all the barbarians, are content with a single wife." (*German.*, 17.)

In the scriptures we find instances of polygamy recorded before the flood. (*Genesis*, iv. 19.) It was common in the patriarchal times, and we have the instance of Jacob marrying two sisters. By the law of Moses it appears to have been tolerated. (*Exodus*, xxi. 9, 10, and *Deuteronomy*, xxi. 15.) But in the time of our Saviour, no indication appears of its being common among the Jews. Divorce, however, was frequent, and our Saviour (*Matthew*, xix. 9) reprobates the custom. St. Paul speaks always of marriage in terms implying the union of one man with one woman. In Christian countries, polygamy has been long since universally forbidden, both by the church and by the civil law, under severe penalties, which in some countries amounted to death. In England, it is a punishable offence. [BIGAMY.]

The Koran allows a man to have four legitimate wives; but it is only the rich who avail themselves of this permission. The Arabs are generally content with one wife.

Polygamy can never prevail much in any country where slavery does not exist in some form, even if the practice is permitted. The expense of two or more wives is a sufficient check on the practice. It is only the rich who can indulge in this way. A poor man in any country will find one wife and one set of children quite enough for him. If in England, for instance, it was permitted for a man to have several wives at once, all of whom should be in the legal condition of a wife, the expense alone would prevent any prudent man from availing himself of the legal permission,

if there were no other objection. When the wife is a kind of slave to her husband and assists to support him by her labour, a plurality of wives is merely an increasing of a man's slaves with the increased power of sexual intercourse at the same time. That such a mode of life must be a brutalized and a half savage state, is obvious enough; and it is not consistent with any improvement in the condition of women; and on the improved condition of women mainly depends the improveable condition of society. If in any country polygamy were carried to a great extent among the rich, the consequence would be that the poor must go without wives, unless the demands of the rich were supplied by importation of female slaves, which is the case in some countries.

That union which exists in the cohabitation of a man with one woman makes a family quite a different thing from a family which is founded on the cohabitation of a man with more than one woman. Traced out to all their consequences, the two practices produce distinct social systems, which, in nearly every respect, are right opposed to one another. The advantage is on the side of monogamy, though the nations which maintain polygamy might easily discover some weak points in the monogamist practice.

POOR. [POOR LAWS AND PAUPERISM.]

POOR LAWS AND PAUPERISM. A pauper in England is a person who, unable to support himself, receives money or money's worth from the contributions of those who are by law compelled to maintain him wholly or in part. There are many poor persons who are not paupers. He who gets his living by his labour, but receives no legal relief, is not a pauper. He who will not or does not work, but gets his living by begging, is a mendicant. Those who are supported wholly or in part by the voluntary gifts of charitable persons are not paupers.

The causes of pauperism are numerous, and it would be equivalent to an attempt to explain most of the phenomena of modern society, if we should affect to assign all its possible or even all its actual causes in any given country. Some of the causes however are clearly traceable to positive law. Every history of positive legislation in this and other countries shows that those who have had the power to make laws have not only ignorantly and unintentionally injured society by not perceiving the tendency of their own enactments, but have often purposely and designedly attempted to accomplish objects which they believed to be beneficial to society, but which an enlarged experience and a sound philosophy have proved to be detrimental to the general interest. When the object has been a good one, a legislator has often failed in accomplishing it, owing to ignorance of the proper means. In England legal interference with the condition of the poor has in some degree been exercised for nearly 500 years. In no country have greater efforts been made to regulate their condition, nor greater mistakes committed in this branch of government.

The great object of the earlier efforts in pauper legislation was the restraint of vagrancy. The 12th Richard II. c. 7 (1388) prohibits any labourer from quitting his dwelling-place without a testimonial from a justice of the peace, showing reasonable cause for his going, and without such a testimonial any such wanderer might be apprehended and put in the stocks. Impotent persons were to remain in the towns where they were dwelling at the passing of the act, provided the inhabitants would support them; otherwise they were to go to the places of their birth, to be there supported. By acts passed in the 11 and 19 of Henry VII. (1495 and 1504) impotent beggars were required to go to the hundred where they had last dwelt for three years, or where they were born, and were forbidden to beg elsewere. By the act 22 Henry VIII. c. 12 (1531), justices were directed to assign to impotent poor persons a district within which they might beg, and beyond which they were forbidden to beg, under pain of being imprisoned and kept in the stocks on bread and water. Able-bodied beggars were to be whipped and forced to return to their place of birth, or where they had last lived for three years.

These acts appear to have had no per-

manent effect in repressing vagrancy. An act passed in 1536 (27 Henry VIII. c. 25) is the first by which voluntary charity was converted into compulsory payment. It enacts that the head officers of every parish to which the impotent or able-bodied poor may resort under the provisions of the act of 1531, shall receive and keep them, so that none shall be compelled to beg openly. The able-bodied were to be kept to constant labour, and every parish making default was to forfeit twenty shillings a month. The money required for the support of the poor was to be collected partly by the head officers of corporate towns and the churchwardens of parishes, and partly was to be derived from collections in the churches and on various occasions where the clergy had opportunities for exhorting the people to charity. Almsgiving beyond the town or parish was prohibited, on forfeiture of ten times the amount given. A "sturdy beggar" was to be whipped the first time he was detected in begging; to have his right ear cropped for the second offence; and if again guilty of begging, was to be indicted "for wandering, loitering, and idleness," and if convicted was "to suffer execution of death as a felon and an enemy of the commonwealth." The severity of this act prevented its execution, and it was repealed by 1 Edward VI. c. 3 (1547). Under this statute every able-bodied person who should not apply himself to some honest labour, or offer to serve for even meat and drink, was to be taken for a vagabond, branded on the shoulder, and adjudged a slave for two years to any one who should demand him, to be fed on bread and water and refuse meat, and made to work by being beaten, chained, or otherwise treated. If he ran away during the two years, he was to be branded on the cheek, and adjudged a slave for life, and if he ran away again, he was to suffer death as a felon. If not demanded as a slave, he was to be kept to hard labour on the highways in chains. The impotent poor were to be passed to their place of birth or settlement, from the hands of one parish constable to those of another. The statute was repealed three years after, and that of 1531 was revived. In 1551 an act was passed which directed that a book should be kept in every parish, containing the names of the householders and of the impotent poor; that collectors of alms should be appointed who should "gently ask every man and woman what they of their charity will give weekly to the relief of the poor." If any one able to give should refuse or discourage others from giving, the ministers and churchwardens were to exhort him, and, failing of success, the bishop was to admonish him on the subject. This act, and another made to enforce it, which was passed in 1555, were wholly ineffectual, and in 1563 it was re-enacted (5 Eliz. c. 3), with the addition that any person able to contribute and refusing should be cited by the bishop to appear at the next sessions before the justices, where, if he would not be persuaded to give, the justices were to tax him according to their discretion, and on his refusal he was to be committed to gaol until the sum taxed should be paid, with all arrears.

The next statute on the subject, which was passed in 1572 (14 Eliz. c. 5), shows how ineffectual the former statutes had been. It enacted that all rogues, vagabonds, and sturdy beggars, including in this description "all persons whole and mighty in body, able to labour, not having land or master, nor using any lawful merchandise, craft, or mystery, and all common labourers, able in body, loitering and refusing to work for such reasonable wage as is commonly given," should "for the first offence be grievously whipped, and burned through the gristle of the right ear with a hot iron of the compass of an inch about;" for the second, should be deemed felons; and for the third, should suffer death as felons, without benefit of clergy. For the relief and sustentation of the aged and impotent poor, the justices of the peace within their several districts were "by their good discretion" to tax and assess all the inhabitants dwelling therein. Any one refusing to contribute was to be imprisoned until he should comply with the assessment. By the statutes 39 of Elizabeth, c. 3 and 4 (1598), every able-bodied person refusing to work for the ordinary wages

was to be "openly whipped until his body be bloody, and forthwith sent, from parish to parish, the most strait way to the parish where he was born, there to put himself to labour as a true subject ought to do."

The next act on this subject, the 43 Elizabeth, c. 2, has been in operation from the time of its enactment, in 1601, to the present day. A change in the mode of administration was however effected by the Poor Law Amendment Act (4 & 5 Wm. IV. c. 76), which was passed in 1834. During that long period many abuses crept into the administration of the laws relating to the poor, so that in practice their operation impaired the character of the most numerous class, and was injurious to the whole country. In its original provisions the act of Elizabeth directed the overseers of the poor in every parish to "take order for setting to work the children of all such parents as shall not be thought able to maintain their children," as well as all such persons as, having no means to maintain them, use no ordinary trade to get their living by. For this purpose they were empowered "to raise, weekly or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, mines, &c., such sums of money as they shall require for providing a sufficient stock of flax, hemp, wool, and other ware or stuff, to set the poor on work, and also competent sums for relief of lame, blind, old, and impotent persons, and for putting out children as apprentices." Power was given to justices to send to the house of correction or common gaol all persons who would not work. The churchwardens and overseers were further empowered to build poorhouses, at the charge of the parish, for the reception of the impotent poor only. The justices were further empowered to assess all persons of sufficient ability, for the relief and maintenance of their children, grandchildren, and parents. The parish officers were also empowered to bind as apprentices any children who should be chargeable to the parish.

These simple provisions were in course of time greatly perverted, and many abuses were introduced into the administration of the law. The most mischievous practice was that which was established by the Justices for the county of Berks in the month of May, 1795, when, in order to meet the wants of the labouring population caused by the high price of provisions, an allowance in proportion to the number of his family was made out of the parish fund to every labourer who applied for relief. This allowance fluctuated with the price of the gallon loaf of second flour, and the scale was so adjusted as to return to each family the sum which a given number of loaves would cost beyond the price in years of ordinary abundance. This plan was conceived in a spirit of benevolence, but the readiness with which it was adopted in all parts of England clearly shows the general want of sound views on the subject. Under the allowance system the labourer received a part of his means of subsistence in the form of a parish gift, and as the fund out of which it was provided was raised from the contributions of those who did not employ labourers, as well as of those who did, their employers, being able in part to burthen others with the payment for their labour, had a direct interest in perpetuating the system. Those who employed labourers looked upon the parish contribution as part of the fund out of which they were to be paid, and accordingly they lowered their rate of wages. The labourers also looked on the parish fund as a source of wages, independent of their labour wages. The consequence was that the labourer looked to the parish aid as a matter of right, without any regard to his real wants, and he received the wages of his labour as only one and a secondary source of the means of subsistence. His character as a labourer became of less value, and his value as a labourer was thus diminished under the combined operation of these two causes. In 1832 a commission was appointed by the crown, under whose direction inquiries were made through England and Wales, and the actual condition of the labouring class in every parish was ascertained with the view of showing the evils of the existing practice, and of suggesting some remedy. The labour of

this inquiry was great, but in a short time a Report was presented by the commissioners, which explained the operation of the law as administered, with its effects upon different classes, and suggested remedial measures. This Report was presented in February, 1834, and was followed by the passing, in August, 1834, of the Poor Law Amendment Act, 4 & 5 Wm. IV. c. 76, in which the principal recommendations of the commissioners were embodied. This Act was amended by the 7 & 8 Vict. c. 101 (9th August, 1844).

The chief provisions of this law are —the appointment of a central board of three commissioners, whose quarters are in Somerset House, London, for the general superintendence and control of all bodies charged with the management of funds for the relief of the poor. There are nine assistant-commissioners, each one of whom has a district: the assistant-commissioners visit their districts and see that the orders of the commissioners are executed. The assistant poor-law commissioners are appointed by and removable by the commissioners. The whole administration of the Poor Law is under the direction of the secretary of state for the home department. The administration of relief to the poor is under the control of the commissioners, who make rules and regulations for the purpose, which are binding upon all the local bodies. They are empowered to order workhouses to be built, hired, altered, or enlarged, with the consent of the majority of a board of guardians. They have the power of uniting several parishes for the purposes of a more effective and economical administration of poor relief, but so that the actual charge in respect to its own poor is defrayed by each parish. These united parishes, or Unions, are managed by boards of guardians annually elected by the rate-payers of the various parishes, but the masters of workhouses and other paid officers are under the orders of the commissioners, and removable by them. The system of paying wages partly out of poor-rates is discontinued, and except in extraordinary cases, as to which the commissioners are the judges, relief is only to be given to able-bodied persons or to their families within the walls of the workhouse. Another branch of the poor-law, which was materially altered by the act of 1834, was that relating to illegitimate children, which is explained under BASTARDY.

The 7 & 8 Vict. c. 101, § 12, empowers the poor-law commissioners to prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions of the indentures of apprenticeship: and no poor children are in future to be apprenticed by the overseers of any parish included in any union or subject to a board of guardians under the provisions of the 4 & 5 Wm. IV. c. 76, but it is declared to be lawful for the guardians of such union or parish to bind poor children apprentices. The 13th section abolishes so much of the 43 Eliz. c. 2, and of the 8 & 9 Wm. III. c. 3, and of all other acts, as compels any person to receive any poor child as an apprentice. The 14th and following sections make some new regulations as to the number of votes of owners of property and rate-payers in the election of guardians, and in other cases when the consent of the owners and rate-payers is required for any of the purposes of the 4 & 5 Wm. IV. c. 76. The 18th section empowers the commissioners, having due regard to the relative population or circumstances of any parish included in a union, to alter the number of guardians to be elected for such parish, without such consent as is required by the Act 4 & 5 Wm. IV. c. 76. Section 18 empowers the commissioners to divide parishes which have more than 20,000 inhabitants according to the census then last published, into wards for the purpose of the election of guardians, and to determine the number of guardians to be elected for each ward. The 25th section provides that so long as any woman's husband is beyond seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman or to her child or children shall be given in the same manner and subject to the same conditions as if she was a widow, but the obligation or liability of the husband in respect of such relief continues as before. The 26th section empowers the guardians of a parish or union to give relief to widows,

under certain conditions, who at the time of their husband's death were resident with them in some place other than the parish of their legal settlement, and not situated in any union in which such parish is comprised.

The 31st section makes some provision as to the burial of paupers.

The 32nd section provides that the commissioners may combine parishes and unions in England for the audit of accounts. By the 40th section the commissioners may, subject to certain restrictions there mentioned, combine unions, or parishes not in union, or such parishes and unions, into school districts, for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, or who are deserted by their parents, or whose parents or surviving parent or guardians are consenting to the placing of such children in the school of such district. By the 41st section the commissioners are empowered to declare parishes or unions or parishes and unions within the district of the metropolitan police or the city of London, or of the city, towns, and boroughs mentioned in the schedule B annexed to the act, to be combined into districts for the purpose of founding and managing asylums for the temporary relief and setting to work therein of destitute houseless poor who are not charged with any offence and who may apply for relief or become chargeable to the poor's rates within any such parish or union.

The 58th section provides for the punishment of persons who are guilty of misconduct in workhouses.

The other provisions of the Act are chiefly framed for the purpose of carrying into effect the general objects already described.

One important consequence which has resulted from the better management of the poor, and which is calculated to produce an important effect on their future condition, is the adoption of plans for the education of children resident in workhouses. Under the administration of the unamended law little or nothing was done towards this object, and in almost every case the child whose misfortune it was to be brought up at the charge of the parish' continued through life dependent upon others for subsistence, and often followed a course of systematic dishonesty. The system of moral, intellectual, and industrial training which has been to some extent engrafted upon the administration of the amended law, is calculated to bring up the children of the workhouse to be useful members of society.

It will now be convenient to state how the law stood previously to the passing of the Act 4 & 5 Wm. IV. c. 76, as to relief to the poor and settlement, and then to notice some of its leading provisions.

Every indigent person, whether a native or a foreigner, being in any district of England or Wales, in which a fund is raised for the maintenance of the poor, has a right to be supplied with the necessaries of life out of that fund. This right depends on statute, and principally on the 43 Eliz. c. 2, which enacts that the churchwardens of every parish, and four, three, or two substantial householders there, to be nominated yearly under the hands and seals of two or more justices of the peace, shall be called overseers of the poor. [OVERSEERS.] Under this statute overseers could be appointed for parishes only. This proved very insufficient, because many large and populous districts were not situate within any parish, and consequently no overseers whatever could be appointed for them, and also because many parishes themselves were of such magnitude that one set of overseers could not properly attend to all the poor. To supply this defect, the 13 & 14 Car. II. c. 12, authorised the appointment of overseers in any township that was either extra-parochial or was part of a parish so large as to require distinct sets of officers for the management of its poor. Townships are sometimes created also by local acts.

It is the duty of these overseers to raise and administer the fund for the relief of the poor of their district. This fund, which is called the poor-rate, they are directed by the statute of Elizabeth in parishes, and by the statute of Car. II. in townships, to raise "weekly or otherwise, by taxation of every in-

habitant, parson, vicar, and other, and every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit, &c. according to the ability of the parish."

These provisions are still however, even since the 4 & 5 Wm. IV. c. 76, very inadequate. Overseers cannot be appointed nor can a poor-rate be levied in any place that was not anciently either a parish or a township. Many districts at the present day form no part of any parish or township; and the poor of such districts, if unable to remove themselves to a parochial division of the country, where they will be entitled to relief as casual poor, may, as far as the law is concerned, perish from want.

The rate may be made according to the exigencies of the place, which, whether parish or township, may conveniently in either case be called a parish, for any period not less than a week nor exceeding a year. The rate, which is made in writing, gives the names of the persons rated, a description of the property for which they are rated, and the amount payable by them; it contains also a declaration, signed by the parish officers, that the rate is, to the best of their belief, correct, and that they have used their best endeavours to make it so. The rate so made and signed must be taken to two justices for their assent, which is called the allowance of the rate, and notice of such allowance must be affixed on the church doors (1 Vict. c. 45) on the Sunday following, or the rate will be entire void. This notice is called the publication of the rate.

As the statute expressly mentions both inhabitants and occupiers, inhabitants were held liable to be rated in proportion to their ability within the parish, although they had no property there which was capable of occupation, and occupiers of property therein were held liable although they resided elsewhere. Accordingly both real corporeal property and personal property within the parish may be assessed, as constituting "the ability of the parish," real corporeal property, as land or houses, may be assessed, wheresoever the occupier resides, and personal property, if the owner is resident within the parish. Incorporeal real property, since it is not the subject of occupation, seems not to be rateable unless incidentally, when, as in the case of the tolls of a canal, it is, as it were, annexed to and enhances the value of corporeal real property, which is the subject of occupation. As it is the occupier and not the owner of real corporeal property who is rated for it, it will be obvious that the term "real property" is not used in the poor-laws according to its strict legal sense, and that the occupier of a house is rated for it, although he has a mere chattel interest in it. The term "personal property" is also used in a restricted sense; it denotes stock in trade, and such things as are not at all of the nature of reality, and excludes chattels real. The assessment is laid in respect of the revenue or annual profit of the property rated, whether real or personal. Such property therefore as is incapable of yielding profit is not rateable. The assessment upon land and houses, &c. is calculated upon an estimate of their net annual value, which is defined to be the rent at which they would let from year to year, free of all tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting the probable average of annual costs of repairs, insurance, and any other expenses which may be necessary to maintain the premises in a state to command such rent. Personal property was not rated unless it had, as it were, a local existence; and therefore neither stock in the funds nor money was rateable. Furniture also was exempted, because it yielded no profit. In practice the only kind of personal property ever rated, and that in very few places, was stock in trade and ships. The rating of this species of property was attended with many disadvantages. The rate was to be made on the profit, which was defined to be not the whole profit, but the excess after payment of debts. Thus it was nearly impossible to ascertain the rateable amount of such property, and the proprietor might always evade the tax by residing out of the parish. So long however as per-

sonal property was rateable by law, the omission of it in the rate was a ground of appeal, because all persons liable are to be rated equally according to their ability. The inconvenience attending this state of things induced the legislature (by the 3 & 4 Vict. c. 83) to suspend the enactments which authorised the rating of inhabitants in respect of stock in trade, and by subsequent acts to continue the exemption from the liability to be rated in respect of such property until the 1st October, 1846.

It is unnecessary to make any detailed remarks on tithes and other property which, by the statute of Elizabeth, are expressly made chargeable.

If a parish is unable to furnish a sufficient sum for the maintenance of its poor, any other parish in the same hundred, with the sanction of two justices, or in any other part of the county, with the sanction of the justices at quarter-sessions, may be called upon to assist the less solvent parish. This is called rating parishes in aid.

The overseers are to collect the rate from the persons rated. If a person rated do not pay when called upon, the overseers may obtain a summons from two justices, requiring him to show cause why a warrant should not issue to levy the rate by distress and sale of his goods; and if no sufficient cause is shown, the payment is enforced accordingly. The party so summoned may show for cause that the rate itself is void, or that he is not liable; he may also, with the consent of the overseers, or Board of Guardians, be excused, if it appear that he is unable to pay through poverty. He may also appeal against the rate, and notice of appeal deprives the magistrates of their jurisdiction to distrain until the appeal is decided, unless the objection is solely on the ground of overcharge, in which case the warrant may issue for such a sum as the property was rated at in the last valid rate. The appeal against the rate on the ground of inequality, unfairness, or incorrectness in the valuation of the property rated, may be to justices at petty-sessions, from whose decision a second appeal lies to the general quarter-sessions. The appeal, on the above grounds, may also be taken to the quarter-sessions in the first instance. If the objection be to the principle of the rate itself, or it is intended to dispute the liability of the property to be rated, the appeal lies to the quarter-sessions only. In all these cases of appeal, notice of appeal and of the precise objections to the rate must be given to the parish-officers, and also to any rated inhabitants that may be interested in opposing the appellant, as, for instance, where his ground of complaint is that they have been underrated.

The overseers, who in some parishes act under the direction of a select vestry, and are assisted by assistant overseers, are to apply the poor-rate to the relief of the poor of their parish. The poor of the parish are, in one sense, all those who happen to be in the parish at the time of their being in distress; for the parish in which they happen to be is bound to afford such paupers immediate, or, as it is called, casual relief. But if the same parish were bound also to afford continued relief to, or permanently to maintain, all the destitute who should come within it, the burden of supporting the poor might press very unequally upon different parishes. Paupers would then, influenced by their own fancy, or instigated to exonerate some other parish, have the power of fastening themselves for ever on any particular parish, or of roaming at pleasure from one parish to another in unrestricted vagrancy. The 13 & 14 Car. II. c. 12, was passed to obviate these evils, and is the foundation of the present law which determines the parish that a pauper belongs to, and gives the power of removing him to it. This law is called the law of Settlement. The statute enables two justices, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of the peace, within forty days after a person coming to settle there, in any tenement under the yearly value of 10*l.*, by their warrant to remove such person to the parish where he was "last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least." Later statutes have

greatly modified the heads of the settlement here enumerated, and have added others; they have also made a pauper irremovable, until he has become chargeable to the foreign parish by receiving relief from it, either in person or through the hands of his wife or children.

The following are the settlements that subsisted at the passing of the Poor-Law Amendment Act:—settlement by birth, parentage, marriage, hiring and service, apprenticeship, renting a tenement, estate, office, payment of rates. Settlements may be divided into two general classes; being, first, natural or derivative settlements, as by birth, parentage, or marriage, to the perfection of which residence in the parish is unnecessary; secondly, acquired settlements, including all the remaining settlements above mentioned, and to these residence for forty days in the parish is necessary. The following were the modes of acquiring the various settlements which have been enumerated:—1. Settlement by birth.—In order that children may not be separated from their parents, the settlement of the father during his life, and the settlement of the mother after his death, is the settlement of the children. But legitimate children who have no known settlement are settled in the place of their birth; so also are illegitimate children, for they can derive neither settlement nor any thing else from their parents. Children however, during the age of nurture, which continues till they are seven years of age, must not be separated from their parents, and are therefore to be supported in the parish where their parents happen to be, at the expense of the parish of their birth settlement. 2. Settlement by parentage.—The settlement of the father, or, if he have none, the maiden settlement of the mother, is communicated to legitimate unemancipated children. After their father's death their settlement shifts with that of the widow, until she marry again, in which case the settlement of her new husband is not communicated to them. A child is said to be unemancipated so long as he forms part of the parents' family. A child is emancipated when he gains a settlement of his own, or, being of the age of twenty-one, lives apart from and independently of the parent, or contracts some relation inconsistent with his continuing a subordinate member of the parent's family, as by marrying or enlisting as a soldier. Any settlement of the parent acquired after the child's emancipation is not communicated to him. 3. Settlement by marriage.—To prevent the separation of husband and wife, the settlement of the husband is communicated to the wife; she can acquire no settlement during marriage; and if he have no settlement, she cannot be separated from him by her removal to her maiden settlement. 4. Settlement by hiring and service is acquired by a person unmarried, and without unemancipated children, hiring himself for a year into service, abiding for a year in the same service, and residing for forty days in any parish within the year, and with a view to the service. A general hiring, that is, a hiring where nothing is said as to the duration of the contract, is considered a hiring for a year. The service for a year need not be wholly under the hiring for a year, it is sufficient if part of the service be under such hiring; the residue may be either under another hiring, or under no hiring at all. The settlement is gained in the parish where the servant last *completes* the residence of forty days—the forty days need not be consecutive days; if a servant reside thirty-nine days in parish A, then forty days in parish B, and finally another day in A, A, where he last completed a residence of forty days, will be the place of his settlement. All the forty days must be within the compass of a single year, but it is sufficient if the residence for any part of the forty days be under the yearly hiring. 5. Settlement by apprenticeship is gained in the parish where a person bound by deed as an apprentice last completes a residence of forty days in his character of apprentice. No service is required, but the apprentice during the necessary period of residence must be under his master's control. 6. Settlement by renting a tenement is acquired by hiring and actually occupying a tenement at the rent of at least 10*l.* a year, payment of

rent to that amount, and residence for forty days in the parish where the tenement is. By actual occupation is meant that no part of the tenement must be underlet. 7. Settlement by estate is gained by the possession of any freehold, copyhold, or leasehold property, and residence for forty days in the parish where the estate lies. If the estate come to a party in any way except by purchase, the value of the estate is immaterial; but a purchased estate confers no settlement if the price given was under 30*l.* But a person residing on his estate, whatever may be its value, is by Magna Charta irremovable from it while so residing, although he may have gained no settlement in respect of it. 8. Settlement by office is gained by executing any public office in the parish, such as the office of constable, sexton, &c. for a year, and residing there forty days. The office need not be of a parochial nature, but it must be at least an annual office. 9. Settlement by payment of rates. In order to acquire this settlement a person must have been rated to and have paid the public taxes of a parish, in respect of a tenement hired at a rent of 10*l.* a year, and have paid that amount of rent, and resided forty days in the parish of the tenement. This head of settlement therefore includes all the requisites of settlement by renting a tenement, except the requisite of actual occupation.

All persons whatsoever, whether natural born subjects of England and Wales, Scotchmen, Irishmen, or foreigners, may gain a settlement in this country. A chargeable pauper is to be removed to the place where he last acquired a settlement. It is often very difficult to find out the place of such last settlement; this is so more especially in cases of settlement by hiring and service and apprenticeship, where the residence, being unconnected with anything of a fixed nature, as a tenement or office in any particular parish, may be continually shifting, the settlement consequently shifting with it, until the last day of the service or apprenticeship. Paupers who have no settlement must be maintained by the parish in which they happen to be, as casual poor, unless they were born in Scotland or Ireland, or in the islands of Man, Jersey, or Guernsey, in which case they are to be taken under a pass-warrant of two justices to their own country. When a pauper has become chargeable, and it is sought to remove him, he is taken before two justices, who inquire as to his place of settlement, and, if satisfied, upon his examination and such other evidence as may be laid before them, make an order for his removal thither. The parish to which he is removed may dispute its liability by appeal to the quarter-sessions, when the order of removal will be quashed, unless it appear that the pauper is settled in the appellant parish.

The Poor-Law Amendment Act (4 & 5 Wm. IV. c. 76) has made no change in the law respecting the rateability of property or the mode of collecting the rate. The Act does not apply itself to the rate until collected; it then takes up the rate for the purpose of securing a better distribution of it. To this end the administration of relief to the poor throughout England and Wales is subject to the control of the three poor-law commissioners. In parishes or unions where there are guardians or a select vestry, relief is to be given solely by such guardians or vestry, or by their order, unless in cases of urgent distress. In these cases an overseer is bound to give temporary relief in articles of absolute necessity, but not in money, and, if he refuse, he may be required to do so by a magistrate's order, disobedience to which is visited by a penalty of 5*l.* In parishes which have no guardians or select vestry, the management and relief of the poor is still left to overseers, subject to the control of the commissioners. But, with the exceptions above stated, the task of relieving the poor is wholly withdrawn from overseers, these officers, from ignorance or corrupt motives, having been generally found incompetent to the discharge of so important a duty. They are still however intrusted with the making and collection of the poor-rate, which they are to pay over to those who have the distribution of it. The general discretionary power which magistrates formerly exercised in ordering relief is also withdrawn. But a single magistrate may still order medical relief,

when called for by sudden and dangerous illness; and two magistrates may order relief to adult persons who from age or infirmity are unable to work, without requiring them to reside in the workhouse. Relief to able-bodied persons cannot be given out of the workhouse, unless with the sanction of the commissioners. In substance, the wants of the poor are as amply supplied as before the Act, but the manner of administering relief is so regulated, by subjecting the applicants for it to the discipline of a workhouse and to other restraints, that the condition of a pauper, living upon the parish fund, is depressed, in point of comfort, below that of the labourer. Thus a ready test is applied to distinguish real and pretended destitution, and a powerful incentive to work is held out to all who can find employment.

The means also of obtaining employment are increased by enlarging the market for the poor man's labour. This is the result of a relaxation in the law of settlement, and particularly of settlement by hiring and service. The old law had been found to obstruct the free circulation of labour by confining the poor to their own parishes. The labourer himself, from attachment to old scenes and associates, was often unwilling to engage himself for a year in a strange parish, lest, by acquiring a settlement there, he should incur, at some future time, a permanent separation from home: the farmer, on the other hand, had an equally strong objection to hire a strange labourer on such terms as to burden his parish with a new settler.

By the Poor-Law Amendment Act a settlement by hiring and service cannot be acquired for the future; but the Act does not interfere materially with settlements previously acquired. Settlements by office and by apprenticeship in the sea service or to a fisherman can no longer be acquired. Settlement by renting a tenement is clogged with the additional qualification that the occupier must have been assessed to the poor-rate, and paid the same for one year. Settlement by estate, like any other settlement, when once gained, used to endure till it was superseded by some new settlement; but now it is converted to a temporary settlement, and to be retained so long only as the proprietor shall live within ten miles of the estate. Settlements by marriage and by payment of rates are untouched.

Settlement by parentage and settlement by birth are both affected to this extent, that illegitimate children born after the passing of the Act are to follow the settlement of their mother, until the age of sixteen, or until they acquire a settlement in their own right; instead of taking, as formerly, the settlement of the place of their birth. The effect of this change in the law is that an unmarried woman, whose pregnancy in itself made her chargeable, is no longer hunted from the parish in which she happens to be, in order that the parish may not, by the birth of the child therein, be permanently charged with its maintenance.

The old law of settlement was full of legal difficulties and refinements, and the effect of the change in the law has been to relieve parishes from a frightful mass of litigation.

A great change also has been introduced in the general law of bastardy, which is stated under the article BASTARDY.

Any person who marries a woman having children, whether legitimate or illegitimate, is liable to maintain them until they attain the age of sixteen, or until the death of the mother.

(Blackstone, *Comm.*, 359; Nolan's *Poor Laws;* Burn's *Justice,* "Poor;" and Gambier *On the Law of Settlement.*)

Until the passing of the Act 1 & 2 Victoria, c. 56, which received the royal assent on the 31st July, 1838, no provision had been made by law for the relief of the helpless or the destitute in Ireland. Relief is confined to the "destitute" poor, who must be relieved in workhouses. Other poor persons may be assisted to emigrate.

Statistics.—The salaries and expenses of the commissioners for carrying into execution the poor-law acts in England and Ireland amounted to about 53,000*l.* in 1845. The chief English commissioner receives a salary of 2500*l.* a year, and the other commissioners 2000*l.* The salary of the chief secretary is 1200*l.*, and the two assistant-secretaries receive

700*l.* and 600*l.* according to seniority. The salary of the assistant-commissioners is 700*l.* a year, with allowances for travelling expenses. Before the business of forming the unions was completed, the number of assistant-commissioners acting in England was twenty-one, but the number is now restricted to nine, under the act 7 & 8 Vict. c. 101. A chief commissioner is appointed for Ireland, who sits in Dublin, and there is a staff of assistant-commissioners for Ireland.

The average sum expended for the relief of the poor in the three years 1783-4 and 5, was 1,912,241*l.*; and in the following years was as under:—

		Proportion per head on total Population.
1801	£4,017,871	9*s.* 1*d.*
1811	6,656,105	13 1
1821	6,959,249	10 7
1831	6,798,888	9 9
1841	4,760,929	6 2

The sums expended for *relief* for a year or two before the passing of the Poor-Law Amendment Act and in subsequent years are shown in the following table:—

	£		£
1832	7,036,968	1839	4,421,714
1833	6,790,799	1840	4,576,965
1834	6,317,254	1841	4,760,929
1835	5,526,418	1842	4,911,498
1836	4,717,630	1843	5.208,027
1837	4,044,741	1844	4,976,093
1838	4,123,604		

A great saving has also been effected in irregular and illegal expenses in consequence of the appointment of auditors for the different Unions.

Number of in-door and out-door paupers relieved, including children, during the following years ending Easter or Lady-day:—

	Paupers.	Proportion per cent. to Population.
1803	1,040,716	12
1815	1,319,851	13
1842	1,429,356	9
1843	1,546,390	9·7
1844	1,477,561	9·3

Number of in-door paupers in 1844, 230,818; out-door 1,246,743. "Of the million and a half of persons thus relieved, a large proportion were permanent paupers, but the number of new cases in the other three quarters may be safely estimated at half a million; so that the number of persons relieved in England and Wales, in the course of the parochial year 1844, may be taken at about two millions, or nearly one-eighth part of the actual population. In other words, about one person in eight, through the entire population, received relief from the poor's rate at some time during that year." (Eleventh Report of the Poor-Law Commissioners.) It should be recollected, however, that if a person ceases to receive relief and again applies for it he is reckoned twice over; but to what extent this is done cannot be ascertained from the Poor-Law Reports.

The expenditure of 585 Unions in England and Wales for 1843-4 was for

In-maintenance . .	£705,253
Out-relief . . .	2,726,451
Establishment charges and salaries . . .	748,985
Workhouse loans repaid .	183,898
Other charges connected with relief	5,584
Total .	4,370,171

The number of paupers relieved in 103 Unions in Ireland for the quarter ending 29th September, 1844, was 64,487. The average number of days during which each pauper was relieved was 92 days. The total number of Unions in Ireland is 130.

POOR LAWS, SCOTLAND. The foundation of the Old Poor Law of Scotland, was the act of parliament 1579, c. 74, which in so many respects resembled the celebrated English statute of the fourteenth of Elizabeth, passed a few years earlier, as to have been considered a mere adaptation from it. The Scottish act, however, fell short of the English in the one important particular of not providing for the care of the able bodied. By this old act, a settlement was acquired by birth, and once so established could not be changed unless by a seven years' industrial residence in another parish. By the act 1672, c. 18, this period was shortened to three years. The method of administering the law, which arose partly out of the terms of

the old acts, partly out of custom, and partly from the directions given to these sanctions by the judgments of the courts, was as follows:—In the rural parishes, the "kirk sessions," or lowest ecclesiastical judicatories, consisting of the parish clergyman and certain elders, shared the management with the "heritors," or rated landed proprietors; but it became customary for the latter body to interest themselves solely in the voting and levying of the rate, leaving its distribution and the management of the poor to the former. In those municipal corporations holding rank as royal burghs, the assessment and management lay with the corporate authorities. The funds for the relief of the poor were of two kinds. The collections at church doors, along with certain fees and eleemosynary bequests, constituting the one department; and rates assessed on the parish, or a substitute voluntarily paid instead of an assessment, the other. Of the sums collected at the church doors only a half went to the regular relief of those legally entitled to relief; the other became a fund for general charitable purposes at the command of the kirk session. In many cases there was no assessment, and the regular practice came to be, that if the miscellaneous sources were insufficient for the relief of the poor, the heritors and session in a country parish, or the magistrates in a town parish, might levy a rate. It became a common practice for the parties chiefly interested to agree to a "voluntary assessment," for the purpose of postponing the imposition of a fixed legal rate. When an assessment was imposed, it became a rule that one half of it should be levied on the proprietors of land, in respect of their land; the other on householders, in respect of their "means and substance," or their incomes so far as not derived from land. The adjustment of the rating was the ground of much dispute, and different parishes followed very distinct methods in practice.

For a considerable period, the Scottish system was very favourably received by political economists, who saw the country in a comparatively sound moral condition, with a parsimonious poor law, while the lavish system of England seemed to promote profligacy and idleness. But from the time when these doctrines were first promulgated, to the completion of the great change of the English poor law, a vast internal alteration had taken place in the social economy of Scotland. The comparative low rate of wages, attracting manufacturing capital from England, had caused a more than average migration of the rural labourers to the manufacturing districts, and a peculiarly rapid increase of the city population. It was found that with these complicated materials, the simple parochial system, adapted to a state of society where each man watched over the interests and the conduct of his neighbour, was incapable of grappling. It was found that even for poor country districts the system was unsuitable, because, though still far behind the English system in profusion, the town administrators were compelled by the voice of public opinion to become more liberal in their dispensations, while the managers of the country parishes not subject to the same influence, kept down the allowances, and thus gave the poor an inducement to endeavour to obtain a settlement by three years' industrial residence in the cities. Dr. Chalmers was the great champion of the old system. With the assistance of some enthusiastic followers, he organised the administration of a parish in the poorer parts of Glasgow, as a demonstration of the efficiency of which the system was capable. It was a very pleasing picture, but the public soon felt that the success with which one energetic individual and his enthusiastic followers might voluntarily perform the duties generally exacted by legal compulsion, was no sufficient ground for believing that the rest of the community can be at all times and in all places depended upon for the performance of onerous public services without the coercion of law.

The public were first awakened to the imperfections of the Scottish poor law by Dr. W. P. Alison, a physician in Edinburgh, and professor of the practice of medicine in the university. Having frequently administered professional ser-

vices to the poorer classes, he showed from his own experience that the utter inadequacy of the provision afforded to those who, by inability to work, or bad seasons, or revulsions in trade, were reduced to want, was an extensive cause of disease, vice, and misery. The city population speedily answered to this appeal, and associations were formed, and inquiries made in various directions. It was shown that the amount expended on the relief of the poor in Scotland amounted to little more than a sixth part of the sum distributed throughout an equal population in England by the economised poor law. In England, the expense of supporting the poor amounted to 6*s.* 10¾*d.* per head of the population; in Scotland, to 1*s.* 2½*d.* In some of the Highland parishes, whence the most destitute objects emigrated over the rest of the country, the allowances were ludicrously small; and a Report made to the General Assembly of the Church of Scotland in 1839, enumerated instances where sums averaging from 3*s.* to 1*s.* yearly were solemnly awarded to destitute people, as the provision which the poor law made for their wants. In the mean time, the discussion of these matters had a tendency gradually to increase the amount of the provision for the poor. The practice of assessments made considerable progress, and a return to parliament in 1843 shows that between 1836 and 1841 the sums raised by assessment had increased from £89,101 to £128,858; while the sums raised by voluntary assessment had risen from £15,829 to £22,385. A commission was at last appointed to inquire into the whole state of the subject, and after hearing much evidence, they presented a Report, accompanied by a voluminous appendix, in 1843. The amendments proposed in this Report were supposed to be of a somewhat narrow nature; the country expressed dissatisfaction with them; and in 1845 a measure was passed embodying alterations considerably more extensive.

By this act, 8 & 9 Vict. c. 83, a board of supervision is appointed, consisting of persons connected with the municipal bodies and the administration of justice in Scotland, with one salaried member, who gives constant personal attendance. The office of the board is in Edinburgh. This board is endowed with ample means for ascertaining, in all parts of the country, the condition of the poor, and the method in which the system of relief is administered. The board has, however, no directory or prohibitory control over the proceedings of the local boards. These bodies are, however, reorganised by the act. In the rural parishes where there is an assessment, the local board is to consist of landowners to the extent of £20 annual value, the kirk session, and certain elected representatives of the other rate-payers, according to the number fixed by the board of supervision. In city parishes, the boards are each to consist of four persons named by the magistrates, deputies not exceeding four from each kirk session in the city, and certain elected persons according to a number and qualification fixed by the board of supervision. In parishes where there is no assessment, the management is to continue under the old system. There is thus in this act no machinery for levying or exacting a rate for the poor, unless in those parishes where the persons more immediately concerned agree to such a measure. It is held, however, that the facilities which the statute gives the poor for exacting from the respective parochial authorities the relief to which they are entitled, will render it necessary to put more extensive funds at the disposal of the distributors of relief, and this can only be accomplished through the system of assessment. When persons apply for relief, it is provided that though they have no settlement, if the claim would be just in the case of their having one in the parish where it is made, subsistence must be afforded them till it is determined what parish is liable. When relief is refused, the applicant may apply to the sheriff, who may grant an order for temporary relief, and then hear parties, and decide whether the applicant is or is not entitled to relief. In this form, however, neither the sheriff nor any other judge can decide on the *adequacy* of relief. The initial step to any judicial

appeal against the amount of the relief afforded, is by an application to the board of supervision, and on that body reporting its concurrence, the applicant is placed on the poor-roll of the court of session, where he has the privilege of the question being discussed gratis. By this act, provision is made for medical attendance and medicines, being part of the system of pauper relief, and for the education of pauper children. It is provided, that for the purposes of the act, parishes may be united into "combinations." By a special clause, nothing in the act is to be construed as entitling the able-bodied to relief, and their claim is thus left in the state of doubt in which it stood before the passing of the act. Men deserting their wives and children are made liable to punishment as vagrants, a provision which it is hoped may afford a remedy to a defect which has long characterised the law of Scotland—the absence of any means by which deserted wives can make effectual claims on their husbands for sustenance to themselves and their children, without a regular action in the court of session. By the new act, a new and more specific mode of apportioning the assessment between landed and other property has been attempted to be established, but this provision is already a fruitful source of dispute and litigation. The time necessary to acquire an industrial settlement is increased from three to five years.

POOR'S RATE. [Poor Laws and Settlement.]

POPE, POPERY. [Catholic Church.]

POPULATION. [Census.]

POPULATION. The circumstances which determine the proportion of the population to the area of any given country, are the first elements which we must take into the account in considering their social condition. In the lowest stage of human existence, in which men depend on hunting and fishing for a subsistence, they are scattered over an immense surface in order to obtain food; and as the animals which they pursue become scarce in one part, they remove to another. Though the numbers of a tribe may not average one individual to a square mile, the difficulties of procuring subsistence are often so great, that frequent hunger and occasional famines have always characterised the savage state. Many of the tribes of North America which live near and among the Rocky Mountains are actual examples of this precarious mode of existence; and the white men who hunt the fur-bearing animals in the same regions are subjected to these inconveniences of a savage life. The purely pastoral state admits of a greater relative proportion of population: but the necessity of frequent removal from place to place in search of pasture does not admit of this proportion surpassing a certain limit, which is determined by the capabilities of the uncultivated land to feed their flocks and herds. If agriculture be resorted to, and the occupation of the shepherd be exchanged for that of the husbandman, the same tract when cultivated will sustain a larger population. In the early stages of agriculture, the implements of labour are few and imperfect; the clothing of each family is the produce of household industry; and the number of carpenters, blacksmiths, and other artificers is small. When a more minute division of employments takes place, and the husbandman is solely engaged in raising food, while others are employed in making clothing and supplying all the other wants of the population, the labour of the community becomes much more productive, and food being raised in greater quantities, this change is followed by an increase of the population; and when machines for abridging human labour are introduced, a further stimulus is given to the increase of population. An intelligent, healthy, and industrious population, who possess a good soil and abundance of mineral wealth, are enabled by improvements in machinery and labour-saving contrivances, not only to supply their own wants, but those of other countries in a less advanced state. When a country has succeeded in introducing the products of an extensively diversified industry into the markets of the world, the population may be continually increased, with a continual increase in the comforts which it enjoys. In the savage state, a tract of several hundred square

miles is overstocked by as many individuals: in nations which have reached the highest degree of civilization hitherto known, the population is as great to one single square mile.

Under all the diversity of circumstances in which the inhabitants of different parts of the world exist, their numbers are limited by the means of subsistence. If the population increases faster than the food for their support, poverty and misery ensue, and death thins their numbers, and brings them to a level with the means of subsistence. This effect may take place whether the population be one to a square mile or several hundreds. Hence the proportion of births, marriages, and deaths to the population, is as important an element in ascertaining the condition of the population of any country as the proportion of their numbers to each square mile.

The evils which arise when the population increases more rapidly than the means of subsistence had not escaped the notice of two of the most eminent writers of antiquity, Plato and Aristotle. (Plato, *Laws*, v., and *Republic*, v.; Aristotle, *Politik.* vii. 16.) In later times this truth had been seen by Dr. Franklin, Sir James Stewart (*Treatise on Pol. Econ.*, book 1), Mr. Townsend (*Essay on the Poor-Laws*), and other English and French economists. Their views attracted little attention at the time when they wrote. In England especially, during the eighteenth century, a false opinion prevailed that the population was diminishing; and subsequently the demand for men during the long war with France rendered the evils of a redundant population almost imaginary in general estimation. The decennial census of the population during the present century, the transition from war to peace, and the commercial embarrassments and periods of public distress which have been experienced, have given us the means of forming a better judgment on such matters; and the writings of the late Mr. Malthus have powerfully aided in producing correct views upon the questions of population. His 'Essay on the Principle of Population' was first published anonymously in 1798. This work was suggested by a paper in Godwin's 'Enquirer,' and the author's object was to apply the principle of population in considering the schemes of human perfectibility and other speculations on society to which the French revolution had given birth. Hume (*Populousness of Ancient Nations*), Wallace (*Dissertation on the Numbers of Mankind in Antient and Modern Times*), and Dr. Price's writings of more recent date, were the authors from whom Mr. Malthus deduced the main principle of his Essay. In 1803 appeared a second edition, to which Mr. Malthus affixed his name, and which might be considered almost a new work. The author had in the interval directed his attention to an historical examination of the effect of the principle of population on the past and present state of society, and the subject was for the first time treated in a comprehensive and systematic manner. A third and fourth edition appeared a few years afterwards. The fifth edition, containing several additional chapters, was published in 1817. The sixth and present edition, which contained few alterations, was published in 1826. The title of the work as it at present stands is as follows:—'An Essay on the Principle of Population, or a view of its past and present Effects on Human Happiness, with an Inquiry into our prospects respecting the future removal or mitigation of the evils which it occasions.' The following is a brief summary of its leading principles:—Mr. Malthus's propositions are—that population, when unchecked, goes on doubling itself every twenty-five years, or increases in a geometrical ratio; while the means of subsistence, under the most favourable circumstances, could not be made to increase faster than in an arithmetical ratio. That is, the human species may increase as the numbers 1, 2, 4, 8, 16, 32; while the increase of food would only proceed in the following ratio: 1, 2, 3, 4, 5, 6. Thus if all the fertile land of a country is occupied, the yearly increase of produce must depend upon improved means of cultivation; and neither science nor capital applied to land could create an increased amount of produce beyond a certain limit. But the increase of population would ever go on with unabated

vigour, if food could be obtained, and a population of twenty millions would possess as much the inherent power of doubling itself as a population of twenty thousand. Population however cannot increase beyond the lowest nourishment capable of supporting life; and therefore the difficulty of obtaining food forms the primary check on the increase of population, although it does not usually present itself as the immediate check, but operates upon mankind in the various forms of misery or the fear of misery. The immediate check may be either *preventive* or *positive;* the preventive is such as reason and reflection impose, and the positive consists of every form by which vice and misery shorten human life. Thus a man may restrain the natural appetite which directs him to an early attachment for one woman, from the fear of being unable to preserve his children from poverty, or in not having it in his power to bestow upon them the same advantages of education which he had himself enjoyed. Such a restraint may be practised for a temporary period or through life, and though it is a deduction from the sum of human happiness, the evil is less than that which results from the positive checks to population, namely, unwholesome occupations, severe labour, and exposure to the seasons, extreme poverty, bad nursing of children, excesses of all kinds, the whole train of common disease and epidemics, wars, plagues, and famines.

The preventive and the positive checks which form the obstacles to the increase of population are resolvable into, 1, moral restraint; 2, vice; 3, misery. *Moral restraint* (considered as one of the checks to population for the first time in the second edition, 1803) is the prudential restraint from marriage, with a conduct strictly moral during the period of this restraint. Promiscuous intercourse, violation of the marriage bed, and improper arts to conceal the consequences of irregular connections, are included under the head of *Vice.* Those positive checks which appear to arise unavoidably from the laws of nature may be called exclusively *Misery.* Such are the checks which repress the superior power of population, and keep it on a level with the means of subsistence.

The 'Essay on Population' places the question in every light which can elucidate the truth. It is divided into four books, the first of which notices the checks to population in the less civilised parts of the world and in past times. The second book passes in review the different states of modern Europe (most of which Mr. Malthus visited in the interval preceding the publication of the second edition), and he points out the checks to population which prevailed in each. Chapter xi. of this book is 'On the Fruitfulness of Marriages;' chapter xii. 'On the Effects of Epidemics on Registers of Births, Deaths, and Marriages;' and chapter xiii. is devoted to 'General Deductions from the preceding view of Society.' The third book comprehends an examination of the different systems or expedients which have been proposed or have prevailed in society, as they affect the evils arising from the principle of population in the first three chapters; the systems of equality proposed by Wallace, Condorcet, Godwin, &c. are considered. Several chapters are devoted to the consideration of poor-laws; corn-laws (first in connection with bounties on exportation, and secondly under restrictions on importation); the agricultural system; the commercial system; and the combination of both. The last two chapters are, 'Of increasing Wealth as it affects the Condition of the Poor;' and a summary containing 'General Observations.' The fourth book treats of 'Our Future Prospects respecting the Removal or Mitigation of the Evils arising from the Principle of Population.' Chapter i. treats 'Of Moral Restraint and our Obligations to practise this Virtue.' Chapter ii. is 'Of the Effects which would result to Society from the prevalence of Moral Restraint.' Chapter iii. is 'Of the only effectual Mode of Improving the Condition of the Poor.' And the last chapter is 'Of our rational Expectations respecting the Future Improvement of Society.'

Perhaps no author has been more exposed to vulgar abuse than Mr. Malthus. He was accused of hardness of heart,

and represented as the enemy of the poorer classes, whereas no man was more benevolent in his views; and the earnestness with which he engaged in his work 'On Population' arose from his desire to diminish the evils of poverty. His mind was philosophic, practical, and sagacious; his habits, manners, and tastes, simple and unassuming; his whole character gentle and placid. The last edition of his 'Principles of Political Economy' contains an interesting memoir of his life and writings by Dr. Otter, late Bishop of Chichester, who had known him intimately for half a century. A list of Mr. Malthus's works and writings is given in page 42 of this 'Memoir:' it is a matter of regret that they have never been published in a collected form. Several of his most valuable productions appeared in the Edinburgh and Quarterly Reviews. Mr. Malthus was born at Albury, near Guildford, in 1766; became a fellow of Jesus College, Cambridge, and entered holy orders: he afterwards married. In 1804 he was appointed Professor of History and Political Economy at the East India College, Haileybury, the duties of which he fulfilled to the time of his death, in December, 1834. Mr. Malthus was a Fellow of the Royal Society and member of the National Institute of France. It is not creditable to those who had the distribution of ecclesiastical patronage, that Mr. Malthus never held any preferment in the church. From this brief notice of the individual whose name is so intimately identified with the theory of population, to the elucidation of which the best part of his life was devoted, we return to the subject of the present article.

Although circumstances may sometimes occur in which the tendency of population to outstrip the means of subsistence may be counteracted, and food may for a time increase faster than population, yet this only gives an impulse to population, and the former proportion is quickly re-established, provided no improvement takes place either in the prudential habits of the people or in the elevation of their tastes and desires. The poverty and misery which are observable among the lower classes of the people in every country can in a great degree be accounted for by a reference to the principle of population. It is evident, for example, that the rate of wages depends, for one of its elements, on the proportion between population and the means of employment, or in other words capital; and that any alteration in either directly affects wages. If population has increased while the funds for employing labour have remained stationary, the competition of labourers will cause the rate of wages to decline. If, on the other hand, capital has increased faster than population, or capital has been concentrated on any given spot more rapidly than population, wages will rise in the former case, and in the latter will be higher than in other places where the same thing has not taken place. Thus occasionally in some parts of the United States so many emigrants with capital will flock to a single spot, that the wages of carpenters, tailors, and others, whose labour is in immediate demand, will become very high compared with any other place that has not been recently settled. The tendency of population to increase is the same under all circumstances, but this is not the case with capital; for in proportion to the capital already accumulated, the difficulty of adding to it becomes greater, that is, the field for the employment of capital becomes less extensive. Under such circumstances wages would have a constant tendency to fall, if the checks to population did not interpose; but it depends upon the people themselves whether the level is to be maintained by vice and misery, or by habits of prudential restraint, which, if adopted, would certainly secure to them a fair proportion of the necessaries of life.

The great problem of society is to maintain the most beneficial proportion between population and food—"to unite two grand desiderata, a great actual population and a state of society in which squalid poverty and dependence are comparatively but little known." Disheartening as the evils resulting from the principle of population may at first sight seem, they are capable of mitigation. This principle may even be regarded as one of

the great springs of human improvement —as the parent of invention and the stimulus to exertion—which preserves society from that state of imbecility and decline into which it would fall if not urged onward by some extraordinary power. It is the interest of all members of society, and is particularly incumbent on those who have the power, to use their best exertions to elevate the habits, tastes, and moral feelings of the people; and by this means to render every successive material improvement conducive to the happiness of society. If this be not done, as much wretchedness as we find in the lower stages of society may co-exist with the highest efforts of art and science, and the greatest perfection in all the processes of industry. Even the introduction of vaccination or any similar means of diminishing mortality is of little avail provided the number of marriages continue the same without any corresponding increase of the resources of society, and the average mortality will not be diminished, but disease will be fatal under other forms. Every improvement which tends to increase the quantity of human food, and every invention which enriches society by cheapening the processes for obtaining the necessaries of life, should be accompanied by a corresponding advance in the intellectual and moral character of a nation, in order to secure all the advantages which these improvements are calculated to confer.

Mr. Malthus's theory is now generally accepted as the true exposition of the principle of population. Many of the objections that have been urged against it are hardly worthy of notice. Some are content to quote the Scripture command, "Increase and multiply," forgetful of the moral obligations which are imposed in connection with it. Others have imagined that they have discovered a supernatural law of fecundity which varies with the fluctuating circumstances of society. Dr. Price, Mr. Godwin, and Mr. Sadler entertained this notion. Mr. Malthus's reasons for not replying to Mr. Godwin's work are stated in the appendix to the sixth edition of the 'Essay on Population.' The fallacies of Mr. Sadler's work are most ably exposed in the 'Edinburgh Review,' No. 102. Mr. Senior is the only economist of any distinction who has objected to the theory of Mr. Malthus. He contends, in his 'Two Lectures on Population,' for the doctrine that "the means of subsistence have a natural tendency to increase faster than population." The appendix to these 'Lectures' contains a correspondence between Mr. Malthus and Mr. Senior on their respective views: it exhibits the latest views of Mr. Malthus, though, after forty years' anxious reflection on the subject, he had no change to make in his opinions.

The latest works on population are, 'The Principles of Population, and their Connection with Human Happiness,' by Archibald Alison, Esq., published in 1840; and 'Over-Population and its Remedy; or, an Inquiry into the Extent and Causes of the Distress prevailing among the Labouring Classes, and into the Means of Remedying it,' by W. T. Thornton (1846).

The disputes about the principle of population, like those which have arisen in many other questions of a like kind, are mainly owing to the ambiguity of language: in fact they are very little more than questions about the consistent use of words. If we analyse the proposition of Mr. Senior, it will appear that it is not easy to conceive with clearness the meaning of its terms. The words "means of subsistence" may signify the subsistence which is obtained from spontaneous products of the earth, and from the natural increase of animals. The products of the earth may be said to have a natural tendency to increase, or naturally to increase, or rather to be produced; and it may, for argument's sake, be admitted, though it is not true, that animals have the same kind of natural tendency to increase, or are in like manner naturally increased, or rather are produced. There is no other natural tendency to increase, or natural increase, or natural produce, that we can conceive, if the word "natural" is to have its ordinary acceptation. The increase of population, or the produce of new population, may be said to be natural, exactly in the same sense in which the

increase or produce of animals generally may be called natural. If then this should be the sense of the word "natural," the proposition means that vegetables and animals (not including man) have a natural tendency to increase faster than man, who is an animal—a proposition which is not worth the trouble of discussion.

But this is not the meaning of the writer who maintains this proposition: he is evidently speaking of human labour and its products when he is speaking of the "means of subsistence." The term "means of subsistence" therefore contains the notion of human labour; and "means of subsistence" are the products obtained by human industry applied to material objects. Everything "natural" therefore is by the very force of the term "means of subsistence" excluded from these words; for it is not of natural produce simply that the writer is speaking, but of that which human labour produces: in other words, though nature (to use the vulgar term) co-operates, the thing produced is not viewed as nature's product, but as the product of human labour. There is then nothing "natural" in "the means of subsistence," and therefore there is no natural tendency to increase in the means of subsistence; and consequently the comparison contained in the proposition between things that have no natural tendency to increase, and things that, in a sense, have a natural tendency, is unmeaning. Whether then the assertion be that "there is a natural tendency in population to increase faster than capital" (Mill), or "that the means of subsistence have a natural tendency to increase faster than population" (Senior), in either case the use of the word "natural" is incorrect, and not only tends to cause, but does cause confusion. It should be observed that in enunciating this proposition, Mr. Senior sometimes omits the word "natural."

Again, the natural tendency of population to increase is simply the desire and the power to gratify the animal passion, the consequence of which is the physical union of the sexes and the production of their kind. But this tendency (to use again this very vague expression) is positively checked by want of food and other things necessary for human sustentation and health. If food and such other things could be had to an indefinite amount without any labour, so far as food and such other things only are necessary to its increase, population would go on continually increasing. But the actual conditions of obtaining food and such other things are human labour; that is, the labour of those animals, who if supplied with all that they want without any labour, *might* go on increasing indefinitely. It appears then that this so-called natural tendency of population to increase has no *effect*, that is, it remains a tendency; that is, it is nothing at all in results, unless man labours; and the amount of his labour, in considering this question, is quite immaterial. It is unimportant whether it consists in making a plough and ploughing the earth, or plucking an apple from a tree and eating it. The whole proposition then may be developed thus:—The means of subsistence are only produced or had by man's labour: these "means of subsistence" so produced have no natural tendency to increase, except so far as man has a natural tendency to increase. Now, man has in a sense a natural tendency to increase, that is, he has a desire and a capacity to increase, and he can increase if he has the means of subsistence. But he must have the means of subsistence first; and if the actual means of subsistence are only sufficient for the actual population, there can be no increase of the population till the means of subsistence are increased. The "means of subsistence." at any given time, and in any given nation, signify those things which the individuals of that nation require according to their several stations and the habits of society: they may be the bare means of sustaining life; or they may be those things also which Mr. Senior has well defined under the heads of "decencies" and "luxuries." If while the means of subsistence remain the same, the population lower their scale of living, it may increase further, for the relative means of subsistence are by the supposition increased. It is true that this lowering of

the scale of living is an evil, inasmuch as it tends to make society move in a retrograde direction: there is also a limit to the extent to which the scale of living can be lowered. The antecedent condition then on which the increase of population depends is its own labour, for it cannot increase without the increase of the means of subsistence, and such increase is the effect of labour only.

We can never contemplate human society in its origin. We must contemplate it in its progress and development. All theories as to how man *began* to propagate and gain the means of subsistence are useless towards the solution of any problem that concerns his condition. We know this, and no more: at any given time, and in any given state of society, there is a certain population which subsists in a certain mode by and out of the means of subsistence which it then has; and these means are partly the product and accumulation of the actual generation, and partly the accumulation of their progenitors. If the means of subsistence (thus understood) of that population are sufficient, and no more than sufficient, any increase of the population must be preceded by increased labour, or by labour rendered more productive. We cannot suppose the population to increase first, and then the additional means of subsistence to be produced; for by the supposition the actual population has only sufficient, and that which is "increase" must be fed out of some other store; and by the supposition, there is no other store.

If it is said that children may be born and are often born, before the means of subsistence, the "revenue of the whole society," has been increased, the answer is that they either die before they have partaken of the then existing means of subsistence, and therefore they are no "increase" of population; or they do live to partake of the general revenue, of the then existing means of subsistence, in which case it must be admitted that population has increased without an increase of the whole means of subsistence; but the consequence is that the average portion of the general revenue which each person gets is less than it was before.

The fact is, that in some countries the means of subsistence are barely sufficient for the existence of the actual population; in others they are more than barely sufficient. In the former case there can be no real increase of population, in the sense in which increase has just been explained, until there has first been an actual increase in the means of subsistence; in the latter case there may be an increase of the population before there is an increase of the means of subsistence, and this increase of population may go on without any increase in the means of subsistence, until the people have reached the lowest limit of subsistence in consequence of each man's share of the general revenue being diminished.

It is clear then that the "means of subsistence" (as above explained) must be first, and increase of population may then follow, and generally does follow to the full amount of these increased means of subsistence; and further, population may and sometimes does increase beyond the amount of such increased means, but it is then of necessity checked by actual suffering in the whole or in a part of the society. And this, we conceive, is the meaning of Mr. Malthus's proposition.

There seems to be an error (or rather, looseness of expression in most writers) in the mode of comparing the rate of increase of the two things, "means of subsistence" and "population." There can be no useful comparison of the rate of increase between these two things except this: a given population may attain its increase, which is proportionate to the antecedent increased means of subsistence, in a less time than these increased means of subsistence were produced; or it may take a longer time. There is also no question about a *tendency* to increase either in the one thing or the other; the question is about an actual increase, which can only take place under the conditions already stated.

The question is perplexed, and its true statement rendered difficult by the fact that an increase of the whole means of subsistence and an increase of the population may be, and generally are, going on at the same time; and it seems to have been supposed that this increase of

population, during a given time, is owing to the *then* increasing means of subsistence. But this cannot be true if it shall be admitted that a given amount of population cannot be increased, unless the actual amount of the means of subsistence of that population is first increased, or, which is the same thing, the rate of living is reduced. If some writers on this subject have not meant what is here imputed to them, they have certainly not sufficiently guarded themselves against the imputation.

There is still another consideration which perplexes the question. For very short periods it is certainly conceivable, and it is very probably the case, that sometimes population is increasing (in a certain sense) at a faster rate than the means of subsistence; that is, taking short intervals, it will or may be found that the population, during such intervals, has outstripped the means of subsistence existing at the end of such intervals, and a part of it must therefore die. These deaths consequently take place either in the whole population, or among those whose means of subsistence are reduced; for some parts of the community may and do enjoy, under such circumstances, as much as they did before, while others do not. In practice, a deficient allowance is not distributed among all, but some suffer and others do not. But on the other hand it is conceivable, and it may be true, that for short intervals the means of subsistence may sometimes be increasing more rapidly than the contemporaneous increase of population; that is, the actual population may possess and be producing and accumulating the means of subsistence more than sufficient for the sustentation of themselves and of the addition to the population made during the time of such production and accumulation. Now this is certainly the fact in many societies, as to part of the society; one part is producing and accumulating more than is necessary for the increase of the population which it is producing; this is the case with many of the middle classes in all industrious communities. At the same time another class is increasing its population at a greater rate than the means of subsistence applicable to such increase: the check to such an increase is obvious. There is no reason why this may not be true of a whole population, as it is of a part.

On the whole, the experience of mankind proves that the sexual passion will, if unrestrained, always, or except under very peculiar circumstances, nearly always increase the population by new births up to the level of the means of subsistence at each moment existing; during short intervals the propagation of the species may also have been so active as to have outstripped the means of subsistence existing at the end of such intervals. But though the population during short intervals may so increase, its increase at the end of a series of such consecutive intervals can only be the effect of a previous increase in the means of subsistence; always supposing the condition of the people not to be growing worse, for there may be, as already observed, an increase of population up to the limit of a bare subsistence, without any actual increase in the whole means of subsistence. Therefore the increase of the means of subsistence, that is, the products of human labour, are the antecedent conditions of any actual increase, and the increase of population may be to the amount of such increase, but cannot surpass it. If for short periods the increase of population does surpass the increase on which by the supposition it depends, the increase is checked; and on taking the account at longer intervals, there is, or may be, no actual increase of the population. If for short periods the increase of the means of subsistence surpasses the increase of population, this is made up in the next periods by an increase in the population. There is then, or may be, a constant fluctuation for short periods, the population and the means of subsistence alternately increasing with greater rapidity. But any increase of population, even for a short period, supposes a previous increase of the means of subsistence over those which the actual population found to be merely sufficient before the commencement of such short period; whatever may be the comparative rates of increase

between the two during such short period. It seems then that in the sense here explained population may so rapidly increase that at the end of an interval from the commencement of which the increase of population is reckoned, the means of subsistence existing at the commencement of such interval, and which were sufficient for the then population and something more, added to the means of subsistence produced during such interval, may be insufficient to support the population existing at the end of such interval, in the same way in which the existing population at the commencement of such interval was living; and, on the other hand, the means of subsistence existing at the end of such interval may be more than sufficient to support the population existing at the end of such interval in the same way of living. At the end of any long interval, if there is an increase of population, as compared with the commencement of such interval, there has been during such interval, on the whole, a balance on the side of the means of subsistence, provided the mode of living has not been lowered; and à fortiori, there must have been such balance, if the mode of living has been raised; that is, the means of subsistence at the commencement of such interval, and those produced during it, have been sufficient to produce and leave in existence at the end of such interval, a larger population than at the commencement of it. This excess on the side of the means of subsistence, if distributed equally through every moment of the long interval, would leave at the end of each such interval a surplus of subsistence, the antecedent condition of an increase in the following interval. The actual fact may be that in some intervals population has passed a little beyond what was provided at the beginning of and during such intervals, the consequence of which is a diminution in its rate of increase in the next interval, and sometimes an increase of deaths. In discussing this question, it is always actual increments that are to be considered, and both for short and long periods. The tendency is nothing; for a tendency of any kind, that is, a capacity to or for a given end, means nothing in such speculations as these, unless it becomes an effect.

The principle of population is stated by Mr. Malthus with more precision than by some writers who have adopted his opinions; and though it seems to us that his language is not always quite free from objection, his real meaning is perfectly so. His correspondence with Mr. Senior shows this. The importance of right notions on this subject must be our apology for this further attempt at explaining it.

PORTREEVE. [MUNICIPAL CORPORATIONS.]

POSITIVE LAW. [LAW, p. 381.]

POSSE COMITA'TUS (literally, the power of a county) comprises all able-bodied males within the county between the ages of 15 and 70 years. All such persons, without any exception, are bound to aid the sheriff in all matters that relate to his office; and he is fineable if he neglect to avail himself of their aid. In case of any invasion, rebellion, riot, &c., or breach of the peace within the county, all such persons, on pain of fine or imprisonment, are bound to attend him on being charged by him to do so, and to assist in opposing and suppressing them. They may come armed, and are justified in killing a person in case of resistance. The power of the county may also be raised when necessary for the purpose of apprehending traitors, felons, &c., and that even within particular franchises. It is lawful for any peace-officer, and perhaps even for a private person, to raise a competent number of people for the purpose of opposing and suppressing enemies, rebels, rioters, &c. within the county. But all such persons are punishable if they use unnecessary violence or create false alarms. It is also the duty of the sheriff or any minister of the king who has the execution of the king's writs, or process even in a civil nature, who meets with actual resistance in his attempt to execute them, to raise a power sufficient to quell the resistance. (2 Inst., 193, 194; 3 Inst., 161; 1 Hawk., P. C., 152, 156.)

POSSESSION. In endeavouring to explain the meaning of this term, we

shall use the following extracts from Savigny's work on the Law of Possession (*Das Recht des Besitzes*, Giessen, 1827).

"All the definitions of possession are founded on one common notion. By the notion of possession of a thing we understand that condition by virtue of which not only are we ourselves physically capable of operating upon it, but every other person is incapable. This condition, which is called Detention, and which lies at the foundation of every notion of possession, is no juristical notion, but it has an immediate relation to a juristical notion, by virtue of which it becomes a subject of legislation. As ownership is the legal capacity to operate on a thing at our pleasure, and to exclude all other persons from using it; so is detention the exercise of ownership, and it is the natural state which corresponds to ownership as a legal state. If this juristical relation of possession were the only one, everything concerning it that could juristically be determined, would be comprehended in the following positions:—the owner has the right to possess; the same right belongs to him to whom the owner gives the possession; no other person has this right.

"But the Roman law, in the case of possession, as well as of property, determines the mode in which it is acquired and lost; consequently it treats possession not only as a consequence of a right, but as a condition of rights. Accordingly, in a juristical theory of possession, it is only the right of possession (jus possessionis) that we have to consider, and not the right to possess (called by modern jurists, jus possidendi), which belongs to the theory of property.

"We now pass from the notion of mere detention to that of juristical possession, which is the subject of this treatise. The object of the first part, which is the foundation of the whole investigation, is to determine this notion formally and materially. Formally, by explaining those rights which presuppose possession as a condition, and consequently determining the signification which the non-juristical notion of detention obtains in jurisprudence, in order to its being considered as something juristical, that is, Possession; materially, by enumerating the conditions which the Roman law requires for the existence of possession, and consequently the positive modifications under which detention can be viewed as possession.

"The formal determination of the notion by force of which alone possession can become a subject of jurisprudence, is divided into three parts; first we must determine the place which possession, as a legal relation, occupies in the system of Roman law. We must then enumerate the rights which the Roman law recognises as a consequence of possession, and we must also examine the rights which are improperly considered rights of possession. It will then be easy to answer the questions whether possession is to be considered as a right, and whether as a jus in re. The first and simplest mode in which possession appears in a system of jurisprudence consists in the owner having the right to possess; but we are here considering possession independent of ownership, and as the source of peculiar rights; the former of these two questions therefore may be expressed thus—in what sense has possession been distinguished from ownership? a mode of expression which has been used by many writers.

"In the second place we must determine how the different senses in which possession occurs in the Roman law are distinguished from one another by the mode of expression; and particularly what were the significations of Possessio generally, and Possessio naturalis, and Possessio civilis, among the Roman jurists.

"In the whole system of Roman law there are only two consequences which can be ascribed to possession of itself, as distinct from all ownership, and these are Usucapion and Interdicts.

"The foundation of usucapion is the rule of the Twelve Tables, that he who possesses a thing one or two years becomes the owner. In this case bare possession, independent of all right, is the foundation of property, which possession must indeed have originated in a particular way, in order to have such effect; but

still it is a bare fact, without any other right than what such effect gives to it. Accordingly it is possession itself, distinct from every other legal relation, on which usucapion, and consequently the acquisition of ownership, depends.

"Possessorial interdicts are the second effect of possession, and their relation to possession is this: possession of itself being no legal relation, the disturbance of possession is no violation of a legal right, and it can only become so by the circumstance of its being at the same time a violation of a legal right. But if the disturbance of possession is effected by force, such force is a violation of right, since every forcible act is illegal, and such illegal act is the very thing which it is the object of an interdict to remedy. All possessorial interdicts then agree in this: they presuppose an act which in its form is illegal.*

"Now since possessorial interdicts are founded on such acts as in their form are illegal, it is clear why possession, independent of all regard to its own rightfulness, may be the foundation of rights. When the owner claims a thing as his property (vindicatio), it is a matter of perfect indifference in what way the other party has obtained possession of it, since the owner has the right to exclude every other person from the possession of it. The case is the same with respect to the interdict, by which the 'missio in possessionem' is protected: this interdict is not a possessorial interdict, for the 'missio' itself gives no possession, but it gives a right to detention, and this right is made effective in the same way as in the case of property. On the other hand, he who has the bare possession of a thing has not on that account any right to the detention, but he has a right to require from all the world that no force shall be used against him. If, however, force is used and directed against his possession, the possessor protects himself by means of the interdicts. Possession is the condition of these interdicts, and in this case, as in the case of usucapion, it is the condition of rights generally.

"Most writers take quite a different view of the matter, and consider every violation of possession as a violation of a legal right, and possession consequently as a right of itself, namely, presumptive ownership, and possessorial plaints as provisonal vindications. This last, which is the practical part of this opinion, is completely confuted in a subsequent part of this treatise; but it is proper to show here how far such a view is true, as this may be a means of reconciling conflicting opinions. The formal act of illegality above mentioned is not to be so understood, as if possessorial interdicts were a necessary consequence of the independent juristical character of force, and obviously sprung out of it. This consequence of force, namely, that possession of the thing must be restored to the person who has been ejected, without regard to the question whether or not he has any right to the thing, is rather simply a positive rule of law. Now, if we ask for the reason of this kind of protection being given against force, that is, why the ejected party should recover the possession to which he may possibly have no title, it may be replied, that the reason is the general presumption that the possessor may be the owner. So far then we may view possession as a shadow of ownership, as a presumed ownership; but this view of the matter only extends to the establishment of the rule of law in general, and not to the legal reason for any particular case of possession. This legal reason is founded rather in the protection against the formal injury, and accordingly possessorial interdicts have a completely obligatory character, and can never be viewed as provisional vindications."

The special object of Savigny's essay may be collected from these passages. The legal principles here developed are applicable to every system of jurisprudence. There must always be a distinction between the right to possess, which is a legal consequence of ownership, and the right of possession, which is inde-

* Possessorial interdicts were not limited to cases of violence; they comprehended the three *vitia possessionis*. (Terence, *Eunuch.* ii. 3; v. 27.)

pendent of all ownership. The owner of a thing may not have the possession, but he has a right to the possession, which he must prosecute by legal means. The possessor of a thing, simply as such, has rights which are the consequences of his possession; that is, he is legally entitled to be protected against forcible ejection or fraudulent deprivation; his title to a continuance of his possession is good against all persons who cannot establish their right to the thing, and this continued possession may, according to the rules of positive law in each country, become the foundation of ownership. It may be that the acquisition of possession may also be the acquisition of ownership, or that the acquisition of possession may be essential to the acquisition of ownership. Thus, in the case of occupation, the taking possession of that which has no owner, or the acquisition of the possession, is the acquisition of the ownership. Also, when a thing is delivered by the owner to another, to have as his own, the acquisition of the possession is the acquisition of the ownership. In these examples, ownership and possession are acquired at the same time, and there is no right that belongs to the possessor as possessor; his rights are those of owner. But the form and mode of the acquisition of the possession, viewed by itself as distinct from the acquisition of the ownership, will also be applicable to the cases of possession when possession only is acquired. For possession of itself is a bare fact, though it has legal consequences; and being a bare fact, its existence is independent of all rules of the civil law or of the jus gentium, as to the acquisition and loss of rights. (Savigny, p. 25.)

Having shown that in the Roman law all juristical possession has reference to usucapion and interdicts, and that the foundation of both is a common notion of juristical possession, Savigny proceeds to determine the material conditions of this notion.

In order to lay the foundation of possession as such, there must be detention, and there must also be the intention to possess, or the "animus possidendi." Consequently the "animus possidendi" consists in the intention of exercising ownership. But this ownership may either be a person's own ownership, or that of another: if the latter, there is no such "animus possidendi" as makes detention amount to possession. In the former case a man is a possessor, because he treats the thing as his own: it is not necessary that he should believe it to be his own.

Whether then we are considering possession as such, or that possession which is concurrently acquired with ownership, or which completes the acquisition of, or is the exercise of, ownership, the material facts of possession are the same. When ownership is transferred from one man to another, every system of law must require some evidence of it. But the evidence of the transfer of ownership may be entirely independent of the evidence of acquisition of possession; and also the evidence of the acquisition of possession may be inseparable from that of the acquisition of ownership. There must then generally be some act which shall be evidence of the acquisition of possession, whether possession as such is obtained without ownership, or possession accompanied by ownership, or possession as necessary to the complete acquisition of ownership, or possession as simply the exercise of ownership.

It is remarked by Savigny (*Das Recht des Besitzes*, p. 185), "that in the whole theory of possession nothing seems easier to determine than the character of corporeal apprehension which is necessary to the acquisition of possession. By this fact all writers have understood an immediate touching of the corporeal thing, and have accordingly assumed that there are only two modes of apprehension: laying hold of a moveable thing with the hand; and entering with the foot on a piece of land. But as many cases occur in the Roman law in which possession is acquired by a corporeal act, without such immediate contact, these cases have been viewed as symbolical acts, which, through the medium of juristical fiction, become the substitute for real apprehension." After showing that this is not the way in which the acquisition of possession is understood in the Roman

law, and that there is no symbolical apprehension, but that the acquisition of possession may in all cases be referred to the same corporeal act, he determines what it is, in the following manner:

"A man who holds a piece of gold in his hand is doubtless the possessor of it; and from this and other similar cases has been abstracted the notion of a *corporeal contact generally* as the essential thing in all acquisition of possession. But in the case put, there is something else which is only accidentally united with this corporeal contact, namely, the physical possibility to operate immediately on the thing, and to exclude all others from doing so. That both these things concur in the case put, cannot be denied: that they are only accidentally connected with corporeal contact, follows from this, that the possibility can be imagined without the contact, and the contact without the possibility. As to the former case, he who can at any moment lay hold of a thing which lies before him, is doubtless as much uncontrolled master of it as if he actually had laid hold of it. As to the latter, he who is bound with cords has immediate contact with them, and yet one might rather affirm that he is possessed by than that he possesses them. This physical possibility then is that which as a fact must be contained in all acquisition of possession: corporeal contact is not contained in that notion, and there is no case in which a fictitious apprehension need be assumed."

This clear exposition of a principle of Roman law is applicable to all systems of jurisprudence which have received any careful elaboration, for the principle is in its nature general. It may be that the expounders of our law have not always clearly seen this principle, even when they have recognised it; and it may be that they have not always acted upon it. Still it will appear from various cases that the physical possibility of operating on a thing is the essential character of the acquisition of possession in the English law. In the case of Ward *v.* Turner (2 Vez., 431) it was held by Lord Hardwicke that delivery of the thing was necessary in a case of "donatio mortis causâ," and delivery of receipts for South Sea Annuities was not held sufficient to pass the ownership of the annuities. In his judgment Lord Hardwicke observed, "delivery of the key of bulky things, where wines, &c. are, has been allowed a delivery of the possession, because it is the way of coming at the possession, or to make use of the thing; and therefore the key is not a symbol, which would not do." In one of his chapters (§ 16, *Apprehension beweglichen Sachen*) Savigny uses the very same example of the key, showing that it is not a symbol, but the means of getting at things which are locked up, and therefore the delivery of the key of such things, when they are sold, is a delivery of the possession. (See the cases in the *Digest* cited by Savigny, p. 209.)

POST-OFFICE. Correspondence is the offspring of advanced civilization. When the state of society in this country anterior to the seventeenth century is considered, there can be little surprise that we hear nothing of a post-office before that period. The business of the state only demanded correspondence. The king summoned his barons from all quarters of the kingdom by letters or writs, and held frequent communication with his sheriffs, to collect his parliament together, to muster his forces, to preserve his peace, to fill his treasury. The expenses of the establishment of Nuncii, charged with the conveyance of letters, formed a large item in the charges of the royal household. As early as the reign of King John, the payments of Nuncii for the carriage of letters may be found enrolled on the Close and Misæ Rolls, and these payments may be traced in an almost unbroken series through the records of subsequent reigns. Nuncii also formed part of the establishment of the more powerful nobles. The Nuncius of the time of King John was probably obliged to provide his own horse throughout his journey; whilst in the reign of Edward II. he was able, and found it more suitable, to hire horses at fixed *posts* or stations. In 1481, Edward IV., during the Scottish war, is stated by Gale to have established at certain posts, twenty miles apart, a change of riders, who handed

letters to one another, and by this means expedited them two hundred miles in two days. The Persians had a similar means of communication, which is described by Herodotus (viii. 98). It would seem that in England the posts, at which relays of riders and horses were kept, were wholly private enterprises; but that when their importance became felt and appreciated, the state found it both politic and a source of profit to subject them to its surveillance. A statute in 1548 (2 & 3 Edw. VI. c. 3) fixed a penny a mile as the rate to be chargeable for the hire of post-horses.

In 1581 one Thomas Randolph is mentioned by Camden as the chief postmaster of England; and there are reasons for concluding that his duties were to superintend the posts, and had no immediate connection with letters. The earliest recital of the duties and privileges of a postmaster seems to have been made by James I. The letters patent of Charles I. in 1632 (*Pat.*, 8 Car. I., p. i. m, 15 d; *Fœdera*, vol. 19, p. 385) recite that James constituted an office called the office of postmaster of England for foreign parts being out of his dominions.

In 1635 a proclamation was made "for settling of the letter-office of England and Scotland." It sets forth "that there hath been no certain or constant intercourse between the kingdoms of England and Scotland;" and commands "Thomas Witherings, Esq., his Majesty's postmaster of England for foreign parts, to settle a running post or two, to run night and day between Edinburgh and Scotland and the City of London, to go thither and come back in six days." Directions are given for the management of the correspondence between post-towns on the line of road and other towns which are named, and likewise in Ireland. All postmasters are commanded "to have ready in their stables one or two horses:" twopence-halfpenny for a single horse and fivepence for two horses per mile were the charges settled for this service. A monopoly was established, with exceptions in favour of common known carriers and particular messengers sent on purpose. In 1640 a proclamation was made concerning the sequestration of the office of postmaster for foreign parts, and also of the letter-office of England, into the hands of Philip Burlamachy of London, merchant; but in 1642 it was resolved by a committee of the House of Commons that such sequestration was "a grievance and illegal, and ought to be taken off," and that Mr. Witherings ought to be restored. As late as 1644 it appears that the postmaster's duties were not connected directly with letters. A parliamentary resolution entered on the Journals of the Commons states "that the Lords and Commons, finding by experience that it is most necessary, for keeping of good intelligence between the parliament and their forces, that post stages should be erected in several parts of the kingdom, and the office of master of the posts and couriers being at present void, ordain that Edmund Prideaux, Esq., a member of the House of Commons, shall be, and is hereby constituted, master of the posts, messengers and couriers." "He first established a weekly conveyance of letters into all parts of the nation, thereby saving to the public the charge of maintaining postmasters to the amount of 7000*l.* per annum." (Blackstone.) An attempt of the Common Council of London to set up a separate post-office, in 1649, was checked by a resolution of the House of Commons, which declared "that the office of postmaster is, and ought to be, in the sole power and disposal of parliament."

But the most complete step in the establishment of a Post-office was taken in 1656, when an act was passed "to settle the postage of England, Scotland, and Ireland." This having been the model of all subsequent measures, induces us to give something more than a passing notice of it. The preamble sets forth "that the erecting of one General Post-office for the speedy conveying and recarrying of letters by post to and from all places within England, Scotland, and Ireland, and into several parts beyond the seas, hath been and is the best means not only to maintain a certain and constant intercourse of trade and commerce between all the said places, to the great benefit of the

people of these nations, but also to convey the publique despatches, and to discover and prevent many dangerous and wicked designs which have been and are daily contrived against the peace and welfare of this commonwealth, the intelligence whereof cannot well be communicated but by letter of escript." It also enacted that "there shall be one Generall Post-office, and one officer stiled the postmaster-generall of England and comptroller of the Post-office." This officer was to have the horsing of all "through" posts and persons "riding in post." Prices for letters, both English, Scotch, Irish, and foreign, and for post-horses, were fixed. All other persons were forbidden to "set up or imploy any foot-posts, horse-posts, or pacquet-boats." These arrangements were confirmed in the first year of the Restoration by an Act which was repealed 9 Anne, c. 11. In 1683, a metropolitan penny-post was set up, the history of which is given at length in the 'Ninth Report of the Commissioners of Post-office Inquiry.' From 1711 to 1838, upwards of 150 acts affecting the regulations of the Post-office were passed. In the first year of Her present Majesty ninety-nine of these were repealed, either wholly or partially, and four Acts were passed (caps. 33, 34, 35, 36), by which the whole department of the Post-office was regulated. Their enactments have been abrogated, to a great extent, by the adoption of Mr. Rowland Hill's plan of uniform postage, which we shall presently notice. This measure was carried into effect by an Act passed in 1839, 2 and 3 Vic., c. 52, which conferred temporary powers on the Lords of the Treasury to do so, and was subsequently confirmed by an Act 3 & 4 Vic., c. 96, passed 10th August, 1840.

Rates of Postage.—The first establishment of a rate of postage for carrying letters occurs in 1635, in the proclamation already described. The rates were fixed as follows:—

Under 80 miles .	2*d.*	single letter.
Between 80 miles and 140 miles .	4	"
Above 140 miles .	6	"
On the borders and in Scotland .	8	"

'Two, three, four, or five letters in one packet, or more, to pay according to the bigness of the said packet.' The rates of postage were successively altered in 1710, 1765, 1784, 1797, 1801, 1805, and 1812. In some instances the scale of 1765 was lower than that of 1710: one penny instead of threepence was charged for distances not exceeding fifteen miles; and twopence instead of threepence for two other distances. In the alterations made in subsequent years the rates of postage were increased each time. Before the uniform penny-postage was adopted the rates in use were as follows:—

Single letters from any post-office in England to any place not exceeding 15 measured miles from such office .	4*d.*
Above 15 and not exceeding 20	5
20 . . . 30	6
30 . . . 50	7
50 . . . 80	8
80 . . . 120	9
120 . . . 170	10
170 . . . 230	11
230 . . . 300	12
300 . . . 400	13
And further for every 100 or part thereof . . .	1

These rates were applied to general-post letters passing from one post-town to another post-town. The principle of the rating was to charge according to the distance which the conveyance travelled, until the year 1839, when the direct distance only was charged. A single letter was interpreted to mean a single piece of paper, provided it did not exceed an ounce in weight. A second piece of paper, however small, or any inclosure, constituted a double letter. A single sheet above an ounce was charged with fourfold postage. After a fourfold charge, the additional charges advanced by weight.

In Scotland, letters, when conveyed by mail-coaches only, were subject to an additional halfpenny. Letters passing between Great Britain and Ireland were subject to the rates of postage charged in Great Britain, besides packet rates, and Menai, Conway Bridge, or Milford rates.

The Postmaster-general had authority to establish penny-posts for letters not exceeding in weight four ounces, in, from,

or to, any city, town, or place in the United Kingdom (other than London or Dublin), without any reference to the distance to which the letters were conveyed. The London Twopenny Post extended to all letters transmitted by the said post in the limits of a circle of three miles' radius, the centre being the General Post-office in St. Martin's le Grand; which limits the Postmaster-general had authority to alter. The London Threepenny Post extended to all letters transmitted by the said post beyond the circle of three miles' radius, and within the limits of a circle of twelve miles' radius, the centre being the General Post-office.

The Select Committee of the House of Commons in 1838 and 1839, which investigated Mr. Rowland Hill's plan, reported the following to be the average rates of postage:—

Average rates, Multiple Letters being included and counted as Single.

	d.
Packet and ship letters .	nearly 23¼
——— and inland general-post letters . . .	nearly 9¾
Ditto, ditto, and London 2*d.* and 3*d.* post letters .	nearly 8½
Ditto, ditto, ditto, and country 1*d.* post letters .	little more than 7½
Inland general-post letters only	nearly 8¾
Ditto and London 2*d.* and 3*d.* post letters . .	nearly 7½
Ditto, ditto, and country 1*d.* post letters . . .	nearly 6¾

Average rates, Multiple Letters being excluded.

Single inland general-post letters	nearly 7¾
Ditto and London 2*d.* and 3*d.* post letters . .	little more than 6¾
Ditto, ditto, and country 1*d.* post letters . . .	nearly 6¼

Franking.—As early as a post-office was established, certain exemptions from the rates of postage were made. Parliamentary franking existed in 1666. In the paper bill which granted the post-office revenue to Charles II. a clause provided that all the members of the House of Commons should have their letters free, which clause was left out by the lords, because no similar provision was made for the passing of their letters, but a compromise was made on the assurance that their letters should pass free.

In 1735 the House of Commons prosecuted some investigations into the subject, which appear on the Journals. Again, in 1764 (4 Geo. III.), a committee was appointed "to inquire into the several frauds and abuses in relation to the sending or receiving of letters and parcels free from the duty of postage." Resolutions restricting and regulating the privilege were passed. From time to time the privilege was extended, until it was finally abolished, with very few exceptions, on the 10th of January, 1843.

Seven millions of franks, out of sixty-three millions of general-post letters, including franks, were estimated in 1838 to pass through the Post-office annually.

The privileged letters, reduced to the standard of single letters, amounted to above 30 per cent. of the whole number of letters transmitted by the general post.

The average weight of a single chargeable letter was about 3-10ths of an ounce; the average weight of a parliamentary frank about 48-100ths of an ounce; that of an official frank 1-9376 oz., or nearly two ounces; and that of a copy of a public statute 3·1129 oz. Had they been liable to the then existing rates, they would have contributed 1,002,222*l.* to the revenue.

Newspapers with a few exceptions pass free of postage. Newspapers printed in foreign countries are charged a small rate of postage, which depends upon the granting of equivalent terms to English newspapers sent by post to such foreign countries. All franking is now altogether abolished.

Revenue.—The statistics of the Post-office revenue are far from complete. In the early period of the Post-office establishment, and before 1716, only a few scattered accounts can be collected. In 1653 the annual revenue was farmed for 10,000*l.*, and in 1659 for 14,000*l.* (Journals of the Commons). In 1663 it was farmed for 21,500*l.* annually, and the amount settled on the Duke of York. In 1674 the farming of the revenue yielded

43,000*l.* In 1685 it produced 65,000*l.* Parliament resumed the grant after 1688, though the king continued to receive the revenue. In 1711 the gross revenue was reckoned at 111,426*l.* From 1716 to 1733 the average yearly net revenue was 97,540*l.*, founded upon "a certain account and not an estimate." (Commons' Journals, April 16, 1735). In the Postage Reports of 1838 (vol. ii., App., p. 176; vol i., p. 511) are accounts showing the gross receipt, charge of management, net receipt, and rate per cent. of collection in Great Britain from 1758 to 1837, and in Scotland and Ireland from 1800 to 1837. The accounts for a few years will serve to show its progress.

GREAT BRITAIN.

Years ended 5 April.	Gross Receipt.	Charges of Management.	Rate per cent. of Collection.
	£	£	£
1758	222,075	148,345	66
1769	305,058	140,298	45
1779	402,918	263,670	65
1786	506,500	220,525	43
1799	1,012,731	324,787	32
1816	2,193,741	594,045	27
1837	2,206,736	609,220	27

The net receipt, deducting returns, was as under:—

	£		£
1758	73,730	1799	657,388
1769	164,760	1816	1,526,527
1779	139,248	1837	1,511,026
1786	285,975		

SCOTLAND.

	1800	1837
	£	£
Gross receipts .	100,651	220,758
Charges of collection . .	16,896	59,945
Net income .	83,755	160,813
Rate per cent. of collection .	16¾	27

IRELAND.

Gross receipts .	84,040	255,070
Charges of collection . .	59,216	95,548
Returns deducted	24,824	134,809
Rate per cent. of collection .	70	37

UNITED KINGDOM.

	1837	1838
	£	£
Gross receipts .	2,462,269	2,467,216
Charges of collection . .	669,940	669,756
Returns . .	122,531	120,938
Net receipts .	1,669,798	1,676,522
Rate per cent. of collection .	27	27

The Select Committee on Postage, in 1838, instituted a comparison of the Post-office revenue, from which it appeared that from 1815 to 1820 inclusive, on an average gross revenue, excluding repayments, of 2,190,597*l.* there had been an increase of 60,827*l.*, averaging only 3578*l.* yearly, or little more than 1½ per thousand, though the advance had been rapid in population, and still more so in wealth, industry, and trade.

Establishment, Cost of Management, &c.—The head of the Post-office is styled the Postmaster-General, under whose authority are placed all the post-offices in the United Kingdom and the colonies. The office was jointly held by two persons until the last few years. It is considered a political one, and the holder relinquishes it with a change of ministry; but the postmaster-general has not generally a seat in the cabinet. The Commissioners of Post-office Inquiry (4th Report) recommended that the office should be exercised by three permanent commissioners; and a Bill passed the Commons to give effect to the recommendation, but was thrown out by the Lords.

In 1835 the number of persons employed at the General Post-office, London, was 1337; the number of General-post letter-carriers was 281, and of Twopenny-post letter-carriers 464. The expenses of the office in salaries amounted to 96,234*l.* A parliamentary paper was printed in 1845, which shewed the number of persons employed in the General Post-office at that time. This return is now out of print, but it shewed that a large addition had been made to the staff of the department since 1835.

In 1831 and 1832 the chief offices of London, Dublin, and Edinburgh were

re-modelled by the Duke of Richmond, then postmaster-general. The separate office of postmaster-general for Ireland was abolished; and a secretary at Dublin and at Edinburgh is chief executive officer for the respective countries.

Constant additions are being made to the number of post-offices throughout the kingdom. In 1840, considering posts formerly called penny-posts, 'fifth clause posts,' and sub-offices as post-offices, the following may be taken to be about the numbers:—

	Post-Offices.	Sub-Offices.	Penny-posts.	Total.
England	650	190	1090	1930
Scotland	220	105	230	555
Ireland	330	105	200	635

Every post-office in the United Kingdom has direct communication respectively with the chief offices in London, Dublin, and Edinburgh.

The Commons' Committee, in 1838, prepared an analysis of the cost of management of the Post-office for the United Kingdom. These accounts show that about four-fifths of the charges consisted of the cost of distributing letters in the United Kingdom. Transit cost two-fifths, (287,306*l.*), and the establishment two-fifths (288,078*l.*). The maintenance of the post between this country and the colonies and foreign countries, the inland post in certain colonies, and other charges, make up the remaining fifth. But these accounts were not altogether complete, because the expense of those packets controlled by the Admiralty was included in the Navy Estimates, and could not be separated. And as the penny stamp on newspapers was retained as a postage, about 185,000*l.* should be carried to the account of the Post-office receipts. These accounts are, of course, subject to change yearly. The transmission of the mails by railroads has added much, since the above analysis was made, to the mileage charges.

No accounts of the number of documents passing through the Post-office were kept until very lately. Founded upon a very careful examination of the best data, the numbers were estimated in 1838 to be as follows:—

Description of Letters.	Yearly Number of Letters.	Average rate per Letter.	Yearly Revenue.
		d.	£.
Packet and ship letters	3,523,572	23·15	369,340
General-post inland letters above 4*d.*	46,378,800	9·22	1,782,191
Ditto, not exceeding 4*d.*	5,153,200	3·5	75,151
London local-post letters	11,837,852	2·32	114,753
Country penny-post letters	8,030,412	1	33,483
Total	74,923,836	7·60	2,374,923
Parliamentary franks	4,813,448	. .	. .
Official franks, for public purposes	2,109,010	. .	. .
Public statutes	77,542	. .	. .
Newspapers	44,500,000	. .	. .
Total of documents transmitted by post	126,423,836	. .	2,374,923
Unappropriated			4,641
Total revenue from letters, 1837			2,379,564

(See Notes to 'Postage Report,' pages 4 and 6.)

The chargeable letters in the mails leaving London were found to weigh only 7 per cent. of the whole weight of those mails. The total weight of the chargeable letters and franks carried by the thirty-two mails leaving London was only 2912 lbs. Deducting one-half as the weight of the franks and franked documents, the weight of all the chargeable letters was only 1456 lbs., being 224 lbs. less than the weight which a single mail is able to carry. The average weight of the thirty-two mails was found to be as follows:—

Average of 32 Mails.	Pounds weight.	Per centage.
Bags weighed	68	14
Letters, including franked letters and documents	91	20
Newspapers	304	66
	463	100

The management of the conveyance of the mails by sea and land is subject, of course, to those constant changes which arise out of the improvements daily taking place in the various modes of transit. Certain packets are exclusively controlled by the Admiralty, to whose charge they were removed in 1837; others still remain with the Post-office. Contracts for the convevance of the mail-

bags to the Continent are made between the Post-office and the proprietors of certain steam-vessels. The Post-office, moreover, has the power of sending a bag of letters in any private ship.

The inland correspondence is carried on by railroads, by four-horse and two-horse coaches; by cars in Ireland, by single-horse carts, on horseback, and foot.

The number of miles travelled over in England and Scotland by the mail-coaches in 1834 was 5,911,006, and in 1839, 7,377,857. The average speed in England was 8⅞ miles per hour; greatest speed 10⅝ miles; slowest 6 miles. The average mileage for four-horse mails in England was 1⅞*d.*; and in Ireland 2⅞*d.* per English mile. The system of mail-coaches owed its origin to Mr. Palmer, who, in 1784, laid a plan before Mr. Pitt, which was adopted by the government, after much opposition from the functionaries of the Post-office. Mr. Palmer found the post, instead of being the quickest, nearly the slowest conveyance in the country; very considerably slower than the common stage-coaches. The average rate of speed did not exceed three miles and a half per hour. Whilst coaches left London in the afternoon and reached Bath on the following morning, the post did not arrive till the second afternoon. Slowness was not the only defect; it was also irregular, and very insecure. The robbery of the mail was very common. Mr. Palmer succeeded in perfecting the mail-coach system, and in greatly increasing the punctuality, the speed, and security of the post and the revenue of the post-office.

Mr. Rowland Hill's Plan.—In 1838 Mr. Rowland Hill privately submitted to the government a plan for the improvement of the post-office, and subsequently published his views on the subject in a pamphlet under the title of 'Post-office Reform—its Importance and Practicability.' The main features of Mr. Hill's plan were—1, a great diminution in the rates of postage; 2, increased speed in the delivery of letters; and, 3, more frequent opportunities for their dispatch. He proposed that the rate of postage should be uniform, to be charged according to weight, and that the payment should be made in advance. The means of doing so by stamps was not suggested in the first edition of the pamphlet, and Mr. Hill states that this idea did not originate with him. It originated incidentally (as stated by Mr. Hill) in a suggestion of Mr. Charles Knight to the Chancellor of the Exchequer to have a stamped penny cover for the postage of newspapers, when it was contemplated to abolish the newspaper stamps. A uniform rate of a penny was to be charged for every letter not exceeding half an ounce in weight, with an additional penny for every additional ounce. Mr. Hill discovered the justice and propriety of a uniform rate in the fact that the cost attendant on the transmission of letters was not measured by the distance they were carried. He showed on indisputable data that the actual cost of conveying letters from London to Edinburgh, when divided among the letters actually carried, did not exceed one penny for thirty-six letters.

The publication of this plan immediately excited a strong public sympathy in its favour, and especially with the commercial classes of the City of London. Mr. Wallace moved for a select committee to inquire into its merits on the 9th May, 1837; but the motion fell to the ground. In December, 1837, the government assented to the appointment of a select committee to inquire into and report upon the plan. After sitting upwards of sixty-three days, and examining Mr. Rowland Hill and eighty-three witnesses, besides the officers of the departments of the Post-office and the Excise and Stamp offices, the committee presented a most elaborate Report in favour of the whole plan, confirming by authentic and official data the conclusions which Mr. Hill had formed from very scanty and imperfect materials. In the session of 1839 the chancellor of the exchequer brought forward a Bill to enable the Treasury to carry the plan into effect, which was carried by a majority of one hundred in the House of Commons, and passed into law on the 17th of August, 1839. In the following month an arrangement was made which secured Mr. Rowland Hill's superintendence of the working out his own measure; but he was superseded by the administration

which came into office in September, 1841. On the 5th December, 1839, as a preparatory measure, to accustom the department to the mode of charging by weight, the inland rates were reduced to a uniform charge of 4*d.* per half-ounce. The scale of weight for letters advanced at a single rate for each half-ounce up to sixteen ounces. Other reductions were made in packet rates; and the London district post was reduced from 2*d.* and 3*d.* to 1*d.* This measure continued in force until the 10th January, 1840, when a uniform inland rate of postage of 1*d.* per half-ounce, payable in advance, or 2*d.* payable on delivery, came into operation. On this day parliamentary franking entirely ceased. On the 6th May stamps were introduced. The warrants of the Lords of the Treasury which authorised these changes were published in the London Gazette of the 22nd November, 28th December, 1839; 25th April, 1840. Returns have been made which show the increase of letters under the uniform-postage system. The number of letters which were actually counted for the week ending 24th November, 1839, before any changes took place, was 1,585,973 letters, including franks; for the week ending 22nd December, 1839, during the fourpenny rate, it was 2,008,687; and for the week ending 23rd February, 1840, 3,199,637. Thus the number of *chargeable* letters of all kinds increased 29 per cent. under the 4*d.* rate, and 121 per cent. (or, deducting the government letters, 117 per cent.) under the 1*d.* rate. The number of chargeable letters dispatched by the General Post increased 40 per cent. under the 4*d.* rate, and 169 per cent. (or, deducting the government letters, 165 per cent.) under the penny rate.

The gross receipts of the Post-office for the United Kingdom in the year preceding the adoption of the uniform rates of postage, and in subsequent years, are shown in the following table:—

1838	£2,346,278	1842	£1,578,145
1839	2,390,763	1843	1,535,215
1840	1,342,604	1844	1,705,067
1841	1,495,540		

The net receipts for each of the following years ending 10th October in each were as under:

	£.		£.
1838	1,536,000	1842	591,000
1839	1,533,000	1843	590,000
1840	694,000	1844	672,000
1841	426,000	1845	688,000

The cost of management for the year ending 5th Jan., 1839, was 686,768*l.*; and for the year ending 5th Jan., 1845, 885,314*l.* Day-mails have been established to every town of importance, and in some cases the communication by post between one town and another takes place several times a day. The mileage paid to railway companies has greatly increased, but the object for which the post-office is established has been more completely attained. Correspondence has increased with the rapidity and frequency of conveyance.

In 1839 the gross receipts of the London district post were 137,041*l.*, and in 1844 225,627*l.*; but the rates of postage (2*d.* and 3*d.*) in 1839 were uniform as it respects weight, and were lower for letters of a certain weight than under the existing system of charging in proportion to the weight.

The number of letters delivered in the United Kingdom for one week in 1839, before the establishment of the uniform rates of postage, and one week in the corresponding week of the year 1841, was as follows:—

	Week ending 24 Nov. 1839.	Week ending 21 Nov. 1841.
Country offices .	764,938	2,029,370
London, inland, foreign, & ship .	229,292	564,481
London District .	258,747	435,602
Total England and Wales .	1,252,977	3,029,453
Ireland . .	179,931	403,421
Scotland . .	153,065	413,248
Total United Kingdom .	1,585,973	3,846,122

The total number of letters delivered in the United Kingdom in the *week* ending Nov. 20th in each of the following years was as under:—

In 1841 . . .	3,846,122
In 1842 . . .	4,202,546
In 1843 . . .	4,349,213

The principle of cheap postage has

been applied to the transmission of money through the post-office by means of money-orders. A few years ago the cost of sending 10*s.* to a person 160 miles from London would have been 2*s.* 2*d.*, whereas the expense would now be only 4*d.* including the postage. In November, 1840, the commission on money-orders was reduced from 1*s.* 6*d.* to 6*d.* for sums above 2*l.* and not exceeding 5*l.*; and from 6*d.* to 3*d.* for sums not exceeding 2*l.* The number of offices empowered to grant money-orders has been increased and other facilities have been granted. The consequences of these successive changes have been as follows: Number and amount of money-orders issued in England and Wales in the quarters ending—

	No.	Amount.
5 April, 1839 ..	28,838	£49,496
5 Jan., 1840 ..	40,763	67,411
5 Jan., 1841 ..	189,984	334,652
5 Jan., 1842 ..	390,290	820,576

POWER OF ATTORNEY. [LETTER OF ATTORNEY.]

PRÆMUNIRE. [LAW, CRIMINAL, p. 188; BENEFICE, p. 339.]

PREBEND (*prebenda*, from *præbeo*, a Low Latin word signifying provision or provender), the portion which the member of a cathedral or collegiate church, called a Prebendary, received in right of his place for his maintenance. It was named from the place whence the profit proceeded, which was either from some temporal lands or church preferment attached to that church, or some other church whose revenues were appropriated towards the maintenance of the member of the cathedral or collegiate church. [CANON.]

PREBENDARY (*prebendarius*). [PREBEND; BENEFICE.]

PRECEDENCE, "a going before," which explanation explains the nature of the thing. On all great and public occasions when persons come together, it is convenient to have some rule which shall determine who shall walk first or sit in the chief place, and so forth. A positive rule prevents disputes and contributes to order. In England the members of the College of Arms, who are the council of the earl-marshal of England, are usually referred to in questions of precedence; and they have arrangement of public processions, as at royal marriages, funerals, coronations, and the like, when questions of precedence come to be considered.

There are tables of precedence in many books, and especially in those called peerages.

PRECEPTORY. [COMMANDERY.]

PRELATE (etymologically from *præ* and *latus*), a person *preferred* or advanced before another, but it is confined to a particular species of preferment or advancement, namely, that amongst the clergy; and it is applied to those only amongst them who have attained the very highest dignity, that of bishop or archbishop, to which we may add *patriarch*, in such churches as have an officer so denominated. The word prelate has, however in ancient times been applied to simple priests, members of the clerical body in general.

PREMIUM IN LIFE INSURANCE. [LIFE INSURANCE.]

PREROGATIVE, a term derived from the Latin Prærogativa, though the modern sense of the word bears little resemblance to its original meaning. As a political term it now signifies all the powers that belong to the crown of Great Britain and Ireland, and are exercised by the king or queen regnant, either personally or by delegation to others. [KING, PARLIAMENT.]

PREROGATIVE COURT. [ECCLESIASTICAL COURTS.]

PRESCRIPTION. "No custome is to bee allowed, but such custome as hath been used by title of prescription, that is to say, from time out of mind. But divers opinions have been of time out of mind, &c., and of title of prescription, which is all one in the law." (Litt., § 170.) According to this passage, "time out of mind," and "prescription," which are the same thing in law, are essential to custom: another essential to custom is usage. But there is a claim or title which is specially called prescription, and which is like custom so far as it has the inseparable incidents of time and usage; but it differs from custom in the manner in which it is pleaded, which difference shows the difference of the

right. This claim is called prescription, because the plaintiff or defendant who makes it "prescribeth that," &c.; stating, after the word "prescribeth," the nature of his claim.

The following is an example of a prescription (Co. Litt., 114, a):—"I. S., seised of the manor of D. in fee, prescribeth thus: that I. S., his ancestors, and all whose estate he hath in the sayd manor, had and used to have common of pasture time out of mind in such a place, &c., being the land of some other, &c., as pertaining to the same manor." The claim of a copyholder of a manor for common of pasture in the manor, alleges a custom time out of mind within the same manor, by which all the copyholders of the manor have had and used common of pasture in it. The claim by prescription then is properly a claim of a determinate person: the claim by custom, as opposed to prescription, is local, and applies to a certain place, and to many persons, and perhaps, it may be added, to an indeterminate number, as the inhabitants of a parish. The following definition of prescription appears to be both sufficiently comprehensive and exact:—"Prescription is when a man claimeth anything for that he, his ancestors, or predecessors, or they whose estate he hath, have had or used any thing all the time whereof no memory is to the contrary." (*T. de la Ley.*) From this definition it follows that prescription may be a claim of a person as the heir of his ancestors, or by a corporation as representing their predecessors, or by a person who holds an office or place in which there is perpetual succession; or by a man in right of an estate which he holds. It is said that certain persons, attorneys for instance, may prescribe that they and all attorneys of the same court have certain privileges; it seems indifferent whether this is called prescription or custom, but it is more consistent with the old definitions to call it prescription, since it is not a local usage, and it is by or on behalf of a determinate number of persons, that is, all the attorneys of a particular court. It is also said that parishioners may prescribe in a matter of easement, as a way to a church-yard, but not for a profit out of land: such a prescription, however, is not contained within the above definition, and is in all respects more properly a custom.

It is essential to prescription (subject to the limitations hereinafter mentioned) that the usage of the thing claimed should have been time out of mind, continuous, and peaceable. "Time out of mind" means, that there must be no evidence of non-usage or of interruption inconsistent with the claim and of a date subsequent to the first year of Richard I., which is the time of the commencement of legal memory. If it can be shown, either by evidence of persons living, by record, or writing, or by any other admissible evidence, that the alleged usage began since the first year of Richard I., the prescription cannot be maintained. Repeated usage also must be proved in order to support the prescription, but an uninterrupted enjoyment for twenty years has been considered sufficient proof, where there is no evidence to show the commencement of the enjoyment. [PRESUMPTION.] The various rules as to prescription what may be prescribed for, in what form the claim must be made, and how a prescription may be lost or destroyed, belong to treatises on law. It is said that prescription is founded on the assumption of an original grant which is now lost.

Recent Acts have made some alterations as to prescription, and limited the time within which actions can be brought or suits instituted relating to real property. The 3 & 4 Wm. IV., c. 27, applies to every thing of a corporeal nature, which is land in the sense in which land is interpreted in that Act; but it only applies to those kinds of property of an incorporeal nature, which are advowsons, annuities, and rents. The 2 & 3 Wm. IV., c. 100, applies only to cases of modus and exemption from tithes. The 2 & 3 Wm. IV., c. 71, which is entitled "An Act for Shortening the Time of Prescription in certain cases," applies (§ 1) to "claims which may be lawfully made at the common law by custom, prescription, or grant to any right of common or other profit or benefit

to be taken from or upon any land, &c., except such matters and things as are therein specially provided for, and except tithes, rents, and services;" (§ 2) "to any way or other easement, or to any watercourse, or the use of any water," &c.; and (§ 3) to the use of light. No claim to the things comprised within this statute "shall, when such right, profit, or benefit (as is mentioned in § 1) shall have been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years: but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such right, profit, or benefit shall have been so taken and enjoyed as aforesaid, for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing." As to the rights enumerated in the second section, the terms of twenty and forty years are respectively fixed in the place of the terms of thirty and sixty years mentioned in the first section. Under the third section, which applies to lights, an absolute right to light may be acquired by twenty years' uninterrupted enjoyment, unless the use has been enjoyed by some consent or agreement made or given by deed or in writing. The eighth section provides "that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been enjoyed or derived, hath been or shall be held under any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as therein last mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof." Formerly it was necessary for all persons, who claimed in respect of an estate and had not the fee, to claim in the name of the person who had the fee, but under the last-mentioned Act "it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed, for such of the periods mentioned in the Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done."

This statute applies also to "any land or water of the king, his heirs, or successors, or any land being parcel of the duchy of Lancaster or of the duchy of Cornwall."

By the common law a man might prescribe for a right which had at any time been enjoyed by his ancestors or predecessors; but the statute of 32 Hen. VIII. c. 2, enacted that no person should "make any prescription by the seisin or possession of his ancestor, unless such seisin or possession hath been within threescore years next before such prescription made." This statute prevented any claim being made by prescription unless there had been seisin or possession within sixty years; but it still allowed the commencement of the enjoyment at any time within legal memory before the sixty years to be proved. The recent Act directs that "the respective periods of years thereinbefore mentioned shall be deemed to be the period next before* some suit or action wherein the claim or matter to which such period may relate shall be brought into question" (§ 4); but it only excludes proof of commencement of enjoyment, and it only gives the absolute right, when the several periods of years, reckoning backwards from the time of some suit or action wherein the matter is brought in question, are completed; and it neither excludes the proof nor gives the absolute right if there has been an interruption, within the meaning of this statute, which has been submitted to or acquiesced in "for one year after the party interrupted

* Richards *v.* Fry, 7 A. & E., 698.

shall have had notice thereof, and of the person making or authorising the same." In these cases, if there has been seisin or possession of the ancestor or predecessor within sixty years, the statute of Henry VIII. will still apply, and evidence of the commencement of enjoyment within legal memory may still be given.

The Acts here enumerated do not apply to a claim "of a manor, a court-leet, a liberty, separate jurisdiction, treasure trove, wreck, waifs, and other forfeitures, fair, market, fishery, toll, park, forest, chace, or any privilege legally known as a franchise, as well as anything pertaining to those rights which come under the description of dignities or offices." (Mr. Hewlett's *Reply, &c., to certain Evidence before the Select Committee of the House of Commons on Records, February*, 1836.)

The term prescription is derived from the Roman law, but the meaning of the term in the Roman law is different. Blackstone says (iii. c. 17, note F.), "This title of prescription was well known in the Roman law by the name of usucapio (*Dig.*, 41, tit. 3, s. 3), so called because a man that gains a title by prescription may be said *usu rem capere*." This remark is not correct. Usucapio in the Roman law was founded solely on possession as such [POSSESSION], and it applied only to "corporeal things:" "by the laws of the Twelve Tables usucapion of moveable things was complete in one year; and of land and houses in two years." (Gaius, ii. 42.) "To usucapion was afterwards added, as a supplement, the longi temporis præscriptio, that is, an exceptio (plea) against the "rei vindicatio," the conditions of which were nearly the same as in the case of usucapion." (Savigny, *Das Recht des Besitzes*, p. 6.) The term præscriptio was properly applied to that which a plaintiff (actor) prefixed (præscripsit) to the formula by which he made his demand against a defendant, for the purpose of limiting or qualifying his demand. It seems afterwards to have been used as equivalent to exceptio or plea.

(Comyns, *Prescription;* Viner's *Abridgment;* Starkie, *Law of Evidence;* Blackstone, ii. c. 17.)

PRESCRIPTION has, by the law of Scotland, a much wider operation than either by the civil law or the law of England, supplying the place of the Statute of Limitations in the latter system. It not only protects individuals from adverse proceedings which other parties might have conducted if the lapse of time had not taken place, but it in some instances creates a positive title to property. The prescription by which a right of property can be established is that of forty years—a period probably borrowed from the *Praescriptio quadraginta annorum* of the Romans. Whatever adverse right is not cut off by the other special prescriptions of shorter periods, is destroyed by the *long* prescription. It may be said generally to preclude the right of exacting performance of any claim, as to which no judicial attempt has been made to exact performance for forty years from the time when it was exigible. To create a title to real property, the long prescription must be both positive and negative. The party holding the property must, by himself or those through whom he holds, have been forty years in unchallenged possession of the property on a title ostensibly valid—this is called positive prescription; and the claimant and those whom he represents must have been forty years without an ostensible title, and must, by not judicially attacking it, have tacitly acquiesced in the possessor's title—this is called negative prescription. An action raised in a competent court interrupts the long prescription. It is usually stated in the Scottish law-books that it is interrupted by the minority of any person who could challenge the opposing right; but it would be more correct to apply in this case the phraseology of the French lawyers, who say it suspends prescription, as the years of minority are merely not counted in making up the period of forty years, while, when there is a judicial interruption, a new period of forty years commences to run. When the prescription applies to a pecuniary obligation, payment of interest or an acknowledgment of the obligation will interrupt it. It may be observed that, by a sort of analogy from the system of prescription, when there

is in Scotland any judicial inquiry as to the antiquity of a custom, it is usual to limit the period of the inquiry to forty years, as sufficient to establish its having existed from time immemorial. It having been the practice in the neighbourhood of Edinburgh for the proprietors of land to irrigate fields with the contents of the city sewers—the system increasing until it became offensive to the neighbourhood—these proprietors produced evidence of their having continued the practice for forty years; and although it had during that time increased from an evil felt only by the individuals immediately concerned with the practice, to the extent of a public nuisance, these proprietors have, so far as the dispute has hitherto gone, been able to defend themselves on the ground of prescription.

The other and shorter prescriptions cut off particular descriptions of claims or methods of supporting them. By the vicennial or twenty years' prescription, holograph writings, not attested with the usual solemnities of Scottish writs, cease to "bear faith in judgment." An obligation of cautionary or suretyship is limited to seven years. Bills of exchange and promissory notes cease to have force after six years; but the debts they represent, if they do represent debts, may be proved by other means. The quinquennial prescription cuts off all right of action, after the lapse of five years, on bargains proveable by witnesses. It also protects agricultural tenants from a demand for rent after they have been five years removed from the land to which the demand applies. The triennial, or three years' prescription, is very important. It cuts off claims on account for goods or services, the three years running from the date of the last item of the account; and also claims for wages, each year's wages running a separate prescription, and ceasing to be exigible, if not pursued for, in the lapse of three years from the time when it became due.

PRESENTATION. [ADVOWSON; BENEFICE.]

PRESENTMENT. [JURY; POLICE.]

PRESS, CENSORSHIP OF, a regulation which has prevailed in most countries of Europe, and still prevails in many, according to which printed books, pamphlets, and newspapers, are examined by persons appointed for the purpose, who are empowered to prevent publication if they see sufficient reason.

There are different modes of censorship; the universal previous censorship, by which all MSS. must be examined and approved of before they are sent to press; the indirect censorship, which examines works after they have been printed, and, if it finds anything objectionable, stops their sale and confiscates the edition, and marks out the author or editor for prosecution; the optional censorship, which allows an author to tender his MS. for examination in order to be discharged from all responsibility afterwards; and lastly, by a distinction which has been very commonly made between newspapers or pamphlets and works of a greater bulk, the censorship of the journals, which exists even in countries where larger works are free from this superintendence. All these forms of censorship imply an establishment of censors, examiners, inspectors, or licensers, as they have been variously called, appointed for the purpose, a provision quite distinct from the laws which define the various offences which a man may be guilty of by publication. These are repressive or penal laws, whilst the censorship, and especially the previous censorship, is essentially a preventive regulation.

The censorship may be said to be coeval with printing. In more ancient times, those writings which were obnoxious to the prevailing political or religious systems, if they fell under the eyes of men in authority, were condemned to be destroyed. Thus, all the copies of the works of Protagoras which could be found in Athens were publicly burnt by sentence of the Areopagus, because the author expressed doubts concerning the existence of the gods. Personal defamation and satire were also forbidden. Naevius at Rome was banished, some say put in prison, for having, in his plays, cast reflections on several patricians. Augustus ordered the satirical works of Labienus to be burnt, and Ovid's alleged or probable cause of exile was his amatory poetry. The senate under Tiberius condemned a work to be burnt, in which Cassius was

styled the last of the Romans. Diocletian ordered the sacred books of the Christians to be burnt, and afterwards Constantine condemned the works of Arius to the flames. All these, however, were penal proceedings independent of any censorship. The councils of the Church condemned books which they judged to be heretical, and warned the faithful against reading them. Afterwards the popes began to condemn certain works and prohibit the reading of them. In the time of Huss and Wycliff, Pope Martin V. excommunicated those who read prohibited books. The introduction of printing having awakened the fears of the ecclesiastical authorities, several bishops ordered books to be examined by censors. One of the earliest instances of this is that quoted by Johann Beckmann, in his 'Book of Inventions,' of Berchthold, Archbishop of Mainz, who in the year 1486 issued a mandate, in which, after censuring the practice of translating the sacred writings from the Latin into the vulgar German, a language, he says, too rude and too poor to express the exact meaning of the inspired text, he adverts to the translations of the books of the canon and civil law, works, as the archbishop says, so difficult as to require the whole life of man to be understood, a difficulty which is now increased by the incompetence of the translator, which renders obscurity still more obscure. His grace, therefore, setting a full value on the art of printing, "which had its cradle in this illustrious city of Mainz," and wishing to preserve its honour by preventing it being abused, forbids all persons subject to his authority, clerical and lay, of whatever rank, order, and profession, to print the translation of any work from the Greek, Latin, or any other language, into German, concerning any art, science, or information whatever, publicly or privately, unless such translation be read and approved of before being printed, and, when printed, before being published, and furnished with the written testimony of one of the doctors and professors of the University of Mainz, named by the archbishop, one for theology, one for law, one for medicine, and one for the arts. All who violated this order were to lose the book, pay a fine of one hundred gold florins to the Electoral Chamber, and be excommunicated.

Then follows the archbishop's commission to the censors—That no one in his province translate, print, or publish, any book in German, unless the censors previously read and approve its contents. And he directs them to refuse their approbation to such works as offend religion or morals, or whose meaning cannot clearly be made out, and may give rise to error and scandal. To those works which they approve of they shall affix their approbation, two of them jointly, in their own handwriting.

There were works printed at Cologne in 1479 bearing the approbation of the rector of that university, and there is also an Heidelberg edition of 1480 of the book entitled 'Nosce teipsum,' which bears four approbations, one by Philip Rota, Doctor utriusque Juris, and another by Maffeus Girardo, Patriarch of Venice and Primate of Dalmatia. There was, however, no general system of censorship in the fifteenth century, which was an age of freedom for printing; and it is a curious fact that the learned scholar Merula, in a letter to his friend Poliziano, dated 1480, expresses a wish that a previous censorship should be established over all books, such as Plato recommends for his republic; "for," says Merula, "we are now quite overcome by a quantity of bad or insignificant books."

In 1501, Pope Alexander VI. (Borgia) issued a bull, in which, after sundry complaints about the devil who sows tares among the wheat, he goes on to say that having been informed that by means of the art of printing many books and treatises, containing various errors and pernicious doctrines, have been and are being published in the provinces of Cologne, Mainz, Treves, and Magdeburg, he by these presents strictly forbids all printers, their servants, and all who exercise the art of printing in any manner, in the above provinces, to print hereafter any books, treatises, or writings, without previously applying to the respective archbishops, or their vicars and officials, or whomever they may appoint for the purpose, and obtaining their licence free of all expense, under pain of excommunica-

tion, besides a pecuniary fine at the discretion of the respective archbishops, bishops, or vicars-general. The bull provides for the books already printed and published, which are to be examined by the same authorities, and those containing anything to the prejudice of the Catholic faith are to be burnt.

At last, in 1515, the Council of the Lateran decreed that in future no books should be printed in any town or diocese, unless they were previously inspected and carefully examined, if at Rome by the vicar and the master of the sacred palace, and in the other dioceses by the bishop or those by him appointed, and by the inquisitor of that diocese or those by him appointed, and countersigned by their own hands gratis and without delay. Any book not so examined and countersigned was to be burnt, and the author or editor excommunicated.

Here, then, was the origin of the principle of a general censorship of the press, which has been ever since maintained by the Church of Rome in all countries where it had power to enforce it. The bishops were the censors in their respective dioceses; but the tribunal of the inquisition, wherever the inquisition was established, were the censors; they examined the MS. of every work previous to its being printed, and granted or refused an 'Imprimatur' or licence at their pleasure. The inquisition moreover sought after all books published beyond its jurisdiction, and having examined their contents, condemned those which were contrary to the doctrine or discipline of the Church of Rome, and of these it formed a list known by the name of 'Index of Forbidden Books,' to which it has made copious additions from time to time. There are several of these indexes, made at different times and in different places: the index of the Spanish Inquisition was different from that of Rome. Collections of these indices have been made. One of the latest is contained in the 'Dictionnaire Critique et Bibliographique des principaux Livres condamnés au Feu, supprimés ou censurés,' by Peignot, Paris, 1806. In countries where the Inquisition was not established, such as France, England, and Germany, the bishops acted as censors and licensers of books, which they examined previous to printing, as to all matters concerning religion or morality. The censorship continued for a long time to belong to the ecclesiastical power, and even afterwards, when the civil power in various countries began to appoint royal censors to examine all kinds of works, the episcopal approbation was still required for all books which treated of religion or church discipline.

The Reformation greatly modified the censorship and reduced its powers, without, however, abolishing it; the power passed into other hands. In England the practice seems to have been to appoint licensers for the various branches of learning; but the bishops monopolized the principal part of the licensing power, as we find at the begining of the reign of Charles I. in a petition of the printers and booksellers to the House of Commons, complaints against Bishop Laud that the licensing of books being wholly confined to him and his chaplains, he allowed books which favoured Popery to be published, but refused licensing those which were written against it. And Archbishop Abbot observed of Laud's licensing, "it seemed as if we had an expurgatory press, though not an index like the Romanists, for the most religious truth was expurgated and suppressed in order to the false and secular interests of some of the clergy." The system of previous licensing, however, did not always secure an author from subsequent responsibility. Thus Prynne's 'Histriomastix' was condemned in 1636 to be burnt by the hangman, for being a satire on the royal family and government, and the author to have his ears cut off, and to be imprisoned and heavily fined, although the book had actually been licensed, but it was alleged on the trial that the licenser had not read the whole of the work.

A decree of the Star Chamber concerning printing and licensing, dated 11th of July, 1637, was issued in order to establish a general system on the subject. The preamble refers to former decrees and ordinances for the better government and regulating of printers and printing, and particularly to an order of the 23rd of June, in the 28th year of

Elizabeth, "which orders and decrees have been found by experience to be defective in some particulars, and divers libellous, seditious, and mutinous books, have been unduly printed, and other books and papers without licence." The decree enacts among other things that "no person or persons shall at any time print or cause to be printed any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications, and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed and authorised only by such person and persons as are hereafter expressed, and by no other, and shall be also first entered into the registrar's book of the Company of Stationers, upon pain that every printer offending therein shall be for ever hereafter disabled to use or exercise the art or mystery of printing, and receive such further punishment as by this Court or the High Commission Court respectively, as the several causes shall require, shall be thought fitting." It then goes on to provide that all books concerning the common laws of the realm shall have the special approbation of the Lord Chief Justices and the Lord Chief Baron for the time being, or one or more of them, or by their appointment; that all books of history or any other book of state affairs shall be licensed by the principal secretaries of state, or one of them, or by appointment; and that all books concerning heraldry, titles of honour and arms, or otherwise concerning the office of earl-marshal, shall be licensed by the earl-marshal or by his appointment; "and further that all other books, whether of divinity, physics, philosophy, poetry, or whatsoever, shall be allowed by the Lord Archbishop of Canterbury or Bishop of London for the time being, or by the chancellors or vice-chancellors of either of the universities of the realm, for such books that are to be printed within the limits of the universities respectively, not meddling either with books of the common law or matters of state. And it is further enacted that every person and persons, which by any decree of this court are or shall be appointed or authorised to licence books or give warrant for imprinting thereof, as is aforesaid, shall have two several written copies of the same book, one of which shall be kept in the public registry of the respective licenser, to the end that he may be secure that the copy so licensed shall not be altered without his knowledge, and the other copy shall remain with the owner, and upon both the said copies he or they that shall allow the said book shall testify under his or their hand or hands, that there is nothing in the book contrary to the Christian faith and the doctrine and discipline of the Church of England, nor against the state or government, nor contrary to good life or good manners, or otherwise, as the nature and subject of the work shall require, which testimony shall be printed in the beginning of the book with the name of the licenser. All books coming from beyond the seas were to be reported by the merchant or consignee to the Archbishop of Canterbury or the Bishop of London, and to remain in custody of the custom-house officers until the Archbishop or Bishop sent one of their chaplains or some other learned man to be present with the master and wardens of the Company of Stationers, or one of them, at the opening of the bale or package, for the purpose of examining the books therein contained. And if there is any seditious, schismatical, or offensive book found among them, it was to be brought forthwith to the Archbishop of Canterbury or the Bishop of London, or the High Commission Office, to be dealt with accordingly." All books, ballads, charts, and portraits were to bear the name of the printer or engraver as well as of the author or maker. All printers were to take out a licence. Their number was fixed and their names were published.

The war between Charles I. and the Parliament, and the abolition of the royal authority, did not affect the censorship, and the Long Parliament in the plenitude of its power maintained the practice just as the Star Chamber had done.

In March, 1642, an order of the Commons House of Parliament appointed by name certain stationers of London to search for any lying pamphlets scandalous to his majesty, or the proceedings of both or either House of Parliament, demolish and take away the printing-presses, and apprehend the printers or sellers.

In June, 1643, was issued an order of the Lords and Commons assembled in Parliament for the regulating of printing, and for suppressing the great late abuses and frequent disorders in printing many false, scandalous, seditious, libellous, and unlicensed pamphlets, to the great defamation of religion and government. It enacts that no book, pamphlet, paper, nor part of any such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched, or put to sale by any person or persons whatever, unless the same be first approved of and licensed under the hands of such person or persons as both or either of the Houses of Parliament shall appoint for the licensing of the same, and entered into the register-book of the Company of Stationers, according to ancient custom. And further on it authorises or requires the master and wardens of the said company, the gentleman usher of the House of Peers, the sergeant of the Commons' House and their deputies, together with the persons formerly appointed by the committee of the House of Commons for examination, to make from time to time diligent search in all places where they shall think meet, for all unlicensed printing-presses, and all presses any way employed in printing of scandalous or unlicensed papers, pamphlets, books, &c., and to seize, deface, and destroy the same in the Common Hall of the said company.

It was in consequence of this order that John Milton wrote his 'Areopagitica; a Speech for the Liberty of Unlicensed Printing,' addressed to the parliament of England, in which he shows that the system of licensing originated with the Papal Inquisition, and that it ought not to be adopted by a Protestant community: he points out its uselessness and injustice, and observes that the order of parliament is only a revival of the former order of the Star Chamber. Milton's disquisition is a piece of close reasoning and eloquently written, but it had no effect upon parliament, which continued to sanction the restraints upon the press, even after the abolition of royalty. A warrant of the Lord-General Fairfax, dated 9th of January, 1648, was addressed to "Captain Richard Lawrence, Marshal-General of the Army under my command," in virtue of an order of parliament, dated 5th of January, 1648, to put in execution the ordinances of parliament concerning scandalous and unlicensed pamphlets, and especially the ordinance of the 28th September, 1642, and the order of the Lords and Commons, dated 14th June, 1643, for the regulating of printing. The marshal-general of the army is "required and authorised to take into custody any person or persons who have offended or shall hereafter offend against the said ordinances, and inflict upon them such corporal punishments, and levy such penalties upon them for each offence as therein mentioned, and not discharge them till they have made full payment thereof, and received the said punishment accordingly." And he is further authorised and required to make diligent search "from time to time, in all places wherein he shall think meet, for all unlicensed printing-presses any way employed in printing scandalous and unlicensed papers, pamphlets, books, or ballads, and to search for such unlicensed books, papers, treatises, &c."

The parliament of 1654 appointed a committee to watch all blasphemous publications, on whose reports several books, religious or controversial, were ordered to be burnt.

The parliament of 1656 appointed a committee to consider the way of suppressing private presses and regulating the press, and suppressing and preventing scandalous books and pamphlets. The Protector Cromwell enforced these restraints in order to prevent the agitation of political questions. In October, 1653, the council at Whitehall ordered that no person shall presume to publish in print any matter of public news or

intelligence, without leave and approbation of the secretary of state. There appeared also an order of the protector and council against printing unlicensed and scandalous books and pamphlets, and for regulating printing. Cromwell however was disposed in general to rescue the victims of religious intolerance from the hands of their persecutors, the Independents and the Presbyterians.

After the Restoration, Roger Lestrange was appointed licenser of printing. He wrote in 1663, 'Considerations and Proposals in order to the Regulation of the Press.' Lestrange seems to have retained his office till the revolution of 1688, when he was succeeded by Fraser, who, it was said, was shortly after removed from his office for having allowed Dr. Walker's 'True Account of the Author of Eikon Basilike' to be printed. Edmund Bohun, a Suffolk justice, was appointed in Fraser's place. In a pamphlet printed in London in 1693, entitled 'Reasons humbly offered for the Liberty of Unlicensed Printing; to which is subjoined the just and true Character of Edmund Bohun, the Licenser of the Press, in a Letter from a Gentleman in the Country to a Member of Parliament,' there is a specimen of Bohun's licences: "You are hereby allowed to print and vend a certain book, ..., and for so doing this shall be your sufficient warrant. E. B."

The act passed under Charles II., in 1662, which was, with few alterations, a copy of the Parliamentary ordinances concerning the licensing of printing, expired in 1679, but was revived by statute 1 Jac. II. c. 17, and continued till 1692. It was then continued for two years longer by statute 4 William and Mary, c. 24, and it expired in 1694, when the licensing system was finally abolished in England; but the question of its revival was repeatedly agitated in parliament, as we see by a paper dated 1703, entitled 'Reasons against restraining the Press,' which deprecates the intention of reviving the licensing system; and by a much later and bolder pamphlet dated 1729, styled, 'Letter to a Great Man concerning the Liberty of the Press.'

Under the old French monarchy, all works previous to being printed were to be examined by the royal censors; and if approved, were signed with their permission. The French censorship was originally in the hands of the bishops, for all matters concerning religion and ecclesiastical discipline. By degrees the bishops delegated this power to the faculty of theology, and the Parliament of Paris sanctioned the practice. The manuscripts were laid before the faculty, which appointed two doctors of divinity to examine them. The doctors made their report to the general assembly of the faculty, which approved or rejected the work. Prelates themselves were not exempt from this rule. The learned Cardinal Sadoleto, while Bishop of Carpentras, was refused permission to print a commentary which he had written on the Epistle of Paul to the Romans in 1532: Cardinal Sauguin was likewise refused permission to publish a work in 1542. As at that time a number of heterodox books were pouring into France from abroad, the Parliament of Paris, by a decision of the year 1542, authorised the faculty of theology to examine all books imported from foreign countries. Towards the beginning of the following or seventeenth century, the great increase and accumulation of new books having induced the examining doctors to omit their reports to the assembly of the faculty, the assembly issued an order to the said examiners not to give their approbation to new works without mature consideration, under penalty of suspension from their office. In 1624 the faculty itself being divided into parties on some matters of controversy, Dr. Duval, the leader of one of the parties, obtained the king's letters patent for himself and three of his colleagues, by which they obtained the exclusive authority of approving all books concerning religion and church discipline. The faculty remonstrated against this innovation, but the king maintained his appointment. After Duval's death, the faculty resumed its old powers; but in 1653, the controversy concerning grace having given birth to a multitude of polemical works, concerning which the faculty itself was divided

in opinion, the chancellor Seguier took from it the censorship; and he created four censors, with an annual stipend, to examine all works without distinction. Before that time it appears that works unconnected with religion were examined by the Maîtres des Requêtes. But ever since 1653, the appointment of the censors rested with the chancellor. They were styled Royal Censors, and their number was gradually increased. They were distributed into seven classes, according to the nature of the works which they had to examine, namely, theology, jurisprudence, natural history and medicine, surgery, mathematics, history and belles lettres (which class had the greatest number of censors attached to it); and lastly, geography, navigation, travels, and engravings. No work could be printed or sold unless it was previously examined and approved by one of the Royal Censors. The lieutenant of police had under him a censor who examined all dramatic works, before they could be performed.

At the Revolution the censorship was abolished. The republican constitutions which were proclaimed in succession acknowledged the principle of the liberty of the press, but amidst the struggle of parties, that principle was often overlooked, and journals and other works obnoxious to the ruling faction of the day were seized, and the authors or editors imprisoned or transported. Throughout the whole period of the so-called French Republic, liberty existed in name, but not in reality; and it was the experience of this that made people acquiesce in Bonaparte's dictatorship. After the revolution of Brumaire, when Bonaparte was proclaimed First Consul of the French Republic, with powers more extensive than most kings, the question of the press attracted his early attention. He said one day in the Council of State, that the character of the French nation required that the liberty of the press should be limited to works of a certain size; but newspapers and pamphlets ought to be subject to the strict inspection of police. No censorship was established by the Consular constitution, but the newspaper press was left at the mercy of the executive. By a degree of the 27th Nivose, 1800, the number of newspapers at Paris was fixed, and the editors were forbidden to insert any article "derogatory of the respect due to the institutions of the country, the sovereignty of the people, and the glory of the French armies," or offensive to the governments and nations which were the friends and allies of France, even if such articles should be extracted from foreign journals, under pain of immediate suppression. The Moniteur was announced to be the only official journal. The Ami des Lois was suppressed on the 3rd Prairial, 1800, by the order of the Consuls on the report of Lucien Bonaparte, Minister of the Interior, for having thrown ridicule on the members of the Institute. Under such discipline the number of subscribers to the newspapers of Paris dwindled rapidly from 50,000 to less than 19,000, and the Moniteur inserted the statement as a subject of congratulation. The Minister of the Interior had the censorship of dramatic compositions before they could be brought on the stage.

Napoleon was not friendly to liberty of any kind, and still less to that of the press. He felt very sore at the jibes and sarcasms of the English journals, which he had translated to him; and he insisted that no word, however offensive, should be omitted. When the organic law was discussed in the Senate, which was to declare him Emperor, some one spoke of guarantees to be given to the nation, and mentioned the liberty of the press among the rest. Napoleon contented himself with appointing a committee in the Senate with the nominal office of protecting the liberty of the press, which was both a misnomer and a sinecure.

In 1806 there appeared an instance of renewed book-licensing. A drama of Collin d'Harleville, making part of the series of his works, bore the following licence: 'Seen and allowed to be printed and published, by decision of his Excellency the Senator Minister of the General Police, dated 9 Prairial, year XIII. By order of his Excellency the chief of the department of the liberty of the press, P. Lagarde.' The Journal of the Empire

inserted this novel document in its columns; upon which the official Moniteur observed, in a tone of ill humour, that the Emperor had been surprised to learn that an estimable writer like M. d'Harleville should need permission to publish a work bearing his name; that there existed no censorship in France; that any French citizen could publish any book that he thought proper, being responsible for its contents before the tribunals, and pursuant to a decree of his Majesty, if charged with any thing derogatory to the power of the Emperor and the interests of the country.

In Napoleon's kingdom of Italy the censorship was likewise declared to be abolished, but on the day of the publication of a work two copies were to be deposited at the office of the Minister of the Interior. A commission, styled likewise "of the liberty of the press," examined the book and made its report to the Minister, who, if he saw reason, stopped the sale of the work, and ordered the author or printer to be arrested and tried. Those who wished to avoid such risks, were allowed to lay their MS. before the commission, which returned it with such corrections or suppressions as it thought advisable. This was called the facultative or optional censorship.

At last, in 1809-10, the project of a definitive law concerning the press in France became the subject of frequent discussions in the Council of State, in which Napoleon took a part. "I conceive," said he, "the liberty of the press in a country where the government is acted upon by the influence of the public opinion, but our institutions do not call upon the people to meddle with political affairs; it is the business of the Senate, the Council of State, and the Legislative Body, to think, speak, and act for the people, and the liberty of the press would not be in harmony with our system, for the manifestation of the power of public opinion would only be productive of disturbance and confusion." On the question of the censorship the more liberal councillors of state argued in favour of the optional censorship, by which authors who of their own accord laid their works before the censors, should be relieved from further responsibility after publication. "Those councillors who were for a previous and obligatory censorship, such as Cambacérès, Molé, Pasquier, Portalis, and Regnier, maintained that writing for publication was a species of teaching, and that in a country like France, where public instruction was so organized and regulated as not to be permitted to spread any dangerous doctrine, it would be inconsistent to allow writers to assume uncontrolled the mission of teaching whatsoever they pleased. No mode of teaching or influencing the public mind ought to escape the vigilance of the authority of the state. Under every government those who addressed publicly a certain number of persons were watched; *à fortiori*, those who by their writings addressed themselves to all men, ought to be watched also. It had been said erroneously that the right of publishing was a natural faculty; the art of printing is a social invention, and as such is subject, like all other inventions, to administrative regulations in order to prevent its being abused. Without the previous censorship, the suppression of a mischievous book after publication came too late." (Sittings of the Council of State of the 11th and 25th of October, 1809, in Thibaudeau, *Histoire de la France et de Napoléon*, ch. 67.) Napoleon was not for the obligatory and previous censorship, because it might find itself placed in an awkward dilemma, especially with regard to certain books which appeared to have a sceptical or heterodox tendency. He preferred the optional censorship, leaving however to the proper authorities the power of stopping the printing or seizing the printed copies of any work which they thought dangerous. He was inexorable towards offences against the state. The decree of February, 1810, which was the result of these discussions, appointed a director-general of the press, with auditors, inspectors, and censors, under the control of the Minister of the Interior. The number of printers was to be fixed in every department; sixty was the number fixed for Paris: printers as well as booksellers were to take licences and swear fidelity to their country and the Emperor. Printers were forbidden to print anything

derogatory of the duties of subjects towards their sovereign, or of the interests of the state. Parties offending were to be brought before the courts, and punished according to the Penal Code; besides which the Minister of the Interior had the right of depriving the printer of his licence. Before setting up a work, the printer was to transmit the title of it, with the name of the author, if known, to the director-general, and likewise to the prefect of the department, declaring his intention to publish the work. The director-general could, if he chose, ask for the MS., and send it to one of the censors for examination. After the censor had made his report, the director would point out such alterations or suppressions in the text as he thought proper, and which became obligatory upon the author or printer, who however had the right of appealing to the Minister of the Interior, who forwarded the MS. to another censor, who made his report to the director-general, and the director-general, assisted by other censors, decided finally upon the matter.

Authors or printers had the option of submitting their MSS. to the examination of the censors previous to printing. But even after being examined, approved, and printed, a work could be seized and its sale stopped by the minister of police, who was however to forward it with his remarks, within twenty-four hours, to the Council of State, which judged finally upon it. A well known instance of this occurred with regard to Madame de Staël's book on Germany, which was seized after having been examined and printed, and the whole edition was destroyed. "Your book is not French, and we are not reduced to seek for models among the nations which you admire," was the minister of police's (Savary) reply to Madame de Staël's remonstrances on the subject.

Books printed abroad could not be imported into France without permission from the director-general.

The police had the censorship of dramatic works intended for the stage. Only one newspaper was allowed in each department, with the exception of Paris, subject to the approbation of the respective prefect. Such was the condition of the press in France during the latter years of Napoleon's empire.

At the first restoration of the Bourbons, in 1814, an article of the Charter of Louis XVIII. acknowledged that "Frenchmen had the right of publishing their opinions by means of the press, conformably however to the laws enacted for the repression of any abuse of the liberty of the press." Soon after, the Abbé de Montesquiou, Minister of the Interior, laid before the chambers the project of a law concerning the press, the effect of which would have been nearly to destroy its freedom. He proposed that all works of less than thirty sheets were to be subject to a previous censorship (*censure préalable*), excepting those in the dead or foreign languages, bishops' charges, pastoral letters, and catechisms and prayer-books, and memoirs of literary and scientific societies. This project was examined by a commission of the chamber, which rejected in its report the previous censorship. The article eight of the charter said that the law should *repress* the abuse of the liberty of the press, but the ministerial project by its previous censorship tended to *prevent* it by suppressing the liberty altogether. The discussion was warm. Montesquiou maintained that to prevent and to repress were synonymous. He at last agreed to exempt from the previous censorship all works of twenty sheets and above, instead of thirty. With this modification the bill passed both houses by considerable majorities. A council of twenty censors was appointed. The office of director-general of the press was retained. Every printer was obliged to give notice of each work that he intended to print, and to deposit two copies of it, when printed, at the director's office, before he published the work.

When Napoleon returned from Elba, in 1815, he did not enforce the previous censorship, because, said he, they had published whatever they pleased against him under the Bourbons, and the matter was now exhausted. The other regulations however concerning printing and publishing were maintained, and the press and the emperor were often at variance during the hundred days. The previous censorship was temporarily re-established

and abolished again under the second restoration of Louis XVIII. After Charles X. came to the throne, he abolished the previous censorship altogether, and by so doing he gained a momentary popularity with the Parisians. But the press, and especially the newspaper press, did not show any great extent of gratitude for the boon, for it proved throughout his reign a sharp thorn in his side, as may be seen by the famous report of his ministers, upon which report the ordinances of July, 1830, were based. That report was attributed to M. Chantelauze, the keeper of the seals, but it was signed by all the ministers. It contains an able, an eloquent, and, in the main, a true exposition of the crafty and persevering course of conspiracy by which the press was constantly exciting or feeding a determined hostility towards the king and his government, casting suspicion upon and misrepresenting all their acts, even those which were evidently beneficial and liberal, because they proceeded from persons whom the press itself had rendered unpopular, appealing to the passions and prejudices of a susceptible and uninstructed multitude, and thus rendering, in fact, government impossible. This report is a very interesting historical document, and ought to be read by those who wish to form a dispassionate judgment of the press, and its powers for good and evil. "At all times," said the minister, "the periodical press had been, as it was in its nature to be, an instrument of disorder and sedition." Accordingly the first of the ordinances of Charles X., signed the 25th of July, suspended the liberty of the periodical press; no journal was to be henceforth published without a special authorization of the government, which was to be renewed every three months. All pamphlets or works under twenty sheets of letter-press were made subject to the same authorization. The ordonnances however were resisted, and the revolution of July was the result. The revised charter which was afterwards promulgated, 'Charte de 1830,' in its seventh article, says: "Frenchmen have the right of publishing and printing their opinions, conformably to the laws. The censorship shall never be re-established." New laws however were enacted to repress the abuses of the press, among which the law of the 9th of September, 1835, is, we believe, the latest. It embodies or refers to many of the former laws of the Empire and the Restoration. It specifies the crimes and misdemeanors committed by means of the press, and assigns the penalty to each. The proprietors of political journals are obliged to deposit a considerable sum in the treasury as a security for their good behaviour. One hundred thousand francs (four thousand pounds sterling) is the deposit required for a daily Paris newspaper, and one half the sum for a weekly paper.

There is a material difference, in all the constitutions which have been framed for France, and for other countries on the model of France, between the abstract constitutional principle, such as liberty of the press, individual liberty, &c., and its application as modified by the various codes of laws, which are chiefly those of Napoleon. However, the press is certainly more free in France than it was under Napoleon or the old monarchy, but it is still far from having attained the wide uncontrolled freedom of the press in England, which may be truly said to be the freest in the world. The surest method of convincing oneself of this would be to pick out two or three of the more ultra-liberal English or Irish papers and examine them according to the existing laws in France, which constitute what is called the 'Code de la Presse,' noticing how often they would be found to have offended against the provisions of that code, and what penalties they would have incurred for each offence. The penalties in the French code of the press are very severe.

The absolute monarchies of Europe, Russia, Austria, Prussia, and the Italian States, retain the obligatory previous censorship of the press, which is derived from the very principle of their government, that of parental authority over their subjects. In some of the Italian States there is a double censorship; one by an ecclesiastical and the other by a political censor. But even then it happens sometimes that after a work has passed the cen-

sorship and obtained the "imprimatur," something obnoxious is discovered which had escaped the censor's penetration, and the book is seized and confiscated.

In the republics of Switzerland, the censorship existed before the organic changes which have taken place in most of the cantons since 1830. All previous censorship is now abolished, but the laws in some of the cantons are very restrictive of the liberty of the press, and especially of the newspaper press, on matters of religion. Generally speaking the press is freest in the Protestant cantons.

By the last Spanish constitution, of 1837, art. 11, "All Spaniards may print and publish their thoughts freely, without previous censorship, but subject to the laws. The determination of offences by means of the press belongs exclusively to juries empannelled for that purpose."

The constitution of Portugal establishes no previous censorship, but refers to the laws for repressing the abuses of the press.

By the constitution of the kingdom of Greece of 1827, "the Hellenes have the right of publishing freely their thoughts by means of the press, abstaining however —1, from attacking the principles of the Christian religion; 2, offending decency and morality; 3, indulging in personal insult and calumny."

The Swedish constitution of 1809, promulgated under King Charles XIII., enacts that the states of the kingdom in every new Diet shall appoint a committee of six members, well informed persons, among whom must be two jurists, for the purpose of maintaining the liberty of the press. The committee will examine all MSS. which shall be laid before it by any author or bookseller, and if the committee declares that the work is fit to be printed, the author and publisher are thenceforth discharged from all further responsibility. The Chancellor of Justice of the State is by right President of the Committee. But this is a voluntary and not an obligatory previous censorship. By a former resolution of the Diet of 1788, books of controversy which attack the established religion (the Lutheran or Augsburg Confession) or support the tenets of other communions, are excluded from the liberty of the press. Persons guilty of libel and other offences by means of the press are tried by a jury. By a law enacted by the Diet in 1812, a newspaper which insults or defames a foreign government friendly to Sweden, is liable to be suppressed by order of the chancellor, without any other formality. This has occurred repeatedly, but then the paper appears again the next day under a slightly altered title; for instance, the Argus is suppressed, but is continued under the title of Argus II. or Argus III.

The constitution of Norway proclaimed in the Storthing of Eidswold, November, 1814, enacts that no one shall be prosecuted for his printed writings, unless he wilfully and evidently manifests or encourages others to manifest disobedience to the laws, contempt for religion, morality, or the constitutional powers, or resistance to the constitutional authorities, or is guilty of defamation and libel against any one, in which case he shall be fined by the tribunals.

The constitution of the Netherlands of 1815, which is still in force in the kingdom of Holland, says, art. 227, "The press being the fittest means to spread knowledge, every one has a right to make use of it to communicate his thoughts, without needing previous permission. But all authors, printers, editors, or publishers, are answerable for those writings which attack the rights either of society or of individuals."

By art. 18 of the constitution of Belgium the press is declared to be free; no censorship can ever be established. Authors, editors, and printers are not required to give security. Offences committed through the press are tried by the ordinary courts.

In Denmark, an ordinance of Christian VII., dated September, 1799, on the subject of the press, abolishes the previous censorship, but imposes severe penalties on those who offend through the press; death is the penalty for any person who shall excite rebellion or provoke a fundamental change in the constitution of the monarchy. Whoever censures or defames or excites hatred or contempt against the constitution of the kingdom and the go-

vernment of the king, either on general grounds or on the occasion of any particular act, shall be banished for life, and if he returns without permission, shall be sent to hard work for life. Whoever shall censure or vilify the monarchical form of government in general shall be exiled from three to ten years. Any libel against the person and honour of the king, or any member of the royal family, shall be punished with exile. Whoever publishes a work tending to deny the existence of God, or the immortality of the soul, or to cast censure or ridicule on the fundamental dogmas of the Christian religion, is to be banished likewise. Any one who shall attack or ridicule the tenets of the other Christian communions tolerated in the kingdom, shall be punished by a short imprisonment on bread and water. The same punishment is assigned to those who shall offend public morals by their writings. Any one defaming a foreign prince friendly to Denmark, or ascribing to his government any unjust or disgraceful act, without quoting any authority, shall be sent to hard work in a house of correction for a limited period.

The liberty of the German press, or the thing so called, varied in former times according to the spirit of the different governments. As long as the emperors of the house of Austria were under the influence of the Jesuits, they tried to establish certain rules in order to check the press equally all over the empire, and an imperial commission was appointed, which sat at Frankfort on the Main, to watch over the productions of a host of authors. The states of the empire however showed little deference to imperial orders; many of them allowed the press nearly complete freedom; and Saxony being foremost among them, the booksellers ceased to assemble at Frankfort, and chose Leipzig for the centre of their extensive trade, which it has remained ever since. King Frederick II. of Prussia granted liberty to the press "because it amused him;" but he cautioned the editors of newspapers "to act cum grano salis, and especially not to give offence to foreign states." The censorship was abolished in Bavaria in 1803; in Hesse and Mecklenburg it existed only occasionally; and in Holstein the press had always been free; but these were exceptions, and in most of the Roman Catholic states, especially in Austria, the press was most arbitrarily checked. The great exertions of the German nation to put down the power of Napoleon and re-establish most of their petty princes on their thrones, seemed to deserve some reward, and the princes consequently promised, in Art. 18 of the Act of Confederation, "that the diet should occupy itself in its first meeting with fixing general rules concerning the press in Germany." The nation thought that such rules would be in favour of the liberty of the press, but it soon became manifest that they were greatly mistaken in forming such sanguine hopes. Several of the minor states, however, abolished the censorship; as Nassau in 1814, Würtemberg in 1815, and Saxe-Weimar in 1816. The political agitation of Europe after the downfall of Napoleon, and the desire of a new order of things, which seemed to take the same turn in Germany as in Spain and Italy, caused the German rulers to hold a congress at Karlsbad in 1819, by which the German periodical press was enslaved by the decision that all books or other printed publications under twenty sheets should be subjected to a censorship. The spirit which directed this censorship was most arbitrary and harsh, and led to collisions of the most dangerous kind between the representative bodies of the states and the rulers. Nor was the liberty of the press for books above twenty sheets respected, and political authors especially experienced many persecutions, while, strangely enough, religious matters might be treated with perfect freedom.

The French revolution in 1830 produced most salutary effects in Germany. The people rose in arms, demanding constitutional rights, and above all a free press, and the rulers were in some states compelled to grant their claims. In § 37 of the new constitution of the electorate of Hesse, it is said that the press and the book trade shall enjoy complete liberty, and that the censorship shall only exist in cases specified by the diet. Similar laws were made in the kingdoms of

Saxony and Hanover, in Brunswick and most of the minor states. The most liberal regulations for the press were obtained by the chambers of the grand duchy of Baden, in December, 1831; but the fear of the French revolutionists having then subsided, the laws of Baden as to the press were declared by the diet, in 1832, to be contrary to the general law (the decree of Karlsbad of 1819), and the press in Baden was once more enslaved. On the 28th of June, 1832, the diet resolved that care should be taken to compel the editors of newspapers and other political productions to keep within proper limits in publishing the debates of the representative bodies, and the diet of 1836 declared that editors of newspapers and political writers should publish no accounts of such debates except those published in the government papers, or extracts from them. Since that time there has been a visible reaction against the freedom of the press, though the censorship is much more severe against political and historical publications than against other works. It was hoped that the present king of Prussia, who manifested very liberal sentiments when his kingdom was threatened with a French invasion, would grant a free press; but that fear having ceased in 1841, the king gave fresh orders to adhere strictly to the decree of Karlsbad, so that now only books above twenty sheets are exempt from the censorship. There are, however, plenty of means in Prussia, as well as in the rest of Germany, for preventing authors from publishing works of a tendency contrary to the views of its government; for nearly all men of scientific attainments, being in the service of government, expose themselves to dangerous consequences unless they act as Frederick the Great recommended, "cum grano salis." A proof of the influence of the government in this respect is the strange change in the spirit of so many Prussian authors since the accession of the present king. Previous to this event the worship of the philosophy of Hegel was almost necessary for obtaining places under government: the present king, however, was known to be opposed to Hegel, and no sooner was he king than Hegel was abandoned by most of his disciples, and those who stuck to him were attacked without mercy. Great numbers of Prussian authors, who were not known for their piety before the king's accession, became known for it after. The only country where the press was free, in spite of the decrees of the diet, was the duchy of Holstein, as mentioned above: and the most liberal German works were printed and issued by the publishers at Altona: but since the dissensions between the German and the Danish populations of the kingdom of Denmark, the periodical press in that duchy has been enslaved to such a degree that even suspicious music has not passed the scissors of the censors, as we read in a late number of the 'Hamburger Correspondent.'

In the political systems prevalent in Germany, censorship is one of the various functions of the police, a word which among the German theorists has a much larger meaning than we are accustomed to give to it. The direction of the censorship was accordingly in the hands of the ministers of police. The present king of Prussia, however, established an Ober-Censur-Behörde, or a commission charged with the direction of the censorship and the superintendence of the different censors in the provinces. A similar arrangement was lately made in Austria: the censorship was taken from the minister of police, and intrusted to a commission, as in Prussia, which is under the control of the minister of the interior.

(*Conversations-Lexicon, Supplement*, Art. *Pressfreiheit;* Lesur, *Annuaire;* Venturini, *Chronik des Neunzehnten Jahrhunderts.*)

The constitutions of the various States composing the North American Union admit the absolute liberty of the press. There is of course in each state a law of libel, sufficiently strict, concerning which it may be entertaining to read Cobbett's account of his own trial, entitled 'A Republican Judge,' under the assumed name of Peter Porcupine. In the slave states there are very severe laws against interfering by the press with the great question of slavery. It has been stated

that abolitionist newspapers are seized at the post-office.

The republics of Spanish America likewise acknowledge the principle of the unfettered liberty of the press, however it may have been often violated in practice amidst the never ending factions and civil wars of those countries. The constitution of the Brazilian Empire establishes the freedom of the press without any censorship; but an author is liable to punishment in such cases as are provided by law.

(Beckmann, *History of Inventions;* Burton, *Diary; Encyclopédie Méthodique*, section "Jurisprudence," art. "Censure des Livres;" Thibaudeau, *Histoire de la France et de Napoleon Bonaparte;* Bacqua, *Codes de la Législation Française*, 1843; *Collection de Constitutions et Chartes*, by A. Dufau, etc. Paris, 1830; and the other works and pamphlets quoted in the course of this article.)

PRESUMPTION. A presumption is variously defined. The following is a definition:—"A presumption may be defined to be a belief as to the existence of a fact not actually known, arising from its necessary or usual connection with others which are known." (Starkie, *Law of Evidence*, i. 23.) In another passage (p. 1234) the same definition is given in substance, with the word "inference" substituted for "belief."

A fact may be proved by the immediate knowledge of the witnesses to it, which is called direct evidence. If it cannot be so proved, some other fact may generally be proved by direct evidence, from which the fact in question may often be inferred. If such other fact can be proved, and the existence of the fact in question can be inferred, such inference is a presumption. The inference may be either strictly logical or necessary, or it may be only probable, that is, the fact inferred may be true or it may not be true. If we cannot infer from the fact proved that the fact in question may be true, there can be no presumption at all as to such last fact. In all cases, then, in order to establish a presumption, there must necessarily be an inference from a fact or facts; but the inference may be either necessary or probable. If necessary, it cannot, by the supposition, be disproved; if probable, it may either be disproved by evidence, or it may not be possible to disprove it for want of evidence, and yet the inference will still only be probable.

Presumptions which are necessary can hardly ever be considered as not conclusive in any system of law. Presumptions which are only probable may by positive law be made as conclusive as necessary presumptions, that is, it may not be permitted to disprove them when they could be disproved; or where such disproving evidence is wanted, and yet the inference is only probable, positive law may give it the same conclusive force as a necessary presumption.

A presumption, when established, that is, a fact when presumed, is legally the same as a fact proved in such manner as the particular system of law requires such fact to be proved. If, then, the law annexes any legal consequence to a given fact when proved, it annexes the same to it when the fact is legally presumed. It is only by virtue of legal consequences being annexed to facts that they become objects of jurisprudence. The establishment then of a presumption, in a legal sense, is only the establishment of a fact to which certain legal consequences are annexed.

In our own system, the presumption is sometimes made by a judge or a number of judges, and sometimes by a jury, but the consequences are the same. Some writers say that presumptions are either "legal and artificial" or "natural." They divide "artificial or legal presumptions" into two kinds, immediate and mediate. "Immediate are those which are made by the law itself directly and without the aid of a jury. Mediate presumptions are those which cannot be made but by the aid of a jury." "Presumptions may therefore be divided into three classes: 1, Legal presumptions made by the law itself, or presumptions of mere law; 2, Legal presumptions to be made by a jury, or presumptions of law and fact; 3, Mere natural presumptions, or presumptions of mere fact." (Starkie, p. 1241.)

The first class of presumptions, it is

said, are either absolute and conclusive, or they may be rebutted by evidence to the contrary. The presumption of law that a bond was executed upon a good consideration cannot be rebutted by evidence, so long as the bond is unimpeached, that is, so long as it is admitted to be a bond. But though the law presumes that a bill of exchange was accepted on good consideration, it admits evidence to show that such was not the fact. Now this presumption of mere law is nothing more than a fact presumed by a judge or judges, to which fact so presumed, that is, so taken to be true, certain legal consequences are annexed or belong. It is, however, a very inaccurate expression to speak of a presumption of mere law; for, as the same writer says (p. 1242), "when the law presumes or infers any fact to which a legal consequence is annexed from any defined predicament of facts, the law in effect indirectly annexes to that predicament the legal consequence which belongs to the presumed fact."

One presumption of mere law may be opposed by another, and the law, that is, the court, must then decide which is the stronger.

Presumptions of *mere law*, as shown, are such as are made by the court. There are instances of presumptions made by Act of Parliament, that is, the legislature has declared that a certain fact or facts, when proved, shall be conclusive proof of another unproved fact which is not a necessary, and, it may be, is often not a highly probable inference from the proved fact. A statute of 21 James I. c. 27 (now repealed), made proof of the concealment of the death of a bastard child by the mother conclusive evidence of her having murdered it, unless she could prove that it was born dead. Sometimes an Act of Parliament declares that a certain presumption shall not be allowed or made. (2 & 3 Wm. IV. c. 71, s. 6.) A presumption of mere law is sometimes called an *intendment* of law.

Presumptions of *law* and *fact* are "also artificial presumptions which are recognised and warranted by the law as the proper inferences to be made by juries under particular circumstances." (Starkie, p. 1243.) In other words, these are facts which the law, that is, the court, will allow a jury to presume from other facts proved by direct evidence. When the presumed fact is declared by the jury to be a real fact, or is implicitly declared in their verdict, the legal effect is the same as if it were presumed by the judge. Indeed it is said "that the inference (made by the jury) is never conclusive," which appears to mean that there are presumptions which are not necessary, and sometimes may not be highly probable, but they are still such as a jury may make (at least under the direction and advice of the court), and their verdict will be good. "Thus a jury is required, or at least advised by a court, to infer a grant of an incorporeal hereditament after an adverse enjoyment for the space of twenty years unanswered." (Starkie, p. 1244.) On this subject it is said in another passage (p. 1214), "the presumption of right in such cases is not conclusive; in other words, it is not an inference of *mere law* to be made by the courts, yet it is an inference which the courts advise juries to make whenever the presumption stands unrebutted by contrary evidence. Such evidence in theory is mere presumptive evidence; in practice and effect it is a bar."

The third class contains "the natural presumptions of *mere fact*." "They are wholly independent of any artificial legal relations and connections, and differ from presumptions of mere law in this essential respect, that those depend upon or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind from the course of nature and the ordinary habits of society." (Starkie, p. 1245.) This class of presumptions properly belongs to a jury, and yet the courts will sometimes make presumptions of this kind without the aid of a jury. These presumptions then are such as a jury may make without the advice or direction of the court, and "it seems to be a general rule that whenever there is evidence on which a jury have founded a presumption according to the justice of the case, the courts will not grant a new trial." (Starkie, p. 1247.)

Though this division of presumptions is far from being characterised by precision, it cannot be denied that it is a kind of index to the practice of the courts as to presumptions. The division is founded —first, on the fact that certain presumptions, which are by no means necessary consequences from the facts proved, are admitted by the judges either as conclusive or as valid, till they are disproved; these presumptions are sometimes made by the court, but when it is necessary the court will permit or advise the jury to make them in order to arrive at a conclusion as to the fact in question: and, secondly, it is founded on the different functions of the judge and the jury, the former declaring the law, and the latter finding the facts, when their assistance for that purpose is necessary.

The presumptions of *mere law*, whether made by the court or by the jury under its direction, are really artificial rules of proof which have been established by judicial decisions, or which in any new case the court upon due consideration will make, and if necessary will direct the jury accordingly.

In those courts where there is no jury, one ground of the classification made by Starkie does not exist, and the judge makes his presumptions either in conformity to the technical rules of his court in cases to which they apply, or he makes his presumptions in cases where there are no technical rules, just as a jury does or any indifferent persons do upon facts submitted to them for their consideration.

Presumption then is either a positive rule by which a certain conclusion is declared by statute, or by the judges. or by the jury under the direction and advice of the judges, to follow from certain other proved facts; or it is a conclusion from certain other proved facts which a judge or a jury may make if they find the probative force of the proved facts sufficient to induce them to make the inference called by Starkie a natural presumption, or presumption of mere fact. Presumptions therefore are incident to every head of law in which proof is required; and the presumptions which are positive rules of law are part of the law of the things to which they relate. The subject of Presumptions is an important part of the law of Evidence, and it requires a better discussion than it has yet received.

The term "præsumptio" occurs occasionally in the 'Digest,' and in the sense of an inference from a fact proved or admitted. (*Dig.*, 22, tit. 3, s. 25.) The general rule as to proof is, that he who affirms must prove what he affirms. "There are, however, facts which are to be presumed until the contrary is proved, præsumptiones; he who maintains such a fact is accordingly relieved from the proof of it: the burden of proof in reference to it is transferred to the opposing party, who maintains the non-existence of the fact; as for example, the continuation of a right which has once begun to exist is presumed, and consequently he who maintains that it has ceased must prove that: he who affirms that he has a right, is only required to prove its acquisition, and not, what is contained in his affirmation, that he still has it." (Puchta, *Cursus*, &c., ii. 183.)

(Bentham, *Rationale of Judicial Evidence;* Starkie, *On Evidence;* Phillips, *On Evidence.*)

PRESUMPTIVE HEIR. [DESCENT.]

PRICE. Political economists speak both of natural or necessary price and market price. The natural price of commodities, it is said, is as a general rule determined by the cost of production, or, in other words, by the amount of labour expended on them; and consequently equal quantities of labour will exchange for equal quantities of labour. The mode of ascertaining what are equal amounts of labour is not and cannot be clearly explained; and it is admitted that the equality of labour is not to be measured by time only, but the kind of labour must be taken into the account. This natural price is the same thing which is meant by the expression Real Value, which is said to be dependent solely on the quantity of labour necessary for the production of a thing. The market price or exchangeable value is that value in exchange which is actually got for anything, which will not always be the same as the price called

natural or real; but the exchangeable value, it is said, never varies materially either above or below the real value. Accordingly the cost of production is considered to be that which regulates market price, when industry is not restricted; but this doctrine is sometimes announced with a limitation: the things produced must be such as can be indefinitely increased in quantity by the application of fresh capital and labour to their production.

According to this doctrine labour is the measure of real value, and real value never varies much from exchangeable value. But labour itself requires a representative, something that shall measure one kind of labour compared with another; and gold and silver are commonly used for this purpose. But gold and silver also vary both in real value, as above explained, and in exchangeable value: the result of all which is, that there is no measure of the exchangeable value of a thing other than the amount of gold or silver or anything else that can be got for it. Things must be exchanged either by simple barter without any price being fixed on the things exchanged, or by an exchange of commodities in which exchange the commodities have a money price fixed upon them, or by giving gold and silver or other things which are current as coin for commodities.

In nations called civilized the exchanges are actually made by giving stamped metal for other things, or by some arrangement which is equivalent to giving stamped metal, so far as concerns the price of things. The exchangeable value or the market price of a thing is therefore the money which it really brings. He who has labour to offer for hire, and he who by labour, or by labour and capital combined, which is the accumulated result of labour, produces a thing for sale, under the ordinary circumstances of society know pretty nearly what they will get for their labour; for the price which they will get is either a matter of contract with some determinate person or persons, or it is that market price which, as a general rule, varies during limited periods of time within certain limits that are tolerably well ascertained. The principle which determines whether a man will continue to offer his labour for the hire or price which at any particular time he can have for it, or will continue to produce things for the price which at any particular time he may be able to get for them, is stated in POLITICAL ECONOMY.

Some writers who have laid down the doctrines of natural and market price as above stated, have, however, not overlooked the facts which are exceptions to the doctrine. Professor Tucker remarks (*The Laws of Wages, Profits, and Rent*, Introduction, p. 8), "All commodities may therefore be divided into two kinds as to their exchangeable value: one, that class which, being the product of man, will command as much labour in the market as it has cost to procure them; the other, the product in part of nature, in which the labour they will command may greatly exceed that expended in obtaining them, according to the proportion between the competition to possess them and the supply." The distinction here made is cited for the purpose of showing that some economists have perceived that the labour expended on things is not always the measure of their exchangeable value. It remains for economists to consider whether the labour expended upon anything can in any case with any propriety of language be considered the measure of its exchangeable value. Labour, it is affirmed, gives to everything its exchangeable value, which is true. It is also said that the amount of labour regulates or determines the exchangeable value. But it is admitted that the value of labour itself depends on the demand for it and the supply. Therefore, according to this theory, exchangeable value is regulated or determined by labour; the exchangeable value of which labour is determined by something else. The term labour is here of course used in its comprehensive sense, as including all means, material and not material, by which anything is brought into that form in which men desire to have it, and brought to that place in which the men are who desire to have it.

The terms Natural Price and Real Value, if they are taken to signify merely, as

they must be taken, the value which a man in his own estimation puts on the things which he has produced, may be convenient terms; though the word Natural is a word always liable to abuse, and Real is a singular kind of term to indicate the value which a man sets on his own labour. If he wants to keep the product of his labour for himself, he may call it by any name that he likes. But as a general rule, the real value of a man's labour, that which he can realize for it, is the value of it to others, its exchangeable value. The exchangeable value of a thing is its realization: the so-called Real value is idealization, which often fails to become Reality.

A man may admit that labour is the sole source of wealth, and of all exchangeable value, and that the cost of production is an essential element in the exchangeable value of all commodities, without admitting that the cost of production is the regulator of selling prices. He may contend that in the actual operation of exchanges it is the efficient demand, the will and the power to purchase, combined with the supply that really regulates the selling price of all things.

These two opinions are not so directly opposed as at first sight may appear. There are two ways of viewing the subject of exchangeable value. The mode which some economists adopt is to trace it from the operations of a rude and savage state to the complicated conditions of modern society—a process something like that of tracing government from a supposed state of nature to the actual condition of existing governments. There is nothing gained by this mode of viewing the subject, and it involves the introduction of certain hypotheses not necessary to the investigation. The other method is to view societies as they exist, and to analyse the complicated movements, in which consist their activity and energy. In this actual condition we know on what terms buyers and sellers meet in the market. Each brings to market what he does not want, and he gets what he can. Each knows that the other expects and desires to make a profit by the exchange, and that if there is not profit on both sides, or what both parties consider to be profit, the exchange will not continue. Each therefore has his own measure of that which he would give in exchange, and he is moved to produce what he offers in exchange by the general market price of that which he gives in exchange. His power to produce and his motive to produce are therefore regulated at each moment by something which is anterior to his production and which regulates his production. The exchangeable value of a thing therefore, as determined by the selling price at a given time or by the average of selling prices for a certain period, is in practice the real regulator of the labour of him who produces for sale. A man who ventures on the production of a new article can only guess whether it will exchange for such a value as will give him a profit: and he is often deceived. If he can produce a thing that is already in demand cheaper than it has been hitherto produced, he has a certainty of a profit, and a larger profit on each single article than before, unless there are competitors in the market. Competition will reduce his rate of profit. Practically, the selling prices of any given time, or the average of such prices for a given period, regulate the operations of producers both as to the quality and the amount of the articles which they produce. The producer has always regard both to the cost of that which he produces and the probable price that he can get for it. The price that he can get cannot determine the cost of his production, nor can the cost of his production determine the price that he can get for it; but he does produce with reference to a certain price which he expects to get. The consumer who buys his commodity never considers the cost of its production. He simply avails himself of the competition of the sellers to get it at the lowest market price: if it is an article of necessity, he must buy so long as he has the means of buying; if it is an article of luxury, he will often do without it, if the amount of the supply does not allow him to have it on his own terms; and he leaves the producers to make the best of their wares.

The difficulty of attaining clear conceptions on all such subjects as price is inseparable from the complicated nature

of the elements which enter into them. The fault of most economical writers consists in the absoluteness of the principles which they lay down, for there is perhaps no principle applicable to the operations of industry which is susceptible of being laid down in absolute unqualified terms. Another obvious fault in some economical writers consists in not analysing the operations of society as they actually are, but in building up their theories almost entirely on certain axioms.

Adam Smith's opinions on Price are contained in his seventh chapter: upon which see the notes in the edition of Smith, published by Knight & Co., 1840: the opinions of a modern school are contained in the article 'Political Economy' in the Edinburgh Supplement to the 'Encyclopædia Britannica.' This article, with some notes upon it by the Rev. J. M'Vickar, has been republished at New York.

PRIMOGENITURE may be defined to be that rule of English law by which a title of dignity or an estate in land comes to a person in respect of his being an eldest male. If a man dies seised of real estate, of which he had the absolute ownership, without having made any disposition of it by his last will, the whole descends to the heir at law, or customary heir; and the heir at law is such by virtue of being the eldest male person of those who are in the same degree of kindred to the person dying, or the representative of such eldest male. [DESCENT.] This is a case in which primogeniture operates. A common example of primogeniture is where a father dies absolutely entitled to real estate, and without disposing of it by will, in which case his eldest son takes it all. If land is settled or entailed on a man and his male issue, the eldest son takes the land by two titles, first as being a male, and next as being the eldest son. The law of primogeniture then only applies in the case of land when the owner dies without having made any disposition of it by will, or where the land is settled on a man and his male issue. It does not apply when the interest in land is a chattel interest, or a term of years, whatever may be its duration; nor does it apply when real estate descends to daughters as coparceners.

At present, those who are the absolute owners of large landed estates seldom die without making a disposition of them by will. In the case of lands which are settled, the person in possession is generally tenant for life, and the inheritance is entailed on the eldest son. When the eldest son is about to marry, it is usual for the father and son to take the usual legal steps (which they can do as soon as the son is of age) to unsettle the estate and obtain the absolute ownership. They then resettle the estate, making the father tenant for life as before; the son, who was before tenant in tail, is also made only a tenant for life; and the inheritance is settled, as before, on the eldest son of the intended marriage. Such eldest son takes the estate, not as heir, and therefore not by the law of primogeniture, but he takes it as the person designated by the deed of settlement.

When a man happens to be tenant in tail, he usually takes the legal steps necessary (which he can do as soon as he is of age) to acquire the absolute ownership of the property, which he then generally settles again by deed or will, or disposes of absolutely.

It is usual in England to settle all large estates, and the object of the settlement is to keep the estates together, and to perpetuate them in one family; but there is a limit to this power of settlement. A man cannot, either by deed or will, settle his land, so as to prevent the absolute ownership of it from being obtained, for a longer period than a life or lives of persons in existence at the time when the settlement takes effect, and twenty-one years more.

Lands in GAVELKIND and BOROUGH ENGLISH are an exception to the general rule of law as to the descent of land.

The law of primogeniture then only operates in the cases already explained; and the system of settlements by which property is kept together in large masses is quite distinct in principle from the law of primogeniture. It is not the result of a law which favours primogeniture, but it is the result of the legal

power which an owner of land has over it, and of the habits of the people. The various reasons which have laid the foundation of this habit, and which perpetuate it, are foreign to the consideration of primogeniture as a rule of law.

In Virginia, after the Revolution, an Act was passed for converting estates tail into fee-simple, and at the same time the law of primogeniture was abolished. These laws have so far been in accordance with or have acted on public opinion, that a parent by his will now generally makes the same disposition of his property as the law makes in case he dies intestate. (Tucker's *Life of Jefferson*, i. 96, &c.)

(*Remarks on Primogeniture and Entails;* Hayes, *Introduction to Conveyancing.*)

PRINCE is the Latin word *princeps*, which was originally used to denote the person who was entitled Princeps Senatûs in the Roman State. He seems to have been originally the custos of the city, and his office was one of importance. Subsequently it became a title of dignity, and the princeps was named by the censors. (Liv., xxvii. 2.) Augustus adopted the title of princeps, as a name that carried no odium with it (Tacitus, *Annal.*, i. 1); and this became henceforward the title of the master of the Roman world. Accordingly the constitutions of the emperors are called Principum (Gaius, i. 2), or Principales. The word princeps is formed similarly to anceps, municeps, &c., and contains the same element as "primus." The word prince, which is derived from princeps, is now applied to persons who have personal pre-eminence, and especially to certain sovereigns of small states who possess sovereign power; and also to others who possess the title without sovereign power or anything that distinguishes them politically from other nobles or persons who enjoy privileges. But the word seems not to have acquired so definite a sense as that which belongs to king, duke, marquis, earl, and some others of the class; but rather to denote persons of high rank in certain states, as in Prussia, Russia, Italy, and other continental states, or persons who are junior members of sovereign houses.

In England it has sometimes been the practice of the heralds to speak of a duke as the high and mighty prince; but the word seems rather to be restricted among us in its application to persons who are of the blood-royal, that is, a son, grandson, or nephew of a king; and it would probably be extended to the remote male posterity of such persons, though no case has arisen in the course of the last three centuries. But in its application it is merely a term of common language, not being conferred, like the title of duke, in any formal manner; and even the precedence which is given to blood-royal has respect to birth, and not to the enjoyment of this word as a title of honour. The eldest son of the king or queen regnant is made Prince of Wales by creation.

PRINCIPAL AND AGENT. [AGENT.]

PRIOR, PRIORY, ecclesiastical terms denoting certain monastic foundations, and the heads of such foundations. They differ in nothing essentially from the terms abbot and abbey. There were in England religious houses, the chiefs of which were called priors, quite as rich and as powerful as many that had a chief who was called the abbot. Thus in Yorkshire there were two houses at no great distance from each other, called Roche and Nostel, the head of the former being an abbot and of the latter a prior, though Nostel was the more ancient and more considerable foundation. Neither has the distinction respect to the order to which the house belonged; for Kirkstall had an abbot, while Fountains had only a prior, and yet both were Cistercian houses. The prior of Saint John of Jerusalem was equal to any abbot; yet in the main we find the greater monastic foundations presided over by monks who were called abbots, as Glastonbury, Malmesbury, Tewkesbury, and others of ante-Norman foundation. In some cases there was both an abbot and a prior, when the abbot was regarded as the superior officer; and in the priories there was often a second officer called the subprior.

PRISONS. [TRANSPORTATION.]

PRIVATE ACT. [PARLIAMENT.]

PRIVATEER, a private ship of war,

fitted out at the cost of an individual for the purpose of carrying on hostilities on his own account, but with the permission of a belligerent state, against the public enemy. It is the practice of most nations to commission vessels of this kind as auxiliaries to the public force. The owners of them are licensed to attack and plunder the enemy, and their enterprise is encouraged by allowing them a large portion of any property which they may capture. It is usual for the country on whose behalf they carry on war to take security for their duly respecting the rights of neutrals and allies, and observing generally the law of nations. In Great Britain persons are empowered to fit out privateers by letters of marque, which are granted by the crown upon application in due form. (45 Geo. III. c. 72; Blackstone, *Commentaries*, i., p. 259; 1 Kent's *Commentaries*, 96.)

PRIVILEGE (*Privilegium*, from the sense of which, however, it has been perverted), a particular beneficial exemption from the general rules of law. The original sense of privilegium is explained in LAW. Privilege is of two kinds; *real*, attaching to place, and *personal*, attaching to persons, as ambassadors, peers, members of parliament, and attorneys.

Formerly many places conferred the privilege of freedom from arrest, even in criminal matters, upon those who entered them; and even in later times many places existed which privileged those within them from arrest in civil suits. Of these the most notorious were White Fryars, the Savoy, the Mint, and other places in their neighbourhood. But by 8 & 9 Wm. III. c. 27, the privileges of all these places were abolished. However, at the present time, no arrest can be made in the king's presence, nor within the verge of the palace of Westminster, nor in any palace where he resides, nor in any place where the king's justices are sitting (3 *Inst.*, 148). Personal privilege, which gives freedom from arrest, is enjoyed by all suitors, counsel, witnesses, or other persons attending any courts of record upon business; or an arbitrator under a rule of Nisi prius. This exemption is to be interpreted liberally, and will not, therefore, be forfeited by taking refreshment after a suit, or by going other than the direct road to or from a court (Com., *Dig.*, tit. 'Privileges'). The privileges of the members of the House of Peers and of the House of Commons are stated under PEERS and PARLIAMENT.

PRIVY COUNCIL (Consilium regis privatum, Concilium secretum et continuum concilium regis). The privy council, or council table, consists of the assembly of the king's privy councillors for matters of state. During the existence of the Star-chamber, the members of the privy council were also members of that court. Their number was antiently about twelve, but is now indefinitely increased. The present usage is, that no members attend the deliberations of the council who are not especially summoned for that purpose. Members of the privy council must be natural-born subjects of England, and are nominated by the king without any patent or grant. After nomination and taking the oath of office, they immediately become privy councillors. Formerly they remained in office only during the life of the king, who chose them subject to removal at his discretion; but by 6 Anne, c. 7, the privy council continues in existence six months after the demise of the crown, unless sooner determined by the successor, and they are to cause the successor to be proclaimed. The privy council of Scotland is now merged in that of England, by 6 Anne, c. 6. The duties of privy councillors, as stated in the oath of office, are to the best of their discretion truly and impartially to advise the king; to keep secret his counsel, to avoid corruption, to strengthen the king's council in all that by them is thought good for the king and his land, to withstand those who attempt the contrary, and to do all that a good councillor ought to do unto his sovereign lord. By the Act of Settlement (12 & 13 Wm. III. c. 2) all matters relating to the government properly cognizable in the privy council are to be transacted there; and all the resolutions taken thereon are to be signed by such of the privy council as advise and consent to them. [CABINET.]

The court of privy council is of great antiquity; and during earlier periods of our history appears not always to have

confined itself to mere matters of state. It had always and still has power to inquire into all offences against the government, and to commit offenders for the purpose of trial in some of the courts of law; but it often assumed the cognizance of questions merely affecting the property and liberties of individuals. This is evident from the complaints and remonstrances that so frequently occur in our history, and ultimately from the declaratory law of the 16 Chas. I. referring to such practices. Probably the very statement of Sir Edward Coke, that the subjects of their deliberation are the "publique good, and the honour, defence, safety, and profit of the realm....private causes, lest they should hinder the publique, they leave to the justices of the king's courts of justice, and meddle not with them," proceeded from his knowledge that such limits had not always been observed, and his jealousy of their invasion. Several other passages in his works seem to show that this was so. These encroachments, in one arbitrary reign, received the sanction of the legislature. By 31 Hen. VIII. c. 8, the king, with the advice of his privy council, was empowered to set forth proclamations under such pains and penalties as seemed to them necessary, which were to be observed as though they were made by Act of Parliament. It is true there was an attempt to limit the effects of this, by a proviso that it was not to be prejudicial to any person's inheritance, offices, liberty, goods, or life. The statute itself, however, was repealed in the first year of the ensuing reign. The king, with the advice of his council, may still publish proclamations, which are said to be binding on the subject; but the proclamations must be consonant to and in execution of the laws of the land. The attempts to enlarge the jurisdiction of the council appear always to have been resisted as illegal; and they were finally checked by the 16 Chas. I. c. 10. That statute recites that of late years "the council-table hath assumed unto itself a power to intermeddle in civil causes, and matters only of private interest between party and party, and have adventured to determine of the estates and liberties of the subject, contrary to the laws of the land, and the rights and privileges of the subject." By the same statute it is declared and enacted that neither his majesty nor his privy council have or ought to have any jurisdiction in such matters, but that they ought to be tried and determined in the ordinary courts of justice, and by the ordinary courts of law.

Subsequently, however, to this statute, in matters arising out of the jurisdiction of the courts of the kingdom, as in colonial and admiralty causes, and also in other matters, where the appeal was to the king himself in council, the privy council continued to have cognizance, even though the questions related merely to the property of individuals. By 2 & 3 Wm. IV. c. 92, the powers of the high court of delegates, both in ecclesiastical and maritime causes, were transferred to the king in council. The decision of these matters, being purely legal, it was found expedient to make some alterations in the court, for the purpose of better adapting it to the discharge of this branch of its duties. Instances had before occurred where the judges had been called in and had given extra-judicial opinions to the privy council; but the practice was inconvenient and unsatisfactory, and all necessity for it is now wholly removed. By the 3 & 4 Wm. IV. c. 41, the jurisdiction of the privy council is further enlarged, and there is added to it a body entitled "the judicial committee of the privy council." This body consists of the keeper of the great seal, the chief justice of the King's Bench and of the Common Pleas, the master of the rolls, the vice-chancellor of England, the chief baron of the Exchequer, the judge of the prerogative court of Canterbury and of the high court of admiralty, the chief judge of the bankruptcy court, and all members of the privy council who have been presidents of it, or have held the office of chancellor or any of the before-named offices. Power is also given to the king by his sign manual to appoint any two other persons who are privy councillors to be members of the committee. By § 2, all appeals or applications in prize suits, and in all other suits or proceedings in the courts of admiralty, or vice-ad-

miralty courts, or any other court in the plantations in America and other his majesty's dominions abroad, which may, by any law, statute, commission, or usage, be made to the high court of admiralty in England, or to the lords commissioners in prize cases, shall be made to his majesty in council; and such appeals shall be made in the same manner and form and within such time wherein such appeals might, if this Act had not been passed, have been made to the said high court of admiralty, or to the lords commissioners in prize cases respectively; and all laws or statutes with respect to any such appeals or applications shall apply to any appeals to be made in pursuance of this act to his majesty in council; and § 3, all appeals or complaints in the nature of appeals whatever which either by virtue of this Act, or of any law, statute, or custom, may be brought before his majesty, or his majesty in council, from or in respect of the determination, sentence, rule, or order of any court, judge or judicial officer, and all such appeals as are pending and unheard, shall from the passing of this Act be referred by his majesty to the said judicial committee of his privy council; and that such appeals, causes, and matters shall be heard by the said judicial committee, and a report or recommendation thereon shall be made to his majesty in council for his decision thereon as heretofore, in the same manner and form as has been heretofore the custom with respect to matters referred by his majesty to the whole of his privy council or a committee thereof, the nature of such report or recommendation being always stated in open court. The judicial committee are authorised to examine witnesses on oath, and to direct issues to be tried by a jury. The judicial committee has the same power of punishing contempts and of compelling appearances, and his majesty in council has the same power of enforcing judgments, decrees, and orders as are exercised by the high court of Chancery or the court of King's Bench. A registrar is attached to the judicial committee.

The privileges of a privy councillor, beyond those of mere honorary precedence, formerly related to the security of his person. If any one struck another a blow in the house or presence of a privy councillor, he was fineable. Conspiracy by the king's menial servants against the life of a privy councillor was felony, though nothing were done upon it. By 9 Anne, c. 16, any unlawful assault by any person on a privy councillor in the execution of his office was felony.

These statutes have, however, been now repealed, by 9 Geo. IV. c. 31, and any offence against a privy councillor stands on the same footing as offences against any other individual. (1 Co. Lit., 110, a, n. 5; 3 *Inst.*, 182; 4 *Inst.*, 52; 1 Blackstone, *Com.*, 222; Hallam's *Constitutional History.*) [DELEGATES, COURT OF.]

PRIZE, property taken from an enemy. The term is generally applied to property taken at sea exclusively. The law of prize is regulated by the law of nations. Sentence of condemnation, that is, sentence that the thing captured is prize, and that consequently the property of its original owner in it is entirely divested, must be pronounced by a court of the capturing power duly constituted according to the law of nations. The prize court of the captor may sit in the territory of an ally, but not in that of a neutral. Questions of prize are by the English law disposed of in the courts of Admiralty. [ADMIRALTY COURTS.]

PRIZE-MONEY. All the Acts relating to army prize-money have been repealed by 2 & 3 Wm. IV. c. 53, which also enacts that all captures made by the army shall be divided according to such general rule of distribution as the king shall direct. Apprizements and sales of prize and capture are made by agents appointed by the commanders and other commissioned officers. A certified list of the persons entitled to share in the capture is transmitted to Chelsea Hospital by the commanding officer. There is a penalty of 500*l.* for altering names. At the end of three months from the receipt of prize-money, the treasurer of Chelsea Hospital is required to notify in the 'London Gazette' and in two London morning papers that distribution will be made at the end of one month.

In this notification the share of an individual in each class must be declared. Shares of prize-money due to a non-commissioned officer or soldier, will be paid only upon personal application, or to his wife, or child, father or mother, brother or sister, or to the regimental agent of his regiment, or to any other regimental agent. If discharged, a certificate must accompany the application, signed by the clergyman and one of the churchwardens or overseers. Personating or falsely assuming the name and character of a person entitled to prize-money with fraudulent intent is punishable with transportation for life, or not less than seven years. By 3 & 4 Vict. c. 65, the Privy Council may refer to the High Court of Admiralty matters concerning booty of war (property captured by land forces). The Prize Court of the Admiralty is the proper court for deciding on matters captured by naval forces. [ADMIRALTY COURTS, p. 29.]

PRIZE COURT. [ADMIRALTY COURTS.]

PROBATE AND LEGACY DUTIES. These duties yield a sum exceeding two millions a-year. The legacy duty is charged on legacies of the value of 20*l.* and upwards out of personal estate or charged upon real estate, and upon every share of residue. Legacy to a husband or wife is exempt from duty. To a child or parent, or any lineal descendant or ancestor of the deceased, the duty is 1*l.* per cent.; to a brother or sister or their descendants, 3*l.* per cent.; to an uncle or aunt or their descendants, 5*l.* per cent.; to a great uncle or great aunt or their descendants, 6*l.* per cent.; to any other relation or any stranger in blood, 10*l.* per cent. The probate duty is payable on the total sum left by the deceased. For sums above 20*l.* and not exceeding 100*l.* the duty is 10*s.* if there is a will; and if there is no will the duty of 10*s.* is chargeable on sums of 20*l.* and not exceeding 50*l.* The duties continue to increase according to a certain scale up to 1,000,000*l.* The following tables show the operation of the legacy and probate duties for nearly half a century; and in Porter's 'Progress of the Nation,' vol. iii. pp. 125-133, will be found some useful and interesting considerations on these duties as indications of the progress of national wealth:—

Duty received from 1797 to 1845 inclusive.	Legacies. £.	Probates, Administrations, and Testamentary Inventories. £.
England . .	36,696,279	29,110,230
Scotland . .	2,199,715	1,521,960
Ireland . .	829,499	1,182,705
	£39,725,493	31,814,896
Duty received in 1845	£.	£.
England . .	1,178,866	963,322
Scotland . .	88,073	66,631
Ireland . .	61,629	65,852
	£1,328,568	1,095,805

Return, showing the Amount of Capital on which the several Rates of Legacy Duty were paid in Great Britain in the Year 1845, and an Abstract of the Total Amount paid under each Rate since 1797:—

1845. Per Cent.	£.	1797-1845. Per Cent.	£.
1*l.* .	24,087,848	1*l.* .	662,775,286
2*l.* 10*s.*	152,493	2*l.* .	20,716,610
3*l.* .	14,599,335	2*l.* 10*s.*	70,683,131
4*l.* .	9,774	3*l.* .	348,364,319
5*l.* .	1,802,196	4*l.* .	12,666,479
6*l.* .	318,359	5*l.* .	50,804,505
8*l.* .	22,778	6*l.* .	17,797,836
10*l.* .	4,606,925	8*l.* .	11,813,294
		10*l.* .	143,798,047
Total .	£45,599,714	Total .	£1,339,419,511

PROCESS VERBAL (*Procès-verbal*) is a term derived from French jurisprudence, in which it signifies a memorandum or instrument drawn up and attested by officers of justice, containing a statement of the circumstances which have taken place upon the execution of a commission, upon an arrest, upon a precognition or preliminary examination of a party accused, or in the course of other legal investigations, and set forth in the order in which they have occurred. The term is now frequently applied to a contemporaneous detailed minute or note of any formal proceeding, though not occurring in the course of any legal inquiry; for instance, a note of the discussions which are taking place during the negotiation of a treaty.

PROCLAMATION. By the constitution of England, the king possesses the prerogative of issuing proclamations; for although this authority is exercised by the lord mayor in the city of London, and by the heads of some other corporations in other cities, for certain limited purposes, it is always founded upon custom or charter, and consequently only exists by delegation from the crown.

The nature and objects of royal proclamations are various. In some instances they are merely a promulgation of matters of state or of acts of the executive government which it is necessary that all persons should know, and upon notice of which, as presumed to be conveyed by a public proclamation, certain duties attach to subjects. Proclamations of the accession of a new king or a demise of the crown, and proclamations for reprisals upon a declaration of war with a foreign state, and for rendering coin current within the realm, are examples of this kind. Another class of proclamations consists of those which declare the intention of the crown to exercise some prerogative or enforce the execution of some law which may have been for a time dormant or suspended, but which a change of circumstances renders it necessary to call into operation. Thus the king might, by proclamation in the time of war, lay an embargo upon shipping, and order the ports to be shut, by virtue of his ancient prerogative of prohibiting any of his subjects from leaving the realm. [NE EXEAT REGNO.] A breach of the duty imposed or declared by a proclamation of this kind would be punishable, either as a contempt, or as a misdemeanor at common law. Another and the most useful class of proclamations issued by the crown consists of formal declarations of existing laws and penalties, and of the intention of government to enforce them, designed as some of the early books term it, *quoad terrorem populi*, and merely as admonitory notice for the prevention of offences. A familiar instance of this kind of declaration is the proclamation against vice and immorality appointed to be read at the opening of all courts of quarter-sessions.

At present the royal prerogative does not authorise the creation of an offence by proclamation which is not a crime by the law of the land; in the language of Sir Edward Coke (3 *Inst.*, 162), "Proclamations have only a binding force when they are grounded upon and enforce the laws of the realm." In early periods of our history after the Norman conquest, the power of the crown in this respect appears to have been much more extensive, and instances of proclamations may be found in Rymer's 'Fœdera,' and elsewhere, which imply an assumption of almost despotic power by the crown. In the reign of Henry VIII. it was enacted by the statute 31 Henry VIII. c. 8, that the king, with the advice of his council, might set forth proclamations under such penalties and pains as to them might seem necessary, which should be observed as if they were made by Act of Parliament; but this statute contained an express declaration that proclamations should not alter the law, statutes, or customs of the realm (Coke's *Reports*, part 12, p. 75), and was repealed about five years afterwards by the stat. 1 Edw. VI. c. 12. A strenuous attempt was made in the reign of James I. to strengthen the crown by increasing the prerogative of making proclamations, which, though encouraged and promoted by the lord chancellor Ellesmere and Bacon, was resisted by Coke, and occasioned great alarm and dissatisfaction among the people. The encroachments which had been made and attempted in this respect are enumerated and complained of in the 'Petition of Grievances' by the Commons, in 1610 (Howell's *State Trials*, vol. ii. p. 524); and in the same year it was expressly resolved by the judges (of whom Sir Edward Coke was one) that the king could not by his proclamation create an offence, which was not an offence before; 'for if so, he might alter the law of the land by his proclamation.' (Coke's *Reports*, part 12, p. 76.)

PROCTOR, an officer of the Ecclesiastical courts, whose business is that of an agent between his clients and the courts to which he is attached. It is a shortened form of the Roman term procurator. He

stands in a similar situation to that of an attorney at common law or a solicitor in chancery. There are about 120 proctors now practising in the several courts of Doctors' Commons, London, which are four in number, the Court of Arches, the Prerogative Court, the Consistory or Consistorial Court of the Bishop of London, and the Admiralty Court.

In commencing a suit in any of these courts, the proctor is appointed by a proxy executed by the client, by which he constitutes him his agent, and promises to confirm all his acts as by law required in such suit. The proctor then proceeds to collect the facts of the case, and to apply to the court in his client's behalf, to draw allegations and interrogatories, and summon witnesses, whose evidence is taken down in private by the examiners, who are proctors appointed for that purpose. This evidence is deposited in the registry of the court in which the suit is brought, and is not allowed to be seen by any party until such time as the court may think fit to order publication. No *vivâ voce* evidence is received in these courts. After the necessary information has been collected and arranged, the proctor prepares his client's case, to be put into the hands of the advocates, to be by them brought before the court, if they deem it advisable.

In the case of wills, or administrations with the will annexed, that is, where the deceased has left a will, but has not appointed any executor, the executors or administrators are sworn to the due execution of the will of the deceased: and they make affidavit as to the amount of property, time of death, and other like matters. The proctor then makes a copy of such will or papers, and places it before the registrar of the court to be compared with the original; the copy, when thus compared, is returned to him with the probate under seal of the court attached. In cases of administration, he delivers in a formal account of the claims of the parties who apply for letters of administration, with an affidavit as to the value of the property and other particulars, and prays the court to decree letters of administration also under seal of the court. These instruments are then delivered to the executors or administrators, and are their authority for distributing the property of the deceased according to his will, or, in the absence of a will, according to law.

It is also the business of the proctor to obtain licences for marriage, on the application of either of the parties about to contract such marriage, and to draw an affidavit in which the party applying for the licence declares that he or she knows of no legal impediment to such marriage. It is the proctor's duty to explain the nature of this affidavit to his client, who is then sworn to the truth of it before one of the advocates, who are appointed surrogates, or deputies of the judge. The affidavit is then lodged in the Faculty Office, or office of the vicar-general, and licence obtained under seal: this licence remains in force for three months.

The proctor in many cases has to attest the acts of his client, and for this purpose he is appointed a notary public, but his power as such extends only to proceedings in his own courts, and not to the general business of a notary. The official title of a proctor is "notary public, and one of the procurators-general of the Arches Court of Canterbury and of the High Court of Admiralty."

The number of the proctors is prevented from increasing very rapidly by the restrictions on taking "clerk apprentices:" only the thirty-four senior proctors, and of them only such as are of five years' standing in such seniority, are allowed to take an articled clerk, and in no case to take a second until the first has served five years, and then only by permission of the court. The term of articleship is seven years, which is legally required on account of the notarial capacity in which they have to act. Notwithstanding these regulations, the number has materially increased. In the time of Charles II. there were only thirty-four procurators-general and ten supernumeraries. The proctors wear a gown as a badge of office in court, and in the Arches a cape trimmed with ermine in addition; and on certain occasions, such as upon admission or attending prayers

on the first day of Term, a wig similar to that of a barrister. They are exempted from serving as jurors or parish officers.

The appeal from these courts is to the Judicial Committee of the Privy Council, where the proctor conducts the case in the same way as in the courts of Doctors' Commons, but is obliged to call to his assistance a barrister, in addition to an ecclesiastical advocate. There is an appeal-court held in Doctors' Commons, but it is only for business preliminary to the cause being heard before the Privy Council.

The courts are held in the common hall of Doctors' Commons, situated in the College, in which are the official residences of the judges and advocates. The proctors have no inn, or regular locality, but are very inconveniently dispersed about the narrow streets near the college.

Attached to courts of the province of York and to the different bishops' courts are similar bodies of proctors, who differ only in trifling circumstances from those here described.

PROCURATOR FISCAL. [ADVOCATE, LORD.]

PROFIT, one of the three parts into which all that is derived from the soil by labour and capital is distributed, the other two parts being wages and rent: from these three sources arise all the revenues of the community. Profit is therefore the surplus which remains to the capitalist after he has been reimbursed for the wages advanced and the capital laid out during the process of production. To obtain this surplus is the only object for which capital is employed.

Profits have a tendency to fall to the same level in all branches of industry; for if the ratio of profit in proportion to the capital employed be greater in one than in another, more capital will be directed to that which affords the highest profit; and the powers of production being increased, the supply is greater, prices fall, and the equilibrium of profit is restored. When the employment of capital is attended with extraordinary risk, profits are nominally high; but after deducting the losses to which it is exposed, the real profits tend to the same level as the ordinary rate. The pleasantness of a particular occupation may induce those who pursue it to be content with a low rate of profit. Unless we reduce profits from their apparent to their real value, there is no truth in the maxim that the rate of profit is uniform in the same country at the same time.

The natural tendency of profits (whether arising from capital employed in agriculture or in manufactures) is to decline as the necessities of the population render it necessary to have recourse to inferior soils. Happily, improvements in machinery and in the art of agriculture, better combinations of labour and capital, and greater freedom of commerce, are calculated to arrest this retrograde movement; and to such sources of relief every highly advanced country must look as a means for sustaining its prosperity; for whatever diminishes the necessity of raising food from the poorer soils, tends to maintain the rate of profit.

Two other causes have great influence upon the rate of profit, namely, wages and taxation. A rise in wages will diminish profits, unless industry becomes more productive; but if production is increased both may rise at the same time, either in the same or in different proportions according to circumstances.

Taxation will diminish profits, unless wages fall or industry become more productive. Taxes on profits, when they fall alike upon all capital engaged in productive industry, are paid by the owners of capital, who have not the power of charging the tax upon consumers. The means of accumulation are diminished when the profits of only certain classes of traders are taxed, and they would betake themselves to other occupations not taxed, unless they could charge the consumers with the tax: the tax therefore falls upon the consumers.

The effect of the competition of capitalists in reducing the rate of profit has not been much discussed by writers on political economy. Mr. M'Culloch says: —"Competition cannot affect the productiveness of industry, and therefore has nothing to do with the average rate of profit." In reply to this assertion it has

been remarked (*Edin. Rev.*, No. 142, p. 443), that although the inferior fertility of newly cultivated soils be the immediate cause of the diminution of the rate of profit, yet it is nothing but the competition of capitalists which drives capital to seek the inferior soil, and induces its owners to be content with a lower rate of profit. The capitalists who had accumulated at the old rate of profit are content with a new investment producing a lower rate, instead of consuming their savings unproductively.

(Ricardo, *Principles of Political Economy and Taxation*, chaps. v. and xiii.; Mill, *Elements of Political Economy*, c. ii. sec. 3; and c. iv. sec. 6; M'Culloch's ed. of the *Wealth of Nations*, note vii.; *The Laws of Wages, Profits, and Rent investigated*, by Professor Tucker, Philadelphia, 1837.)

PROHIBITION, a writ to prohibit a court and parties to a cause then depending before it from further proceeding in the cause.

A writ of prohibition may issue from any of the three superior courts of common law at Westminster, and also from each of the common-law courts of Chester and Lancaster. It is generally stated that a writ of prohibition may issue from the Court of Chancery; but the Court of Chancery acts by injunction addressed only to the parties, and does not interfere with the court.

It may be addressed by any of the three superior courts to any other temporal court; such as the Admiralty Courts, to courts-martial, a court baron, any other inferior court in a city or borough, to the Cinque-Ports courts, the duchy or county palatine courts, the chancery of Chester, the Stannary courts, the Court of Honour of the Earl-Marshal, to the Commissioners of Appeals of Excise, to any court by usurpation without lawful authority, or to a court whose authority has expired. When any one has a citation to a court out of the realm, a prohibition lies to prevent his answering. It seems also that it might issue to the Court of Exchequer and to the Court of Common Pleas; but not to the Court of Chancery, nor is there any instance of a prohibition to the King's Bench. It may be granted by any of the three superior common-law courts to any spiritual court, and by the common-law courts of Chester and Lancaster to the spiritual courts within the county palatine and duchy.

The writ is grantable in all cases where a court entertains matter not within its jurisdiction, or where, though the matter is within its jurisdiction, it attempts to try by rules other than those recognised by the law of England. Matter may be said to be not within the jurisdiction of a court in two senses: 1, when the subject-matter entertained is in its nature not cognizable by the court; 2, where the subject-matter is in its nature cognizable by the court, but lies out of the local district where only that court has jurisdiction; or, in the case of a court whose jurisdiction is general, when the subject-matter lies in a local district exempt from the general jurisdiction of the court or where the subject-matter of the cause relates to persons over whom the court has no jurisdiction. The subject of prohibition comprehends the circumstances under which it is grantable; the person who may obtain it, and the form and incidents of the proceeding; which heads belong to legal treatises.

If parties proceed after a writ of prohibition has been obtained and served, they are liable to an attachment for contempt.

(Comyns's *Digest*; Bacon's *Abridgment*; Viner's *Abridgment*; tit. "Prohibition," 2 *Inst.*, 599; 3 Blackstone, *Com.*, c. 7.)

The power of the common-law courts to issue writs of prohibition, and the mode in which they exercised that power, have often been the subject of great dispute between the common-law judges and the ecclesiastics. The ecclesiastics have several times exhibited many articles of grievance before the parliament and privy council against the common-law judges. The most famous of these are the "Articuli Cleri," exhibited by Archbishop Bancroft, in the name of the whole clergy, in the third year of the reign of James I. They are given at length by Lord Coke (2 *Inst.* 599), with

a full view of the nature of the controversy between the parties, and the unanimous answers of the judges.

A system of law which contains so many rules on Prohibition is an imperfect system. It does not seem inconsistent with the best system of law that a supreme court should have the power in certain cases of prohibiting inferior courts from exercising jurisdiction. The power however is most necessary in a country in which the law has been developed out of many incongruous and conflicting elements, and there is a variety of courts, each of which has a separate jurisdiction, the result of which is that the superior courts by a kind of necessity must sometimes interfere to prevent wrong being done.

PROLOCUTOR. [CONVOCATION.]

PROMISSORY NOTE. [EXCHANGE, BILL OF; MONEY.]

PROPERTY is derived, probably through the French language, from the Latin word Proprietas, which is used by Gaius (ii. 89) as equivalent to ownership (dominium,) and is opposed to possession. [POSSESSIO.] The etymology of the word proprietas (proprius) suggests the notion of a thing being a man's own, which general notion is contained in every definition of property. A foreign writer defines ownership or property to be "the right to deal with a corporeal thing according to a man's pleasure, and to the exclusion of all other persons."

The definition excludes incorporeal things, which however are considered objects of property in our law, and were also considered as objects of property in the Roman law, under the general name of jura or jura in re; they were considered as detached parts of ownership, and so opposed to Dominium. a word which represented the totality of the rights of ownership. (Savigny, *Das Recht des Besitzes*, 5th ed., p. 166.) This definition also describes property as consisting in a right, by which word right is meant "a *legal* power to operate on a thing, by which it is essentially distinguished from the mere possession of the thing, or the physical power to operate upon it. Consequently such a right is not established by the possession of the thing; and it is not lost when the possession of a thing is lost. Such a right can also be enforced by him who possesses the right by an actio in rem against every person who possesses the thing, or disputes his right to it." (Mackeldey, *Lehrbuch des heutigen Röm. Rechts*, ii. p. 1-36.) This definition, which is characterised by more precision than that of Blackstone (ii. 1), may be adopted, with this limitation, that to deal with a corporeal thing according to a man's pleasure, must not be such a dealing as will prevent other people from dealing with their property at their pleasure. The extent of this limitation is very indefinite; but such a limitation must be admitted as necessary. A man may destroy his own property if he likes, but the destruction must not be in such manner as to destroy any other man's property. By property then is here understood that which the positive law of a country recognises as property, and for the protection or recovery of which it gives a remedy by legal forms against every person who invades the property, or has the possession of it.

Austin observes ('An Outline of a Course of Lectures on General Jurisprudence') that "dominion, property, or ownership is a name liable to objection. For, first, it may import that the right in question is a right of unmeasured duration, as well as indicate the indefinite extent of the purposes to which the entitled person may turn the subject. Secondly, it often signifies property, with the meaning wherein property is distinguished from the right of possession. Thirdly, dominion, as taken with one of its significations, is exactly co-extensive with *jus in rem*, and applies to every right that is not *jus in personam*." The first sense of the word property is expounded by determining the quantity and quality of an estate as understood in English law. As to the second, possession is of itself no right, but a bare fact, and its relation to rights in rem is the same as the physical to the legal power to operate on a thing. The doctrine of possession is therefore distinct from and should precede the doctrine of property. The third sense of property has reference

to the legal modes of obtaining the possession of a thing in which a man can prove that he has property and a present right to possess.

A complete view of property, as recognised by any given system of law, would embrace the following heads, which it would be necessary to exhaust, in order that the view should be complete. It would embrace an enumeration of all the kinds or classes of things which are objects of property: the exposition of the greatest amount of power over such things as are objects of property, which a man can legally exercise —and connected with this, the different parts or portions into which the totality of the right of property may be divided or conceived to be divided: the modes in which property is legally transferred from one person to another, that is, acquired and lost: the capacity of particular classes of persons to acquire and transfer property as above understood; or, to take the other view of this division, an enumeration of persons who labour under legal incapacities as to the acquisition and loss of property.

The general division of property in the English law is into Things Real and Things Personal, the incidents to which are in many respects different in the system of English law.

Things Real are comprehended under the terms of Lands, Tenements, and Hereditaments. The word Hereditaments is the most comprehensive of these terms, because it comprehends every thing which may be an object of inheritance, both Things Real, and also some Personal Things, such as heirlooms, which are objects of inheritance.

Hereditaments are divided into Things Corporeal and Incorporeal. A Corporeal Hereditament is land, in the legal sense of the term. An Incorporeal Hereditament is defined by Blackstone to be "a right issuing out of a thing corporate (corporeal), whether real or personal, or concerning or annexed to, or exerciseable within the same." Perhaps the definition is not quite exact, and it would not be easy to make an exact definition. The Things Incorporeal of the English law correspond in their general character to the Res Incorporales of the Roman Law, one distinguishing character of which is that they are incapable of tradition or delivery (Gaius, ii. 28): the Res Corporales of the Roman Law are things which are capable of tradition, whether moveable, as a horse, or immoveable, as a house. The Incorporeal hereditaments enumerated by Blackstone are, Advowsons, Tithes, Commons, Ways, Offices, Dignities, Franchises, Corodies or Pensions, Annuities, and Rents.

The interest which a man can have in any land, tenement, or hereditament, is called an Estate; and this word comprises the greatest amount of power and enjoyment, both as to time and manner, which a man can legally have over and in any of the three things just enumerated, as well as the smallest legal amount of such power and enjoyment: it also comprises, under the notion of time, the determination of the period when his power and enjoyment shall commence, as well as when they shall cease. [ESTATE.]

With reference to an estate, the time during which the right of enjoyment continues is usually expressed by the term Quantity of Estate. The manner in which the enjoyment is to be exercised during this time is often expressed by the term Quality of Estate; thus a man may enjoy an estate solely or in joint-tenancy.

A person may have the estate both as to quantity and quality in the sense above explained, either with or without the right to the beneficial enjoyment. The person who has merely the Estate in quantity and quality has the bare legal Estate. He who has not the right to the Estate in quantity and quality, as above explained, but merely to the enjoyment of such estate, while the other has not, is said to have the equitable estate. The term quality of estate might be used to express this equitable interest; but inasmuch as we want a word to express the manner and mode of enjoying an estate as distinct from the time of enjoyment, and as quality is the word used to express that manner and mode, it must not be used in a different sense.

It has been said that this distinction between legal and beneficial or equitable property is peculiar to the English law. (Lord Mansfield, 1 *T. R.*, 759, n.) But these two kinds of property existed in the Roman law, and the theory of the division of ownership or property into Quiritarian or legal, and bonitarian, beneficial, or equitable, was fully developed. Its origin in the Roman law is not certain; but it is a probable conjecture that its origin so far resembled the origin of the like division in English law, that it was due to the attempt to get rid of the difficulties attending the alienation of property by the old legal forms. "There is," says Gaius (ii. 40), "among other nations (peregrini) only one kind of ownership or property (dominium), so that a man is either owner or not; and it was the same in the old Roman law, for a man was either owner 'ex jure quiritium,' or he was not. But ownership was afterwards divided, so that one man may now be owner of a thing ex jure quiritium, and another may have the same thing in bonis. For if in the case of a res mancipi, I do not transfer it to you by mancipatio, or in jure cessio, but only deliver it, the thing indeed will become yours beneficially (in bonis), but it will remain mine legally (ex jure quiritium), till you have acquired the property by usucapion; for as soon as the time of usucapion is completed, from that time it begins to be yours in full ownership (pleno jure), that is, the thing begins to be yours both in bonis and in jure, just as if it had been transferred by mancipatio or in jure cessio." This passage seems to suggest a conjecture as to the origin of the distinction between legal and equitable property which was of so much importance in Roman law. The distinction between the two kinds of ownership or property was as clearly marked as in our system, though it was not applied to all the purposes to which this divided or double ownership is applied in our system.

A view of the modes in which property is legally transferred from one person to another, and of the legal capacity of persons to transfer and acquire estates in lands and tenements, belongs to legal treatises.

Personal Property is not sufficiently described by the term "moveables," for certain estates in land are personal property, and are comprehended under the term Chattels Real. [CHATTELS.] Terms for years are an example of chattels real; and they pass together with the rest of a man's personal estate to the executor, the universal successor. Chattels Personal are all other personal property, and are said by Blackstone "to be properly and strictly speaking things *moveable*, which may be annexed to or attendant on the person of the owner, and carried about with him from one part of the world to another. Such are animals, household stuff, money, jewels, coin, garments, and everything else that can properly be put in motion, and transferred from place to place." Personal property as thus defined corresponds to the mobilia or res mobiles of the Roman law; but this is a very inadequate description of personal property as recognised by the English law. And herein we first perceive the greater certainty and distinctness of the law relating to real property compared with the law relating to chattels; the things which can be the objects of real property are defineable, as well as the estates that can be had in them; the things that can be the objects of personal property are hardly determinable, and the estates, or more properly the interests, which a man may have in them, are perhaps also less determinate. As examples of objects of personal property, which in no way come within Blackstone's description, we may instance patent-rights and copyrights, which are things incorporeal, though not hereditaments, and are the objects of property in a sense.

A quantity of stock in the public funds is not money, though often talked of as such, but still it is property in a sense; for it is a legal right to a perpetual annuity paid by the State, and it is a thing that can be bought and sold. Even debts due to a testator or intestate are considered as property with respect to probate and letters of administration; still they are not expressed by the term goods and chattels in the letters of administration, but by the term "credits," for as debts

are not the property of a man to whom they are due, until he gets them, so they cannot become property simply because he happens to die.

The system of the English law as to the nature of property is peculiar, and the modes in which it can be acquired and transferred are also in many respects peculiar, especially in the case of Real Estate. The discussion of these matters properly belongs to legal treatises.

Property in Chattels may, like property in Things Real, vary as to quantity and quality of interest, though things personal are not capable of such extended and various modifications, analogous to estates, as things real are. As to quantity, that is, duration, a man may have the use of a personal thing for life, and another may have the absolute property in it after his death. As to quality, persons may own a thing personal as joint tenants and as tenants in common. There is an equitable property in chattels as well as in things real. Money, for instance, is often paid to a trustee, in order that he may give the interest of it to one person for life, and after his death pay the money to another. The trustee, so long as he holds the money, has the legal property in the money, and in the thing in which the money is invested. A legatee has only an equitable interest, even in a specific legacy, after his testator's will is proved, until the executor gives the thing to him, or in some clear way admits his right to it.

Property in a thing must not be confounded with a faculty or power to dispose of the thing in certain ways. A man may have a power to do a certain act with reference to property, without having any property in the thing; or he may have a property in the thing of a limited quantity, and also a power to dispose of the thing in a certain way. Thus a tenant for life, who has only a limited property in land, may have a power given to him to make leases, subject to certain conditions, of the property of which he is tenant for life.

The property which is called copyright or patent is not strictly property. It consists in a power to do certain acts, as to produce and sell a certain work or print or machine; and the power or faculty is made effective by the duty imposed on everybody else of abstaining from making and selling such things. The things that are produced by virtue of such a power are objects of property, but the copyright or patent right is merely a power or faculty which is given exclusively to a determinate person or persons for a determinate time.

The notion of property is universal, though the particular rules as to property vary in different countries. Society rests on two things chiefly, marriage and the notion of property. The notion of marriage varies in different countries, but there is perhaps no set of people among whom it does not exist in some form. It is the foundation of the notion of a family, an essential element of a State. In fact the notion of marriage implies a species of property, which consists in the exclusive dominion which a man thereby obtains over a woman's person, and over the children which are the fruit of their union. A community of women is a thing as impossible as a community of property, to which the mass of mankind have an invincible repugnance founded on the natural desire of man to appropriate things to his own use. Fixed rules then for the acquisition and maintenance of property are essential to the existence of society and of government: without such rules there would be anarchy. Those who are suffering from abject poverty, and those who wish to enjoy without labour, may not recognise the necessity of these fixed rules: they have often a vague notion that they would gain something by the destruction of all existing appropriations of the wealth of society. But all or nearly all who have any property cannot fail to see that they would certainly lose something by such a change and might gain nothing. Those who see still more clearly into the nature of human society, know that there can be no increase of the national wealth, of which all industrious people receive a share, if those who labour are not secured in the enjoyment of that which they obtain by their labour. The enormous disparities which exist in most countries between the wealth of those

who have more than they can use and the pittance of the great mass who live by their daily toil, often make even reflecting people for a moment imagine that things might be better arranged. But careful consideration finally establishes a general conviction that hard and stern as the laws are which punish all infringement of the rights of property, they are absolutely essential to the existence and well-being of society. The degree of the penalties and punishments which are inflicted on those who break the rules which guard each man's property, may often be excessive, and property may be better maintained by moderate than by excessive punishment. But all experience and all sound reason combine to prove that the maintenance of the most unbounded wealth that an individual can acquire is as much the interest of every member of society as the maintenance to the poorest man of his daily earnings. No limits can consistently with the general interest be placed on a man's power to acquire property by the employment of his capital, his industry, and his skill. Some limits may be properly put, but it is very difficult to say what they should be, on his power of giving that which he has acquired, and on his power of making dispositions of it which shall extend beyond his own life. [PRIMOGENITURE.]

PROPERTY TAX. [TAX.]

PROROGATION. [PARLIAMENT.]

PROSTITUTION. The history of prostitution would make a curious chapter in the history of society. It appears that in all countries and in all ages there have been women who have prostituted their bodies for hire. The practice has been viewed in very different lights in different countries, but probably in all countries it has been attended with a certain degree of infamy.

As marriage and the formation of a family are the foundation of all society, anything which checks marriage or encourages promiscuous intercourse, must be considered as opposed to the general interest. But prostitution in some form or degree will probably always exist: and the object of good government should be to make such regulations, if any, as may reduce it to the least amount. There is a difference between concubinage, or the regular cohabitation of unmarried persons, and that promiscuous intercourse which is fornication. Concubinage may externally appear a marriage, and the evil to society from bad example or disorderly conduct may be entirely absent, though there are reasons enough why it may often offend against good order and decency. The main disadvantage of concubinage in a political view is that the woman is deprived of all those rights to which marriage entitles her, and the children are exposed to neglect. It is, however, a thing which is best left to the control of positive morality. If the positive morality of any given society discountenances it, that is a sufficient check: if the positive morality looks on it as a matter of indifference, legislative enactments will be ineffectual.

The same principles do not apply to prostitution. The laws of all well regulated societies should interfere so far at least as to prevent open indecency and check any disturbance which may be caused in houses to which persons resort for fornication. But here also the positive morality of society will be the strongest check, when the positive morality of the mass is opposed to the irregular connection of the sexes. The practice of licensing prostitutes and subjecting them immediately to the control of the police is at least a matter of doubtful policy. Where it has long existed, there may be reasons for continuing this system; but there are weighty reasons against introducing it into any society where it has not been long established.

The most efficient check to prostitution will be the improvement of the early education of females of the poorer classes, from among whom the great mass of prostitutes come. The solicitation of chastity proceeds from the male, and the temptation is money, which gives a woman the hope of living without labour and of indulging in dress and other things which her station in life does not allow her. The immediate inducements which lead women to surrender their chastity are no doubt as numerous and various as their condition and dispositions. But the temptation of money operating upon po-

verty and on the ignorance and inexperience of young women is certainly the most powerful of the causes of seduction. Those who would direct their efforts towards diminishing an evil which can never be entirely removed will succeed best by attempting to remove the main causes of it; by supporting every measure which will give to the labouring classes better wages, and secure to them a better and more practical education than they now receive.

As the solicitation of a woman's chastity proceeds from the male, whose passions are generally much stronger, seduction and its usual consequence, prostitution, would be most effectually checked by operating upon the propensities of the male. But it is not easy to suggest any efficient mode of doing this. All good education will contribute to this end by forming men to habits of greater self-control, and accustoming them to view the consequences to the whole of society as well as to themselves of every act of their lives.

The English law has few regulations on this subject, and it is very doubtful if any good would be effected by additional legislation. Brothels, or bawdy-houses, which is the name of houses kept for the resort of men and women, are common nuisances; and persons who keep such houses are punishable by fine and imprisonment. Fornication itself is an illegal act; and it is also punishable in the spiritual courts: but these courts perhaps seldom take cognizance of fornication now, except in the case of clergymen of the established church. Indeed, the practice of punishing fornication as such, either in courts of common law or the spiritual courts, is now fallen into disuse: the indecency or disorderly conduct with which it may be accompanied is punished. The positive morality of society is now the chief check upon fornication, and a check as efficient as any legislative provision probably would be. Some recent attempts to legislate further on this subject only show the ignorance of those who think that because a law is made it will for that reason be efficient.

PROTEST. [PARLIAMENT; LORDS, HOUSE OF; PEERS OF THE REALM.]

PROTEST. [EXCHANGE, BILL OF.]

PROTESTANT, a general term comprehending all those who profess Christianity, and are not in the communion of the Church of Rome. There is a great variety of opinion among the persons thus separated, in points of faith, church order, and discipline, but this term comprehends them all.

The term originated in Germany. At the diet at Spire, in 1526, decrees had been passed which were so far favourable to the progress of the Reformation that they forbade any peculiar measures against it. The consequence was that the spirit of reformation gained strength, and spread itself more extensively in Germany. Then arose also commotions which were attributed to the reformed and to the spirit kindled by them. Both the pope and the emperor looked with increasing alarm on the aspect of affairs; and at another diet, held at the same place in 1529, the emperor directed an imperial brief to the persons assembled, to the effect that he had forbidden all innovation, and proscribed the innovators in matters of religion, who had notwithstanding increased since the decrees of 1526, but that now, by virtue of the full powers inherent in him, he annulled those decrees as contrary to his intentions. The peremptory tone of these letters alarmed the persons who were present at the diet; and particularly the elector of Saxony is reported to have said to his son that no former emperor had used such language, and that he ought to be informed that their rights were more ancient than the elevation of his family.

This strong measure of the emperor had also the effect of uniting, at least on this point, the two great sections of the German reformers, the Lutherans and the Sacramentarians, of whom Zuinglius was the head. However, the party opposed to the Reformation was the stronger, and the emperor's brief received the sanction of the diet. Upon this the reformers declared that this was not a business of policy or temporal interests, with respect to which they were ready to submit to the will of the majority, but it affected the interests of

conscience and futurity. On this and other grounds they founded a *protest*, which was delivered in on the 13th day of April, but refused by the rest of the diet. A second protest, larger than the former, was presented on the succeeding day. The princes and the cities who favoured the Reformation joined in it, and thenceforth it became usual to call the reformers *Protestants*.

It is often found that a particular occasion leads to the construction of a name for a religious party, which becomes extended, as in this instance, to parties who have no immediate connection with the particular incident, or interest in the question with which it is connected. The term Protestant in fact seems to have as much to do with the constitution of the Germanic confederacy as with the principles of the Reformation; and certainly neither England nor Scotland had any thing to do with the proceedings of the emperor or with the diet of Spire. The term Reformed Church might seem to designate the church of England or the church of Scotland more appropriately than the Protestant church.

PROVINCIAL COURTS. [ECCLESIASTICAL COURTS, p. 802.]

PROVOST, a term having its origin apparently in the Latin *præpositus*, which denotes the chief of any society, body, or community. In France the corresponding word *prévôt* approaches nearer the original form. In that country it is applied to the persons who discharge the functions of many different offices, but in England it is rarely used: we believe the only instances are those of the heads of certain colleges, as Eton, King's College (Cambridge), &c. But in Scotland it is used to designate the chief officer in cities, as the provost of Edinburgh or of Glasgow, where in England the same officer is called the mayor.

PROVOST-MARSHAL, a term adopted from the French, who call an officer with similar functions, the prévôt des maréchaux de France, or at least did so before the Revolution. The English provost-marshal is attached to the army, his duty being to attend to offences committed against military discipline, to seize and secure deserters and other criminals, to restrain the soldiery from pilfering and rapine, to take measures for bringing offenders to punishment, and to see to the execution of the sentences passed upon them.

PROXY. [LORDS, HOUSE OF; PARLIAMENT; PEERS OF THE REALM.]

PUBLIC HEALTH. [TOWNS, HEALTH OF.]

PUBLIC PROSECUTOR. [ADVOCATE, LORD.]

PUFFERS. [AUCTION.]

PUNISHMENT. The verb *to punish* (whence the noun substantive *punishment*) is formed from the French *punir*, according to the same analogy as *furnish* is formed from *fournir*, *tarnish* from *ternir*, *finish* from *finir*, &c. The French *punir* is derived from the Latin *punire*, anciently *pœnire*, which is connected with *pœna* and the Greek *poinè* (ποινή). Poinè signified a pecuniary satisfaction for an offence, similar to the *wergeld* of the German codes: *pœna* had doubtless originally a similar sense; but in the Latin classical writers its meaning is equivalent to that of our word *punishment*.

Punishment may be inflicted on men by a supernatural being or by men; and it may be inflicted on them either in the present life, or in the existence which commences after death. Punishment may likewise be inflicted by men on the more intelligent and useful species of animals, such as horses and dogs. In the following remarks, we confine ourselves to punishment inflicted by man on man.

The original idea of punishment was, pain inflicted on or endured by a person as a satisfaction or atonement by him for some offence which he had committed. (Grimm, *Deutsche Rechtsalterthümer*, p. 646.) According to this conception of punishment, it appeared to be just that a person should suffer the same amount of pain which he had inflicted on others by his offence; and hence the origin of the retaliatory principle of punishment, or the *lex talionis*. This principle is of great antiquity, and is probably the earliest idea which all nations have formed concerning the nature of punishment. It occurs among the early Greeks, and was attributed by them to their

mythical prince and judge of Hades, Rhadamanthys. They embodied it in the following proverbial verse:—

εἴ κε πάθοι τὰ κ' ἔρεξε, δίκη κ' ἰθεῖα γένοιτο.
(*Aristot.*, *Eth. Nic.*, *v.* 8.)

The *talio* was also recognized in the Twelve Tables of Rome (*Inst.*, iv. 4, § 7), and upon it was founded the well-known provision of the Mosaic law, "an eye for an eye, and a tooth for a tooth:" a maxim which is condemned by the Christian morality. (*Matth.*, v. 38-40; and Michaelis, *Commentaries on the Laws of Moses*, vol. iii. art. 240-2).

The infliction of pain for the purpose of exacting a satisfaction for an offence committed is *vengeance*, and punishment inflicted for this purpose is *vindictive*.

By degrees it was perceived that the infliction of pain for a vindictive purpose is not consistent with justice and utility, or with the spirit of the Christian ethics; and that the proper end of punishment is not to avenge past, but to prevent future offences. (Puffendorf's *Droit de Nature et des Gens*, viii. 3, § 8-13; Blackstone's *Commentaries*, vol. iv. p. 11.)

This end can only be attained by inflicting pain on persons who have committed the offences; and as this effect is also produced by vindictive punishment, vindictive punishment incidentally tends to deter from the commission of offences. Hence Lord Bacon justly calls revenge a sort of wild justice.

But inasmuch as the proper end of punishment is to deter from the commission of offences, punishment inflicted on the vindictive principle often fails to produce the desired purpose, and moreover often involves the infliction of an unnecessary amount of pain. All punishment is an evil, though a necessary one. The pain produced by the offence is one evil; the pain produced by the punishment is an additional evil; though the latter is necessary, in order to prevent the recurrence of the offence. Consequently a penal system ought to aim at economizing pain, by diffusing the largest amount of salutary terror, and thereby deterring as much as possible from crimes, at the smallest expense of punishments actually inflicted; or (as the idea is concisely expressed by Cicero), "ut metus ad omnes, pœna ad paucos, perveniret." (*Pro Cluentio*, c. 46.)

It follows from what has been said, that it is essential to a punishment to be *painful*. Accordingly, all the known punishments have involved the infliction of pain by different means, as death, mutilation of the body, flogging or beating, privation of bodily liberty by confinement of various sorts, banishment, forced labour, privation of civil rights, pecuniary fine. The punishment of death is called *capital* punishment: other punishments are sometimes known by the name of *secondary* punishments. Moreover, the pain ought to be sufficiently great to deter persons from committing the offence, and not greater than is necessary for this purpose.

A punishment ought further to be, as far as the necessary defects of police and judicial procedure, will permit, *certain*; and also, as far as the differences of human nature and circumstances will permit, *equal*.

If a punishment be painful, and the pain be of the proper amount, and if it be likewise tolerably equal and certain, it will be a good punishment.

The qualities just enumerated are those which it is most important that a punishment should possess. But it is sometimes thought desirable that a punishment should possess other qualities than those which we have enumerated.

1. Since the time when it has been generally understood that punishment ought not to be inflicted on a vindictive principle, the deterring principle of punishment (which necessarily involves an infliction of pain) has been sometimes overlooked, and it has been thought that the end of punishment is the reformation of the person punished. This view of the nature of punishment is erroneous in excluding the exemplary character of punishment, and thus limiting its effects to the persons who have committed the offence, instead of comprehending the much larger number of persons who may commit it. The reformation of convicts who are suffering their punishment is an object which ought to enter into a good penal system; but it is of subordinate

importance as compared with the effect of the punishment in deterring unconvicted persons from committing similar offences.

2. It is likewise sometimes thought that punishment is inflicted for the purpose of getting rid of offenders, or of rendering them physically incapable of repeating their offence. Death has often been inflicted for this purpose; and bodily disablements of various sorts have been inflicted for the same end; transportation has likewise been recommended on the ground of its getting rid of convicts. This view of punishment errs in the same manner as that just examined; inasmuch as it is confined to the persons who have actually committed offences. If all offenders were removed to a place of reward, they would be got rid off, but not punished. The principle of getting rid, or confinement, for the purpose of protecting society against the known dangerous tendencies of a person, is properly applicable in the case of insane persons.

A detailed account of the punishments which have been used in different nations may be found in different works on antiquities and law books. See, for the Greeks, Wachsmuth's *Greek Antiquities*, vol. ii., part 1, p. 181: Hermann's *Greek Antiquities*, § 139; for the Romans,—Haubold's *Lineamenta*, § 147: for the ancient Germans and for Europe generally in the middle ages,—Grimm's *Deutsche Rechtsalterthümer*, b. v., ch. 3: for modern France, *Le Code Pénal*, liv. 1: and for England, Blackstone's *Commentaries*, vol. iv.

The subject of *Secondary Punishments* (the principal of which are in this country transportation and imprisonment) is treated under TRANSPORTATION. We will here make a few remarks on the subject of *Capital Punishments*.

An idle question is sometimes raised as to the right of a government to inflict death as a punishment for crimes, or, as it is also stated, as to the lawfulness of capital punishment. That a government has the power of inflicting capital punishment cannot be doubted; and in order to determine whether that power is rightfully exercised, it is necessary to consider whether its infliction is, on the whole, beneficial to the community. The following considerations may serve to determine this question respecting any given class of crimes. Death is unquestionably the most formidable of all punishments; the common sense of mankind and the experience of all ages and countries bear evidence to this remark. Moreover, capital punishment effectually gets rid of the convict. It may be added, as subordinate considerations, that death is the cheapest of all punishments, and that it effectually solves all the difficult practical questions which arise as to the disposal and treatment of convicted criminals. On the other hand, capital punishment, from its severity and consequent formidableness, is likely to become unpopular; and hence, from the unwillingness of judges and juries to convict for capital offences, and of governments to carry capital sentences into effect, uncertain. Whenever the infliction of capital punishments becomes uncertain, their efficacy ceases, and they ought to be mitigated. An uncertain punishment is not feared, and consequently the pain caused by its actual infliction is wasted. Capital punishments ought therefore to be denounced only for crimes which would not be effectually prevented by a secondary punishment, and for which they are actually inflicted with as much constancy as the necessary defects of a judicial procedure will allow.

The writings on the subject of punishment, and particularly of capital punishment, are numerous. Sound opinions on the nature and end of punishment are contained in the works of Grotius and Puffendorf; but Beccaria's well-known treatise first applied an enlightened spirit of criticism to the barbarous penal system of the continental states, but it cannot be read with much profit at the present time. The best systematic work on the subject is Bentham's *Théorie des Peines*, edited by Dumont. Some valuable remarks on the subject of punishment may likewise be found in the recent writings of Archbishop Whately and others respecting transportation.

PURCHASE, which is corrupted from the Latin word Perquisitio, is defined by Littleton (i. 12) to be "the possession of lands or tenements that a man hath by his deed or agreement, unto which possession he cometh not by title of descent from any of his ancestors, or of his cousins (consanguinei), but by his own deed." Purchase as thus defined comprehends all the modes of acquiring property in land by deed or agreement, and not by descent: but it is not a complete description of purchase, as now understood, for it omits the mode of acquisition by will or testament, which however, when Littleton wrote, was of comparatively small importance, as the power of devising lands did not then exist, except by the custom of particular places. Blackstone makes the following enumeration of the modes of purchase—Escheat, Occupancy, Prescription, Forfeiture, and Alienation. As to escheat, there is some difficulty in the classification, as the title appears to be partly by descent and partly by purchase; and alienation is here used in a larger sense than that which this term has in the Roman law, in which it does not comprehend acquisition by testament. Generally then, purchase is any mode of acquiring lands or tenements, except by Descent. [DESCENT.]

PURSER. [NAVY.]

PURVEYANCE (*purveyance*, a providing), a prerogative formerly enjoyed by the King of England, of purchasing provisions and other necessaries for the use of the royal household, and of employing horses and carriages in his service in preference to all other persons, and without the consent of the owners. The persons who acted for the king in these matters were called purveyors. A privilege of the same nature was also exercised by many of the great lords. The parties whose property was thus seized were entitled to a recompense; but what they received was inadequate, and many abuses were committed under the pretext of purveyance. About forty statutes were passed upon the subject, many of them, like all the important early statutes, being a re-enactment of those preceding. Some of the most strict occur in the 36th year of Edward III. The parliament of that year, which is said to have been held 'for the honour and pleasure of God, and the amendment of the outrageous grievances and oppressions done to the people, and the relief of their estate,' after a general confirmation of former statutes, immediately proceeds to enact five statutes on the subject of purveyance. These statutes confine the exercise of it to the king and queen, and provided that for the future 'the heinous name of purveyor shall be changed into that of buyer:' they forbid the use of force or menaces, and direct that where purveyors cannot agree upon the price, an appraisement shall be made, &c. &c. The provisions of these statutes are very full, but they appear to have wholly failed in their operation, and other statutes were passed without effect. Several of the charges against Wolsey were the exercise of purveyance on his own behalf. (4 *Inst.* 93.) In the time of Elizabeth, two attempts were made in the same year by the Commons to regulate the abuses of purveyance. The queen was extremely indignant at this, and desired the Commons not to interfere with her prerogative. During the first parliament of James I., Bacon, on presenting a petition to the king, delivered his famous speech against purveyors, which forms a sort of compendium of the heavy charges made against them. Several negotiations took place in that reign for the purchase of the prerogative of purveyance, but nothing was done. Under the Commonwealth it fell into disuse. Purveyance was not formally abolished till after the Restoration. By the 12 Ch. II., c. 24, this branch of the prerogative was surrendered by the king, who received in lieu of it a certain amount payable on exciseable liquors. Probably in the earlier periods of our history the existence of purveyance was almost necessary for the support of the royal household, especially during the progresses which were then so frequent. This seems almost a necessary inference from its continuance in spite of so many attempts to suppress it. Even after its final abolition by the statute Charles II. several temporary statutes were passed,

and in that and the succeeding reign, for its partial revival on the occasion of royal progresses. On behalf of the navy and ordnance, a statute to that effect occurs as late as 11 and 12 Will. 3. (Camden, 388; Bacon's *Works*, vol. vi. p. 3, Montagu's edit.; Hume's *Hist.*; 1 Bl. *Com.*, 287; 3 *Inst.*, 82; 4 *Inst.*, 273.)

Q.

QUALIFICATION. [GAME LAWS.]

QUALITY OF ESTATES. [PROPERTY.]

QUANTITY OF ESTATES. [PROPERTY.]

QUARANTINE. Quarantine regulations are regulations, chiefly of a restrictive nature, for the purpose of preventing the communication from one country to another of contagious diseases, by means of men, animals, goods, or letters. The term *quarantine* originally signified a period of forty days during which a person was subject to the regulations in question. The period of forty days during which a widow entitled to dower can remain in her husband's mansion-house after his death is also called, in our law, the widow's quarantine. (Blackstone's *Commentaries*, vol. ii. p. 135.)

Quarantine regulations consist in the interruption of intercourse with the country in which a contagious disease is supposed to prevail, and in the employment of certain precautionary measures respecting men, animals, goods, and letters coming from or otherwise communicating with it. Men and animals are subjected to a probationary confinement, and goods and letters to a process of depuration, in order to ascertain that the contagious poison is not latent in the former; and to expel it, if it be present, in the latter. Quarantine regulations respecting *men* and *animals* are therefore founded on the assumption that the contagious poison, after having been taken into the constitution of a man or an animal, may remain dormant in it for a certain time, and that a seclusion of a certain duration is necessary in order to allow the disease time to show itself, or to afford a certainty that the disease is not latent. Quarantine regulations respecting *goods* and *letters* are founded on the assumption that the contagious poison may be contained in goods and letters, and transmitted from them so as to communicate the disease to men.

The country from which the introduction of a contagious disease is apprehended, may either be conterminous with the country which establishes the quarantine regulations, or may be divided from it by the sea. Accordingly quarantine lines may either be drawn round a coast, as is the case in France, Italy, and Greece, with respect to the Levant, or they may be drawn along a land frontier, as on the frontier between Austria and Servia and Wallachia.

The contagious diseases which quarantine regulations are intended to guard against are plague and yellow-fever, and latterly cholera.

The principal disease, with reference to quarantine regulations, is the *plague of the Levant;* and in practice quarantine regulations are of little importance except with respect to the intercourse by land and sea with Turkey, Asia Minor, and Egypt, and some other of the Mohammedan countries bordering on the Mediterranean.

The disease styled plague, although formerly prevalent over the whole of Europe, is now nearly confined to the Levant; but its symptoms, morbid changes, history, and mode of propagation, bear so close a resemblance to those of the malignant typhus of this country, that it is difficult to regard them otherwise than as different types of the same disease. The plague of the Levant appears likewise to be generated by the same causes which generate typhus in this country, namely, filthy, crowded and ill-ventilated dwellings, want of personal cleanliness, defective drainage, and insufficient or unwholesome food. We believe it to be certain that, when the disease has been thus generated, it may, particularly under the influence of any of the causes which originally produced it, be communicated from one person to another. It seems likewise that its communication from one

person to another is promoted not only by filth, want of ventilation, and the other usual accompaniments of squalid poverty, but also by certain atmospheric causes, such as a certain state of heat, moisture, &c., respecting which we are as yet imperfectly informed. The plague therefore is both epidemic and contagious; that is to say, it may either be generated by local causes, which simultaneously affect a large number of the inhabitants of a country, or it may be communicated directly from one person to another. Where a disease is both epidemic and contagious, it is difficult to determine what proportion of the cases of it are due to local causes and what proportion to contagion. The analogy of typhus in this country would lead us to believe that the number of cases of plague in the plague countries produced by contagion is small as compared with the number produced by local causes. The invisible nature of the ordinary causes of plague and other epidemic diseases, and the simultaneous seizure of many persons in the same district, the same street, or the same house, have naturally led to the belief that the disease is in every case communicated from one person to another; according to the fallacy ingeniously exposed by Dr. Radcliffe, who, on being asked his opinion respecting the contagiousness of epidemic diseases, answered: "If you and I are exposed to the rain, we shall both be wet; but it does not follow that we shall wet one another."

This view of the ordinary causes of plague is likewise confirmed by the undoubted fact that the poor are the chief sufferers by it, and that it prevails most in the filthiest and worst quarters of towns.

From the fact of the plague prevailing principally among the poor, and rarely attacking the rich, it may be inferred either that the plague is produced exclusively by the filth, crowding, and bad food to which the poor are subject; or that if it be contagious, the contagion does not in general take effect upon the inhabitants of spacious and well ventilated houses, who are clean in their persons, orderly in their habits, and have a sufficient supply of wholesome food. We see that diseases which appear to be contagious under nearly all circumstances, prevail equally among the rich and poor; and that none of the physical advantages possessed by the latter afford any security against it. Thus, before the introduction of vaccination, small-pox was equally destructive to persons of all ranks in society; and the contagious diseases which attack children, as measles and hooping-cough, make no distinction between the children of the rich and the poor.

There seems to us to be no reasonable doubt that the plague is contagious—in other words, that it can be communicated directly from one person to another—provided there be circumstances favourable to its transmission. A quarantine for persons may therefore be expedient for countries where the spread of the plague, supposing it to be introduced, is not improbable. The duration of this quarantine ought to depend upon the time during which the disease may be latent in a person who has taken it by contagion or otherwise.

Since the plague is a peculiarly malignant and destructive fever, and runs its course with a rapidity far greater than typhus, there seems a fair ground for concluding that its poison would not be long latent in the human body. The answers to the protomedico of Malta respecting the plague in Malta of 1813, state that "the periods at which the disease made its appearance in different individuals after communication were various. It was generally from the third to the sixth day; sometimes longer, even to the fourteenth day, but not latter." (Dr. Maclean, *On Epidemic and Pestilential Diseases*, vol. ii. p. 29.) M. Ségur Dupeyron, the secretary of the Council of Health in France, states, in in his Report on Quarantine to the Minister of Commerce (May, 1834), that "the physicians who have made a close study of the plague are pretty generally of opinion that its poison cannot be latent in the human body more than fifteen days; and the cases of plague introduced into the lazarettoes confirm this opinion" (p. 48). We believe that the cases of plague which have of late years occurred

in the lazarettoes of Valletta, Marseille, and Leghorn have broken out either at sea or shortly after the ship's arrival. When the line of French steamers was first established, in 1837, between Marseille and the Levant, it was arranged that the steamers coming from the Levant should perform their quarantine at Marseille. But in consequence of several cases of plague having broken out on board the steamers before they could reach Marseille, the French government decided that they should perform their quarantine at the nearest practicable station, namely Malta.

It is commonly assumed that actual or nearly actual contact is necessary in order to communicate the plague. "All measures against the plague (says M. de Ségur Dupeyron) are founded on the opinion that, except within a very small distance from the body, contact alone can give the disease. Consequently goods taken from ships with different bills of health are often placed in the same warehouse; and physicians who have visited plague-patients, without having touched them, are not put in quarantine, and are permitted to go about immediately after their visit" (p. 76). We believe the idea that actual contact is necessary for the communication of the plague to be utterly erroneous; and we entertain no doubt that under circumstances favourable to its communication, such as filth, crowding, and want of ventilation, the poison of the plague might be introduced into the human body by inspiration through the lungs. We account for the escape of the physicians, guardians, and others, who come within a short distance of the plague-patients in lazarettoes, by the supposition that with the isolation, cleanliness, and good ventilation of a well-managed lazaretto, the contagion of the plague is exceedingly feeble.

With respect to the quarantine of animals, it may be remarked that, according to the belief commonly received in the Mediterranean, all living animals are capable of communicating the plague. Accordingly horses, asses, cattle, and sheep are placed in quarantine upon their importation. There is, we believe, an idea among the Franks resident in the plague countries, that the horse cannot communicate the poison of the plague, but that it is frequently communicated by other animals, especially by cats. (See Maclean, vol. i. p. 202.) We suspect that there is no foundation for the notion that plague can be communicated by means of animals.

Goods carried in ships or by land are subject to quarantine, according as they belong to the class of susceptible or nonsusceptible goods. Goods which are supposed to be capable of containing and transmitting the poison of the plague are called *susceptible*. Goods which are supposed to be incapable of containing and transmitting the poison of the plague are called *nonsusceptible*. All animal substances, such as wool, silk, and leather, and many vegetable substances, such as cotton, linen, and paper, are deemed susceptible. On the other hand, wood, metals, and fruits are deemed nonsusceptible. In Venice an intermediate class, subject to a half quarantine, is introduced between susceptible and nonsusceptible goods (Ségur Dupeyron, p. 70); but this classification appears to be peculiar to the Austrian dominions. All susceptible goods are unladen in the lazaretto, and are there exposed to the air, in order to undergo a process of depuration.

The grounds of the received distinction between susceptible and nonsusceptible articles must, we conceive, be altogether fanciful; since we cannot discover any evidence that the plague has ever been communicated by merchandise. Whenever the plague has been introduced into the lazarettoes of the Mediterranean, it has always been introduced by passengers or their clothes (Ségur Dupeyron, pp. 45-48). It may be added, that persons employed in the process of depurating susceptible goods have never been known to catch the plague, which could scarcely have failed to be sometimes the case, if the poison of the plague could be transmitted through goods. (See answer 28 of the Maltese Protomedico, in Maclean, vol. ii. p. 31.) It seems to be likewise supposed that some substances are not only nonsusceptible, but

can even nullify the poison of the plague in susceptible articles. "At Trieste (says M. de Ségur Dupeyron), the juice of dried grapes is considered as a purifier; and consequently currants in susceptible wrappers are allowed to pass without the wrappers being subjected to any quarantine" (p. 72).

There appears, however, to be conclusive evidence that the clothes and bedding of plague-patients have transmitted the plague (Dupeyron, p. 32-71). We believe the danger of its transmission in this manner to be equal to the danger of its transmission by passengers.

We are not aware of any well authenticated example of the transmission of the plague by means of letters. Nevertheless, as paper is considered susceptible, letters coming from and passing through the plague countries, are opened and fumigated at the lazarettoes—a process which is often productive of mistakes, delays, and other inconveniencies.

Every ship is furnished by the consul or other sanitary authority at the last port where it touched, with an instrument, styled a bill of health, declaring the state of health in that country. If the ship brings a clean bill of health, the passengers and goods are not subject to any quarantine. If she brings a foul bill, they are subject to quarantines of different durations, according as the plague is known or only suspected to have existed in the country at the ship's departure. On account of the prevalence of plague in the countries upon the Levant, they are considered as permanently in a state of suspicion, and no ship sailing from any of them is considered to bring a clean bill. The periods or quarantine vary from two or three to forty days; the usual periods are from ten to twenty days.

The building in which passengers usually perform their quarantine, and in which goods are depurated, is called a lazaretto. The most spacious and best appointed lazarettoes in the Mediterranean are those at Malta and Marseille.

The institution of quarantine originated at Venice, in which city the expediency of some precautions against the introduction of the plague was suggested by its extensive commercial relations with the Levant. A separate hospital for persons attacked by the plague was established in an island near Venice, in 1403; and the system of isolating passengers and depurating goods appears to have been introduced there about 1485. The system thus established in Venice gradually spread to the other Christian countries in the Mediterranean, and has been adopted to a greater or less extent, over all the civilised word. (See Beckmann's 'History of Inventions,' art. 'Quarantine,' vol. ii. p. 145.)

It is much to be desired that the plan of an inquiry, by competent medical authority, into the grounds of the existing quarantine regulations in the Mediterranean, to be conducted under the direction of the chief European powers (which has been suggested by M. de Ségur Dupeyron, Dr. Bowring, and others), should be adopted. It cannot be expected that the causes of plague and the mode of its communication will receive any light from the semi-barbarians who inhabit the Mohammedan countries of the Levant. Moreover, quarantine regulations cannot be changed without the consent of different nations which are concerned in their enforcement. The reason why it is necessary for a nation to adapt its quarantine regulations to the received opinions upon the subject, is explained in the following extract from a paper respecting quarantine regulations in the Mediterranean, which was printed in the Malta 'Government Gazette' of the 19th December, 1838:—"The quarantine regulations of the English colonies in the Mediterranean cannot be changed by the simple will of the English government without producing inconveniences far greater than those arising from the existing system. If the English government should change the quarantine regulations of Malta and its other colonies in the Mediterranean without previously obtaining the approbation of the sanitary authorities of the neighbouring countries, the pratique granted in those colonies would not be received elsewhere; and all vessels coming from any of those colonies would be sub-

jected to a quarantine of observation (from eight to fifteen days). The latter liability would attach to the ships of the royal navy as well as to the merchant vessels; so that no ship of war sailing from Malta could communicate with any part of France, Italy, or Austria, without being previously subjected to a quarantine of observation. Malta, in particular, would suffer most severely by being unable to give an effectual pratique to ships performing quarantine in the harbour of Valletta, and by subjecting all ships clearing out of that harbour to a quarantine of observation. Not only would its transit-trade be almost completely destroyed, but it would lose its importance as a quarantine station. Its importance as a quarantine station is now daily growing, on account of the establishment of the French steamers to the Levant, and the use of the overland journey to India. It would, however, cease to be a quarantine station if its pratique were not received by the Board of Health at Marseille, and by the other sanitary authorities of the Mediterranean. In order therefore that the quarantine regulations of the English colonies in the Mediterranean might be safely altered, it would be necessary that the alterations should be made in concert with the governments of the neighbouring European countries."

The small states of Italy are suspected (and, we fear, with justice) of abusing quarantine regulations for the purpose of preventing commercial intercourse, and also for the sake of the profit to be made by farming out the quarantine dues.

The heads of the English law respecting quarantine are contained in the 6 Geo. IV. c. 78. This Act also confers upon the queen in council extensive powers for making quarantine regulations. A full official abstract of the regulations established by this statute, and of the orders in council made under it, may be seen in M'Culloch's *Commercial Dictionary*, article 'Quarantine.'

QUARE IMPEDIT. [BENEFICE, p. 338.]

QUARTER-SESSIONS. [SESSIONS.]

QUEEN. The Saxon cpen, which was used to denote *mulier, femina, conjux*, as well as women of the highest rank. The use of it to denote a princess who reigns in her own right, and possesses all the powers which belong to a male person who has succeeded to the kingly power in a state, is a modern application of the term.

In England the king's wife has some peculiar legal rights. She can purchase lands, and take grants from the king her husband; she has separate courts and officers, including an attorney-general and a solicitor-general; she may sue and be sued apart from her husband, have separate goods, and dispose of them by will. She pays no toll, is not subject to amercement, has a share in fines made to the king for certain privileges, which last is called queen's gold. Anciently manors belonging to the crown were assigned to her in dower, but now the provision for her is made by a parliamentary grant at the time of marriage. It is treason to compass or imagine the death of the king's wife. To violate or defile her person is also treason, though she consent; and if she do consent, she also is guilty of treason. It has been the usual practice to crown the queen with the same kind of solemnities as are used at the coronation of a king. In the case of Caroline, the wife of George IV., who was living at the time apart from her husband, this was not done; but her right was most ably argued at the time by Mr. Brougham before the privy-council.

If a queen dowager marry a commoner, she does not lose her rank; but no one, it is said, can marry a queen dowager without special licence from the king.

A queen regnant, or princess who has inherited the kingly power, differs in no respect from a king. [KING.]

QUEEN CONSORT. [QUEEN.]

QUESTMEN. [CHURCHWARDENS.]

QUIA EMPTORES. [FEUDAL SYSTEM.]

QUI TAM ACTIONS. These have sometimes been called Popular Actions. A Popular Action is defined to be an action founded on the breach of a penal statute, which every man may sue for himself and the king. It is called a Qui tam action from the words used in the process; "*qui tam* pro domino rege

sequitur quam pro se ipso," "who sues as well for our lord the king as for himself." In a Qui tam action part of the penalty goes to the suer or informer, and part to the king. A strange instance occurred in 1844 of the legislature interfering to stop certain Qui tam actions against gamblers. [GAMING, p. 58, 59.] See also INFORMER.

QUIT RENT. [RENT.]

QUORUM. [SESSIONS.]

R.

RANGER (*Rangeator*), an ancient officer in the king's forests and parks, appointed by patent, and enjoying certain fees, perquisites, and other advantages. His duty was of three kinds: 1, to make daily perambulations, to see, hear, and inquire concerning any wrong doings in the limits of his bailiwick; 2, to recover any of the beasts which had strayed beyond the limits of the forest or chase; and, 3, to present all transgressions at the next forest court.

RANSOM. [AIDS.]

RAPE. [LAW, CRIMINAL.]

RATE, an assessment levied upon property. Rates are of various kinds, and are denominated with reference to the objects to which they are applied.

The nature of Church-rates is explained under CHURCH-RATES: and rates for the relief of the poor under POOR-LAWS. The subject of County-rates is explained under COUNTY-RATES. There are also rates levied for the construction and repair of Sewers; and for other purposes.

READER, READINGS. [BARRISTER.]

REAL ESTATE. [PROPERTY.]

REBELLION. [SOVEREIGNTY.]

RECEIPT. In its more general and popular sense Receipt means a written discharge of a debtor on the payment of money due. When given for sums greater than five pounds, it must be stamped. The amount of the stamp duty varies with the sums for which it is given from 3*d.* to 10*s.*: in Ireland the lowest stamp is 2*d.* and the rates are otherwise different from those in Great Britain. A receipt, though evidence of payment, is not absolute proof, and this evidence may be rebutted by showing that it has been given under mistake or obtained by fraud. The object of requiring a stamped receipt is to obtain revenue, and no other. It is one of the many modes of taxation. In 1832 the revenue from receipt stamps amounted to 193,065*l.*, namely: England 154,466*l.*; Scotland 16,344*l.*; Ireland 22,254*l.* The amount received in England on each kind of stamp was as follows:—

At 0*s.* 3*d.*	£19,940
0 6	31,286
1 0	42,995
1 6	22,466
2 6	16,790
4 0	6,939
5 0	5,408
7 6	4,143
10 0	4,495

(Impey's *Stamp Act*; 55 Geo. III. c. 184; 3 & 4 Wm. IV. c. 23.)

RECEIVING STOLEN GOODS. [LAW, CRIMINAL.]

RECIPROCITY ACT. [SHIPS.]

RECOGNIZANCE is an obligation of record, entered into before some court of record, or magistrate duly authorised, by which the party entering into it (the cognizor), whose signature is not necessary, acknowledges (recognizes) that he owes a sum of money to the king, or to some private individual, who is called the cognizee. This sum is named the amount of the recognizance. The acknowledgment is generally followed by an undertaking on the part of the cognizor to do some act, such as to keep the peace, to pay a sum of money, to attend to give evidence, and the like. On the performance of this act, the cognizor is discharged from his recognizance. On his default, the recognizance is forfeited, and he becomes indebted absolutely to the amount of the recognizance. A debt on recognizance takes precedence of other debts, and binds the lands of the cognizor from the time of its enrolment. If the recognizance is made to a private individual in the nature of a statute staple, for instance, he may on its forfeiture, by virtue of process directed to the sheriff, obtain delivery of

the lands and goods of the cognizor till the debt is satisfied, or proceed against the cognizor in an action of debt, or by scire facias. If the recognizance is made to the king, it was formerly, in all cases of forfeiture, estreated into the exchequer, and afterwards recovered by process from that court to the use of the treasury. But now, in the cases of forfeited recognizances taken before the court of quarter-sessions, or justices of the peace, provision is made by stats. 3 Geo. IV. c. 46, and 4 Geo. IV. c. 37, for their enrolment among the sessions records, and their immediate recovery by the sheriff. A list of the amounts, &c. is yearly returned by the clerks of the peace and town-clerks for their districts respectively, to the lords of the treasury. A power of appeal by the cognizor against the forfeiture is given to the sessions, and the sheriff is not to levy on the cognizor till the appeal has been decided. Where a recognizance has been estreated into the exchequer, that court may discharge or compound it according to the justice of the case. (Comyns, *Dig.*, "Recognizance;" Dalton; 2 Blackstone, *Com.*; Burn's *Justice.*)

RECORD, COURTS OF. [COURTS.]

RECORDER (*Recordator*), a judge, described by Cowel as "he whom the mayor or other magistrate of any city or town corporate having jurisdiction, or a court of record, within their precincts by the king's grant, doth associate unto him for his better direction in matters of justice and proceedings according to law." The Norman term, *recordeur*, appears to have originally been applied to every person who was present at a judicial proceeding, and to whose remembrance or record of what had taken place the law gave credit in respect of his personal or official weight and dignity. Of this we perceive a trace in the ordinary writ of Accedas ad Curiam, by which the sheriff is commanded to go to some inferior court (which, not being the king's court, is not a court of record), taking with him four knights, and there to record the plaint, which is in that court; the remembrance of the four knightly recordeurs of what they saw existing in the inferior court, in obedience to the king's writ, being treated as equivalent to their actual presence at the proceeding to be recorded. So if the proceedings are in the sheriff's court, he is ordered by the writ of Recordari facias loquelam to cause the plaint to be recorded by four knights. And by a record of the eighth year of King John, we find that a judgment of battle in the court of the Archbishop of Canterbury being vouched in the king's courts, four knights were sent to inspect the proceedings, who returned "quod recordati sunt." (*Placitorum Abbreviatio*, 54.) The practice of certifying and *recording* the customs of London *by the mouth of the recorder*, which is antecedent to the charters granting or recognising the practice, appears to be referrible to the same source. Where criminal or civil jurisdiction was exercised by citizens or burgesses, it would add to the importance of the court if its proceedings took place in the presence of an officer to whose *record* the superior courts would give credit, either in respect of his personal rank, as a peer or knight, or on account of his connection with those courts, as a serjeant or barrister-at-law.

Since 1835 the duties of recorders in cities and boroughs enumerated in the schedules of the Municipal Corporations Act (5 & 6 Wm. IV. c. 70) have been regulated by the provisions of that and of subsequent statutes.

The jurisdiction of the recorder in places of minor importance than those mentioned in the schedules, is taken away. These Acts do not affect the city of London.

The recorder of London is a judge who has criminal and civil jurisdiction. He is also the adviser and the advocate of the corporation. In respect of the duties performed by the recorder in the assemblies of the corporation, in the courts of mayor and aldermen, of common council, and of common hall, his office may be said to be ministerial. He is by charter a justice of the peace within the city of London, and a justice of oyer and terminer, and a justice of the peace, in the borough of Southwark.

The business of the mayor's court, in which the recorder ordinarily presides alone, comprehends a court of equity. In the mayor's court the recorder tries

civil causes, both according to the ordinary course of common law and the peculiar customs of the city. The amount for which such actions may be brought is unlimited. Causes depending in the superior courts at Westminster for sums under 20*l.*, writs of trial are occasionally ordered to be executed by a judge of a court of record in London under statute 3 & 4 Wm. IV. c. 42, s. 17. Such trials sometimes take place before the recorder, and sometimes before the judges of the sheriffs' court.

All the duties of a justice of the peace, including those of chairman, devolve upon the recorder at the quarter and other sessions held at Guildhall for the city of London. At the eight sessions which are held in the year at Justice-hall in the Old Bailey for the metropolitan district, the recorder acts as one of the judges under her majesty's commission of oyer and terminer, and general gaol delivery. At the conclusion of each session he prepares a report of every felon capitally convicted within the metropolitan district, for the information and consideration of the queen in council, and he issues his warrant for the reprieve or the execution of the criminals whose cases have been reported.

The fixed annual salary of the recorder is 1500*l.* The Common Council have added 1000*l.* annually to the salary of the present recorder, and to that of his immediate two predecessors. Besides this, the recorder has fees on all cases and briefs which come to him from the corporation. He is also allowed to continue his private practice.

The recorder is elected by the court of aldermen, most commonly at a special court held for the purpose. Any alderman may put any freeman of the city in nomination as a candidate for the office, but an actual contest seldom takes place. The recorder elect is admitted and sworn in before the court of aldermen. The appointment is during good behaviour. The recorder has always been a serjeant-at-law or a barrister.

The recorder of London deriving his authority from charters, and not being appointed by commission (except temporarily as included with other judges in the commission of oyer and terminer, &c., at the Old Bailey), he is not, like the judges of the superior courts, liable to dismissal by the crown upon an address by both Houses of Parliament. But all recorders may be removed for incapacity or misconduct by a proceeding at common law.

Deputy recorders have in some instances, but not very lately, been appointed by the court of aldermen on the nomination of the recorder. (*Report on Municipal Corporations.*)

In cities and boroughs within the Municipal Corporations Act, the recorder (who must be a barrister of not less than five years' standing) is a judge appointed under the sign manual by the crown during good behaviour: he has criminal and civil jurisdiction within the city or borough, with precedence next to the mayor.

Criminal jurisdiction is given to recorders by the Municipal Corporations Act, explained by subsequent statute. The 105th section of that Act provides that the recorder shall hold once in every quarter of a year, or at such other and more frequent times as he shall in his discretion think fit, or as the crown shall think fit to direct, a court of quarter-session of the peace, at which the recorder shall sit as the sole judge, and such court shall be a court of record, and shall have cognizance of all crimes, offences, and matters whatever cognizable by any court of quarter-session of the peace for counties in England, provided nevertheless that no recorder shall have power to make or levy any rate in the nature of a county-rate, or to grant licence to keep an alehouse or victualling-house, to sell exciseable liquors, or to exercise any of the powers by that Act specially vested in the town-council.

The jurisdiction of the county sessions extends, under 34 Edw. III. c. 1, to the trying and determining of all felonies and misdemeanors. The commission under which county justices are appointed, however, directs that if any case of difficulty arise, they shall not proceed to judgment but in the presence of one of the justices of the courts of King's Bench or Common Pleas, or of one of the justices

of assize; and courts of quarter-session in counties have latterly treated every case in which judgment of death would be pronounced upon conviction, as a case of difficulty, and have left such cases to be tried at the assizes; and though no such direction is contained in the grant of the office of recorder or in the Municipal Corporations Act, it has been the invariable practice of recorders appointed under the Act to refrain from the exercise of jurisdiction in such cases.

The civil jurisdiction given to recorders by 5 & 6 Wm. IV. c. 76, § 118, is to try actions of assumpsit, covenant, or debt, whether by speciality or by simple contract, and all actions of trespass or trover for taking goods or chattels, provided the sum or damages sought to be recovered do not exceed 20*l.*, and all actions of ejectment between landlord and tenant wherein the annual rent of the premises does not exceed 20*l.*, and upon which no fine has been reserved, with an exception of actions in which title to land, or to any tithe, toll, market, fair, or other franchise is in question in courts, which before the passing of the Act had not authority to try actions in which such titles were in question. This enactment does not take away the more extended civil jurisdiction which previously existed in particular cities and boroughs by prescription or by charter.

The practice, or mode of proceeding, and also the course of pleading, in courts of civil jurisdiction in cities and boroughs, are governed by rules made by the recorder and allowed by three judges of the superior courts.

RECORDS, PUBLIC. Records, in the legal sense of the term, are contemporaneous statements of the proceedings in those courts of law which are courts of record, written upon rolls of parchment. (Britton, c. 27.) Matters enrolled among the proceedings of a court, but not connected with those proceedings, as deeds enrolled, &c., are not records, though they are sometimes in a loose sense said to be "things recorded." In a popular sense the term is applied to all public documents preserved in a recognised repository; and as such documents cannot be conveniently removed, or may be wanted in several places at the same time, the courts of law receive in evidence examined copies of the contents of public documents so preserved, as well as of real records. [COURTS; RECORDER.]

We may consider that as a record which is thus received in the courts of justice.. The Act, for instance, which abolished Henry VIII.'s court of augmentation (of the revenues obtained from the suppression of the religious houses), declared that its records, rolls, books, papers, and documents, should thenceforth be held to be records of the court of exchequer; and accordingly we have seen many a document, originally a mere private memorandum, elevated to the dignity of a public record, on the sole ground of its official custody, and received in evidence as a record of the Augmentation-office. On the other hand, numbers of documents which were originally compiled as public records, having strayed from their legal repository to the British Museum, have thereby lost their character of authenticity. (*Proceedings of the Privy Council*, vol. v. p. 4, edited by Sir Harris Nicolas.)

"Our stores of public records," says Bishop Nicolson, "are justly reckoned to excel in age, beauty, correctness, and authority, whatever the choicest archives abroad can boast of the like sort." (Preface to the *English Historical Library*.) Indeed, this country is rich beyond all others of modern Europe in the possession of ancient written memorials of all branches of its government, constitutional, judicial, parliamentary, and fiscal, memorials authenticated by all the solemn sanctions of authority, telling truly, though incidentally, the history of our progress as a people, and handed down in unbroken series through the period of nearly seven centuries. The amount of public care given to this subject during the last forty years, is shown by the appointment of successive commissions and parliamentary committees of inquiry, by a cost in one shape or another amounting to little less than a million of pounds sterling, and by the passing of an Act of Parliament designed to effect a thorough

change in the system of keeping and using the public records.

The greater part of records are kept as rolls written on skins of parchment and vellum, averaging from nine to fourteen inches wide,* and about three feet in length. Two modes of fastening the skins or membranes were employed, that of attaching all the tops of the membranes together bookwise, as is employed in the exchequer and courts of common law, whilst that of sewing each membrane consecutively was adopted in the chancery and wardrobe.

The material on which the record is written is generally parchment, which, until the reign of Elizabeth, is extremely clear and well prepared. From that period until the present, the parchment gradually deteriorates, and the worst specimens are furnished in the reigns of George IV. and William IV. The earliest record written on paper, known to the writer, is of the time of Edward II.

The handwriting of the courts, commonly called court-hand, which had reached its perfection about the reign of our second Edward, differs materially from that employed in chartularies and monastic writings. As printing extended, it relaxed into all the opposites of uniformity, clearness, legibility, and beauty which it once possessed. The ink too lost its ancient indelibility; and, like the parchment, both handwriting and ink are the lowest in character in the latest times: with equal care, venerable Domesday will outlive its degenerate descendants.

All the great series of our records, except those of parliament, are written in Latin, the spelling of which is much abbreviated, and in contractions, there can be little doubt, derived from Latin manuscripts.

During the Commonwealth, English was substituted; but soon after the Restoration, Latin was restored, and the records of the courts continued to be kept in Latin until abolished by Act of Parliament in the reign of George II. In certain branches of the Exchequer, Latin continued in use until the abolition of the offices in very recent times. Many of our statutes from Edward I. to Henry V., and the principal part of the rolls of parliament, are written in Norman French. Petitions to parliament continued to be presented in Norman French until the reign of Richard II., whose renunciation of the crown is said to have been read before the estates of the realm at Westminster first in Latin and then in English. After this period we find English, which had doubtless always remained in use among the lower classes, often used in transactions between the people and government.

At the present time, besides the offices for modern records attached to each court, we may enumerate the following repositories, with their different localities, as containing the public records:—

The Tower, in Thames-street; Chapter-House, Westminster Abbey; Rolls Chapel, Chancery-lane; Rolls House, Chancery-lane; Duchy of Lancaster, Lancaster-place, Strand; Duchy of Cornwall, Somerset House; Common Pleas, Carlton Ride and Whitehall-yard; Queen's Remembrancer's Records, in Carlton Ride and tower of Westminster Hall; Augmentation-Office, Palace-yard, Westminster; Pipe-Office, Somerset House; Lord-Treasurer's Remembrancer, Somerset House; Land Revenue, Carlton Ride; Pell-Office, 1, Whitehall-yard; Exchequer of Pleas, 3, Whitehall-yard; First-Fruits Office, Temple.

The fullest examination into the state of the public records which has been made in recent times was effected by a Committee of the House of Commons, in 1800, conducted by Lord Colchester, then Mr. Abbot, and the report of that Committee presents the most comprehensive account which has yet appeared of our public records, to which a period of forty years has added very little. This Report originated a commission for carrying on the work which its authors had begun. The Record Commission was renewed six several times between the years 1800 and 1831, and altogether suspended at the accession of the present

* The rolls of the Great Wardrobe exceed eighteen inches in width.

queen. All the several record commissions during thirty years recited, one after another, that "the public records of the kingdom were in many offices unarranged, undescribed, and unascertained;" that they were exposed "to erasure, alteration, and embezzlement," and "were lodged in buildings incommodious and insecure." The commissioners were directed to cause the records to be "methodised, regulated, and digested," bound and secured; to cause "calendars and indexes" to be made and "original papers" to be printed. The present state of the Record Offices affords abundant evidence, that the record commissioners interpreted their directions in an inverse order; they expended the funds intrusted to them rather in printing records than in arranging or calendaring them. And it is an undoubted fact that not withstanding these commissions, records were "embezzled"—and are still lodged in most "insecure" buildings. A full investigation into the proceedings of the record commission was made by a Committee of the House of Commons in 1835, and the Report of the Committee was printed. During the last half-century there has been no niggard expenditure in respect of the public records. It is not easy to ascertain its total amount or the precise appropriation of it; but the following may be received as an approximation to correctness:—

Parliamentary Papers show that grants were made on behalf of the Record Commission between 1800 and 1831, to the amount of .	£362,400
Between 1831 and 1839 inclusive . . .	125,700
Salaries, &c., for the custody of Records . . .	120,000
Fees, estimated on an average of the years 1829, 1830, and 1831, at least . .	120,000
Removals of Records, estimated at . . .	30,000
	758,100
Irish Record Commission, estimated at . . .	120,000
	£878,100

Of the grants made to the record commission, by far the greater part was spent in printing and the expenses connected therewith.

An Act was passed (1 & 2 Vict. c. 49) calculated to remedy effectually what preceding efforts had in vain attempted, by constituting a special agency for the custody of the records; to the want of which and a sufficient responsibility, all the defects of the old system are attributable. By this Act the Master of the Rolls is made the guardian of the public records, and he has powers to appoint a deputy, and, in conjunction with the treasury, to do all that may be necessary in the execution of this service. The Act contemplates the consolidation of all the records, from their several unfit repositories, into one appropriate receptacle; their proper arrangement and repair; the preparation of calendars and indexes, which are more or less wanting to every class of records; and giving to the public more easy access to them. Lord Langdale, the present Master of the Rolls, to whose influence the change of system is greatly due, has already brought the above Act into as full operation as circumstances have allowed. The old custodyship of most of the offices has been superseded, and the offices are constituted branches of one central depository, the Public Record Office, which, until a proper building is ready, is at the Rolls House in Chancery Lane. The arrangement and repair, as well as the making of inventories of records, have been generally begun in most of the offices.

Preparations are also making for a uniform system of calendaring, a gigantic work which a century will hardly see completed. To select what is useful from the judgments of a single court, the Common Pleas for instance, at least 1200 miles of parchment nine inches wide must be patiently read through; and yet without the performance of this labour these records can scarcely be consulted.

The principal changes which have been made for the better accommodation of the public may be seen in the following table:—

System before July, 1840.

Office.	Hours of Attendance.	Charges for			*Present System.*
		Search.	Inspection of Record.	Copy of Record.	
Tower . .	10 till 3	10s.	6s. 8d.	1s. per folio	Attendance 10 till 4. Search in all Indexes, Calendars, &c., 1s. Inspection of a Record 1s. Copies 6d. per folio. The public may make extracts or copies in pencil, hitherto forbidden or allowed as a favour.
Rolls Chapel .	10 till 3	1s. a year ea. name	2s. 6d. ea. Roll	5s. 6d. a sheet	
Chapter House .	10 till 1	8s. 4d.		1s. per folio	
Carlton Ride .	10 till 4	3d. a term			
(Common Pleas) .	In term-time only	2s. 6d. in Index		6d. per folio	
3, Whitehall Yard, Common Pleas .	No attendance				
Exch. of Pleas .	No attendance	3d. a term		6d. per folio	
King's Bench (Rolls House) . .	No attendance	2s. 6d. in Index			

The best work of general reference as to the subjects to which the public records relate is the 'Report of the Select Committee in 1800.'

RECRUITING is the act of raising men for the military or naval service. As to the military service, recruiting is done by officers appointed for the purpose, who engage men by bounties to enter as private soldiers into particular regiments. The officers, commissioned and non-commissioned, while so employed, are said to be on the recruiting service; but the actual engaging of men as recruits is called enlistment. The laws relating to this subject have been already noticed. [ENLISTMENT.]

Formerly private persons were allowed to enlist men for the army in any way that they might think best; but now, by a clause in the Mutiny Act, any person advertising or opening an office for recruits without authority in writing from the adjutant-general or the directors of the East-India Company is liable to the penalty of twenty pounds.

In order to produce uniformity in the system of recruiting, and to ensure the employment of legal means only in obtaining men, the supreme control of this branch of the military service was vested in the adjutant-general of the army, and both Great Britain and Ireland were divided into several recruiting districts. To each of these were appointed an inspecting field-officer; an adjutant, whose duty it is to ascertain, in respect of stature and bodily strength, the fitness of any recruit for the service; a paymaster; and a surgeon, the latter of whom is to report concerning the health of the recruit. Under the inspecting field-officer there are several regimental officers who are stationed in the principal towns of the different recruiting districts in order to superintend the non-commissioned officers appointed to receive the applications of the persons who may be desirous of entering the service.

In order to procure recruits, a serjeant or other non-commissioned officer mixes, in country places, with the peasantry at their times of recreation; and, in towns, with artisans who happen to be unemployed, or who are dissatisfied with their condition; and, by address in representing whatever may seem agreeable in the life of a soldier, or by the allurement of

a bounty, occasionally induces such persons to enter the service.

The reports concerning the fitness of a recruit for military service are finally submitted for approval to the inspecting field-officer of the district, except when the distance of the head-quarters from the place where the recruit is enlisted is such that it would be more convenient to send the latter to the depôt of the regiment to which he is to belong: in that case the officer commanding at the depôt is especially authorised to sanction them.

Officers employed on the recruiting service are not allowed to interfere with one another in the performance of their duties; particularly, no one is permitted to use any means in order to obtain for his own party a man who has already taken steps by which he may become engaged to another.

RECTOR, RECTORY. [BENEFICE, p. 341.]

RECUSANTS are persons who refuse or neglect to attend divine service on Sundays and holidays, according to the forms of the Established church.

There were four classes of offenders under the statutes against recusancy:—those who absented themselves from the public service of the church from indifference, irreligion, or dissent, were termed "recusants" simply—after conviction they were styled "recusants convict;" those absentees who professed the Roman Catholic religion were called "Popish recusants;" and those who had been convicted in a court of law of being Popish recusants were called "Popish recusants convict."

Popish recusants, in addition to the general penalties enacted against recusants, were disabled from taking lands, either by descent or by purchase, after eighteen years of age, until they renounced their errors. They were bound at the age of twenty-one to register the estates which they had already acquired, and were bound also to register all future conveyances and wills relating to them. They were and are incapable of presenting to any advowson, and of making a grant of the right of presenting at any avoidance of the benefice. They could not keep or teach any school, on pain of perpetual imprisonment. For the offence of saying mass, the Popish recusant forfeited 200 marks, or 133*l.* 6*s.* 8*d.* For the offence of wilfully hearing mass, he forfeited 100 marks (66*l.* 13*s.* 4*d.*), and was in each case subjected to a year's imprisonment.

Popish recusants convict incurred additional disabilities, penalties, and forfeitures. They were considered as persons excommunicated: they could not hold any public office or employment; they were not allowed to keep arms in their houses; they were prohibited from coming within ten miles of London, under the penalty of 100*l.*; they could bring no action at law or suit in equity; they were not permitted to come to court, under pain of 100*l.*, or to travel above five miles from home except by licence, upon pain of forfeiting all their goods. Severe penalties were imposed in respect of the marriage or burial of the Popish recusant convict, or the baptism of his child, if the ceremony was performed by any other than by a minister of the Church of England. Such a recusant, if a married woman, forfeited two-thirds of her dower or jointure, was disabled from being executrix or administratrix of her husband, and from having any part of his goods, and she might be kept in prison, unless her husband redeemed her at the rate of 10*l.* per month, or by the profits of the third part of all his lands. The present state of the law as to recusants is given under LAW, CRIMINAL, p. 217.

REDEMPTION, EQUITY OF. [MORTGAGE.]

REEVE. [SHERIFF.]

REFORMATION, HOUSES OF. [TRANSPORTATION.]

REGA'LIA, the ensigns of royalty. This term is more especially used for the several parts of the apparatus of a coronation. In England, the regalia properly so called are the crown, the sceptre royal, the virge, or rod with the dove, St. Edward's staff, the orb or mound, the sword of mercy, called Curtana, the two swords of spiritual and temporal justice, the ring of alliance with the kingdom, the armillæ or bracelets, the spurs of chivalry, and sundry royal vestments. The regalia

here enumerated, all but the vestments, are preserved in the Jewel-Office in the Tower of London. Before the Reformation in the time of Henry VIII. they were constantly kept by the religious of the abbey of Westminster; and are still presented before the king on the morning of the coronation by the dean and prebendaries of that church.

REGENT, REGENCY. These words, like *rex*, contain the same element as *rego*, "to rule," *regens*, "ruling;" and denote the person who exercises the power of a king without being king, and the office of such a person, or the period of time during which he possesses the power. Wherever there has been an hereditary kingly office, it has been found necessary sometimes to appoint a regent. The cases are chiefly those of (1) the crown devolving on a minor too young to execute any of the duties belonging to it; (2) mental incapacity of the person in whom the kingly office is vested; (3) temporary illness, where there is a prospect of the long continuance of the disease, and of incapacity in consequence; (4) absence from the realm. But in the first case the regent has usually been called in England by the name of Protector: the latest instance was the minority of Edward VI., when his uncle, the Duke of Somerset, was the Protector.

In the earlier periods of English history we have several instances of protectors during minorites, and some of regencies during the temporary absence of the king. The occasional absences of George I. and George II. on visits to their continental dominions rendered the appointment of regents a matter of convenience, if not of necessity. Sometimes the power was put, so to speak, in commission, being held by several persons jointly; but Queen Caroline sometimes discharged the functions of regent during the absence of George II. [LORDS JUSTICES.]

This part of the English constitution was, however, so imperfectly defined, that when George III. was incapacitated for discharging the functions of royalty by becoming insane, a question arose, on which the chief constitutional and political authorities of the time were divided in their judgment. The question was this—whether the heir apparent, being of full age, and the king's eldest son, did not become of right regent. The Whig party of the time, led by Mr. Fox, contended that he did. On the other side, it was maintained that it lay with parliament to nominate the person who should be regent. No regent was at that time appointed, because the king recovered. When the king was a second time incapacitated, all parties agreed in conferring the title and office of regent on the Prince of Wales, then heir apparent. But it was done by parliament, who laid certain restrictions upon him during the first year; but in the event (which event did happen) of the continued incapacity of the king, he was to enter into the full possession of all the powers of king, as if the king were dead; using, however, only the name of regent, not king.

The time when the Prince of Wales held the office of regent is the period of English history which will be meant hereafter by the expression "the regency," just as "the regency" in reference to French history denotes the time of the minority of Louis the Fifteenth, when the Duke of Orleans was regent. It was during the English regency that the power of Napoleon was broken, and peace was restored to Europe.

REGIMENT, a body of troops, whether infantry or cavalry, forming the second subdivision of an army. The union of two or more regiments or battalions constitutes a brigade, and two or more brigades make up a grand division, or corps d'armée. A regiment is commanded by a colonel, a lieutenant-colonel, and a major, whose several ranks are graduated so as to correspond to those of the general officers who command the army or division; and when a regiment is divided into two or more battalions, each of these has, at least when complete, its own lieutenant-colonel and major.

REGISTER, REGISTRATION, REGISTRY. The mere possession of land is not sufficient evidence of the title to it, except in those cases where it can be shown that it has been held by a party

who sells adversely for such a period as to preclude under the operation of the Statute of Limitations all claims from any other party. In tracing the title to land, a purchaser or mortgagee requires to have the right established by the production of the instruments under which the title to it is derived; and the usual period during which such title is required to be shown is the last sixty years. Now except in what are termed register counties, a purchaser or mortgagee has no means of ascertaining that some of the deeds purporting to show the title may not be purposely or accidentally withheld: for instance, A. B. may have acquired a title under a deed of conveyance, or under a will, but may have mortgaged or otherwise charged the estate, with an agreement that he should remain in possession till default of payment, and may conceal the instrument which effects this charge; and the purchaser, notwithstanding he had no notice of such charge, may after payment of the purchase-money lose his estate by reason of a charge prior to his right in point of time. And he has no absolute means of guarding himself against this risk. If, however, there were a law which compelled the registry of all instruments relating to the title in lands, and protected purchasers from the operation of all such as were not registered, this evil would be removed; and with due care in searching such registry a purchaser would be certain that he was duly protected against all adverse claims, and that his title was secure.

The Real Property Commissioners have devoted their Second Report to the subject of a general register of deeds, and they unanimously recommend the establishment of a General Public Register for England and Wales of all deeds or instruments affecting land, in order to secure titles against the loss or destruction, or the fraudulent suppression or accidental non-production of instruments; to simplify titles by rendering in most cases needless the assignment of out-standing terms; to protect them from the consequences of constructive notice; and to render conveyances shorter and more simple.

To a certain extent such registers have been already established in England. By the 27 Henry VIII. c. 16, it is enacted that all bargains and sales of land shall be enrolled. The 2 & 3 Anne, c. 4 (amended by 5 Anne, c. 18) directs that a memorial of all deeds, conveyances, and wills concerning any lands in the West Riding of Yorkshire may, at the election of the parties, be registered; and that any conveyance or will affecting the same lands shall be deemed void against a subsequent conveyance unless a memorial shall be registered. The 6 Anne, c. 35, recites that "lands in the East Riding of York, and in the town and county of the town of Kingston-upon-Hull, are generally freehold, which may be so secretly transferred or conveyed from one person to another, that such as are ill-disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons (who, through many years' industry in their trades and employments, and by great frugality, have been enabled to purchase lands, or to lend moneys on land security) have been undone in their purchases and mortgages by prior and secret conveyances and fraudulent incumbrances; and not only themselves, but their whole families thereby utterly ruined:" and then the Act establishes a register of the memorials of deeds and wills in the East Riding of Yorkshire. The 7 Anne, c. 20, establishes such a register for Middlesex; and the 8 George II. c. 6, establishes one for the North Riding of Yorkshire, and provides that deeds, wills, and judgments affecting land may be registered at length, instead of the registration of mere memorials of them. In the Bedford Level there is a registration of all deeds affecting land there. These registers, owing to the insufficiency of their indexes, and to some other defects, do not answer all the purposes which might be expected from them, and in many respects the arrangements respecting them are cumbrous and expensive: nevertheless (as the Commissioners remark) no one has proposed to abolish them. A registration of wills of personalty has long been established in the ecclesiastical courts. The Act for Abolishing Fines and Recoveries

(3 & 4 Wm. IV. c. 74) substitutes for them a deed which is enrolled in the Court of Chancery. In Ireland, Scotland, in the Colonies, in most of the United States, in Sweden, France, and Italy, and in many of the German States, registers are established. Nor is it found that the disclosures which a register makes of the state of landholders' property produce inconveniance, nor are such disclosures inseparable from all systems of registration. It is obviously for the public benefit that the apparent extent of a person's landed property should not induce men to give him a credit to which the actual amount of that property does not entitle him.

The commissioners propose to register every document transferring any estate in land or creating a charge upon it, except such as relate to copyholds, and leases for not more than twenty-one years, accompanied by possession. Thus contracts concerning land (with certain limitations), liens upon it, judgments, crown debts, decrees in equity, pending suits, and appeals, should all form matters of registration. They recommend that all deeds should be registered at length; indeed, that the original deeds should be deposited at the Registry, and that (unless in special circumstances) office-copies of them shall be admitted as evidence. They propose that the register should not be classified according to the names of individuals, but that to the registered deed relating to an estate a symbol shall be attached indicative of that estate, under which symbol all subsequent documents affecting it will be entered. The system admits of opening a fresh series of entries, or, in other words, commencing a new title for any portion of the estate which may be separately conveyed, references being made from each to the other. And thus again many separate estates might be united under one symbol. Indexes should be prepared both of the symbols and of persons: and to facilitate reference, England and Wales should be divided into districts, usually corresponding in limits with the counties. Separate indexes should be made to wills, judgments, &c.

It is the opinion of the commissioners that if a register is established, it ought to be taken as sufficient notice of the documents registered; and that, on the other hand, default of registration ought not to be remedied by any proof even of actual notice. With this view they recommend that persons should have liberty to register contracts, to enter caveats during the interval between the execution of the deed and its registration, and inhibitions which shall prevent owners of estates who enter them from dealing with the estates pending such inhibition. A bill founded on this report was brought into Parliament (1846), but after a report by a Committee of the House of Commons, it was dropped.

The Act 1 & 2 Victoria, c. 110 (abolishing arrest on mesne process, except in certain cases) provides (§ 19) that no judgment of the superior courts or decree of the courts of equity shall affect lands unless a memorandum of such judgment, &c., shall be registered with the senior master of the Court of Common Pleas, who shall enter it under the name of the person whose estate is to be affected by it. The 2 & 3 Vict. c. 11, enacts that these registered judgments shall not be valid for a longer space than five years, but it provides that the entry of them may be renewed; it also enacts that no pending suit (lis pendens) shall affect the purchaser or mortgagee with notice, unless a similar memorandum is registered by the same officer, under the head of the person whose estate is affected by it, and the entry must be renewed every five years; and, thirdly, the Act requires crown debtors to be registered in the same office, and provides means for obtaining and recording their discharge from their liabilities to the crown; but the Act does not require the renewal every five years of the entry in this case.

(Second Report of Real Property Commissioners; and the Works therein cited; Tyrrell's *Suggestions for the Laws of Real Property.)*

REGISTRATION. The registration of documents in Scotland is a great and important system intimately connected with the titles of real or heritable property, and with the execution of the law. It is thus divided into two distinct departments, which may be considered sepa-

rately — Registration for Preservation, and Registration for Execution.

Registration for Preservation, in its simplest form, is merely the preserving of an attested transcript of any deed in a public register, that thus an authentic copy may be had recourse to in case the original should be lost. Besides the regular statutory records of particular deeds, there are books attached to the several courts of civil jurisdiction, in which parties may for their own convenience register such documents as do not require by any special obligatory law to be recorded. It is a general rule that extracts from any such records may stand in the place of the originals when these are not forthcoming, but that a party is not to found on an extract if he have the original deed in his possession and can produce it. In the case of sasines, however, and other deeds, of which, as will be seen below, it is not the deed itself, but its registration, that makes the completed title, an extract from the register is the proper document to be produced. There is a certain class of actions, however, to meet which the original must be produced if it be accessible. These are called Actions of Reduction-Improbation. Such an action is raised against the party favoured by the deed, by some other party, and its object is the annulling the deed on some legal ground. As a matter of form, in commencing such an action, the pursuer states, along with whatever other grounds of objection he may have, that the deed is forged, and he desires the original to be produced, that it may be judicially examined. The rule for production of the original is subject to modifications, where the ground of the action is extrinsic of anything peculiar to the original document; and if the original be lost without being intentionally destroyed, the inquiry must proceed on the extract and the other circumstances that can be adduced. It is usual to speak of registration for preservation, as being also for publication; and in this sense, when a deed is of such a character that to make it effectual in the grantee's favour it must have been delivered to him by the grantor, such registration is in the general case equivalent to the delivery. It will operate in this respect in adjusting questions of competing right, as where a father makes over to one child the property that, in case of his dying intestate, would go to another, and registers the deed. It is questioned, however, if the mere registration would be in all cases that complete transference of property which is necessary to bar the claims of creditors under the statutes against alienations to their prejudice by insolvents. The registration of ordinary documents for preservation was sanctioned by the Act 1698, c. 4, which generally extends to registration "in any authentic public register that is competent." Besides the central register attached to the supreme court, there are others connected with the Sheriff and Corporation Courts, but it does not appear to be distinctly settled what may be, with reference to various descriptions of documents in each case, a "competent" register.

By far the most remarkable of the registers for preservation, is that of the "Sasines *and* Reversions," the former word expressing the Act by which an estate is created or transferred in heritable (*i. e.* real) property, the latter the attestation of the extinction of a burden, *i. e.* of the devolution of a temporary estate on the person entitled to the remainder. This system has been gradually formed. In its present state its main operative principle is, that when a title to land appears on the register, no latent title derived from the same authority can compete with it, and that registered titles rank according to their priority, so that if A first sell his property to B and execute the proper conveyance, and subsequently sell the same property to C, if C get his title first recorded it cannot be questioned by B, who has only his pecuniary recourse against A. In pursuance of this system, in transactions regarding land, the public records are relied on as affording the means of ascertaining the character and title, and after they have searched for the period of prescription, or examined over a period of forty years, [PRESCRIPTION] parties can trust that there are no latent rights, and may safely deal with the person who professes

to dispose of any right connected with it. The origin of this system may be traced back to the commencement of the sixteenth century, when the notaries were required to record their proceedings in their protocols, and the other officers connected with the feudal transference of land were bound to make returns of their official acts. In 1599 an Act was passed in which an effort was made to produce regularity in these registers, by penalties. It was by the Act 1617, c. 16, that the system was founded on its right principle. The preamble of that statute bears "considering the great hurt sustained by his Majesty's lieges by the fraudulent dealing of parties who having annallied [alienated] their lands, and received great summes of money therefore, yet by their unjust concealing of some private right formerly made by them, render the subsequent alienation done for great summes of money altogether unprofitable; which cannot be avoided unless the said private rights be made public and patent to her Majesty's lieges." The Act then appoints the sasines, reversions, &c., to be registered within three-score days after execution, otherwise they are "to make no faith in judgment, by way of action or exception, in prejudice of a third party, who hath acquired a perfect and lawful right to the said lands and heritages: Bot prejudice alwayes to them to use the said writs against the party maker thereof, his heirs, and successours." By the other clauses of the Act the superintendence of the system is given to the Clerk-Register, and the country is divided into Registration Districts. There is one defective provision in this Act, which is still in force. Parties are allowed to register their titles either in the particular register of their district or in the general register at Edinburgh. It is unusual to adopt the latter alternative, and when it is followed, it is generally for the purpose of concealing instead of publishing the transaction. There was another material defect in the old Act. A person might have his title immediately registered, but was liable to have it superseded by any other person able to register a title on a warrant previously obtained. This was remedied by the Act 1693, c. 13, which gave the registerable titles priority not according to the date of their execution, but to that of their registration. To prevent injustice by the accumulation of unregistered deeds at the office, a minute-book was, by a contemporary Act, appointed to be kept, in which the keeper enters an outline of each document as it is presented to him. By the present practice, when a sasine or other writing belonging to this register is presented to the keeper, he marks in the minute-book the day and hour of presentation. This is indorsed on the deed itself, and marks the date of registration. When the deed is engrossed at length in the register, a certificate to that effect is indorsed on the deed, mentioning the pages of the register in which it is to be found, and the deed is then returned. Registration volumes, with minute-books accompanying them, are from time to time issued from the General Register-house to the district registrars, so systematically marked and certified, as to prevent them from being tampered with without either interpolation or mutilation being easily perceptible. When a volume is finished, it is returned with the corresponding minute-book to the General Register-house, the keeper of the District Register retaining a copy of the minute-book for general reference. The real titles of all the heritable property in Scotland are thus preserved in a seriatim and indexed collection, in the General Register-house at Edinburgh. When property is offered for sale or mortgage, a "search" generally forms part of the titles offered for inspection to the parties treating for it. This is a certificate by the proper officer, describing all registered documents regarding that particular piece of land which have been recorded during forty years. The documents that require to be registered have lately been much simplified and abbreviated by the act 8 & 9 Vict. c. 35. It has to be kept in view that the execution of the real title which may be registered within the sixty days only gives a *preferable* title. It is not necessary to create a title, and if the receiver of a conveyance have an absolute reliance on

the integrity of the granter and all from whom that person may have derived his title he may defer completing and recording it, and may encounter the risk of some other person obtaining a title and getting on the register before him. The simplification of the documents to be registered tends to lessen the temptation to delay their completion and registration. It is remarkable that the enlightened mind of Cromwell appears to have comprehended the utility of this system, and that he made an effort to introduce it into England. We are told by Ludlow (Memoirs I. p. 436), "In the meantime the reformation of the law went on but slowly, it being the interest of the lawyers to preserve the lives, liberties, and estates of the whole nation in their own hands, so that upon the debate of registering deeds in each county, for want of which within a certain time fixed after the sales, such sales should be void, and being so registered that land should not be subject to any incumbrance, this word incumbrance was so managed by the lawyers, that it took up three months' time before it could be ascertained by the committee."

Registration for Execution is another peculiarity of the law of Scotland, although the system of warrants to confess judgment in England in some measure resembles it. The party to a solemn deed incorporates with it a clause of registration, by which, on the deed being registered in the books of a court competent to put the deed in force, the decision of the court shall be held as pronounced in terms of the deed, and execution may proceed against the party on an extract, as if it were the decree of a court. The engagement on which such execution may issue must be very distinctly set forth. Thus, if it be for payment of money, it must be for a sum named in the deed, and not for the balance that may be due on an account arising out of the transactions to which the deed refers. This method of execution was by statute (1681, c. 20) made applicable to bills and promissory notes without their containing any clause of registration. To entitle it to this privilege, the bill or note must be apparently without flaw, must bear the appearance of due negotiation, and must have been protested. The operation of this system was much widened by the Act 1 & 2 Vict. c. 114, which extended registration for execution to the Sheriff Courts.

REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES. Parish registers were not kept in England till after the dissolution of the monasteries. The 12th article of the injunctions issued by Cromwell, Henry the Eighth's secretary, in 1538, directs that every clergyman shall, for every church, keep a book wherein he shall register weekly every marriage, christening, and death, any neglect being made penal. This measure was surmised to be preliminary to a new levy of taxes, and therefore caused much alarm. In the first year of the reign of Edward VI. (1547) ecclesiastical visitors were sent through the different dioceses in order to enforce various injunctions, and, among others, that of Cromwell with respect to parish registers. In the beginning of Elizabeth's reign this injunction was repeated, when the clergy were required to make a protestation in which, among other things, they promised to keep the register-book in a proper and regular manner. In 1694 an Act (6 & 7 Wm. III. c. 6) for a general registration of marriages, births, and deaths, was passed merely for purposes of revenue; it is 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." It is a very long Act, in which the duties are minutely set down. A supplementary Act was passed (9 Wm. III. c. 32), entitled "An Act for preventing frauds and abuses in the charging, collecting, and paying the duties upon marriages, births, burials, bachelors, and widowers. The 52 Geo. III. c. 146 (28 July, 1812), entitled "An Act for the better regulating and preserving parish and other registers of births, baptisms, marriages, and burials, in England," made some alteration in the law, chiefly with reference to having the books made of parchment or strong paper, and

to their being kept in dry and well-painted iron chests.

The Registration Act (6 & 7 Wm. IV. c. 86: 17 Aug., 1836), entitled "An Act for registering Births, Deaths, and Marriages, in England," came into operation July 1, 1837. By the 44th section of the 6 & 7 Wm. IV. c. 85, entitled "An Act for Marriages in England," the provisions of this Registration Act are extended to the Marriage Act. [MARRIAGE, p. 322.]

The most important provisions of this Registration Act are the following:—A general registry-office is to be provided in London and Westminster (§ 2). Lord Treasurer and Lords Commissioners of his Majesty's Treasury to appoint officers, and fix salaries, to be paid out of the consolidated fund (§§ 3 and 4). Regulations for conduct of officers to be framed under direction of the Secretary of State (§ 5). Annual abstract of registers to be laid before Parliament (§ 6). The guardians of the poor of a union or parish, shall on the 1st of October, 1836, if the board is established at the passing of the Act, or, if not, within three months after its establishment, divide the union or parish into districts as directed by the registrar-general, and appoint registrars and superintendent registrar, if the clerk of the guardians will not or cannot execute that office (§ 7). Register offices to be provided in each union by the guardians, and to be under the care of the superintendent registrar (§ 9). Temporary registrars and superintendent registrars to be appointed, for parishes not having guardians under the Poor-law Act, by the Poor-law Commissioners; but in case of subsequent unions, previous appointments to be vacated (§§ 10 and 11). Deputy registrars may be appointed by the registrars (§ 12). All books, &c. to be transferred on removal of registrar or superintendent, under a penalty of committal to gaol (§ 15). Registrar and deputy to dwell in the district, and their names and additions to be put on their dwelling-houses (§ 16). Register books to be provided by the registrar-general, for making entries of all births, deaths, and marriages of his Majesty's subjects in England, according to the forms of schedules (A, B, C) annexed to the Act (§ 17). Registrars authorised and required to inform themselves carefully of every birth and every death which shall happen within their district after the first day of March, 1837, and to learn and register as soon after the event as conveniently may be done, without fee or reward, save as hereinafter mentioned, in one of the said books, the particulars required to be registered according to the forms of the said schedules (A and B) respectively, touching every such birth or every such death not already registered (§ 18). After March 1, 1837, parents and occupiers may, within forty-two days after birth and five after death, give notice thereof to registrar; and owners and coroners must do so forthwith in cases of foundlings and exposed dead bodies (§ 19). Parents and occupiers, on being required by the registrar, within forty-two days, must give all the particulars required to be registered respecting birth (§ 20). Children born at sea must be registered by the captain (§ 21). After the expiration of forty-two days from the birth of the child, it can only be registered within six months, on the solemn declaration of the particulars before the superintendent registrar, who is to sign the entry, and to receive 2*s.* 6*d.* and registrar 5*s.*, extra fee; and no registration, after forty-two days, shall be made otherwise than as above, under a penalty of 50*l.* (§ 22). Births not to be registered after six months, under a penalty not exceeding 50*l.*, and no registration after that date shall be evidence (§ 23). Name given in baptism may be registered within six months after registration of birth, on production of a certificate by the minister (§ 24). Some person present at death, or occupier of house, required to give particulars of death, on application by registrar, within eight days; registrar to make entry of finding of jury upon coroner's inquests (§ 25). Registry of persons dying at sea, containing particulars, to be kept by the captain (§ 26). Registrar to give certificate of death to undertaker, who shall deliver the same to the minister or officiating person, and unless such certificate is de-

livered the minister must give notice to the registrar; but the coroner may order body to buried, and give certificate thereof; and if any dead body shall be buried without certificate of registry or of inquest, and no notice given to the registrar within seven days, the party shall forfeit 10*l.* (§ 27). Every register must be signed by the informant (§ 28). Registrars to make out accounts quarterly, to be verified by the superintendent, and are to be paid by the guardians, as directed (§ 29). Marriage register books to be provided by the registrar-general for ministers (§ 30). Marriage registers to be kept in duplicate, containing the several particulars of schedule C; and every entry shall be signed by the clergyman, or the registering officer, or secretary of Quakers and Jews, and by persons married, and by two witnesses (§ 31). Certified copies of registers of births and deaths to be sent quarterly, and the register-books, when filled, to the superintendent-registrar (§ 32). Duplicates and certified copies of registers of marriages to be sent to superintendent-registrar (§ 33). Superintendent-registrars to send certified copies of registers to the general register office (§ 34). Searches may be made and certificates given by the persons keeping the registers, on payment of the fees prescribed (§ 35). Indexes to be made at the superintendent-registrar's office, searches allowed, and certified copies given (§ 36). Indexes to be kept at general register office, searches allowed, and certified copies given (§ 37). Certified copies given at general register-office to be sealed, and shall then be evidence without further proof (§ 38). Ministers, &c. may ask parties married the particulars required to be registered; and wilfully giving false information is perjury (§§ 40 and 41). Penalty for not duly registering births, deaths, and marriages, or for losing or injuring the registers, not exceeding 50*l.* Penalty for destroying or falsifying register-books, or entries therein, or giving false certificates, is felony (§ 43). Accidental errors may be corrected, within one month, in the presence of the parties (§ 44). Modes of recovering penalties and of making appeals are provided for by §§ 45 and 46. Registers of baptism and burials may be kept as heretofore (§ 49). Registrar-general to furnish notices to guardians of unions, &c. specifying acts required to be done by parties registering, and which are to be published in conspicuous places of the unions or parishes (§ 50).

Another Act was passed (1 Vict. c. 22 —June 30, 1837), entitled "An Act to explain and amend two Acts passed in the last session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages, in England." This Act consists chiefly of arrangements necessary to extend and improve the provisions of the former Act, and its clauses are not of sufficient interest to the public to require any abstract to be given of them.

Previous to the Registration Act coming into operation it was necessary to divide the country into districts of convenient size for equalizing the labours of the registrars by contracting the area where the population was dense and extending it where the population was thin. The Registrar-general issued a circular letter in September, 1836, to the boards of guardians throughout the country, on whom devolved the duty of forming each poor-law union into registration districts, and as the unions differed much from each other in population, ranging from 2000 to 80,000, the registrar-general left the arrangement to the guardians, simply referring them to certain principles for their guidance. Parishes and townships not under the Poor-law Commissioners were formed into temporary districts, or, where more convenient, were annexed to a district already comprised in a poor-law union. To each district a registrar of births and deaths is appointed, and also a registrar of marriages; and in each union there is a superintendent registrar. The registrar of births and deaths is appointed by the guardians, and is always a resident in the district in which he acts. The registrar of marriages is appointed by the superintendent registrar, subject to the approval of the guardians.

The total number of registrars of births and deaths at the end of Septem-

ber, 1838, was 2193, of whom 1021 were officers in poor-law unions. At the end of December, 1838, the number of superintendent registrars was 618, of whom 56 were superintendent registrars of temporary districts; at the same period the number of registrars of marriages was 817, of whom 419 were also registrars of births and deaths. In the first year, under the new Act, there were registered in England and Wales—

Births	399,712
Deaths	335,956
Marriages . . .	111,814

Mr. Finlaison, in an estimate of the number of births, deaths, and marriages, which might require to be registered in the first year, calculated the number of births at 550,085, of deaths at 335,968, and of mariages at 114,947. The approximation as to deaths is remarkable, and not less so the deficiency in the births and in some degree in the marriages. The imperfection in the registration of births, which seems to have arisen partly from the opposition of interested persons, partly from the erroneous notions of the ignorant, and partly from mere negligence, has since been in some degree remedied, but is still imperfect.

The registrar-general, in his 6th Report, dated Aug. 10, 1844, states that four inspectors had been appointed to visit every district into which England has been divided, in order to examine into the mode in which the registrars perform their duties. These inspectors, among other important directions given to them, are required to see "that the places of birth or death are accurately recorded; that the ages and professions of those who die are duly registered; that exertions are used to impress upon persons giving information of deaths the importance of producing a certificate of cause of death, in the hand-writing of the medical men who attended the deceased in their last illness," &c.

By the end of 1839 about 350 new register-offices had been built, and the use of temporary offices had been sanctioned in many places. The ordnance-office supplied iron boxes for holding the register books of each district. By the end of September, 1838, register books of births and deaths, and forms for certified copies thereof, had been provided by the registrar-general for 2193 registrars of births and deaths; and marriage register books, and forms for certified copies had been supplied to 11,694 clergymen of the established church, to 817 registrars of marriages, to 90 registering officers of the Society of Friends, and to 36 secretaries of Jewish synagogues. They are each required to transmit certified copies on paper having a peculiar water-mark as a safeguard against the substitution of false entries, every three months, to the superintendent registrar of each district, who transmits, once a quarter, to the registrar-general the certified copies of all the births, deaths, and marriages, which have occurred within the district during the preceding three months. These certified copies, having been deposited in the register-office in London, are there examined and arranged; and alphabetical indexes are then formed and abstracts of them are compiled. In a few years millions of entries will have been made, and yet, for legal or other purposes, it will be as easy to find out the name of any individual from among so great a number as it is to find out a word in a dictionary or a cyclopædia.

The registration for 1839 was

Births .	480,540
Deaths .	331,007
Marriages .	121,083

The improvement in the registration of births, as compared with that for 1838, is sufficiently obvious.

The registration for 1839-40 and 1840-41 is as follows:—

	1839-40.	1840-41.
Births .	501,589 .	504,543
Deaths .	350,101 .	355,622
Marriages .	124,329 .	122,482

The number of births not registered still amounts to some thousands annually, and the registrar-general is of opinion that "the registration of births will not be complete until it is enacted by law that the father or mother, or some other qualified informant, shall give notice, within a fixed period, of a birth having taken place."

A parliamentary paper gives the num-

ber of marriages, births, and deaths, registered in 1839, 1840, 1841, and 1842, as follows:—

	1839.	1840.	1841.	1842.
Marriages .	123,166	122,665	122,496	118,825
Births .	492,574	502,303	512,518	517,739
Deaths .	338,979	359,634	343,847	349,519

For other details relating to registration of marriages in England, see MARRIAGE.

REGISTRY OF SHIPS. [SHIPS.]

REGRATING. [FORESTALLING.]

RELEASE. "Releases are in divers manners, viz.: releases of all the right which a man hath in lands or tenements; and releases of actions personals and reals, and other things." (Litt. § 444.)

The former kind of release may be considered as a species of conveyance, and the instrument of release must be a deed. The operative words of release are *remise, release, renounce*, and for ever *quit claim* (an abbreviation or corruption of *quietum clamasse*). According to Littleton (§ 508), a release to a man of all demands is the best release that can be made, "and shall ensure most to his advantage;" but Coke remarks that "claims" is a word of still more extensive import. The parties to a release are the releasor and the releasee: the releasor is he who quits or renounces that which he has; the releasee is he who acquires what the other gives up, but he cannot acquire anything by the release, unless he has some estate in or right to the thing which is the object of the release.

Releases are either of an estate in land or of a right to land; or they are releases of things personal. Releases of estates in or rights to land form a part of the law of the acquisition of real property.

In order that a Release of an estate in land may have its intended effect, there must be privity of estate between the releasor and releasee; that is, the estates of the releasor and releasee must have been acquired by the same conveyance or title, or the one estate must have been derived immediately out of the other. There must be this privity whenever the Release of an estate operates either by way of enlarging the estate of the releasee, or by way of passing to him the estate of the releasor.

A Release, not considered as an instrument of conveyance, is the giving up or discharging of a right of action or suit which one man has against another. This release may be either by act of law or by deed.

If a creditor makes his debtor his executor or one of his executors, the debt is legally extinguished as soon as the creditor dies, though there can be no legal evidence of this extinguishment until the executor has obtained probate of the will. The ground of this legal conclusion is, the union of creditor and debtor in the person of the executor, who would be a necessary party to an action at law against himself. But in equity so far is the debtor from being released, that the debtor executor is considered to have received the debt, and to have it as assets in his hands. Accordingly in a suit in equity against him, he may be ordered to pay the amount of the debt into court, upon admitting it in his answer. If a debtor appoint his creditor his executor, the creditor executor, both at law and in equity, may retain his debt out of the assets which come to his hands, provided he does not thereby prejudice creditors of a superior degree. If a woman marries her debtor or creditor, the extinguishment of the debt is a necessary consequence.

In a Release of this kind also the proper words are *remise, release*, and *quit claim;* but any words are sufficient for the purpose which clearly express the intention of the parties to the deed. If a man covenants with another that he will never sue him, this is legally construed to be equivalent to a release, because the same end would be ultimately effected by virtue of this covenant, as if there were an absolute release. But there are cases in which a perpetual covenant not to sue one debtor will not discharge a co-debtor. (Hutton *v.* Eyre, 6 Taunt., 289.) A covenant not to sue for a limited time cannot of course have the effect of a release.

All persons may release, who are not under some legal disability, such as infancy. A husband may release a debt

due to his wife, because he is the person entitled to receive it; but his release of a debt due to the wife extends only to such debts as are demands at the time of the release. A partner, or other co-debtee, may also release a debt due to him and his co-partners. An executor may, at law, release a due debt to him and his co-executors as such; and one of several administrators has the same power: but such releases are ineffectual in equity, unless they are made in the due discharge of the executor's duty. Though one of several co-plaintiffs may release a cause of action, a court of law will set aside the release if it is a fraudulent transaction.

A release may be set aside in equity on the ground of the fraud, a term which will include every act of commission or omission that renders the transaction unfair, such as misrepresentation or suppression of facts important to be known to the releasor. A plea of a release is no answer to a bill in equity which seeks to set aside the release on the ground of fraud, or which, anticipating a plea of the release, charges that it was fraudulently obtained, unless the fraud which is charged is put in issue in the plea, and sufficiently denied by answer. The principle of this is fully and clearly stated by Lord Redesdale. (Roche *v.* Morgell, 2 Scho. and Lef., 730.)

A release is generally so expressed as to include all demands up to the day of the date of it; but in this case the day of the date is excluded from the computation. If the release extends to all demands up to the making of the release, this will comprehend all demands up to the delivery of it.

It is usual for releases to contain very general words, which, in their literal signification may comprehend things that the releasor does not intend to release. But whenever it can be clearly shown, as for instance by a particular recital in a deed, that the general words of release were intended to be limited, such construction must be put on them. Parol evidence is not admissible for the purpose of limiting or enlarging the words of release; but, as in the case of wills, it may be admitted where a difficulty arises in applying the words of the instrument to the facts of the case, for which purpose the state of the facts at the time of the release must be ascertained by extrinsic evidence.

RELIEF, RELE'VIUM, a burthen incident to feudal tenures, being a sum of money paid to the lord on the admittance of a fresh tenant. It is a relic of that state of things in which the succession was not strictly speaking of right, but at the will of the lord, who required the payment of such an acknowledgment for the concession. It became, however, so much the custom for the lords to admit the sons or near kindred (heirs, as we now say) to the inheritance of the ancestor, that a custom became established of doing so, and out of the custom grew the law of inheritance. The money, however, which had been paid for admission in the former state of things, continued to be paid when the succession of the next heir had become what is called matter of right.

Bracton gives what is probably the true etymology of the word. "Relevia," says he, "are so called, 'quia hereditas quæ jacens fuit per antecessoris decessum, *relevatur* in manus heredum, et propter factam relevationem.'"

REMAINDER. An estate in remainder is defined by Coke to be "a remnant of an estate in lands or tenements, expectant on a particular estate, created together with the same at one time." According to this definition, it must be an estate in lands or tenements, including incorporeal hereditaments, as rents and tithes; and it is an estate which at the time of its creation is not an estate in possession, but an estate the enjoyment of which is deferred. The estate in remainder may exist in lands or hereditaments held for an estate of inheritance or for life. It must be created at the same time with the preceding estate, and by the same instrument; but a will and a codicil are for this purpose the same instrument. A remainder may be limited by appointment, which is an execution of a power created by the instrument that creates the particular estate; for the instrument of appointment is legally considered as a part of

the original instrument. A remainder may also be created either by deed or by will; and either according to the rules of the common law, or by the operation of the Statute of Uses, which is now the more usual means.

If a man seised in fee simple grants lands to A for years or for life, and then to B and his heirs, B has the remainder in fee, which is a present interest or estate, and he has consequently a present right to the enjoyment of the lands upon the determination of A's estate; or, in other words, he has a vested estate, which is called a vested remainder. A reversion differs from a remainder in several respects. He who grants an estate or estates out of his own estate, retains as his reversion whatever he does not grant; and upon the determination of the estate or estates which he has granted, the land reverts to him. There may be several remainders and a reversion expectant on them. If A, tenant in fee simple, limits his estate to B for years, with remainder to C for life, with remainder to D in tail, this limitation does not exhaust the estate in fee simple. By the limitation B becomes tenant in possession for years, C has a vested remainder for life, D a vested remainder in tail, and A has the reversion in fee. If the limitation by A exhaust the whole estate, as it would have done in the preceding instance if the limitation had been to C and his heirs, A has no estate left. It is a necessary consequence that if a man grants all his estate, he can grant nothing more; and therefore the grant of any estate after an estate in fee simple is void as a remainder. Indeed, the word remainder implies that what is granted as such is either a part or the whole of something which still remains of the original estate.

The estate which precedes the estate in remainder or in reversion is called the *particular* estate, being a particula or portion of all the estate which is limited; and the particular estate may be any estate except an estate at will and an estate in fee simple. It must therefore be either an estate for years, or for life, or in tail.

Estates for years may be granted to commence at a future time; but by the rules of the common law, no estate of freehold can be created to commence at a future time. If therefore such an estate of freehold is granted, there must be created at the same time an estate for years, which shall continue till the time fixed for the enjoyment of the estate of freehold. If a freehold remainder expectant on an estate for years is created at common law, there must be livery of seisin to the tenant for years, for it is necessary that the freehold should pass to the grantee at the time of the grant, and the livery to the tenant for years enures to give a seisin to him to whom the estate of freehold is granted.

A remainder cannot be granted so as not to take effect immediately on the determination of the particular estate. If there is any interval left between the particular estate and the remainder in their creation, the remainder is absolutely void. A grant of an estate to A, and one day after the determination thereof to B, is a void remainder.

Estates in remainder are either vested or contingent. The remainder may vest at the time of the limitation, or it may vest afterwards: in either case the remainder-man acquires an estate in the land, to the enjoyment of which he is entitled upon the determination of the preceding estate. But it may happen that a vested remainder may never become an estate in possession.

A vested remainder is an estate which, by the terms of the original limitation or conveyance, is limited or conveyed unconditionally. If a remainder is not vested, it is contingent.

A contingent remainder is defined by Fearne to be "a remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate." Accordingly it is the limitation of the remainder which is conditional, and there is no remainder limited or given until the condition happens or is performed. The uncertainty of the remainder becoming an estate in possession is no part of the notion of a contingent remainder; for this kind o

uncertainty may exist, as already observed, in the case of vested remainders.

Fearne has made four classes of contingent remainders, to some one of which he considers that all kinds of contingent remainders may be reduced, but he adds that "several cases which fall literally under one or other of the two last of those four descriptions, are nevertheless ranked among vested estates." The subject of contingent remainders is fully discussed in the elaborate treatise of Fearne, on *Contingent Remainders and Executory Devises.*

RENT is defined by Mr. Ricardo to be "that portion of the produce of the earth which is paid to the landlord for the use of the indestructible powers of the soil. It is often, however (he remarks), confounded with the interest and profit of capital, and in popular language the term is applied to whatever is annually paid by a farmer to his landlord." Mr. Malthus (*Prin. of Pol. Econ.*) defines rent to be "that portion of the value of the whole produce which remains to the owner of the land, after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of the profits of agricultural capital, at the time being."

The chapter on rent, in the 'Wealth of Nations,' though abounding in important facts, contains no distinct enunciation of the nature and causes of rent. Dr. James Anderson in the 'Recreations in Agriculture' (vol. v. p. 401), published in 1801, is acknowledged to have propounded the theory of the origin and progressive increase of rent which is now generally recognised; but his theory excited little attention at the time; and it was not until 1815 that it was more fully and elaborately treated in two works published simultaneously: one of them was an 'Essay on the Application of Capital to Land,' by a Fellow of University College, Oxford (Mr. West, a barrister, afterwards chief-justice of Bombay); the other work was by the late Mr. Malthus, and was entitled 'An Inquiry into the Nature and Progress of Rent.' The late Mr. Ricardo had adopted the principles of these two works several years before they were published, but it was not until 1817 that a pamphlet by him appeared which contained his views on the subject. The publication of his 'Principles of Political Economy and Taxation' followed in the same year. Mr. Mill and Mr. MacCulloch have more fully adopted the Ricardo theory than any other writers; but Mr. Malthus has dissented from some of its principles, although his views in the main coincide with that theory; and Professor Tucker, of the university of Virginia, dissents from it still more widely than Mr. Malthus. Mr. Senior, while condemning some of Mr. Ricardo's reasonings, appears to have again propounded them under a different form.

The causes of the ordinary excess of the price of raw produce above the cost of production, as enumerated by Mr. Malthus, are:—1, That quality of the soil, by which it can be made to yield a greater quantity of the necessaries of life than is required for the maintenance of the persons employed on the land. This is the foundation of rent, and the limit to its possible increase. 2, The second quality consists in that property peculiar to the necessaries of life, by which, if properly distributed, they create demanders in proportion to the quantity of necessaries produced. Thus, the effect is to give a value to the surplus of necessaries, and also to create a demand for more food than can be raised on the richest lands. 3, The comparative scarcity of fertile land; a circumstance which is necessary to separate a portion of the general surplus into the specific form of rent to a landlord. As most modern economists have adopted the main principles of the Ricardo theory, we here give an outline of it, in the words of Mr. Ricardo.

Mr. Ricardo says:—"If all land had the same properties, if it were boundless in quantity and uniform in quality, no charge could be made for its use, unless where it possessed peculiar advantages of situation. It is then because land is of different qualities with respect to its productive powers, and because, in the progress of population, land of an inferior quality, or less advantageously situated, is called into cultivation, that rent is ever

paid for the use of it. When, in the progress of society, land of the second degree of fertility is taken into cultivation, rent immediately commences on that of the first quality, and the amount of that rent will depend on the difference in the quality of these two portions of land. . . With every step in the progress of population which shall oblige a country to have recourse to land of a worse quality to enable it to raise its supply of food, rent on all the more fertile land will rise. . . . If good land existed in a quantity much more abundant than the production of food for an increasing population required, or if capital could be indefinitely employed without a diminished return on the old land, there could be no rise of rent; for rent invariably proceeds from the employment of an additional quantity of labour with a proportionally less return."

Rent, according to the definition which has been given, consists of a surplus which remains after the capital expended in production has been replaced with ordinary profits. This surplus, which constitutes rent, arises, as Mr. Ricardo asserts, from, and is in proportion to, the necessity for resorting to inferior soils or employing capital on the old soil with smaller returns. To use the words of Mr. Mill—"Rent is the difference between the return made to the more productive portions and that which is made to the least productive portion of capital employed upon the land." In a country containing, as every country does contain, land of various degrees of fertility, rent therefore will not be paid until the demands of an increasing population have rendered it necessary to have recourse to the inferior soils. "Thus (continues Ricardo), suppose land, Nos. 1, 2, 3, to yield, with an equal employment of capital and labour, a net produce of 100, 90, and 80 quarters of corn. In a new country, where there is an abundance of fertile land compared with the population, and where therefore it is only necessary to cultivate No. 1, the whole net produce will belong to the cultivator, and will be the profits of the stock which he advances. As soon as population had so far increased as to make it necessary to cultivate No. 2, from which 90 quarters only can be obtained after supporting the labourers, rent would commence on No. 1; for either there must be two rates of profit on agriculture, or ten quarters, or the value of ten quarters, must be withdrawn from the produce of No. 1 for some other purpose. Whether the proprietor of the land or any other person cultivated No. 1, these ten quarters would equally constitute rent; for the cultivator of No. 2 would get the same result with his capital, whether he cultivated No. 1, paying ten quarters for rent, or continued to cultivate No. 2, paying no rent. In the same manner it might be shown, that when No. 3 is brought into cultivation, the rent of No. 2 must be ten quarters, or the value of ten quarters, whilst the rent of No. 1 would rise to twenty quarters. . . It often and indeed commonly happens that before Nos. 2 and 3, or the inferior lands, are cultivated, capital can be employed more productively on those lands which are already in cultivation. . . In such case, capital will be preferably employed on the old land, and will equally create a rent; for rent is always the difference between the produce obtained by the employment of two equal quantities of capital and labour. If with a capital of 1000*l.* a tenant obtain 100 quarters of wheat from his land, and by the employment of a second capital of 1000*l.* he obtain a further return of 85, his landlord would have the power, at the expiration of his lease, of obliging him to pay 15 quarters, or an equivalent value for additional rent; for there cannot be two rates of profit. If he is satisfied with a diminution of 15 quarters in the return for his second 1000*l.*, it is because no employment more profitable can be found for it. . . . In this case, as well as in the other, the capital last employed pays no rent. For the greater productive powers of the first 1000*l.*, 15 quarters is paid for rent; for the employment of the second 1000*l.*, no rent whatever is paid. If a third 1000*l.* be employed on the same land, with a return of 75 quarters, rent will then be paid for the second 1000*l.*, and will be equal to the difference between the produce of these two, or 10 quarters; and at the same time the rent

of the first 1000*l.* will rise from 15 to 25 quarters, whilst the last 1000*l.* will pay no rent whatever." (Ricardo's *Prin. of Pol. Econ.*, 3rd. ed.)

Another incident of rent, it is said, is this: that it does not form a part of the cost of production. Mr. MacCulloch has given the following explanation of this law in Note iii. of his edition of the "Wealth of Nations." "The price of raw produce," he remarks, "does not exceed the cost of production," including in that expression the ordinary profits of the producer's capital. "The aggregate price exceeds the aggregate cost of production; but this is because the cost of production is unequal. The price exceeds the lowest, but not the highest cost of production: and this highest cost, since it regulates the price of the whole, may be considered, without impropriety, as the cost of the whole, and the rent to be a peculiar privilege of favoured individuals."

The circumstances which precede or accompany the cultivation of inferior lands or the employment of additional capital on the old lands are stated to be —1, an increase of population; 2, the accumulation of capital; 3, a rise in the exchangeable value of raw produce. The two first cause a fall in profits and wages, and a rising market-price of raw produce is a consequence of more labour or more capital being required to produce it, or of a deficient supply previous to its being produced. In a new country, the whole produce is divided between the capitalists and the labourers, and so long as fertile land is in abundance and may be had for an almost nominal price, nobody will pay a rent to a landlord, and profits and wages are maintained at a high rate. But capital accumulates and wages decrease; and whenever agriculture has reached a state in which the returns of additional capital on the old lands are less than could be obtained from the inferior land, such inferior land will be cultivated, and if the profits of the capital employed on such inferior land were 20 per cent., while the old lands yielded 30 per cent., a rent would arise equivalent to the difference, or 10 per cent. This, as well as any subsequent rise of rents, is caused by more capital being ready to be laid out on the old land, but which cannot be so employed without diminished returns, and this circumstance renders it more profitable to take fresh lands into cultivation, though of an inferior degree of fertility.

One of Professor Tucker's objections to the Ricardo theory of rent is directed against the assumption that "the means of subsistence are a fixed quantity, or near it, instead of its admitting of such gradations that a labourer may be supported by one-fifth of the soil once required for subsistence;" and he points to the Western states of the American Union, where a labourer can earn, in less than ten days, as much grain as he can consume in a year, and where consequently a very high scale of diet is maintained, and he contrasts it with other countries in which the whole of the year's labour is necessary to earn subsistence for the year, although the scale of diet is comparatively low. In the Atlantic states of the Union, as compared with the Western states, the contrast is also very striking. This varying character of human subsistence, Professor Tucker contends, may be a cause of rent, without either an increase or decrease in the returns to capital. The very high rents paid in Ireland may be partly attributed to this cause. In the course of his objections to Mr. Ricardo's theory, Professor Tucker remarks:—"Land is a productive machine, which but a few possess, but whose produce none can dispense with, and for which there being more and more demanders, they must and will give more of their labour to obtain it. . . Rents, having once begun, continue to increase with the increase of population and the more frugal consumption to which it impels individuals." Mr. MacCulloch simply regards the adoption of a less costly food by the labourers as similar in its effects upon prices and rents to an improvement in agriculture. Professor Tucker's further objections against the Ricardo theory consist in its ascribing "the progressive rise of raw produce and of rents to the greater amount of labour expended on the soil

last cultivated, and not to the greater cheapness of all labour from the increase of population;" and in its maintaining that "when raw produce rises, labour also rises" (p. 156). He concludes "that neither is a resort to soils of inferior quality, to lands more distant from market, nor different outlays of capital on the same lands, necessary either to the existence of rent, or to its progressive increase; but that it is caused solely by the increase of population, together with the capacity which the same soil possesses of supporting a greater number by reason of their resorting to a more frugal mode of subsistence" (p. 121). It should be observed, that Professor Tucker admits that "successive resorts to inferior soils, or outlays of fresh capital on old lands, keep pace with the rise of raw produce, and ordinarily afford a *measure of the progress of rent*, and of its different degrees, according to diversities of fertility, culture, or distance from market, but they are not the cause of its rise" (p. 113). Indeed, whatever may be the true theory of the causes and amount of rent in any given community, it may be very easily shown that the existence of soils varying in fertility is not a necessary element to the existence of rent, while the limited amount of productive soil is a necessary element.

Advantages of position, such as a proximity to markets, may counterbalance the disadvantage of barrenness; and land of this description, which, if it were further removed, would yield no rent, will, under these circumstances, produce a higher rent than more fertile lands situated at a distance from the same market. Land in the neighbourhood of towns yields a high rent, and a still higher rent is paid for land in towns. The rent in each of these cases is regulated either by the common principle that there cannot be two rates of profit, of which the case first mentioned is an instance; or, as in the latter examples, it is determined by the limited extent of such land.

Restrictions on the importation of grain, by forcing the inferior soils into cultivation, undoubtedly tend directly to raise rents; but no possible quantity of imported produce could have any material effect in diminishing the total rents of the country. Importation necessarily implies the existence of high prices in the importing country: it has a tendency to equalise rather than to lower prices, as, by facilitating the exchange of manufactured goods for common food, population is increased, and an increased demand arises for other products of the soil besides bread corn. This has been the case in the territory of Genoa, where the soil, though of a sterile nature and unfit for the production of corn, yields a higher rent than the fertile corn-lands in the plains not far distant; for the cost of production being low by means of the low price of imported food, land may be cultivated for various agricultural objects, and yield a rent which, if employed in the production of grain, would scarcely repay the cost of production. In a country which possesses superior manufacturing resources and capabilities, the exchange of manufactures for common food may therefore be a cause of rent without resorting to inferior soils.

Mr. Ricardo regarded the owners of land in the same light as the possessors of a monopoly, advantageous to themselves and proportionably injurious to the mass of consumers. Mr. Malthus proposed to modify this view of their advantages, and to consider them as originating only in a "partial monopoly." The former is accused of underrating the national importance of rents, and Mr. Malthus of overrating them. Under a system of free importation of the produce of the soil, it may be correct to consider the owners of land as possessed only of a "partial monopoly," but it is scarcely so when laws are passed which, except in seasons of high prices, prohibit the supply of provisions from foreign countries; and in this case the interests of the community do not coincide with that of the owners of land.

When rights of property are fully established, rents will exist, whether they accrue to the farmer-proprietor or are paid by the farmer-tenant to a landlord. That quality of land which terminates in rent, Mr. Malthus regards as a boon most important to the happiness

of mankind, and the main security against the time of the whole society being employed in procuring mere necessaries. "This," he observes, "is the source of all power and enjoyment; and without which, in fact, there would be no cities, no naval and military force, no arts, no learning, none of the finer manufactures, none of the conveniences and luxuries of foreign countries, and none of that cultivated and polished society which not only elevates and dignifies individuals, but which extends its beneficial influences through the whole mass of the people."

In Mr. Malthus's 'Principles of Pol. Econ.' the subject of section 7, chap. iii., is "On the causes which may mislead the landlord in letting his lands, to the injury both of himself and the country." Most of the considerations which he urges are of a practical nature, and relate to rent in agriculture. On this part of the subject the reader may refer to Grainger and Kennedy, "On the Tenancy of Land in Great Britain."

(Ricardo, Malthus, Mill, and MacCulloch's *Treatises on the Elements and Principles of Political Economy;* Professor Tucker's *Laws of Wages, Profits, and Rent investigated,* Philadelphia, 1837; Professor Jones's *Essay on the Distribution of Wealth and on the Sources of Taxation.*')

RENT (in Law Latin, *redditus,* "a return") is a right to the periodical receipt of money or something valuable in respect of lands or tenements held by him from whom the rent is due. There are three kinds of rent—rent-service, rent-charge, and rent-seck.

There is rent-service when a tenant holds lands of his lord by fealty and certain rent, or by homage, fealty, and certain rent, or by other services and certain rent. Rent-service therefore implies tenure, and it may be due to the lord of the manor of which the lands are held, or to some other chief (that is, immediate) lord of the fee, or to the reversioner. The right of distress is an incident to rent-service in arrear, so long as it is due to the same person to whom fealty is due. In order that rent-service may now be created, the person to whom the rent is reserved must have a reversion in the lands and tenements out of which the rent is to issue; but any reversion is sufficient. Thus a person who has a term of twenty years may grant it to another, all but one day, and this will leave him a reversion, so that a rent-service may be reserved, with its incidents of fealty and the right of distress. If he assign all his term, reserving a rent, but without a clause of distress in the assignment, he cannot distrain for the rent.

Rent-service therefore which has been created since the statute of Quia Emptores can only be reserved to the lessor who retains a reversion, and it will belong to the person who is entitled to the reversion. If a man seised in fee simple makes a lease of lands for years, reserving rent, the rent-service is descendible to his heir with the reversion; though all rents which accrue due to the lessor before his death will belong to his personal representatives. A rent-service reserved out of chattels real will of course belong to the personal representatives of the lessor. A rent is now most commonly reserved in leases for years, but it may be reserved on any conveyance which passes or enlarges an estate; and it may be reserved in the grant of an estate in remainder or reversion, or in a grant of a lease for years to commence at a future time.

A rent-service may be separated from the reversion or seignory, by the reversioner granting the rent and retaining the fealty: in this case the lands are still held of the grantor, but the rent is due to the grantee; not however as rent-service, but as rent-seck (redditus siccus), so called, "for that no distress is incident to it." (Litt. 218.) If the seignory or reversion is granted, the rent-service will pass by the grant, and the grantee is entitled to receive the rent from the tenant from the time that he gives him notice of the grant, together with all rent that had accrued due since the grant, and is unpaid at the time of such notice.

Rent-service can only be reserved to the feoffor, donor, or lessor, or to their heirs, upon any feoffment, gift, or lease: and if rent is reserved generally, without specifying the persons, it will belong to the lessor, and after his death to those who are entitled to the reversion. Rent

is payable at the times mentioned in the reservation, but not till the last minute of the day on which it is payable.

When rent-service is in arrear, the common-law remedy for the recovery of it is by distress. [DISTRESS.] By 4 Geo. II. c. 28, § 2, every landlord who by the terms of his lease has a right of re-entry in case of non-payment of rent, may, when half a year's rent is due, and there is no sufficient distress on the premises, serve a declaration in ejectment on his tenant, without any formal re-entry or previous demand of rent, and a recovery in such ejectment is final and conclusive, unless the rent and all costs are paid within six calendar months after the judgment in the action of ejectment has been executed. The action may also be stayed before trial, if the tenant will pay or tender to the lessor, or pay into court all the rent then in arrear, together with the costs. By the common law the lessor has also an action of debt for rent against a lessee for years or at will; and by the statute of Anne (8, c. 14, § 4) there is also the same action against a lessee for life during the continuance of his estate, which had previously been given for arrears of rent after the determination of the estate (32 Hen. VIII. c. 37). A lessor may also have an action of covenant for rent, either by force of the implication contained in such words as "yielding and paying" rent, or by force of an express covenant to pay, which is seldom omitted in any lease. If the lessee assign his interest in the term, he, and his executors so far as they have assets, are still liable under the covenants to the person entitled to the reversion. The assignee also becomes bound by such of the covenants as run with the land, and is consequently liable to an action upon them. There is also the remedy by action of assumpsit or debt for the use and occupation of land, which action lies without any express agreement for rent.*

Rent-service may be discharged in various ways. If the tenant be evicted from the lands demised to him, he is discharged from payment of the rent; and if the lessor purchase the lessee's interest, the rent is also discharged. The lessor may release a part of the rent-service, without releasing the whole.

A rent-charge is a rent granted out of land either at common law or by the Statutes of Uses, with a power of distress for the recovery of the rent. Such rents may be created by the owner of the land who retains the property of it; and they may also be reserved on the alienation of the land. These rents differ from rent-service in not being connected with tenure, and the remedy by distress is therefore not an incident to rent-charges, but is created by the same instrument which creates the rent-charge. If no power of distress is given, the rent is a rent-seck. Rent-charge may be created either by deed or by will. Sometimes, by the terms of the grant, the grantee of a rent-charge is empowered to enter on the land and satisfy himself for all arrears out of the profits of the land. When a rent-charge is created under the Statute of Uses (§ 4, 5) with a power of distress and entry upon the land in case of arrear, the person to whom the rent-charge is given obtains the legal estate in the rent-charge, with all the remedies for its recovery, as he would by a direct grant of the rent-charge; and the same instrument (lease and release) which creates the rent-charge may also make a settlement of the lands charged with the rent. In this way in a marriage-settlement a rent-charge may be provided for the wife's jointure.

An estate in a rent-charge may be either in fee simple, in fee tail, for lives, or for years, according to the terms of the original limitation. A rent-charge of inheritance is real estate, and descendible to the heir; but a payment that is due belongs to the person representative.

A rent-seck, as already mentioned, is not, like rent-service, accompanied with a right to distrain at common law; but by the stat. 4 Geo. II. c. 28. § 5, this distinction in respect of remedy between rent-service and rent-seck, created since that statute, is abolished; and the act also applies to rent-seck created prior to the statute which had been duly paid for three years out of the last twenty years. Other rents, though they belong to one of

* See a remark on this action, 6 A. and E., p. 839.

the three divisions above mentioned, are often distinguished by particular names: thus the real rent due from a freeholder is called a chief rent (redditus capitalis); the rents of freeholders and antient copyholders of manors are sometimes called rents of assise, being *assisi*, or ascertained, and also quit rents (quieti redditus), because they are a quittance and discharge of all services.

A fee-farm rent is properly a perpetual rent-service reserved by the crown, or, before the statute of Quia Emptores [FEUDAL SYSTEM], by a subject, upon a grant in fee simple. The purchaser of fee-farm rents originally reserved to the crown, but sold under 22 Car. II. c. 6, has the same power of distress that the king had, and so may distrain on other land of the tenant not subject to the rent.

REPORTS (in Law) are relations of the proceedings of courts of law and equity. They contain a statement of the pleadings, the facts, the arguments of counsel, and the judgment of the court in each case reported. The object of them is to establish the law, and prevent conflicting decisions, by preserving and publishing the judgment of the court, and the grounds upon which it decided the question of law arising in the case.

The earliest reports extant are the 'Year-books.' It is said that some few exist in MS. of the reign of Edward I., and a few broken notes are to be found in Fitzherbert's Abridgment. A series of these commences, and are now printed, from the reign of Edward II. They were published annually, which explains their name, from the notes of persons, four in number, according to Lord Coke, who were paid a stipend by the crown for the purpose of committing to writing the proceedings of the courts. These early accounts of cases are very short, abrupt, and often confused, especially from the circumstance that it is frequently difficult to ascertain whether a judge or a counsel is speaking. At that time judges were dismissed at the pleasure of the crown, and after their dismissal returned to their previous position of counsel.

The Year-books continue, with occasional interruptions in their series, down to the reign of Henry VIII. The omission during the time of Richard II. has been attempted to be supplied by Bellewe, who collected and arranged the cases of that period which had been preserved by other writers. The Year-books are wholly written in Norman-French, although by 36 Edw. III. stat. 1, c. 15, it was enacted that all pleadings should be in the English language, and the entries on the rolls in Latin. The Norman-French continued to be used by some reporters even as late as the eighteenth century. The last which appeared in that tongue were those of Levinz and Lutwyche: the former in 1702; the latter, in French and Latin, in 1704. The Year-books of later date have more continuity of style and fulness of discussion: cases are cited, and the decision of the court is given at greater length. About the end of the reign of Henry VII. it is probable that the stipend was withdrawn. Only five Year-books exist for the ensuing reign, and none were published after it. Lord Coke observes, that there is no small difference between the cases reported in the reign of Henry VIII. and those previous. Their place was shortly afterwards supplied by reports compiled and published by private individuals on their own responsibility, but subject for some time to the inspection and approbation of the judges, whose testimony to the ability and fitness of the reporter is often prefixed to the Reports. This however soon became a mere form, as appears by the statement of Lord-Keeper North, who speaks slightingly of the Reports in his time as compared with his favourite Year-books.

During the reign of Henry VIII. and his three successors, Dyer, afterwards chief-justice of the Common Pleas, took notes as a reporter. Benloe and Dalison were also reporters in these reigns. In the time of Elizabeth many eminent lawyers reported the proceedings of the courts, and from the ability with which they acquitted themselves, added to the previously unsettled state of the law, the Reports of about this period have acquired very great authority. Anderson, Moore, Leonard, Owen, Coke, and Croke all lived about this time. But the first printed accounts of cases published by a private hand are those of Edmund Plowden, the

first part of which appeared in the year 1571, under the title of 'Commentaries.' A few years afterwards the executors of Dyer published the notes of their testator under the express name of 'Reports,' being the first published under that title. These were followed, in 1601 and 1602, by those of Sir Edward Coke, which, from their excellence, have ever been dignified by the name of 'The Reports.' During this time reporters did not, as they have done in more modern times, confine themselves to one court. In the same volume are found reports of cases in chancery, in the three superior courts, the court of wards, &c. During the reign of James I., Lord Bacon and Sir Julius Cæsar suggested to the king the appointment of two officers for the purpose of taking notes and minutes of proceedings in the courts. James acceded to the suggestion, and a copy of his ordinance for their appointment, at a salary of 100*l.* each, is still extant. (Rymer's *Fœdera*, 15 Jac. I. 1617.) The ordinance does not however appear to have been acted upon, and Reports continued to be compiled and published by private hands only.

The English language was first used by reporters about the time of Elizabeth. Lord Coke employed it in his 'Commentary upon Littleton.' In his preface he states why he thought it convenient to do so; and adds that his conduct was not without precedent. From the period of Elizabeth down to the present, reports have been published of the proceedings in all the courts. The whole body of Reports is now very large. Every court has its reporters, who are not persons authorized by the courts. The reporters use their own judgment as to what they shall report, and their volumes often contain trifling matters and are swelled out to a most unreasonable and useless bulk.

A good record of cases decided, with a brief statement of the cases and the grounds of the decision, is certainly both useful and necessary; but the great mass of reported cases and the trifling matter of many of them have had the effect of making lawyers rely more on the judgments in particular cases than on those general principles of law which have an extensive application and are the surest foundation for a sound legal opinion.

(Coke's *Reports*, Preface to Part 3; Dugdale's *Origines Juridicales*; Reeves's *History of the English Law*.)

REPRESENTATIVES. [COMMONS, HOUSE OF; PARLIAMENT.]

REPRIEVE (from the French *repris*, withdrawn) means the withdrawal of a prisoner from the execution and proceeding of the law for a certain time. Every court which has power to award execution, has also power, either before or after judgment, to grant a reprieve. The consequence of a reprieve is, that the delivery or the execution of the sentence of the court is suspended. A reprieve may proceed from the mere pleasure of the crown expressed to the court, or from the discretion of the court itself. The justices of gaol delivery may either grant or take off a reprieve, although their session be finished, and their commission expired. A reprieve which proceeds from the discretion of the court is usually granted when, from any circumstance, doubt exists as to the propriety of carrying a sentence into execution. This doubt may be created either from the unsatisfactory character of the verdict, the suspicious nature of the evidence, the insufficiency of the indictment, or from the appearance of circumstances favourable to the prisoner. When a reprieve has been granted with a view to recommend to mercy a prisoner capitally condemned, a memorial to that effect is forwarded to the secretary of state, who recommends the prisoner to the mercy of the crown, and to a pardon, on condition of transportation or some lighter punishment. [PARDON.] Where it has been granted by reason of some doubts in point of law as to the propriety of the conviction, the execution of the sentence is suspended until the opinion of the judges has been taken upon it. The sentence is then executed or commuted in accordance with their opinion.

There are two cases in which a reprieve is always granted. One is where a woman who has been capitally convicted pleads her pregnancy in delay of execution. [LAW, CRIMINAL, p. 228.] The other is where a prisoner appears

to have become insane between judgment and the award of execution. In such case a jury must be sworn to inquire whether he really is insane. If they find that he is, a reprieve must be granted. (*Termes de la Ley*, 498; Hale, *P. C.*; 2 Hawk. *P. C.* book ii. c. 51, § 8, 9; 4 Blackstone, *Com.*)

A reprieve is granted thus:—Before leaving an assize town, a calendar containing the names, offences, and sentences of the prisoners is prepared by the clerk of the assize, and is signed by the judge. If he thinks proper to reprieve any one of them, he writes the word "reprieved" in the margin of the calendar, opposite to the name of the prisoner, as follows:—

"*Reprieved.*	A. B. for the murder of C. D.	To be hanged."

If he leaves A. B. for execution, and subsequently reprieves him, he writes to the under-sheriff and the gaoler to say so, and such letter from the judge stays execution.

If the reprieve is sent by the secretary of state, it is under the sign manual of the king.

REPUBLIC is derived immediately from the French *république*, and ultimately from the Latin *res publica*. The Latin expression *res publica* is defined, by Facciolati, to be "res communis et publica civium una viventium," and corresponds very closely with the English word *commonwealth*, as used in its largest acceptation for a political society. The Latin word *res publica* might be applied to a community under a substantially monarchical government; thus Augustus is said, in a passage of Capito, a Roman lawyer, to have governed the *res publica* (Gellius, xiii. 12); the word, however, was more applicable to a society having a popular government than to a society having a monarchical government; thus Cicero denies that the name of *res publica* can be properly given to a community which is grievously oppressed by the rule of a single man: "Ergo illam rem populi, id est rem publicam, quis diceret tum, quum crudelitate unius oppressi essent universi; neque esset unum vinculum juris, nec consensus ac societas coetus, quod est populus." (*De Rep.*, iii. 31.)

So Haemon, in the 'Antigone' of Sophocles (v. 733), says that a state which is under the power of one man does not deserve the name of a state.

A *republic*, according to the modern usage of the word, signifies a political community which is not under monarchical government, or, in other words, a political community in which one person does not possess the entire sovereign power. Dr. Johnson, in his dictionary, defines a republic to be "a state in which the power is lodged in more than one." Since a republic is a political community in which several persons share the sovereign power, it comprehends the two classes of aristocracies and democracies, the differences between which are explained under ARISTOCRACY and DEMOCRACY.

The word *republic* is sometimes understood to be equivalent to *democracy*, and the word *republican* is considered as equivalent to *democrat*; but this restricted sense of the words appears to be inaccurate; for aristocratic communities, such as Sparta, Rome in early times, and Venice, have always been called republics.

It has been shown in MONARCHY that the governments usually styled "limited monarchies" are properly aristocracies presided over by a king; and consequently ought to be referred to the class of republics, and not to that of monarchies, in which they are commonly placed. We observe, however, that the German writers, who know from their personal experience the character of monarchies strictly so called, sometimes correctly give the name of republican to the government of England since 1688, and to the government of France since 1815.

A vast deal of error and confusion of thought (leading to important practical consequences) has arisen from the capricious and indistinct usage of the words *monarchy* and *republic*.

REQUEST, COURTS OF (sometimes called *Courts of Conscience*), are local tribunals, founded by Act of Parliament to facilitate the recovery of small debts from any inhabitant or trader in the district defined by the Act.

As all the Acts are made upon the same model, the most easy method of explaining the functions of these courts will be to show the general provisions of those Acts.

A board of commissioners is appointed, often in corporate towns consisting of one or two aldermen, with a certain number of householders as assessors. To this board is given the power of summoning a debtor, upon the complaint of the creditor, of taking the evidence of the creditor and his witnesses upon oath, of determining on the amount due, and issuing a summons or order to the debtor to pay that amount, either in one sum or by instalments. The board has usually the power of distress on goods, or of imprisonment during a limited time, if the order for payment is not obeyed. In London the jurisdiction is confined to cases where both parties are inhabitants, and the same restriction may be found in some of the older Acts; but usually it is sufficient that the debtor should be an inhabitant, or should be "seeking his livelihood" within the jurisdiction.

The sum to which the jurisdiction of these courts extends is usually 5*l.*, often only 2*l.*, and the debt may arise either upon simple contract, a balance of accounts, or as a compromise of a larger debt; but there is usually a proviso in the Acts that a larger debt shall not be split into fragments to bring it within the jurisdiction of the court, although the creditor may reduce a larger demand to such a sum as the court can award, provided he is satisfied with the smaller amount in discharge of his whole debt.

The Acts usually provide that if a party within the jurisdiction is sued in one of the superior courts, and the plaintiff recovers from him only the sum which the local court could have awarded, the plaintiff shall pay full costs to the defendant. The Acts also reserve to a landlord the right to distrain for rent, and also prohibit the courts from interfering in matters touching the right to land or the occupation of it, or in matters belonging to ecclesiastical courts, or to tithes: usually, too, gambling debts are excluded, and sometimes tavern debts incurred on Sunday. The courts have jurisdiction over persons under age, and can usually grant summons for wages due to minors. Attorneys are not exempted from the jurisdiction of the court, but they are usually prohibited from practising in it, and they are not liable to payment of costs for suing in superior courts. Most of the Acts contain a clause prohibiting the removal of the proceedings to superior courts.

The 8 & 9 Vict. c. 127, § 9, enables her majesty, with the advice of her privy council, among other things to extend the jurisdiction of any court of requests to 20*l.*, if such court has a judge who is either a barrister at law, or special pleader, or an attorney of one of the superior courts of common law at Westminster, who shall have practised as an attorney for at least ten years. The same section makes provision for the appointment of such a judge.

The first Act for the establishing of a court of requests is the 1 James I. c. 15, which confirms the court which had already been established in London by an act of the common council, at least as early as the reign of Henry VIII., if indeed it had not been established by antient usage. (Tidd Pratt's 'Abstract of the Acts of Parliament relating to Courts of Requests,' for a list of the places which have such courts.)

RESIDENCE. [BENEFICE.]

RESIGNATION. The word Resignation literally signifies an unsealing or breaking of a seal in order to open a testamentary instrument, as in Horace, Lib. i. Ep. vii. 8:

> "Officiosaque sedulitas et opella forensis
> Adducit febres, et testamenta resignat."

The English word Resignation is the proper term to express the giving up of a benefice which the canonists call Renunciation. A surrender is the giving up of temporal land into the hands of the lord. A resignation of a benefice must be made to a superior: a parson must resign to his bishop, a bishop to the archbishop, and an archbishop to the king. A donative is to be resigned to the patron, for a donative is received immediately from the patron; but a common benefice is to be resigned to the ordinary who has admitted and instituted the clerk. The

subject of Resignation Bonds is discussed under BENEFICE, p. 350.

The resignation must be in writing, and contain the proper formal words, of which "resigno," "resign," is one, but not the only one that is necessary. The benefice or ecclesiastical preferment is not vacant until the resignation has been accepted.

The term Resignation is now generally applied to any giving up of an office or place, even to those which are merely honorary, as a seat at a board of directors or at the council of a literary or scientific society. It is usual to accept such resignations formally, though in most cases a man may give up or withdraw from any such place, when he pleases, though he will not thereby alone free himself from any pecuniary demand to which he may in such capacity have made himself liable.

RESIGNATION BONDS. [BENEFICE, p. 352.]

RESPONDENTIA. [BOTTOMRY.]

RESTITUTION.—*Restitution of stolen goods.* By 7 & 8 Geo. IV. c. 29, § 57, if any person guilty of a felony or misdemeanor under that act, in stealing, converting, or receiving any property, shall be indicted for such offence by the owner or his executor, and convicted, the property shall be restored to the owner, and the court before whom the person shall be convicted shall have power to award writs of restitution for the property, or order it to be restored in a summary manner. Provided that if it shall appear that any valuable security shall have been *bonâ fide* paid or discharged by some person liable to pay it, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery by some person for a valuable consideration, without any reasonable ground to suspect that it had been stolen, &c., then the court shall not order the restitution of such security.

Before this Act, the owner was in all cases entitled to restitution on conviction for a felony, but not for a misdemeanor. During the period between the theft and the conviction, or acquittal or death of the prisoner, the ownership of the property is suspended. (2 *Inst.*, 711; Horwood *v.* Smith, 2 *T. R.*, 750; Burn's *Justice*, 'Restitution.')

REVERSION. "Reversion of land is a certain estate remaining in the lessor or donor, after the particular estate and possession conveyed to another by lease for life, for years, or gift in tail. And it is called a reversion in respect of the possession separated from it: so that he that hath the one, hath not the other at the same time, for being in one body together, there cannot be said a reversion, because by the uniting, the one of them is drowned in the other. And so the reversion of land is the land itself when it falleth." (*Termes de la Ley.*) Thus if a man seised in fee simple conveys lands to A for life, or in tail, he retains the reversion in fee simple. In all cases where the owner of land or the person who has an estate in land, grants part only of his estate, he has a reversion; and as the grantee holds of him, there is tenure between them, and the grantor has a seignory by virtue of having a reversion. When a man grants all his estate to another, or grants a particular estate to A, and various remainders over, remainder to F in fee, he has no reversion left, and therefore he has no seignory since the passing of the statute of Quia Emptores. The remainder-men also who precede the remainder-man in fee, do not hold of such remainder-man, but of the lord of the fee of whom the original owner held. The word reversion is often used inaccurately, and it is sometimes necessary to recur to its strict legal signification.

Before the passing of the statute De Donis, if a man seised in fee simple granted his lands to a man and the heirs of his body, he had no reversion, for the grantee was considered to have a conditional fee. But since this statute, an estate to a man and the heirs of his body has always been considered to be a particular estate.

If a man grants a lease of lands in possession, at common law, he has no reversion until the lessee enters by virtue of his lease, for the lessee has no estate until he enters; but if the term of years is created under the Statute of Uses, as by bargain and sale, the lessee has a

vested estate by virtue of the statute, without entering on the land, and consequently the lessor has a reversion. It is said that a reversion cannot be created by deed or other assurance, but arises from construction of law. This means that a reversion is not created by the act of the party who conveys part of his estate, but is a legal consequence of his acts. If a man seised in fee simple limits his estate to another for life or in tail, remainder to himself in fee or to his own right heirs, he has not a remainder, but a reversion. Yet by a recent statute (3 and 4 Wm. IV. c. 106) the effect of such a limitation is to vest such remainder in fee in the settlor by *purchase*, and he is not to be considered to be entitled to it as his former estate or part thereof.

A reversion is a vested estate, which may be granted or conveyed, and charged like an estate in possession; and in some cases the reversioner in fee may bring an action, as well as the tenant in possession, for an injury to his inheritance.

Fealty is an inseparable incident to a reversion. There may or may not be a rent reserved, but fealty is always due from the owner of the particular estate to the reversioner, and it cannot be separated from the reversion, though the rent, if there is one reserved, may be separated from it. Reversions which are expectant on estates for years are subject to dower and courtesy; but this is not the case with reversions expectant on a freehold estate.

By a recent Act (3 and 4 Wm. IV. c. 104), reversionary estates or interests in lands, tenements, and hereditaments, corporeal and incorporeal, are assets to be administered in courts of equity for the payment of a person's debts both on simple contract and on speciality, when such person shall not by his last will have charged such estates or interests with or devised them subject to the payment of his debts.

RIGHT. It has been shown in LAW [i. p. 174] that the word *right* occurs under some form in all the Teutonic languages; and that it bears a double meaning equivalent to the significations of the Latin word *jus*, namely, *law* and *faculty*. The Anglo-Saxon word bore this double meaning, but *right*, in modern English, has lost the signification of *law*, and has retained only its other meaning.

Right, in its strict sense, means a legal claim; in other words, a claim which can be enforced by legal remedies, or a claim the infringement of which can be punished by a legal sanction. It follows from this definition that every right presupposes the existence of positive law.

The causes of rights, or the modes of acquiring them, are various, and can only be explained in a system of jurisprudence; for example, a person may acquire a right by contract, by gift, by succession, by the non-fulfilment of a condition.

Every right correlates with a legal duty, either in a determinate person or persons or in the world at large. Thus a right arising from a contract (for example, a contract to perform a service, or to pay a sum of money) is a right against a determinate person or persons; a right of property (or dominion) in a field or house, is a right to deal with the field or house, availing against the world at large. On the other hand, every legal duty does not correlate with a right; for there are certain absolute duties which do not correlate with a right in any determinate person. Such are the duties which are included in the idea of police; as the duties of cleanliness, order, quiet at certain times and places.

The word right is sometimes used, improperly and secondarily, to signify not legal but moral claims; that is to say, claims which are enforced merely by public opinion, and not by the legal sanction.

In this sense the right of a slave against his master, or of a subject against his sovereign, may be spoken of; although a slave has rarely any legal right against his master, and a subject never has a legal right against his sovereign. It is in the same sense that a sovereign government is sometimes said to have rights against its subjects, although in strictness a sovereign government creates rights, and does not

possess them. In like manner, one sovereign government is said to have rights against another sovereign government; that is to say, moral rights, derived from the positive morality prevailing between independent nations, which is called *international law*.

We likewise sometimes hear of certain rights, styled natural rights, which are supposed to be anterior to civil government, and to be paramount to it. Hence these supposed natural rights sometimes receive all the additional epithets of indefeasible, indestructible, inalienable, and the like. This theory of natural rights is closely connected with the fiction of a social compact made between persons living in a state of nature; which theory, though recommended by the authority of Locke, has now been abandoned by nearly all political speculators.

RIGHT OF COMMON. [COMMONS, RIGHTS OF.]

RIGHT, PETITION OF. [PETITION OF RIGHT.]

RIGHTS, BILL OF. [BILL OF RIGHTS.]

RIGHTS, DECLARATION. [BILL OF RIGHTS.]

RIOT. A riot is a misdemeanour at common law. The definition of it given by Hawkins, and which appears to have been very generally adopted without much alteration by subsequent writers, is "a tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist one another against any one who shall oppose them in the execution of some enterprise of a private nature, and afterwards executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." But if the enterprise is for the purpose of redressing grievances generally throughout the kingdom, or to pull down all inclosures, the offence is not a riot, but amounts to a levying of war against the king, and the parties engaged in it are guilty of high treason.

Violence, if not of actual force, yet in gesture or language, and of such a nature as to cause terror, is a necessary ingredient in the offence of riot. The lawfulness of the enterprise operates no further than as justifying a mitigation of the punishment. It does not in any way alter the legal character of the offence. All parties present at a riot who instigate or encourage the rioters, are themselves also to be considered as principal rioters.

Various Acts of Parliament have been passed for the purpose of giving authority to magistrates and others for the purpose of suppressing riots, and restraining, arresting, and punishing rioters. These are collected and commented upon by Hawkins (1 *P. C.*, b. i., c. 65) and Burn (5 vol., 'Riot,' &c.). The most important is 1 Geo. I., st. ii., c. 5, commonly called the Riot Act. By that statute it is provided that "if any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, shall continue so assembled for the space of an hour after a magistrate has commanded them by proclamation to disperse, they shall be considered felons."

The form of proclamation is given in the Act, and is as follows:—

"Our sovereign lady the queen chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies.

"God save the Queen."

This is directed to be read with a loud voice and as near as possible to the rioters; no word must be omitted. Persons who do not disperse within the hour may be seized and apprehended by any magistrate or peace-officer, or any private person who has been commanded by a magistrate or officer to assist. In case of resistance, those who are attempting to disperse or apprehend the rioters will be justified in wounding or killing them. It is felony also to oppose the reading of the proclamation; and if the reading should be prevented, those who do not disperse are still guilty of felony,

if they know that the reading of the proclamation has been prevented.

A prosecution under this Act must be commenced within a year after the offence has been committed. By the 7 & 8 Geo. IV., c. 30, s. 8, rioters who demolish or begin to demolish a church or a chapel, a dwelling-house, or any other of the various buildings or machinery mentioned in that Act, are to be considered as felons. By 7 & 8 Geo. IV., c. 31, provision is made for remedies against the hundred in case of damage done by rioters.

By that Act compensation may be recovered by action against the hundred for any injury done to buildings, or furniture, &c., contained in them, to the amount of 30*l.* Where the damage does not amount to 30*l.*, inquiry may be made on oath of the claimant, or other witnesses, before justices at a petty sessions, who are authorised to make an order for payment of damages and costs. An inhabitant of the hundred is made a competent witness for the defendants. In order to recover in either of these proceedings, it is necessary to show that a riot has been committed; and in case the building, &c., has not been demolished, to show that the rioters had *begun to demolish* it; that is, that their intent was to demolish, although from some reason that intent has not been carried into execution. Unless this intent is proved, the party is not entitled to compensation, however great damage may have been done; and if the intent did exist in the mind of the rioters, compensation is still claimable, however slight the damage. If the rioters have been interrupted in their proceedings, it will be left to the jury, or it will be for the justices to say, whether, without such interruption, a demolition would have been effected. But if the rioters have voluntarily retired without effecting a demolition, or if, though disturbed, their intent, from other circumstances, appears to have been directed towards some other object, as for instance to compel persons to illuminate, &c., the parties injured will have no remedy under the statute, as it appears that there was no intent to demolish.

The action must be commenced within three months after the commission of the offence; and to entitle the party injured to bring an action, he, if he had knowledge of the circumstances, or the party in charge of the property, must, within seven days after the injury done, go before a magistrate and give on oath all the information relative to the matter which he possessed, and also be bound over to prosecute the offenders.

With respect to unlawful assemblies of a seditious character, various provisions are enacted by 39 Geo. III., c. 79, and 57 Geo. III., c. 19; and in reference to those for training to the use of arms, by 60 Geo. III., c. 1. [SEDITION.]

(Hawkins, *P. C.*; East, *P. C.*; Burn's *Justice*, vol. 5, 'Riot,' &c.; Russell, *On Crimes.*) [LAW, CRIMINAL, p. 182.]

RIOT ACT. [RIOT.]

RIVER. In a legal sense rivers are divisible into fresh and salt-water rivers. Salt-water rivers are those rivers or parts of rivers in which the tide ebbs and flows. Rivers are also divisible into public or navigable rivers and private rivers.

The property in fresh-water rivers, whether public or private, is presumed to belong to the owners of the adjacent land; the owner on each side being entitled to the soil of the river and the right of fishing as far as the middle of the stream. But this presumption may be rebutted by evidence of special usage to the contrary. For instance, it may be shown that the river belongs to one person, and the adjacent land to another; or that one party owns the river and the soil of it, and another the free or several fishery of the river. If a fresh-water river between the lands of two owners gains on one side by insensibly shifting its course, each owner continues to retain half the river, and the insensible addition by alluvium belongs to the land to which it attaches itself; unless the lands of the proprietors on each side have been marked out by other known boundaries, such as stakes, in the river. This part of the law as to the acquisition by alluvio, is stated by Bracton in the chapter "De acquirendo rerum dominio" (fol. 9), and his statement both in substance and expression is taken from the *Digest* (41, tit. 1,

s. 7), with which Gaius may be compared (ii. 70). But if the course of the river is changed suddenly and sensibly, then the boundaries of the lands will be, as they were before, in the midst of the deserted channel of the river. Though fresh-water rivers are presumed to be the property of adjacent landowners, yet such owner cannot set up a ferry and demand a toll unless by prescription or by charter from the king.

In those rivers which are navigable, and in which the public have a common right to a passage, the king is said to have "an interest in jurisdiction," and this is so not only in those parts of them which are the king's property, but also where they are become private property; such rivers are called "fluvii regales," "haut streames le roy," "royal rivers;" not as indicating the property of the king in the river, but because of their being dedicated to the public use, and all things of public safety and convenience being under his care and protection. Thus a common highway on land is called the king's highway, and navigable rivers are in like manner the king's highway by water. Many of the incidents belonging to a highway on land attach to such rivers. Accordingly any nuisances or obstructions upon them may be indicted even though the nuisances be in the private soil of any person; or the nuisances and obstructions may be abated by individuals without process of law. But all the incidents of a land highway do not attach to such rivers. Thus, if the highway of the river is obstructed, a passenger will not be justified, as he would be in the case of a land highway, in passing over the adjacent land. Though a river is a public navigable river, there is not therefore any right at common law for parties to use the banks of it as a towing-path. (Ball *v.* Herbert, 3 *T. R.*, 253.)

If a river which is private in use as well as in property be made navigable by the owner, it does not therefore become a public river unless from some act it may be presumed that he has dedicated it to the public. The taking of toll is such an act. Callis says that the soil of the sea and of royal rivers belongs to the king. But the expression, if intended to apply to all parts of the rivers where the public have a right of passage, appears too comprehensive.

But there is no doubt that in some such rivers the property may be in the crown; as it was in the river Thames, the property in which, both as to the water and the soil, was conveyed by charter to the lord mayor and citizens of London. And in all rivers as far as the tide flows, the property of the soil is in the king, if no other claims it by prescription. In navigable rivers where the tide flows, the liberty of fishery is common and public to all persons. (Hale, *De Jure Maris et Brachiorum ejusdem;* Callis, *On Sewers.*)

The mere running water belongs to no one; but the proprietor of adjoining land is entitled to the reasonable use of it as it runs by his land. "And consequently no proprietor can have the right to use the water to the prejudice of any other proprietor. Without the consent of the other proprietors who may be affected by his operations, no proprietor can either diminish the quantity of water which would otherwise descend to the proprietors below, or throw the water back upon the proprietors above. Every proprietor who claims a right either to throw the water back above, or to diminish the quantity of water which is to descend below, must, in order to maintain his claim, either prove an actual grant or licence from the proprietors affected by his operations, or must prove an uninterrupted enjoyment of twenty years."

(*Judgment of Sir J. Leach in* Wright *v.* Howard; Sim. and Stuart, 109; Gale, *On Easements.*)

ROAD. [WAY.]

ROBES, MASTER OF THE, an officer of the household who has the ordering of the king's robes. By statute 51 Henry III., the "Gardein de la Garderobe de Roi," the warden of the king's wardrobe, was to make accompt yearly in the Exchequer, on the feast of St. Margaret. Under a queen, the designation of the office is changed to that of a mistress of the robes. The office has always been one of dignity. High privileges were conferred upon it by King Henry VI., and others by King James I.,

who erected the office of master of the robes into a corporation.

ROGUE AND VAGABOND. [VAGRANT.]

ROLLS COURT. [CHANCERY.]

ROLLS, MASTER OF THE. [CHANCERY.]

ROLLS. [RECORDS.]

ROMAN CATHOLICS. [CATHOLIC CHURCH; ESTABLISHED CHURCH; RECUSANTS.]

ROMAN LAW. The historical origin of the Roman Law is unknown, and its fundamental principles, many of which even survived the legislation of Justinian, are older than the oldest records of Italian history. The foundation of the strict rules of the Roman law as to familia, agnatio, marriage, testaments, succession to intestates, and ownership, was probably custom, which being recognised by the sovereign power, became law. As in many other states of antiquity, the connexion of the civil with the ecclesiastical or sacred law was most intimate; or rather, we may consider the law of religion as originally comprehending all other law, and its interpretation as belonging to the priests and the king exclusively. There was however direct legislation even in the period of the kings. These laws, which are mentioned under the name of Leges Regiae, were proposed by the king, with the approbation of the senate, and confirmed by the populus in the Comitia Curiata, and, after the constitution of Servius Tullius, in the Comitia Centuriata. That there were remains of this antient legislation existing even in the Imperial period, is certain, as appears from the notice of the Jus Civile Papirianum or Papisianum, which the Pontifex Maximus Papirius is said to have compiled from these sources, about or immediately after the expulsion of Tarquinius Superbus (*Dig.*, i., tit. 2), and from the distinct references to these Leges made by late writers. Still there is great uncertainty as to the exact date of the compilation of Papirius, and its real character. Even his name is not quite certain, as he is variously called Caius, Sextus, and Publius. (Dion. Hal., iii. 36; *Dig.*, i., tit. 2.)

But the earliest legislation of which we have any important remains is the compilation called the Twelve Tables. The original tables indeed are said to have perished in the conflagration of the city after its capture by the Gauls, but they were satisfactorily restored from copies and from memory, for no ancient writer who cites them ever expresses a doubt as to the genuineness of their contents. It is the tradition that a commission was sent to Athens and the Greek states of Italy, for the purpose of examining into and collecting what was most useful in their codes; and it is also said that Hermodorus of Ephesus, then an exile in Rome, gave his assistance in the compilation of the code. There is nothing improbable in this story, and yet it is undeniable that the laws of the Tables were based on Roman and not on Greek or Athenian law. Their object was to confirm and define perhaps rather than to enlarge or alter the Roman law, except in some few matters; and it is probable that the laws of Solon and those of other Greek states, if they had any effect on the legislation of the Decemviri, served rather as models of form than as sources of positive rules. The Twelve Tables were a body of constitutional law as well as other law.

Ten tables were completed and made public by the Decemviri, in B.C. 451, and in the following year two other tables were added. This compilation is quoted by the antient writers by various titles: Lex XII. Tabularum, Leges XII., sometimes XII. simply (Cic., *Legg.*, ii. 23), Lex Decemviralis, and others. The rules contained in these tables long continued to be the foundation of Roman Law, and they were never formally repealed. The laws themselves were considered as a text-book, and they were commented on by the Jurists as late as the age of the Antonines, when Gaius wrote a commentary on them in six books ('Ad Legem XII. Tabularum'). The actions of the old Roman law, called Legitimae, or Legis Actiones, were founded on the provisions of the Twelve Tables, and the demand of the complainant could only be made in the precise terms which were used in the Tables. (Gaius, iv. 11.) The rights of action were consequently very limited, and they were only subse-

quently extended by the Edicts of the Praetors. The brevity and obscurity of this antient legislation rendered interpretation necessary in order to give the laws any application; and both the interpretation of the laws and the framing of the proper forms of action belonged to the College of Pontifices. The civil law was thus still inseparably connected with that of religion (Jus Pontificium), and its interpretation and the knowledge of the forms of procedure were still the exclusive possession of the patricians.

The scanty fragments of the Twelve Tables hardly enable us to form a judgment of their character or a proper estimate of the commendation bestowed on them by Cicero (*De. Or.*, i. 43.) It seems to have been the object of the compilers to make a complete set of rules both as to religious and civil matters; and they did not confine themselves to what the Romans called private law, but they comprised also public law ("Fons publici privatique juris," Liv., iii. 34). They contained provisions as to testaments, successions to intestates, the care of persons of unsound mind, theft, homicide, interments, &c.

They also comprised enactments which affected a man's status, as for instance the law contained in one of the two last Tables, which did not allow to a marriage contracted between a patrician and a plebeian the character of a legal Roman marriage, or, in other words, declared that between patricians and plebeians there could be no Connubium. Though great changes were made in the Jus Publicum by the various enactments which gave to the plebeians the same rights as the patricians, and by those which concerned public administration, the fundamental principles of the Jus Privatum, which were contained in the Tables, remained unchanged, and are referred to by jurists as late as the time of Ulpian.

The old Leges Regiae, which were collected into one body by Papirius, were commented on by Granius Flaccus in the time of Julius Cæsar (*Dig.*, l., tit. 16, s. 144), and thus they were probably preserved. The fragments of these laws have been often collected, but the best essay upon them is by Dirksen, 'Versuchen zur Kritik und Auslegung der Quellen des Römischen Rechts,' Leipzig, 1823. The fragments of the Twelve Tables also have been often collected. The best works on the subject are that by James Godefroy (Jac. Gothofredus), and the more recent work of Dirksen, 'Uebersicht der bisherigen Versuche zur Kritik und Herstellung des Textes der Zwölf-Tafel-Fragmente,' Leipzig, 1824.

For about one hundred years after the Legislation of the Decemviri, the patricians retained their exclusive possession of the forms of procedure. Appius Claudius Cæcus drew up a book of the forms of actions, which it is said that his clerk Cnaeus Flavius stole and published; the fact of the theft may be doubted, though that of the publication of the forms of procedure, and of a list of the Dies Fasti and Nefasti, rests on sufficient evidence. The book thus made public by Flavius was called Jus Civile Flavianum; but like that of Papirius it was only a compilation. The publication of these forms must have had a great effect on the practice of the law: it was in reality equivalent to an extension of the privileges of the plebeians. Subsequently Sextus Aelius published another work, called "Jus Aelianum," which was more complete than that of Flavius. This work, which was extant in the time of Pomponius (*Dig.*, i., tit. 2, s. 2, § 39), was also called "Tripertita," from the circumstance of its containing the laws of the Twelve Tables, a commentary upon them (interpretatio), and the Legis Actiones. This work of Aelius appears to have been considered in later times as one of the chief sources of the civil law (veluti cunabula juris); and he received from his contemporary Ennius the name of "wise:"

"Egregie cordatus homo catus Aelius Sextus."

Sextus Aelius was Curule Aedile, B.C. 200, and Consul, B.C. 198.

In the Republican period new laws (leges) were enacted both in the Comitia Centuriata and in the Comitia Tributa. The Leges Curiatae, which were enacted by the curiae, were limited to cases of adrogation and the conferring of the imperium. The Comitia Centuriata were made independent of the Curiata by the

Lex Publilia (Liv., viii. 12), which declared that the leges passed in these Comitia should not require the confirmation of the patres, that is, the Comitia Curiata. The leges passed in the Comitia Tributa were properly called Leges Tributae or Plebiscita, and originally they were merely proposals for a law which were confirmed by the curiae. But the Lex Publilia (B.C. 336), and subsequently the Lex Hortensia (B.C. 286), gave to the Plebiscita the full force of leges without the consent of the patres (Liv., viii. 12; Gaius, i. 3; Gell., xv. 27); and a Plebiscitum was accordingly sometimes called a lex. The leges generally took their name from the gentile name of the magistrate who proposed them (rogavit), and sometimes from the name of both consuls, as Lex Aelia or Aelia Sentia, Papia or Papia Poppaea. If the proposer of the law was a dictator, praetor, or tribune, the Lex or Plebiscitum, as the case might be, took its name from the proposer only, as Lex Hortensia. Sometimes the object of the lex was indicated by a descriptive term, as Lex Cincia de donis et muneribus.

The Senatus Consulta also formed a source of law under the republic. That a senatus consultum in the time of Gaius (i. 4) should have the force of law (vicem legis optinet), may be easily admitted; but Gaius in this passage appears to be referring not only to such senatus consulta as had been passed under the empire, but to the senatus consulta generally as a source of law. Probably the senate gradually came to be considered in some degree as the representative of the curiae, and its consulta, in many matters relating to administration, the care of religion, the aerarium, and the administration of the provinces, had the full effect of laws. It does not seem as if the Romans themselves had a very clear notion of the way in which the senate came to exercise the power of legislation; but they imagined that it arose of necessity with the increasing population of the state and the increase of public business. The senate thus became an active administrating body, and, as an easy consequence, that which it enacted (constituit) was observed, and this new source of law was termed Senatus Consultum (*Dig.*, i., tit. 2). It seems probable that the senate began to exercise the power of making senatus consulta after the passing of the Hortensia Lex, though it is not pretended that the Hortensia Lex or any other Lex gave this power to the senate. No senatus consulta are recorded as designated by the names of magistrates, till the time of Augustus; a circumstance which seems to show that whatever binding authority senatus consulta might have acquired under the Republic, they were not then viewed as laws properly so called. But from the time of Augustus, the titles of senatus consulta frequently occur; their names, like those of most of the leges, were derived from the consuls, as S. C. Velleianum, Pegasianum, Trebellianum, &c., or of the emperor who proposed them, as S. C. Claudianum, Neronianum, &c., or they were said to be made "auctore Principe," or "ex auctoritate Principis." The expression applied to the senate, so enacting, was "censere." (Gaius, i. 47.) Special consulta were sometimes passed for the purpose of explaining or rendering effectual previous leges.

A new source of law was supplied by the Edicta of those magistrates who had the Jus Edicendi, but mainly by the praetors, the praetor urbanus and the praetor peregrinus. The edicts of the praetor urbanus were the most important. The body of law which was formed by the Edicta is accordingly sometimes called Jus Praetorium, which term however might be limited to the Edicta of the praetors, as opposed to those of the curule aediles, the tribunes, censors, and pontifices. The name Jus Honorarium, as opposed to Jus Civile, comprehends the whole body of edictal law; and the name Honorarium was given to it, apparently because the Jus Edicendi was exercised only by those magistratus who had the Honores. Jus Civile in its larger sense comprehended all the law of any given nation; but the Jus Civile Romanorum, as opposed to the Honorarium, consisted of Leges, Plebiscita, Senatus Consulta, to which, under the empire, were added the Decreta Principum and the Auctoritas Prudentium. The Honorarium Jus was introduced for the purpose of aiding, supplying, and correcting the defects of the

Jus Civile Romanorum in its limited sense. (*Dig.*, i., tit. 1, s. 7.) The nature of the Roman Edictal Law is explained at the end of the article EQUITY.

With the establishment of the Imperial Constitution begins a new epoch in the Roman law. The leges of Augustus and those of his predecessor had some influence on the Jus Privatum, though they did not affect the fundamental principles of the Roman law. A Lex Julia came into operation, B.C. 13, but it is better known as the Lex Julia et Papia Poppaea, owing to the circumstance of another lex of the same import, but less severe in its provisions, being passed as a kind of supplement to it in the consulship of M. Papius Mutilus and Q. Poppaeus Secundus, A.D. 9. This law had for its object the encouragement of marriage, but it contained a great variety of provisions. A Lex Julia de Adulteriis, which also contained a chapter on the dos, is of uncertain date, but was probably passed before the former Lex Julia came into operation. Several Leges Juliae Judiciariae are also mentioned, which related both to Judicia Publica and Privata, and some of which may probably belong to the time of the dictator Cæsar.

The development of the Roman law in the Imperial period was little affected by direct legislation. New laws were made by Senatus Consulta, and subsequently by the Constitutiones Principum; but that which gives to this period its striking characteristic is the effect produced by the Responsa and the writings of the Roman jurists.

So long as the law of religion or the Jus Pontificium was blended with the Jus Civile in its limited sense, and the knowledge of both was confined to the patricians, jurisprudence was not a profession. But with the gradual separation of the Jus Civile and Pontificium, which was partly owing to the political changes by which the estate of the plebeians was put on a level with that of the patricians, there arose a class of persons who are designated as Jurisperiti, Jurisconsulti, Prudentes, and by other equivalent names. Of these jurisconsulti the earliest on record is Tiberius Coruncanius, a plebeian Pontifex Maximus, and consul B.C. 280: he is said to have been the first who professed to expound the law to any person who wanted his assistance; he left no writings, but many of his Responsa were recorded. Tiberius Coruncanius had a long series of successors who cultivated the law, and whose responsa and writings were acknowledged and received as a part of the Jus Civile. The opinions of the jurisconsulti, whether given upon questions referred to them at their own houses, or with reference to matters in litigation, were accepted as the safest rule by which a judex or an arbiter could be guided. Accordingly, the mode of proceeding, as it is described by Pomponius, is perfectly simple; the judices in difficult cases took the opinion of the jurisconsulti, who gave it either orally or in writing. Augustus, it is said, gave the responsa of the jurists a different character. Before his time, their responsa, as such, could have no binding force, and they only indirectly obtained the character of law by being adopted by those who were empowered to pronounce a sentence. Augustus gave to certain jurists the respondendi jus, and declared that they should give their responsa "ex ejus auctoritate." In the time of Gaius (i., 7) the Responsa Prudentium had become a recognised source of law; but he observes that the responsa of those only were to be so considered who had received permission to make law (jura condere); and he adds that if they all agreed, their opinion was to be considered as law; if they disagreed, the judex might follow which opinion he pleased. The matter is thus left in some obscurity, and, for want of more precise information, we can only conjecture what was the precise way in which these licensed jurists under the empire were empowered to declare the law. It is however clear, both from the nature of the case and the statement of Gaius, that their functions were limited to exposition, or to the declaration of what was law in a given case, and that they had no power to make new rules of law as such; further, the licensed jurists must have formed a body or college, for otherwise it is not possible to conceive how the opinions of the majority could be ascertained on any given occasion.

The commencement of a more systematic exposition of law under the empire is indicated by the fact of the existence of two distinct sects or schools (scholae) of jurists. These schools originated under Augustus, and the heads of each were respectively two distinguished jurists, Antistius Labeo and Ateius Capito. But the schools took their names from other jurists. The followers of Capito's school, called Sabiniani, derived their name from Massurius Sabinus, a pupil of Capito, who lived under Tiberius and as late as the time of Nero: sometimes they were called Cassiani, from C. Cassius Longinus, another distinguished pupil of Capito. The other school was called Proculiani, from Proculus, a follower of Labeo. If we may take the authority of Pomponius, the characteristic difference of the two schools was this: Capito adhered to what was transmitted, that is, he looked out for positive rules sanctioned by time; Labeo had more learning and a greater variety of knowledge, and accordingly he was ready to make innovations, for he had more confidence in himself; in other words, he was a philosophical more than an historical jurist. Gaius, who was himself a Sabinian, often refers to discrepancy of opinion between the two schools; but it is not easy to collect from the instances which he mentions, what ought to be considered as their characteristic differences. Much has been written on the characteristics of these two schools; but nearly all that we know is contained in the few words of Pomponius, of which Puchta (*Cursus der Institutionen*, i. 433) has given perhaps the most satisfactory exposition.

The jurisprudentes were not only authorised expounders of law, but they were most voluminous writers. Massurius Sabinus wrote three books Juris Civilis, which formed the model of subsequent writers. The commentators on the Edict were also very numerous, and among them are the names of Pomponius, Gaius, Ulpian, and Paulus. Gaius wrote an elementary work, which furnished the model of the Institutiones of Justinian. Commentaries were also written on various Leges, and on the Senatus Consulta of the Imperial period; and finally, the writings of the earlier jurists themselves were commented on by their successors. The long series of writers to whom the name of classical jurists has been given, ends, about the time of Alexander Severus, with Modestinus, who was a pupil of Ulpian. Some idea may be formed of the vast mass of their writings from the titles of their works as preserved in the 'Digest,' and from the 'Index Florentinus;' but with the exception of the fragments which were selected by the compilers of that work, this great mass of juristical literature is nearly lost.

Among the sources of law in the Imperial period are the Imperial Constitutiones, the nature of which has been explained. [CONSTITUTIONS, ROMAN.]

With the decline of Roman jurisprudence began the period of compilations, or codes, as they were termed. The earliest were the Codex Gregorianus and Hermogenianus, which are only known from fragments. The Codex Gregorianus, so far as we know it, began with the constitutions of Sept. Severus, and ended with those of Diocletian and Maximian. The Codex Hermogenianus, so far as it is known, contained constitutions also of Diocletian and Maximian, and perhaps some of a later date. Though these codes were mere private collections, they apparently came to be considered as authority, and the codes of Theodosius and Justinian were formed on their model.

The code of Theodosius was compiled under the authority of Theodosius II., emperor of the East. It was promulgated as law in the Eastern empire, A.D. 438; and in the same year it was confirmed as law in the Western empire by Valentinian III. and the Roman senate. This code consists of sixteen books, the greater part of which, as well as of the Novellæ, subsequently promulgated by Theodosius II. are extant in their original form. The commission who compiled it were instructed to collect all the Edicta and Leges Generales from the time of Constantine, and to follow the Codex Gregorianus and Hermogenianus as their model. Though the arrangement of the subsequent code of Justinian differs considerably from that of Theodosius, it is clear from a comparison of them that the com-

pilers of Justinian's code were greatly aided by that of his Imperial predecessor. The valuable edition of the Theodosian Code, by J. Gothofredus (6 vols. fol., Lugd., 1665), re-edited by Ritter, Leipzig, 1736-1745, contains the first five books and the beginning of the sixth, only as they are epitomized in the Breviarium; and this is also the case with the edition of the 'Jus Civile Antejustinianeum,' published at Berlin in 1815. But recent discoveries have greatly contributed to improve the first five books. The most recent edition of the 'Jus Civile Antejustinianeum' is that of Bonn, 1835 and 1837.

The legislation of Justinian is treated of under JUSTINIAN'S LEGISLATION.

There are numerous works on the history of the Roman law, but it will be sufficient to mention a few of the more recent, as they contain references to all the earlier works: *Lehrbuch der Geschichte des Römischen Rechts*, by Hugo, of which there are numerous editions; *Geschichte des Römischen Privatrechts*, by Zimmern; *Geschichte des Römischen Rechts*, by F. Walter, 1840; and for the later history of the Roman law, *Geschichte des Römischen Rechts im Mittelalter*, by Savigny.

ROUNDHEADS, a name given to the republicans in England, at the end of the reign of Charles I. and during the Commonwealth. The name seems to have been first applied to the Puritans because they wore their hair cut close, but to have been afterwards extended to the whole republican party. The Cavaliers, or royal party, wore their hair in long ringlets.

ROYALTY. The French words *roi* and *royal* correspond to the Latin words *rex* and *regalis*; and from *royal* has been formed *royalté* (now *royauté*); whence has been borrowed the English word *royalty*. The corresponding Latin word is *regalitas*, which occurs in the Latin of the middle ages. (Ducange, *in v.*)

Royalty properly denotes the condition or *status* of a person of royal rank, such as a king or queen, or reigning prince or duke, or any of their kindred. The possession of the royal *status* or condition does not indicate that the possessor of it is invested with any determinate political powers; and therefore *royalty* is not equivalent to *monarchy* or *sovereignty*. A royal person is not necessarily a monarch; or, in other words, does not necessarily possess the entire sovereign power. The powers possessed by persons of royal dignity have been very different in different times and places; and have varied from the performance of some merely honorary functions to the exercise of the entire sovereignty. [KING, SOVEREIGNTY.]

In popular discourse *royalty* is made equivalent to *monarchy* or *sovereignty;* and a king is called monarch or sovereign without any reference to the fact whether he possesses the entire sovereign power or only a portion of it. The principal causes of this confusion are stated in MONARCHY. The confusion is attended with important consequences both in speculative and practical politics.

RUBRIC (from the Latin *rubrica*, a kind of red earth or stone), a name given to the titles of chapters in certain ancient law-books: and more especially to the rules and directions laid down in our Liturgy for regulating the order of the service. These, in both instances, were formerly written or printed, as the case might be, for distinction's sake in red characters, and have retained the name, though now printed in black. In the Latin language rubrica has like meanings. It signifies a heading or title of the things which are contained in a law or in an edict. Thus there was an interdict called Unde vi from its initial word, and Unde vi was accordingly the rubrica or heading under which the edict would be found (*Dig.* 43, tit. 16).

RULE (in Law) is an order of one of the three superior courts of Common Law. Rules are either general or particular.

General rules are such orders relating to matters of practice as are laid down and promulgated by the court. They are a declaration of what the court will do, or require to be done, in all matters falling within the terms of the rule. The power of issuing rules for regulating the practice of each court is incident to the jurisdiction of the court. By a re-

cent Act of Parliament (3 & 4 Wm. IV. c. 42), the judges were authorised within five years from the date of it (1833) to make rules of a more comprehensive nature, relating especially to pleading in civil actions. These rules after being laid before both houses of parliament within certain times mentioned in the Act, were to have "the like force and effect as if the provisions contained therein had been expressly enacted by parliament." In exercise of this authority, a number of rules, generally called "The New Rules," have been promulgated, which have introduced very material changes in the mode of pleading. (Stephens *on Pleading;* Chitty *on Pleading;* Jervis *on the New Rules.*) Formerly each court of common law issued its own general rules, without much regard to the practice in the other courts. Of late the object has been to assimilate the practice in all the courts of common law.

Rules not general are such as are confined to the particular case in reference to which they have been granted. Of these, some, which are said to be "of course," are drawn up by the proper officers on the authority of the mere signature of counsel, without any formal application to the court; or in some instances, as upon a judge's fiat or allowance by the master, &c., without any signature by counsel; others require to be handed in as well as signed by counsel. Rules which are not of course, are grantable on application, or, as it is technically termed, "the motion," either of the party actually interested or of his counsel. Where the grounds of the motion are required to be particularised, the facts necessary to support it must be stated in an affidavit by competent witnesses. After the motion is heard, the court either grants or refuses the rule. A rule, when granted, may, according to circumstances, be either "to show cause" or it may be "absolute in the first instance." The term "rule to show cause," also called a "rule nisi," means that unless the party against whom it has been obtained shows sufficient cause to the contrary, the rule, which is conditional, will become absolute. After a rule nisi has been obtained, it is drawn up in form by the proper officer, and served by the party who obtains it upon the party against whom it has been obtained, and notice is given him to appear in court on a certain day and show cause against it. He may do this either by showing that the facts already disclosed do not justify the granting of the application, or he may contradict those facts by further affidavits. The counsel who obtained the rule is then heard in reply. If the court think proper to grant the application, or if no one appears to oppose it, the rule is said to be made "absolute." If they refuse the application, the rule is said to be "discharged."

Rules may be moved for either in reference to any matter already pending before the court, as for a change of venue in an action already commenced, or for a new trial, &c.; or in respect of matters not pending before the court, as for a criminal information, a mandamus, &c.

A copy of a rule obtained from the proper officer is legal proof of the existence of such a rule. (Tidd's *Practice;* Archbold's *Practice.*)

The rules which regulate the practice of the Court of Chancery are called orders.

RURAL DEAN. [DEAN.]
RUSSIA COMPANY. [JOINT STOCK COMPANY, p. 139.]

S.

SACRILEGE (from the Latin Sacrilegium) is "the felonious taking of any goods out of any parish-church or other church or chapel." By the common law it was a capital offence, though the offender seems to have been entitled to the benefit of clergy at the discretion of the ordinary. But even if it were not clergyable at the common law, yet the statute 25 Edw. III. c. 4, "De Clero," comprehended this as well as other crimes, and gave "the privilege of holy church to all manner of clerks, as well secular as religious." Sacrilege was apparently the only felony at common law which deprived

the offender of the privilege of sanctuary.

The present state of the law of sacrilege depends on the statute 7 & 8 Geo. IV. c. 29, s. 10, which enacts that "if any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel in any church or chapel, shall break out of the same, every such offender, being convicted thereof, shall suffer death as a felon."

By 9 Geo. IV. c. 55, s. 10, the same protection was extended to meeting-houses and all places of divine worship.

By statute 5 & 6 Wm. IV. c. 81, the punishment of death was abolished, and transportation for life or for any term not less than seven years, or imprisonment with or without hard labour for any term not exceeding four years, was substituted in its place. These penalties were again altered by 6 Wm. IV. c. 4, which limited the term of imprisonment to three years, and gave to the court a discretionary power of awarding any period of solitary confinement during such term. But now, by the statute 7 Wm. IV. and 1 Vict. c. 90, s. 5, no offender may be kept in solitary confinement for more than one month at a time, or three months in the space of one year.

The Roman sacrilegium was defined to be the "stealing of sacred things" (sacrarum rerum furtum), that is, the robbing temples or stealing things from them which had been appropriated to the purposes of religion. It was not unusual for persons to deposit their money in temples for safe keeping; and it was a doubtful question whether the stealing of such money was sacrilege. A rescript of Septimius Severus and Caracalla determined that the taking of a private person's money from a temple was only theft. (*Dig.*, xlviii., tit. 19, s. 5). In the Republican period Sacrilegium had also the wider meaning of any offence against religion, a principle which was more fully developed in the Imperial period. The Lex Julia on Peculatus, which was the embezzlement of public property, placed Sacrilegium on the same footing with Peculatus as to the penalties.

(Rein, *Criminalrecht der Römer*, p. 691).

SAILORS. [Ships.]

SALVAGE. [Ships.]

SANCTION. [Law, p. 175.]

SANCTUARY, a consecrated place which gave protection to a criminal taking refuge there. The word also signified the privilege of sanctuary, which was granted by the king for the protection of the life of an offender. Under the dominion of the Normans there appear early to have existed two kinds of sanctuary; one general, which belonged to every church, and another peculiar, which originated in a grant by charter from the king. The general sanctuary afforded a refuge to those only who had been guilty of capital felonies. On reaching it, the felon was bound to declare that he had committed felony, and came to save his life. [Abjuration of the Realm.] A peculiar sanctuary might, if such privilege was granted by the charter, afford a place of refuge even for those who had committed high or petty treason; and a party escaping thither might, if he chose, remain undisturbed for life. He still, however, had the option to take the oath of abjuration and quit the realm. Sanctuary seems in neither case to have been allowed as a protection to those who escaped from the sheriff after being delivered to him for execution. During the latter part of the reign of Henry VIII., at the time when the religious houses were dissolved, several statutes were passed (26 Hen. VIII. c. 13; 27 Hen. VIII. c. 19; 32 Hen. VIII. c. 12), which regulated, limited, and partially abolished the privilege of sanctuary, both as regarded the number and classes of criminals entitled to it, and also the places possessing the privilege. Finally, by 21 James I. c. 28, s. 7, it was enacted that no sanctuary or privilege of sanctuary should thereafter be admitted or allowed in any case. [Abjuration of the Realm; Asylum.]

(Reeve's *History of the English Law*; Comyn's *Digest*, tit. 'Abjuration;' 4 Blackstone, *Com.*)

SAPPERS AND MINERS, ROYAL, the non-commissioned officers and privates of the corps of Royal Engineers. They are employed in building and repairing permanent fortifications, in raising field-redoubts and batteries, in making

gabions and fascines, in digging trenches and executing galleries of mines during sieges, and also in forming bridges of rafts, boats, and pontoons.

From 1812 to the peace in 1814, the corps of sappers and miners amounted to 2861 men; and during the hostilities in 1815, it consisted of 2421 men. At present it consists of 13 companies, each of 68 men; and, besides the regular course of instruction in sapping, mining, making gabions, fascines, &c., the men are taught the most elementary principles of fortification, the manner of drawing plans and sections of buildings, and, to a certain extent, the art of land-surveying. Several of the companies are employed in the Colonies in the exercise of their professional duties; and of those which remain in this country, some are engaged under the officers of engineers in the mechanical operations connected with the survey of Great Britain and Ireland which is being carried on by the Board of Ordnance; parties of the corps also regularly attend the Royal Military College at Sandhurst and the East India Company's seminary at Addiscombe, where they execute, for the instruction of the gentlemen-cadets, the several works connected with the practice of field-fortification. The troops of the corps have invariably, in whatever part of the world they have been employed, conducted themselves as intelligent men and steady soldiers.

SAVINGS' BANKS are banks established to encourage habits of prudence in the poorer classes, who were previously without any places where they could safely and profitably deposit their savings.

The origin of savings' banks has been attributed to the Rev. Joseph Smith, of Wendover, who, in the year 1799, circulated proposals, in conjunction with two of his parishioners, in which they offered to receive from any inhabitant of the parish any sum from twopence upwards every Sunday evening during the summer months, to keep an exact account of the money deposited, and to repay at Christmas to each individual the amount of his deposit, with the addition of one-third to the sum. The depositors were at liberty to demand and receive back the amount of their savings, without this addition of one-third, at any time before Christmas, if they stood in need of their money.

The next institution of this kind that was established, of which we have any account, was founded at Tottenham, in Middlesex, by Mrs. Priscilla Wakefield. This, which was called the Charitable Bank, bore a nearer resemblance to the savings' banks of the present day than the Wendover plan. The Tottenham bank was opened in 1804. At first the accounts were kept by Mrs. Wakefield, who was assisted by six gentlemen who undertook each to receive an equal part of the sums deposited, and to allow five per cent. interest on the same to such depositors of 20 shillings and upwards as should leave their money for at least a year in their hands. In proportion as the amount of the deposits increased, additional trustees were chosen, so as to diminish the loss which might otherwise have been considerable, owing to the high rate of interest that was allowed. In 1808 a society was formed at Bath, managed by eight individuals, four of whom were ladies, who received the savings of domestic servants, and allowed interest upon the same at the rate of four per cent.

The Parish Bank Friendly Society of Ruthwell was formed in 1810 by Mr. Henry Duncan, who published an account of his institution with the hope of promoting similar establishments elsewhere. This was the first savings' bank regularly organised, which was brought before the public, and it is, owing to this successful undertaking that previous to the year 1817 there were seventy savings' banks established in England, four in Wales, and four in Ireland.

In the year 1817 legislative provisions were made for the management of these institutions. Acts were passed (57 Geo. III. c. 105 and 130) for encouraging the establishment of banks for savings in Ireland and England respectively. Under these acts, the trustees and managers, who were prohibited from receiving any personal profit or advantage from the institutions, were required to enrol the rules of their institutions at the sessions. A fund was established in the office for the reduction of the national debt in London, entitled, 'The Fund for the Banks for

Savings,' and to this fund the trustees were bound to transmit the amount of all deposits that might be made with them when the sum amounted to 50*l.* or more. For the amount so invested the trustees received a debenture, carrying interest at the rate of threepence per centum per diem, or 4*l.* 11*s.* 3*d.* per centum per annum, payable half-yearly. The rate of interest then usually allowed to depositors was four per cent. In Ireland the depositors were restricted to the investment of 50*l.* in each year, and in England the same restriction was imposed, with a relaxation in favour of the first year of a person's depositing, when 100*l.* might be received. No further restriction was at this time thought necessary as to the amount invested, neither was the depositor prevented from investing simultaneously in as many different savings' banks as he might think proper. This circumstance was found liable to abuse, and an Act was passed in 1824, which restricted the deposits to 50*l.* in the first year of the account being opened, and 30*l.* in each subsequent year, and when the whole should amount to 200*l.* exclusive of interest, no further interest was to be allowed. Subscribers to one savings' bank were likewise not allowed to make deposits in any other, but the whole money deposited might be drawn from one savings' bank in order to be placed in another.

In 1828 a further Act was passed, entitled 'An Act to consolidate and amend the laws relating to Savings' Banks,' and it is under the provisions of this Act (9 Geo. IV. c. 92), and of 7 & 8 Vict. c. 83, that all savings' banks are at present conducted. It is provided by the 7 & 8 Vict. c. 83, s. 19, that two written or printed copies of all rules or alterations of rules of savings' banks, signed by two trustees, shall be submitted to the barrister appointed under 9 Geo. IV. c. 92, for his certificate, and the said barrister must return one of such copies when certified to the trustees and transmit the other to the commissioners for the reduction of the national debt. This provision stands in place of the provision in 9 Geo. IV. c. 92, which required that a transcript of the rules of a savings' bank or government annuity society should be deposited with or filed by the clerk of the peace, and a certificate thereof returned to the institution, and that such transcript should be laid before the justices at sessions.

The money deposited in savings' banks must be invested in the Bank of England, or of Ireland, in the names of the commissioners for the reduction of the national debt. The receipts given to the trustees of savings' banks for money thus invested bear interest at the rate of 3*l.* 5*s.* per cent., and the interest paid to depositors must not exceed 3*l.* 0*s.* 10*d.* per cent. per annum, the difference being retained by the trustees to defray the expenses of the bank. The trustees are not allowed to receive deposits from any individuals whose previous deposits have amounted to 150*l.*, and when the balance due to any one depositor amounts with interest to 200*l.*, no further interest is to be allowed; and not more than 30*l.* can be deposited by one person in any one year. Trustees or treasurers of any charitable provident institution, or charitable donation or bequest for the maintenance, education, or benefit of the poor, may invest sums not exceeding 100*l.* per annum, and not exceeding 300*l.*, principal and interest included. Friendly societies whose rules have been certified pursuant to acts of parliament relating thereto, may deposit the whole or any part of their fund.

The increase of savings' banks has been great beyond all expectation. On the 20th of November, 1833, there were 385 savings' banks in England holding balances belonging to 414,014 depositors, which amounted to 13,973,243*l.*, being on an average 34*l.* for each depositor. There were at the same time in Wales 23 savings' banks, having balances amounting to 361,150*l.* belonging to 11, 269 depositors, being an average of 32*l.* for each depositor; while in Ireland there were 76 savings' banks, with funds amounting to 1,380,718*l.*, deposited by 49.872 persons, the average amount of whose deposits was 28*l.* The total for England, Wales, and Ireland was consequently 484 savings' banks, with funds amounting to 15,715,111*l.*; the number of accounts open was 475,155, and the average amount of deposits was consequently 33*l.* On the 20th of November, 1833, there were

244,575 depositors of sums under 20*l.* in the savings' banks of England, Wales, and Ireland, whose savings amounted to 1,734,709*l.*, being an average of 7*l.* 1*s.* 10*d.* for each depositor.

By the 3 Wm. IV. c. 14, the industrious classes are encouraged to purchase annuities, to commence at any deferred period which the purchaser may choose, the purchase-money being paid either in one sum at the time of agreement, or by weekly, monthly, quarterly, or yearly instalments, as the purchaser may determine. The transactions under this Act are to be carried on through the medium of savings' banks, or by societies established for the purpose, and of which the rector or other minister of the parish, or a resident justice of the peace, shall be one of the trustees. The 7 & 8 Vict. c. 83, contains some fresh regulations as to these annuities, as well as to other matters that concern savings' banks. This act extends to societies for purchasing annuities as well as to savings' banks, and to Great Britain and Ireland, Berwick-upon-Tweed, Guernsey, Jersey, and the Isle of Man.

Rules framed in agreement with the statute have been issued by the commissioners for the reduction of the national debt. These rules provide, among other things, that no person being a trustee, treasurer, or manager of the society, shall derive any emolument, direct or indirect, from its funds; that the treasurer, and the paid officers of the society shall give security for the faithful execution of their trust; that the age of the party, or nominee, upon whose life the annuity is contracted, must not be under fifteen years; that no one individual can possess, or be entitled to, an annuity, or annuities, amounting altogether to more than 20*l.* (30*l.*, by the 7 & 8 Vict. c. 83), and that no annuity of less than 4*l.* can be contracted for; that minors may purchase annuities. The annuities are payable half-yearly, on the 5th of January and 5th of July, or on the 5th of April and 10th of October. If any person wishes to have an annuity payable quarterly, that object may be accomplished by purchasing one half payable in January and July, and the other half payable in April and October. Upon the death of the person on whose life the annuity depends, a sum equal to one-fourth part of the annuity, beyond all unpaid arrears, will be payable to the person or persons entitled to such annuity, or to their executors or administrators, if claimed within two years. These annuities are not transferable, unless the purchaser becomes bankrupt or insolvent, when the annuity becomes the property of the creditors, and will be repurchased, at a fair valuation, by the commissioners for the reduction of the national debt. If the purchaser of an annuity should be unable to continue the payment of his instalments, he may at any time, on giving three months' notice, receive back the whole of the money he has paid, but without interest. If the purchaser of a deferred life annuity should die before the time arrives at which the annuity would have commenced, the whole of the money actually contributed, but not with interest, will be returned to his family without any deduction. If a person who has contracted for, or is entitled to, an annuity, becomes insane, or is otherwise rendered incapable of acting, such weekly sum will be paid to his friends for maintenance and medical attendance as the managers shall think reasonable, or any such other payments may be made as the urgency of the case may require, out of the sums standing in the name of the party. Any frauds that may be committed by means of misstatements and false certificates will render void the annuity, and subject the parties offending to other and severe penalties. The rules of societies formed for carrying into effect the purposes of this act must be signed by trustees, and duly certified by the barrister appointed for the purpose.

Annuity tables, calculated under the direction of Government, for every admissible period of age, and for every probable deferred term, may be had at the office of the commissioners for reducing the national debt, in the Old Jewry, London. Every information respecting, and forms of rules, &c., for the establishment, &c. of friendly societies, building societies, loan societies, savings' banks, and government annuity societies, may be obtained free of expense, on applying by letter, post-paid, directed to the Bar-

SUMMARY of the 577 SAVINGS' BANKS in ENGLAND, SCOTLAND, WALES, and IRELAND, on the 20th Nov., 1844.

	ENGLAND.			SCOTLAND.			WALES.			IRELAND.			TOTAL.		
	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.
		£	£		£	£		£	£		£	£		£	£
Number and Amount of Individual Depositors in Savings' Banks.	813,601	23,469,371	28	68,791	966,149	14	18,007	518,348	28	90,144	2,685,698	29	990,543	27,639,566	28
Number and Amount of Charitable Institutions in account with Savings' Banks . . .	9,789	511,073	52	630	28,880	45	205	12,063	58	677	41,233	60	11,301	593,249	52
Number and Amount of Friendly Societies in account with Savings' Banks.	8,900	1,132,421	127	403	48,154	119	478	69,385	145	422	22,086	52	10,203	1,272,046	124
Total . .	832,290	25,112,865	30	69,824	1,043,183	14	18,690	599,796	32	91,243	2,749,017	30	1,012,047	29,504,861	29
Number and Amount of Friendly Societies in direct account with the Commissioners for the Reduction of the National Debt .	. . . . .												428	1,770,775	..
												Gross Total . . .	1,012,475	31,275,636	..

rister appointed to certify the rules of friendly societies.

The 5 & 6 Wm. IV. c. 57, passed in September, 1835, extended the provisions of the 9 Geo. IV. c. 92, and of 3 Wm. IV. c. 14, to savings' banks in Scotland, and enabled existing banks to conform to the said Acts by preparing and depositing their rules pursuant to these Acts.

Military or Regimental Savings' Banks were established by warrant dated October 11, 1843. The following is the amount of all sums deposited in them within the year ended March 31, 1844; of all sums withdrawn during the same period; and of the interest allowed upon such deposits; and also of the number of depositors on the 31st of March, 1844:—

	£	s.	d.
Amount of sums deposited	15,069	3	2
Amount of deposits withdrawn . . .	316	11	5¼
Amount of interest allowed	96	10	1¾
Balance due by the public	14,849	1	11½

Number of depositors 1,890.

(*History of Savings' Banks*, by J. Tidd Pratt; *The Law relating to the Purchase of Government Annuities through Savings' Banks and Parochial Societies*, by the same author; *A Summary of Savings' Banks, &c.*, by the same author, 1846.)

SCANDAL. [LIBEL; SLANDER.]

SCHOOLS. A school is a general name for any place of instruction. There are schools for young children, called Infant Schools; schools for children of more advanced age; and schools for the higher branches of learning, as Grammar Schools, Colleges, and Universities. There are also schools for special branches of knowledge, as schools for Agriculture, Medicine, Theology, Law, and so forth.

The school systems of all nations have something peculiar; and the peculiarities are closely connected with the political system of each country. A good system of schools of all kinds suited to the wants of a political community perhaps exists in no country, though some of the German states have perhaps approached nearer to establishing such a system than any other countries. There are two modes in which good schools may be established: a government may make the whole school system a part of administration, and leave very little to individual enterprise and competition; or the establishment of schools of all kinds may be left nearly altogether to individual enterprise. Perhaps in no country has either the one or the other mode been altogether followed. Prussia is an instance in which the government has apparently done most in the way of directing the establishment and management of schools; and in England, of all countries which have attained a high degree of wealth and power in modern times, the government has perhaps done the least, though perhaps in no country have benevolent individuals and associations of individuals contributed so largely to the establishment of permanent places of education. England is also the country in which there are most schools kept by individuals for the object of private profit.

It is impossible to consider a state well organised which shall not, to some degree and in some manner, superintend all places for education. It is equally impossible to view education as well organised in a state, if all competition shall be excluded from the system; and in fact there is no country, not even those in which education is most directly made a branch of administration, in which some competition of some kind does not exist. In fact, if it does not exist in some form and in some degree, there will be no efficient instruction.

The general consideration of this subject is contained in the article EDUCATION.

SCHOOLS, ENDOWED. An Endowed School in England is a school which was established and is supported by funds given and appropriated to the perpetual use of such school, either by the king or by private individuals. The endowment provides salaries for the master and usher, if there is one, and gratuitous instruction to pupils, either generally or the children of persons who live within certain defined limits. Endowed schools may be divided, with respect to the objects of the founder, into grammar-schools, and schools not grammar-schools. A grammar-school is generally defined to be a school in which the learned languages,

the Latin and the Greek, are taught. Endowed schools may also be divided, with respect to their constitution for the purposes of government, into schools incorporated and schools not incorporated. Incorporated schools belong to the class of corporations called eleemosynary, which comprehends colleges and halls, and chartered hospitals or almshouses. [COLLEGE].

Endowed schools are comprehended under the general legal name of Charities, as that word is used in the act of the 43rd of Elizabeth, chap. 4, which is entitled, 'An Act to redress the Misemployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uses.' Incorporated schools have generally been founded by the authority of letters patent from the crown, but in some cases by act of parliament. The usual course of proceeding has been for the person who intended to give property for the foundation of a school, to apply to the crown for a licence. The licence is given in the form of letters patent, which empower the person to found such a school, and to make, or to empower others to make, rules and regulations for its government, provided they are not at variance with the terms of the patent. The patent also incorporates certain persons and their successors, who are named or referred to in it, as the governors of the school. This was the form of foundation in the case of Harrow School, which was founded by John Lyon, in the fourteenth year of Elizabeth, pursuant to letters patent from the queen. Sometimes the master and usher are made members of the corporation, or the master only; and in the instance of Berkhampstead School, which was founded by act of parliament (2 & 3 Edw. VI., reciting certain letters patent of Henry VIII.), the corporation consists of the master and usher only, of whom the master is appointed by the crown, and the usher is appointed by the master. Lands and other property of such a school are vested in the corporation, whose duty it is to apply them, pursuant to the terms of the donation, in supporting the school. Many school endowments are of a mixed nature, the funds being appropriated both to the support of a free-school and for other charitable purposes. These other purposes are very various; but among them the union or connection of an hospital or almshouse with a free-school is one of the most common.

Where there is no charter of incorporation, which is the case in a great number of school endowments, the lands and other property of the school are vested in trustees, whose duties, as to the application of the funds, are the same as in the case of an incorporated school. It is necessary from time to time for the actual trustees to add to their numbers by such legal modes of conveyance as shall vest the school property in them and the new trustees jointly. These conveyances sometimes cause a considerable expense; and when they have been neglected, and the estates have consequently become vested in the heir-at-law of the surviving trustee, some difficulty is occasionally experienced in finding out the person in whom the school estates have thus become vested. When the school property consists of money, the same kind of difficulty arises; and money is also more liable to be lost than land.

Every charity, and schools amongst the rest, seems to be subject to visitation. We shall first speak of incorporated schools.

The founder may make the persons to whom he gives the school property on trust also the governors of his foundation for all purposes; and if he names no special visitor, it appears that such persons will be visitors as well as trustees. If he names a person as visitor, such person is called a special visitor; and it is a general rule that if the founder names no special visitor, and does not constitute the governors of his foundation the visitors, the heir-at law of the founder will be visitor; and if there is no heir-at-law, the crown will visit by the lord keeper of the great seal. The king is visitor of all schools founded by himself or his ancestors. The duties of trustees and visitors are quite distinct, whether the same persons are trustees and visitors, or the trustees and visitors are different. It is the duty of trustees to preserve the school property, and to apply it to the purposes intended by the founder. In respect of

their trust, trustees are subject to the jurisdiction of the Court of Chancery, like all other trustees; and of course they are answerable for all misapplication of the funds. It is the visitor's duty to inquire into the behaviour of the master and usher in their respective offices, and into the general conduct of the school. He must judge according to the founder's rules, which he cannot alter unless he is empowered by the terms of the donation to do so. There seems to be no reason for supposing that the king, in respect of royal foundations, has any further power than other persons, and consequently he cannot alter the terms of the donation, unless this power was originally reserved to the founder and his successors; but on this matter there may be some difference of opinion. The visitor, or those who have visitorial power, can alone remove a master or usher of an endowed school. The Court of Chancery never removes a master or usher, when they are part of the corporate body, on the general principle that this court has no power to remove a corporator of any kind; and when there is a visitor, or persons with visitorial power, the Court never attempts directly to remove a master or usher, even if they are not members of the corporation. (17 Ves., Att.-Gen. *v.* the Earl of Clarendon.)

Trustees of endowed schools which are not incorporated are accountable in a court of equity for the management of the school property. But the internal management of the school still belongs to the special visitor, if there is one; and if there is no special visitor it belongs to the founder's heir. Trustees of endowed schools, simply as such, are merely the guardians of the property, as already observed; and it is their duty to take care of it, and to apply the income according to the founder's intention. It has, however, happened that in schools not incorporated the jurisdiction of the Court of Chancery and the visitorial jurisdiction have not been kept quite distinct; and cases have arisen in which it has been found difficult to determine what ought to be the proper mode of proceeding.

A free grammar-school is an endowment for teaching the learned languages, or Greek and Latin, and for no other purpose, unless the founder has prescribed other things to be taught besides grammar. This legal meaning of the term grammar-school has been fixed by various judicial decisions, and it appears to be established that, if the founder merely expresses his intention to found a grammar-school, the school must be a school for teaching Latin and Greek only, at least, so far as the teaching is gratuitous; other branches of instruction may be introduced, but the scholars must pay for this extra instruction. If it should happen that the endowment has, for a long time, been perverted from its proper purposes, this will not prevent the Court of Chancery from declaring a school originally designed for a grammar-school to be still a grammar-school, and it will give the proper directions for carrying into effect the founder's intentions, whatever may be the length of time during which they have been disregarded. This was the case with the grammar-school of Highgate, in the county of Middlesex, which was founded by Sir Roger Cholmeley, under letters patent of Queen Elizabeth, under the title of the Free Grammar-school of Roger Cholmeley, Knight. The statutes were made in 1571, by the wardens and governors, with the consent of the Bishop of London, under the authority of the letters patent. The first statute ordered that the schoolmaster should be a graduate, and should teach young children their A, B, C, and other English books, and to write, and also in their grammar as they should grow up thereto. An information which was filed against the governors, charged that the school had been converted from a free grammar-school into a mere charity school, and that the governors had, in other ways, abused their trust. The facts of the abuse were established, but it was shown that, so far back as living memory could go, the school had been merely a place of instruction in English, writing, and arithmetic; and also that, in other respects, the statutes had not been observed as far back as the year 1649. Notwithstanding this, it was declared by the chancellor (Eldon) that this was a school originally intended for the purpose of

teaching grammar, and a decree was made for restoring the school according to the intention of the founder. But it appears from the first statute that the school was also intended to be an English school.

As to teaching something besides Latin and Greek in an endowed school, Lord Eldon observes (Att.-Gen. *v.* Hartley, 2 J. & W., 378), "if there was an antient free grammar-school, and if at all times something more had been taught in it than merely the elements of the learned languages, that usage might engraft upon the institution a right to have a construction put upon the endowment different from what would have been put upon it if a different usage had obtained." When the founder has only intended to establish a grammar-school, and has applied all the funds to that purpose, none of them can be properly applied to any other purpose, such as teaching the modern languages or other branches of knowledge. When the funds of a school have increased so as to be more than sufficient for the objects contemplated by the founder, the Court of Chancery will direct a distribution of the increased funds, but it will still apply the funds to objects of the same kind as those for which the founder gave his property. If then a founder has given his property solely for the support of a grammar-school, it is inconsistent with his intention to apply any part of the funds to other purposes, such for instance as paying a master for teaching writing and arithmetic; and yet this has been done by the Court of Chancery in the case of Monmouth school (3 Russ., 530) and in other cases. The foundation of Monmouth school consists of an almshouse, a free grammar-school for the education of boys in the Latin tongue, and other more polite literature and erudition, and a preacher. The letters patent declared that "all issues and revenues of lands to be given and assigned for the maintenance of the almshouse, school, and preacher, should be expended in the sustentation and maintenance of the poor people of the almshouse, of the master and under-master of the school, and of the preacher, and in repairs of the lands and possessions of the charity." Notwithstanding this, the Court of Chancery appointed a writing-master, at a salary of 60*l.* per annum, to be paid out of the issues and revenues; and thus it took away 60*l.* per annum from those to whom the founder had given it. This was done on the authority of a case in the year 1797, which was itself a bad precedent.

Lord Eldon's decision in the case of Market Bosworth school (Att.-Gen. *v.* Dixie, 3 Russ., 534) established an usher in the school, whose sole occupation was to be to instruct the scholars in English, writing, and arithmetic, and it gave the usher a salary of 90*l.* per annum out of the school funds. But in doing this Lord Eldon merely did what the donor intended. Market Bosworth is one of those grammar-schools in which the founder has directed that other things should be taught besides Latin and Greek. According to the statutes, the school was to be divided into two branches, the lower school and the upper; and "in the first form of the lower school shall be taught the A, B, C, Primer, Testament, and other English books." In the upper school the instruction was confined to Latin, Greek, and Hebrew. It is therefore in this case as clear that the founder's intention was carried into effect by the decree of the court, as it is clear that in the case of the Monmouth school such intention was violated. The case of Monmouth school, however, furnished a precedent, which has been followed in other cases.

There are many grammar-schools in which nothing is provided for or nothing intended by the founder except instruction in grammar, which, as the term was then understood, appears to have meant only the Latin and Greek languages, or sometimes only Latin perhaps. Where provision is made for other instruction in addition to, or rather as preparatory to, the grammar instruction, modes of expression like those already mentioned in the case of Highgate and Market Bosworth schools have been used by the founder or the makers of the statutes. In the founder's rules for the grammar-school of Manchester, which has now an income of above 4000*l.* per annum, it is said, "The high-master for the time being shall always appoint one of his scholars,

as he thinketh best, to instruct and teach in the one end of the school all infants that shall come there to learn their A, B, C, Primer, and sorts, till they being in grammar," &c. In all cases of grammar-schools where this instruction is to be given, it was evidently intended as a preparation for and not as a substitute for grammar. It was therefore clearly an abuse in the case of the Highgate school to have converted it into a mere school for reading, writing, and arithmetic; but it is equally an abuse in the case of the Manchester school to make the following regulation as to the admission of pupils, which was in force at the time of the Charity Commissioners' Inquiry: "All boys who are able to read are admitted on application to the head master into the lower school, where they are instructed in English and the rudiments of Latin by the master of that school. They are so admitted about the age of six or seven."

Grammar-schools have now for a long time been solely regulated by the Court of Chancery, which, though affecting merely to deal with them in respect of the trusts and the application of the trust-monies, has in fact gone much farther. The court may be applied to for the purpose of establishing a school where funds have been given for the purpose, but the object cannot be effected without the aid of the court. It may also be applied to for the purpose of correcting a misapplication of the funds. The court may also be applied to in order to sanction the application of the school funds when they have increased beyond the amount required for the purposes indicated by the founder. Such surplus funds are often applied in establishing exhibitions or annual allowances to be paid to meritorious boys who have been educated at the school, during their residence at college. The master's scheme for the regulation of Tunbridge school in Kent, which was confirmed by the Court of Chancery, established sixteen exhibitions of 100*l.* each, which are tenable at any college of Oxford or Cambridge, and payable out of the founder's endowment. It also extended the benefits of the school beyond the limits fixed by the founder, and made various other regulations for the improvement of the school, having regard to the then annual rents of the school estates.

When the application has been an honest one, the schemes sanctioned by the Court of Chancery may generally be considered as aiming at least to carry the founder's intention into effect, and as calculated on the whole to benefit the school. But in some cases decrees have been obtained by collusion among all the parties to the suit, against which it is no security that the attorney-general is a necessary party to all bills and informations about charities. The founder of a school and hospital in one of the midland counties, among other things, appointed that "the schoolmaster should be a single person, a graduate in one of the universities of Oxford or Cambridge," &c.; and he did "further will that if any schoolmaster so to be chosen should marry or take any woman to wife, or take upon him any cure of souls, or preach any constant lecture, then in every of the said cases he should be disabled to keep or continue the said school." The trustees dispensed with these restrictions and qualifications, but afterwards finding that they could not do this, they applied to the Court of Chancery: and the court ordered, among other things, that a clergyman should be the head master, though the founder did not intend to exclude laymen; and that the head master was not to be restricted from marrying or taking upon him the cure of souls, &c. This mode of dealing with a founder's rules has not much appearance of an attempt to carry them into effect.

This clause about marrying occurs in the rules of several grammar-schools, for instance in those of Harrow school. The rule may be wise or unwise; but it was once observed, and it ought to be observed still, until it is altered by the proper authority.

It appears from the rules of many grammar-schools that religious instruction according to the principles of the Church of England, as established at the Reformation, is a part of the instruction which the founder contemplated; and when nothing is said about religious instruction, it is probable that it was always the practice to give such instruction in

grammar-schools. That it was part of the discipline of such schools before the Reformation cannot be doubted, and there is no reason why it should have ceased to be so after the Reformation, as will presently appear. It is generally asserted that in every grammar-school religious instruction ought to be given, and according to the tenets of the Church of England; and that no person can undertake the office of schoolmaster in a grammar-school without the licence of the ordinary. This latter question was argued in the case of Rex *v.* the Archbishop of York. (6 *T. R.*, 490.) A mandamus was directed to the archbishop directing him to license R. W. to teach in the grammar-school at Skipton, in the county of York. The return of the archbishop was that the licensing of schoolmasters belongs to the archbishops and bishops of England; that R. W. had refused to be examined; and he relied as well on the antient canon law as upon the canons confirmed in 1603 by James I. (*The Constitutions and Canons Ecclesiastical*, 'Schoolmaster,' 77, 78, 79.) The return was allowed, and consequently it was determined that the ordinary has power to license all schoolmasters, and not merely masters of grammar-schools. As to schoolmasters generally, the practice is discontinued, and probably it is not always observed in the case of masters of grammar-schools.

The form of the ordinary's licence is as follows:—"We give and grant to you, A. B., in whose fidelity, learning, good conscience, moral probity, sincerity, and diligence in religion we do fully confide, our licence or faculty to perform the office of master of the grammar-school at H., in the county, &c., to which you have been duly elected, to instruct, teach, and inform boys in grammar and other useful and honest learning, and knowledge in the said school allowed of and established by the laws and statutes of this realm, you having first sworn in our presence on the Holy Evangelists to renounce, oppose, and reject all and all manner of foreign jurisdiction, power, authority, and superiority, and to bear faith and true allegiance to her majesty Queen Victoria, &c., and subscribed to the thirty-nine articles of religion of the United Church of England and Ireland and to the three articles of the thirty-sixth canon of 1603, and to all things contained in them, and having also before us subscribed a declaration of your conformity to the Liturgy of the United Church of England and Ireland as is now by law established. In testimony,' &c.

From this licence it appears that the master of every school who is licensed by the ordinary must be a member of the Church of England, and must take the oath and make the subscriptions and declarations which are recited in the licence.

It is a common notion that the master of a grammar-school must be a graduate of Oxford or Cambridge, and in holy orders; and such is the present practice. But it is by no means always the case that the rules of endowed schools require the master to be in holy orders. The founders seem generally to have considered this a matter of indifference, but many of them provided that if the master was in orders, or took orders, he should not at least encumber himself with the cure of souls. The principle clearly was, that the master of a grammar-school should devote himself solely to that work, and it was a good principle. The Court of Chancery has in various cases ordered that the master should be a clergyman, where the founder has not so ordered. Dean Colet, the founder of St. Paul's School, London, ordered by his statutes, that neither of the masters of that school, if in orders, nor the chaplain, shall have any benefice with cure or service which may hinder the business of the school. He appointed a chaplain to the school, thereby appearing to intend that the religious instruction should not be given by the masters of grammar, who would be fully employed otherwise.

It has sometimes been doubted whether a master of a grammar-school could hold ecclesiastical preferment with it. If the founder has not forbidden this, there is no rule of law which prevents him. If the holding of the two offices should cause him to neglect the duties of either, the remedy is just the same as if he neg-

lected either of his offices for any other cause.

Many grammar-schools are only free to the children of a particular parish, or of some particular parishes; but this privilege has occasionally been extended to a greater surface, as in the case of Tunbridge school. Some are free to all persons, which is the case with some of King Edward VI.'s endowments. Sometimes the number of free boys is limited, but the master is allowed to take pay scholars, either by usage or by the founder's rules. At present the practice is for masters of grammar-schools to take boarders if they choose, but in some cases the number is limited. Abuses undoubtedly have arisen from the practice of the master taking boarders, and the children of the parish or township for which the school was intended have been neglected or led to quit the school sometimes in consequence of the head master being solely intent on having a profitable boarding school. But in most cases the school has benefited by the master taking boarders; and this has frequently been the only means by which the school has been able to maintain itself as a grammar-school. When the situation has been a good one, an able master has often been found willing to take a grammar-school with a house, and a small salary attached to it, in the hope of making up a competent income by boarders. As this can only be effected by the master's care and diligence in teaching, a small neighbourhood has thus frequently enjoyed the advantage of its grammar-school, which otherwise would have been lost.

There has never been any general superintendence exercised over the endowed schools of this country. The Court of Chancery only interferes when it is applied to, and then only to a certain extent; and visitors are only appointed for particular endowments; they are also often ignorant of their powers, and they rarely exercise them. As many of these places have only small endowments, are situated in obscure parts, with the property vested in unincorporated trustees, who are ignorant of their duty, and sometimes careless about it, we may easily conceive that these schools would be liable to suffer from fraud and neglect, both of trustees and masters; and this has been the case. The object of the statute of Elizabeth was to redress abuses in the management of charities generally; but a great many endowments for education were excepted from the operation of that statute, which indeed seems not to have had much effect, and it soon fell nearly into disuse. Applications for the redress of abuses have, from time to time, been continually making to the Court of Chancery, and Berkhampstead school has now, for a full century, been before the court. In many cases the governors of schools have obtained Acts of Parliament to enable them better to administer the funds. This was done in the case of Macclesfield school by an Act of the year 1774, and another for the same school has recently been obtained. An Act of Parliament was also obtained in 1831 for the free-school of Birmingham, the property of which had at that time increased considerably in value, and is still increasing. Both these schools were foundations of Edward VI., and were endowed with the property of suppressed religious foundations.

The condition of the endowments for education in England may now be collected from the Reports of the Commissioners for Inquiry into Charities. In 1818 commissioners were appointed under the great seal, pursuant to an Act passed in the 58th year of the reign of George III., entitled "An Act for appointing Commissioners to inquire concerning Charities in England for the Education of the Poor." A great many places were excepted from the operation of this Act. The commission was continued and renewed under various Acts of Parliament, the last of which (5 & 6 Wm. IV. c. 71) was entitled "An Act for appointing Commissioners to continue the Inquiries concerning Charities in England and Wales until the 1st day of August, 1837." All the exceptions contained in the first Act were not retained in the last; but the last Act excepted the following places from inquiry: "The universities of Oxford and Cambridge, and the colleges

and halls within the same; all schools and endowments of which such universities, colleges, or halls are trustees; the colleges of Westminster, Eton, and Winchester; the Charter House; the schools of Harrow and Rugby; the Corporation of the Trinity House of Deptford Strond; cathedral and collegiate churches within England and Wales; funds applicable to the benefit of the Jews, Quakers, or Roman Catholics, and which are under the superintendence and control of persons of such persuasions respectively." Under the last Act the Commissioners completed their inquiries into endowments for education and other charities, with the exceptions above specified. The Reports of the Commissioners contain an account of the origin and endowment of each school which was open to their inquiry, and also an account of its condition at the time of the inquiry. The Reports are very bulky and voluminous, and consequently cannot be used by any person for the purpose of obtaining a general view of the state of these endowments; but for any particular endowment they may be consulted as being the best, and in many cases the only accessible sources of information.

The number of grammar-schools reported on by the Commissioners is 700; the number of endowed schools not classical, 2150; and of charities for education not attached to endowed schools, 3390. The income of grammar-schools reported on is 152,047*l.* 14*s.* 1*d.*; of endowed schools (not classical), 141,385*l.* 2*s.* 6*d.*; and of the other charities given for or applied to education, 19,112*l.* 8*s.* 8*d.*

The previous remarks on grammar-schools must be taken subject to the provisions contained in a recent Act of Parliament, which is the only attempt that has been made by the legislature to regulate schools of this class. This Act (3 & 4 Vic. c. 77) is entitled "An Act for improving the Condition and extending the Benefits of Grammar-Schools." The Act recites, among other things, that the "patrons, visitors, and governors of such grammar-schools are generally unable of their own authority to establish any other system of education than is expressly provided for by the foundation, and her majesty's courts of law and equity are frequently unable to give adequate relief, and in no case but at considerable expense." The Act then declares that the courts of equity shall have power, as in the Act provided, "to make such decrees or orders as to the said courts shall seem expedient, as well for extending the system of education to other useful branches of literature and science, in addition to or (subject to the provisions thereinafter contained) in lieu of the Greek and Latin languages, or such other instruction as may be required by the terms of the foundation or the then existing statutes, as also for extending or restricting the freedom or the right of admission to such school, by determining the number or the qualifications of boys who may thereafter be admissible thereto as free scholars or otherwise, and for settling the terms of admission to and continuance in the same, and to establish such schemes for the application of the revenues of any such schools as may in the opinion of the court be conducive to the rendering or maintaining such schools in the greatest degree efficient and useful, with due regard to the intentions of the respective founders and benefactors, and to declare at what period, and upon what event, such decrees or orders, or any directions contained therein, shall be brought into operation; and that such decrees and orders shall have force and effect, notwithstanding any provisions contained in the instruments of foundation, endowment, or benefaction, or in the then existing statutes;" but it is provided, that if there shall be any special visitor appointed by the founder or other competent authority, he shall be heard on the matters in question before the court makes any orders or decrees.

This enactment extends the power of the court over grammar-schools very considerably, as will appear from what has been said; not so much however, if we view what the court has done, as if we take the declarations of the most eminent equity judges as to what the court can do. The power however of changing a grammar-school into one not a grammar-school, which is given by this Act, is a considerable extension of authority;

but the power is limited to cases (§ 3) where the necessity of such a change arises from insufficiency of the revenues of a grammar-school for the purpose of such school. But this provision, as it has properly been remarked, will be of very difficult application; for in many successful grammar-schools the revenue is small, and in some which are not successful it is large. Smallness of revenue, therefore, will not of itself prove "insufficiency of revenues" in the sense intended by the Act. The same section contains also a provision, that except in this case of insufficient revenues, the court shall not by this Act be authorised to dispense with any statute or provision now existing, so far as relates to the qualification of any schoolmaster or under-master. The dispensing power then which the court has often assumed, as shown in some instances above mentioned, remains as it was; that is, it does not exist at all.

When a grammar-school shall have been made into another kind of school under the provisions of this Act, it is still to be considered a grammar-school, and subject to the jurisdiction of the ordinary as heretofore.

In case there shall be in any city, town, or place, any grammar-school or grammar-schools with insufficient revenues, they may be united, with the consent of the visitor, patron, and governor of every school to be effected thereby. The legal meaning of city and town (township) is sufficiently precise, but "place" has no legal meaning, and the framers of the Act have forgotten to give it one in their 25th section, which treats of the construction of terms in that Act.

The court is also empowered (§ 14) to enlarge the powers of those who have "authority by way of visitation or otherwise in respect of the discipline of any grammar-school;" and where no authority by way of visitation is vested in any known person, the bishop of the diocese may apply to the Court of Chancery, stating the facts, and the court may, if it so think fit, give the bishop liberty to visit and regulate the said school in respect of the discipline, but not otherwise. This provision, for various reasons, will prove completely inoperative.

The Act gives a summary remedy against masters who hold the premises of any grammar-school after dismissal, or after ceasing to be masters. Such masters are to be turned out in like manner as is provided in the case of other persons holding over, by the Act of the first and second of Victoria, entitled "An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy."

All applications to the court under this Act may be (not *must*) made by petition only, and such petitions are to be presented, heard, and determined according to the provisions of the 52 Geo. III. c. 101.

The Act saves the rights of the ordinary. It is also declared not to extend "to the universities of Oxford or Cambridge, or to any college or hall within the same, or to the university of London, or any colleges connected therewith, or to the university of Durham, or to the colleges of St. David's or St. Bees, or the grammar-schools of Westminster, Eton, Winchester, Harrow, Charter-House, Rugby, Merchant Tailors', St. Paul's, Christ's Hospital, Birmingham, Manchester, or Macclesfield, or Lowth, or such schools as form part of any cathedral or collegiate church." But the exemption does not extend to the grammar-schools of which the universities of Oxford or Cambridge, or the colleges and halls within the same, are trustees, though these schools were excepted from the Commissioners' inquiry by the 5 & 6 Wm. IV. c. 71.

Endowments for Education are probably nearly as old as endowments for the support of the church. Before the Reformation there were schools connected with many religious foundations, and there were also many private endowments for education. Perhaps one of the oldest schools of which anything is known is the school of Canterbury. Theodore, who was consecrated archbishop of Canterbury in 668 (according to some authorities), founded a school or college by licence from the pope. This school certainly existed for a long time; and there is a record of a suit before the Archbishop of Canterbury in 1321, between the rector

of the grammar-schools of the city (supposed to be Theodore's school or its representative) and the rector of St. Martin's, who kept a school in right of the church. The object of the suit was to limit the rector of St. Martin's in the number of his scholars. This school probably existed till the Reformation, at least this is the time when the present King's school of Canterbury was established by Henry VIII., and probably on the ruins of the old school. Before the Reformation schools were also connected with chantries, and it was the duty of the priest to teach the children grammar and singing. There are still various indications of this connection between schools and religious foundations in the fact that some schools are still, or were till lately, kept in the church, or in a building which was part of it. There are many schools still in existence which were founded before the Reformation, but a very great number were founded immediately after that event, and one professed object of king Edward VI. in dissolving the chantries and other religious foundations then existing was for the purpose of establishing grammar-schools, as appears from the recital of the Act for that purpose (1 Ed. VI. c. 14). [CHANTRY.]

Though the Act was much abused, the king did found a considerable number of schools, now commonly called King Edward's Schools, out of tithes that formerly belonged to religious houses or chantry lands; and many of these schools, owing to the improved value of their property, are now among the richest foundations of the kind in England In these, as in many other grammar-schools, a certain number of persons were incorporated as trustees and governors, and provision was made for a master and usher. At that time the endowments varied in annual value from twenty to thirty and forty pounds per annum.

A large proportion of the grammar-schools were founded in the reigns of Edward VI. and Elizabeth, and there is no doubt that the desire to give complete ascendency to the tenets of the Reformed Church was a motive which weighed strongly with many of the founders. Since the reign of Elizabeth we find grammar-schools occasionally established, but less frequently, while endowments for schools not grammar-schools have gradually increased so as to be much more numerous than the old schools. Foundations of the latter kind are still made by the bounty of individuals from time to time; and a recent Act of Parliament (2 & 3 Wm. IV. c. 115) has made it lawful to give money by will for the establishing of Roman Catholic schools. The statute of the 9th Geo. II. c. 36, commonly called the Mortmain Act, has placed certain restrictions on gifts by will for *charitable* purposes, which restrictions consequently extend to donations by will for the establishment or support of schools. [MORTMAIN.]

The history of our grammar-schools before the Reformation would be a large part of the history of education in England, for up to that time there were probably no other schools. From the time of the Reformation, and particularly till within the last half-century, the grammar-schools of England were the chief places of early instruction for all those who received a liberal training. From these often humble and unpretending edifices has issued a series of names illustrious in the annals of their country—a succession of men, often of obscure parentage and stinted means, who have justified the wisdom of the founders of grammar-schools in providing education for those who would otherwise have been without it, and thus securing to the state the services of the best of her children. Though circumstances are now greatly changed, there is nothing in the present condition of the country which renders it prudent to alter the foundation of these schools to any great extent; and certainly there is every reason for supporting them in all the integrity of their revenues, and for labouring to make them as efficient as their means will allow. In the conflict of parties who are disputing about education, but in fact rather contending for other things—in the competition of private schools, which from their nature must be conducted by the proprietor with a view to a temporary purpose—and in the attempt made to form proprietory establishments which shall com-

bine the advantages of grammar-schools and private schools, and shall not labour under the defects of either—we see no certain elements on which to rest our hopes of a sound education being secured to the youth of the middle and upper classes of this country. The old grammar-schools, on the whole, possess a better organization than anything that has yet been attempted, and though circumstances demand changes in many of them, they require no changes which shall essentially alter their character. In the present state of affairs, these are specially the schools for the middle classes who belong to the Established Church, and it is their interest to cherish and support them.

Digests of the whole body of Reports made by the Commissioners for Inquiry into Charities have been prepared and presented to both Houses of Parliament (1842). Two of these volumes, folios of 825 pages and 829 pages respectively, called an Analytical Digest, are arranged according to the alphabetical order of every county in England, in North Wales, and in South Wales; and under the head of every city and parish in each county are given the following particulars (the cities and parishes are arranged in alphabetical order):—The name of the charity or donor; for what purpose each charity is applicable; the quantity of land and number of houses; the rent paid for the same; the amount of unimprovable rents and rent-charges, with the amount of land-tax, if any, deducted therefrom; the amount of personal property, distinguishing money in the funds, on mortgage, or on personal or other security, or to be applied by way of loan, with or without interest; the total income of each charity; and a column of observations.

The first volume of the Analytical Digest contains a reference to the volume and page of each Report.

Such ecclesiastical presentations as are mentioned in the Reports are noticed in the Digest at the end of each county. The Digest concludes with a similar statement of those which are reported on by the Commissioners under the head of General Charities.

The second part of the Return (a folio of 691 pages) contains a more particular Digest of all schools and charities for Education. It is divided into three parts: the first relating to Grammar schools, viz., in which Greek or Latin is required to be, or is in fact, taught; secondly, Schools not Classical; and thirdly, Charities for Education not attached to Endowed Schools, which include donations for the support of Sunday-schools.

A good deal has been written on the subject of endowments for education from time to time. There are several articles on endowed schools in the 'Journal of Education,' and an article on endowments in England for the purposes of Education, in the second volume of the publications of the Central Society of Education, by George Long. The evidence before the select committee of the House of Commons in 1835, contains much valuable information. In 1840 a sensible pamphlet on grammar-schools appeared in the form of a letter to Sir R. H. Inglis, by the Honourable Daniel Finch, for twenty years a charity commissioner. We are indebted to this letter for several facts and suggestions.

SCIRE FACIAS, a writ sued out for the purpose either of enforcing the execution of, or of vacating, some already existing record. It directs the sheriff to give notice ("Scire facias," whence the name) to the party against whom it is obtained to appear and show cause why the purpose of it shall not be effected. A summons to this effect should be served on the party, whose duty then is to enter an appearance, after which a declaration is delivered to him, reciting the writ of scire facias. To this he may plead, or demur, and the subsequent proceedings are analogous to, and in fact are in law considered as an action. If the party cannot be summoned, or fail to appear, judgment may be signed against him. The proceedings under a scire facias are resorted to in a variety of cases. They may be divided into—

1. Those where, the parties remaining the same, a scire facias is necessary to revive or set in operation the record.

2. Those where another party seeks to take the benefit of it, or becomes chargeable, or is injured, by it.

In cases where a year and a day have elapsed since judgment has been signed, and nothing (such as a writ of error, an injunction, &c.) has existed to stay further proceedings, it is a legal presumption that the judgment has either been executed, or that the plaintiff has released the execution. In such case execution cannot issue against the defendant until he has had an opportunity, by means of the notice given him under a scire facias, of appearing and showing any cause which may exist why execution should not issue against him. If the judgment has been signed more than ten years, a scire facias cannot issue unless with the permission of the court or a judge; and by the statute 3 & 4 Wm. IV. c. 27, § 40, proceedings appear to be limited to a period of twenty years. When a plaintiff, having had execution by elegit, under which he obtains possession of a moiety of the rents and profits of the defendant's land, has had the debt satisfied by payment or from the profits of the land, scire facias may be brought to recover the land.

3. The cases of more ordinary occurrence under the second head are those where one of the parties to an action becomes bankrupt, or insolvent, or dies, or, being a female, marries, or where it is sought to enforce the rights of a plaintiff against the bail to an action, or to set aside letters patent. If a woman obtain a judgment, and marry before execution, the husband and wife must sue out a scire facias to have execution. And if judgment is obtained against a woman, and she marries before execution, a scire facias must be brought against her and her husband before execution can be obtained. A scire facias is the only proceeding for the purpose of repealing letters patent by which the king has made a grant injurious to some party, as where he has granted the same thing which he had already granted to another person; or a new market or fair is granted to the prejudice of an antient one, &c. The king may have a scire facias to repeal his own grant, and any subject who is injured by it may petition the king to use his name for its repeal. A man may have a scire facias to recover the money from a sheriff who has levied under a fieri facias and retains the proceeds.

(2 Wms. Saund. 71; Tidd's *Practice;* Archbold's *Practice.*)

SCOTCH CHURCH. [General Assembly of the Church of Scotland.]

SCUTAGE, or ESCUAGE. [Feudal System, p. 24.]

SEARCH, RIGHT OF. The general principles upon which that part of the Law of Nations is constructed which respects the usages to be observed towards neutral powers in time of war by the belligerent powers, have been explained under the head of Blockade. Here it is only necessary further to remark that manifestly no other right can be exercised by the belligerent over the ships of the neutral without the right of visitation and search. The existence of that right, accordingly, is admitted on all hands as the rule, whatever may be the limitations or exceptions. As Lord Stowell has said in his judgment on the case of the Maria (Garrels *v.* Kensington, 8 T. R. 230), "Till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists."

In the exercise of the right of search upon a neutral vessel, the first and principal object of inquiry is generally the ship's papers. These are, the passport from the neutral state to the captain or master; the sea letter, or sea brief, specifying the nature and quantity of the cargo; the proofs of property; the muster-roll of the crew, containing the name, age, rank or quality, place of residence, and place of birth of each of the ship's company; the charter party; the bill of lading: the invoices; the log-book; and the bill of health. (Chitty *on the Law of Nations*, pp. 196-199.)

The penalty for the violent contravention of the right of visitation and search, is the confiscation of the ship and cargo; and a rescue by the crew after the captors are in actual possession is considered as the same thing with a forcible prevention. In either case the resisting ship may be seized in the same manner as if it be-

longed to the enemy, and, being brought into port, will be condemned as prize.

Of course, any of the belligerent powers may agree with any of the neutral states that the right of search shall only be exercised in certain circumstances; and this is the first limitation that falls to be noticed. "Two sovereigns," Lord Stowell has said in the same judgment, "may unquestionably agree, if they think fit, as in some late instances they have agreed, by special covenant, that the presence of one of their armed ships along with their merchant-ships shall be mutually understood to imply that nothing is to be found in that convoy of merchants' ships inconsistent with amity or neutrality; and, if they consent to accept this pledge, no third party has a right to quarrel with it, any more than with any other pledge which they may agree mutually to accept. But surely no sovereign can legally compel the acceptance of such a security by mere force. The only security known to the Law of Nations upon this subject, independent of all special covenant, is the right of personal visitation and search, to be exercised by those who have the interest in making it." Lord Stowell here alludes to the pretensions of the northern powers in their convention for the establishment of what was called an armed neutrality in 1800, one of the clauses of which was, "That the declaration of the officers who shall command the ship of war, or ships of war, of the king or emperor, which shall be convoying one or more merchant-ships, that the convoy has no contraband goods on board shall be sufficient; and that no search of his ship, or the other ships of the convoy, shall be permitted." It is sometimes stated that this was also one of the principles of the previous convention of the same kind formed by the northern powers in 1780; and there may perhaps have been an understanding among the contracting parties to that effect; but we do not find it distinctly avowed in any of their published announcements. The position in question, namely, that the presence of a ship of war should protect from search the merchantmen under its convoy, never has been admitted by Great Britain.

But it is now universally admitted that the right of visitation and search cannot be exercised upon a ship of war, or public or national vessel, itself; and this is the second limitation of the right. It is strange that there should ever have been any doubt or dispute upon this point. A ship of war has always been looked upon as in a manner part of the national territory, and as such inviolable in any circumstances whatever; the act of entering it in search either of contraband goods or of deserters must be considered as an act of the same character with that of pursuing a smuggler or fugitive across the frontier of the state without permission of the sovereign authority, a thing the right of doing which has never been claimed. Accordingly, although it has been a common thing for nations to declare by express stipulation in their treaties with one another that the prize courts in each shall exercise a jurisdiction according to the recognised principles of public law in questions arising with regard to captures at sea, the language used has always implied that the captures are to be merchant or private vessels: of the concession by one power to another of the right of adjudicating upon its ships of war detained or brought into port not a trace is to be found in any such treaty. Yet an opposite doctrine has been both maintained in argument, and attempted to be carried into effect. In 1653, when, after the disasters of the war with England that had broken out in the preceding year, the Dutch were reduced to such a state as to make them anxious for peace upon almost any terms, the English government demanded as one of the stipulations of the proposed treaty that all Dutch vessels, both of war and others, should submit to be visited, if thereto required. But, humbled as the Dutch were, they peremptorily refused to agree to any such stipulation; and the treaty was concluded in 1654 without it. Very soon after this peace, the States General were again led to take the whole subject of the visitation and search of ships at sea into their consideration by the circumstance of one of their men-of-war, convoying a fleet of merchant ships, having been met by an English man-of-war in the Downs, when the merchant-

men were subjected to search. The first question that arose was, whether even such an exercise of the right of search was legal in the presence of the convoy; and upon this question the States determined that "the refusal to let merchantmen be searched could not be persisted in." At the same time, however, they took occasion to make the following declaration:—"That, in conformity with their High Mightinesses' instructions taken in respect to the searching of ships of war, and especially those of September, 1627, November, 1648, and December, 1649, it is thought good, and resolved, that all captains and other sea officers that are in the service of this state, or cruising on commission, shall be anew strictly commanded, told, and charged that they shall not condescend to no commands of any foreigners at sea, much less obey the same; neither shall they any ways permit that they be searched; nor deliver, nor suffer to be taken out of their ships, any people or other things." From this time for more than a century and a half, the principle of the immunity of ships of war from visitation and search was acquiesced in by the practice of our own and of every other country, nor is it known to have been contested even in speculation. But at length, in the course of the controversy that arose respecting the rights of neutrals out of the Berlin and Milan decrees of the French emperor and our own Orders in Council, in 1806 and 1807 [BLOCKADE], while some extreme partisans on the one side contended that even merchant ships were not liable to search when under the convoy of a man-of-war, others on the opposite side revived the old pretension of the English republican government of 1653, and maintained our right of visiting and searching the ships of war themselves of neutral states whenever we should think proper. The practical application of the principle that was now especially called for was the visitation of the ships of war of the United States of America for the purpose of recovering seamen alleged to be subjects of this country and deserters from the British service. The pretension thus set up was ably discussed, and its unwarrantable character clearly demonstrated, in an article published in the 'Edinburgh Review' for October, 1807, pp. 9-22; but before this paper appeared an actual enforcement of the new doctrine had occurred in an attack made, on the 23rd of June, by the British ship of war, Leopard, upon the American frigate Chesapeake, lying off the Capes of Virginia. On the refusal of the American captain to permit his ship to be visited, the Leopard fired into the Chesapeake, which, being unprepared for action, immediately struck her flag. Four men were carried off, and the American ship was then left. A late American writer has, not in too strong language, described this act as "an exertion of power which was beyond all patient endurance, and which electrified the nation to its remotest extremities" (Tucker's *Life of Jefferson*, ii. 258). President Jefferson immediately issued a proclamation interdicting all armed British vessels from the harbours and waters of the United States, and forbidding all supplies to them, and all intercourse with them. The American minister in London was also directed to demand satisfaction of the British government. The conduct of the captain of the Leopard was not attempted to be defended by the ministry here; on the contrary, its illegality was at once admitted, at least by implication; but Mr. Canning, then Secretary of State for Foreign Affairs, insisted that, inasmuch as the United States had taken measures of retaliation into their own hands, Great Britain might take those measures into account in the estimate of reparation; and he inquired whether the President's proclamation would be withdrawn on the king disavowing the act of Captain Humphreys of the Leopard, and of Admiral Berkeley, his commanding officer, who had directed it. The proclamation was justified by the American government as a measure of precaution, and not of retaliation. Negotiations were continued for a long time without any result; the affair of the Chesapeake soon became mixed and complicated with other incidents, giving rise to new claims and counterclaims; at last the American government took its stand on new ground, objecting to the search not only of ships

of war but even of merchant vessels for deserters; it was not denied that the search of merchantmen was sanctioned by the law of nations, but the exercise of the right was denounced as necessarily irritating and fraught with danger, and it was urged that it should on that account be dispensed with and abolished. In the end war broke out between the two countries in the summer of 1812; but even that did not settle any of the questions that had arisen between them in connection with the right of search. The treaty of peace signed at Ghent on the 24th of December, 1814, contained no stipulation on that subject, which was now supposed to have lost its practical importance for the present by the cessation of the general war which had occasioned all the late difficulties respecting the treatment of neutral states.

The right of visitation and search, however, is by no means necessarily confined to a time of war. Its exercise has always been admitted to be equally allowed by international law in time of peace, though it may not commonly have then been so frequently thought to be called for. The very question of the seizure by one country of its subjects serving in the mercantile navy of another, which was one of the main subjects of dispute between England and America before the breaking out of actual hostilities in 1812, may arise in a time of peace as well as in a time of war, though its importance no doubt is less in the former than in the latter. The chief questions connected with the right of search, the number of which is greatly reduced in a time of general peace, are those relating to the trading rights of neutrals; but even of these some remain. Of late years, however, the right of search has become principally important in reference to the trade in slaves, which has now been declared to be illegal by most of the great maritime states. The right of visitation and search, however its exercice may be regulated, seems to afford the only means of ascertaining whether or no a vessel has got slaves on board; but it is evident that any power opposed, for whatever reason, to the exercise of that right may, even while declaring the slave trade to be illegal, refuse to allow that illegality to be made an excuse for the visitation of suspected ships bearing its flag. It is only by express stipulation that the free exercise of the right can be established. England, which has all along been foremost in the attempt to suppress the slave trade, has never objected to the exercise of the right of search for this, or indeed for any other legitimate object; but other nations, jealous of our predominant maritime power, have, not perhaps very unnaturally, been extremely reluctant to concede it in this particular case. Some further remarks on this subject are briefly made under the article SLAVE, SLAVERY, farther on in this work.

SEARCHERS. [BILLS OF MORTALITY.]

SEAWORTHINESS. [SHIPS.]

SECRETARY (French, *Secrétaire*), one entrusted with the secrets of his office or employer; one who writes for another. Its remote origin is the Latin *secretum*. The phrase "notarius secretorum" is applied by Vopiscus (*Div. Aurelianus*, c. 36) to one of the secretaries of the emperor Aurelian. This appellation was of very early use in England: Archbishop Becket, in the reign of Henry II., had his "secretarius;" although the person who conducted the king's correspondence, till the middle of the 13th century, was called his clerk only, probably from the office being held by an ecclesiastic. The first time the title of "secretarius noster" occurs is in the 37th Hen. III., 1253.

SECRETARY OF STATE. The office of secretary of state is one of very antient date, and the person who fills it has been called variously "the king's chief secretary," "principal secretary," and, after the Restoration, "principal secretary of state." He was in fact the king's private secretary, and had custody of the king's signet. The duties of the office were originally performed by a single person, who had the aid of four clerks. The statute 27 Hen. VIII. c. 11, which regulates the fees to be taken by "the king's clerks of his grace's signet and privy seal," directs that all grants to be passed under any of his majesty's seals shall, before they are so sealed, be brought

and delivered to the king's principal secretary or to one of the clerks of the signet. The division of the office between two persons is said to have occurred at the end of the reign of Henry VIII., but it is probable that the two secretaries were not until long afterwards of equal rank. Thus we find Sir Francis Walsingham, in the time of Queen Elizabeth, addressed as her majesty's principal secretary of state, although Dr. Thomas Wilson was his colleague in the office. Clarendon, when describing the chief ministers at the beginning of the reign of Charles I., mentions the two secretaries of state, "who were not in those days officers of that magnitude they have been since; being only to make dispatches upon the conclusion of councils, not to govern or preside in those councils." Nevertheless the principal secretary of state must, by his immediate and constant access to the king, have been always a person of great influence in the state. The statute 31 Hen. VIII. c. 10, gives the king's chief secretary, if he is a baron or a bishop, place above all peers of the same degree; and it enacts that if he is not a peer he shall have a seat reserved for him on the woolsack in parliament; and in the Star Chamber and other conferences of the council, that he shall be placed next to the ten great officers of state named in the statute. He probably was always a member of the privy council. Lord Camden, in his judgment in the case of Entick *v.* Carrington (11 Hargrave's *State Trials*, p. 317), attributes the growth of the secretary of state's importance to his intercourse with ambassadors and the management of all the foreign correspondence of the state, after the policy of having resident ministers in foreign courts was established in Europe. Lord Camden, indeed, denies that he was antiently a privy counsellor.

The number of secretaries of state seems to have varied from time to time: in the reign of George III. there were often only two; but of late years there have been three principal secretaries of state, whose duties are divided into three departments—home affairs, foreign affairs, and the colonies. They are always made members of the privy council and the cabinet. They are appointed (without patent) by mere delivery to them of the seals of office by the king. Each is capable of performing the duties of all the three departments, and the offices are so far considered as one, that upon being removed from one secretaryship of state to another, a member of the House of Commons does not vacate his seat.

To the Secretary of State for the Home department belongs the maintenance of the peace within the kingdom, and the administration of justice so far as the royal prerogative is involved in it. All patents, charters of incorporation, commissions of the peace and of inquiry, pass through his office. He superintends the administration of affairs in Ireland.

The Secretary for Foreign affairs conducts the correspondence with foreign states, and negotiates treaties with them, either through British ministers resident there, or personally with foreign ministers at this court. He recommends to the crown ambassadors, ministers, and consuls to represent Great Britain abroad, and countersigns their warrants.

The Secretary for the Colonial department performs for the colonies the same functions that the secretary for the home department performs for Great Britain.

Each Secretary of State is assisted by two under-secretaries of state, nominated by himself; one of whom is usually permanent, and the other is dependent upon the administration then in power. There is likewise in each department a large establishment of clerks appointed by the principal secretary.

The power to commit persons on suspicion of treason is incident to the office of principal secretary of state—a power which, though long exercised, has been often disputed. It is not necessary here to give the arguments on both sides; they are discussed with great care by Lord Camden in the case above cited (Entick *v.* Carrington), which was one of the numerous judicial inquiries arising out of the dispute between the Crown and John Wilks at the beginning of the reign of George III. The conclusions to which Lord Camden comes are—that the secretary of state is not a magistrate known to the common law; that the power of com-

mitment for state offences, which he has for many ages exercised, was used by him as an immediate delegation from the person of the king, a fact which may be inferred, among other things, from the debates in parliament in the time of Charles I., when Secretary Cook claimed the power on that ground; that nevertheless courts of justice must recognise this power, inasmuch as there has been constant usage of it, supported by three judicial decisions in favour of it since the Revolution, viz., by Lord Holt, in 1695 (Rex *v.* Kendal and Rowe); by Chief Justice Parker, in 1711 (Queen *v.* Derby); and by Lord Hardwicke, in 1734 (Rex *v.* Earbury). In a more recent case (King *v.* Despard, 1798), Lord Kenyon says, "I have no difficulty in saying that the secretaries of state have the right to commit;" and he hints that Lord Camden felt too much doubt on the subject. The secretary of state has also power to issue a warrant by which he may direct letters to be opened which are sent through the post-office. This power is occasionally exercised, and was the subject of much discussion in parliament in 1845.

There is also a chief secretary for Ireland, resident in Dublin (except when parliament is sitting), and he has always an under-secretary there. He corresponds with the home department, and is under the authority of the lord-lieutenant of Ireland. His office is called that of secretary to the lord-lieutenant; but it is analogous to the office of secretary of state. He has sometimes, though very rarely, been a member of the cabinet.

SEDITION (from the Latin *seditio*). It is stated that in many of the old English common law writers treason is sometimes expressed by the term Sedition; and that when law proceedings were in Latin, *seditio* was the technical word used in indictments for treason, till it was superseded by the word *proditio*.

Sedition does not appear to be very exactly defined. It is stated to comprehend contemptuous, indecent, or malicious observations upon the king or his government, whether made in words only, or in writing, or by tokens (which last term must comprehend pictures or drawings), calculated to lower him in the opinion of the subjects or to weaken his government. All these offences fall short of treason; but they are considered crimes at common law, and punishable by fine and imprisonment.

There are also statutes against particular acts of sedition, such as seditious libels. [LAW, CRIMINAL, p. 210, No. 40.]

There are also various acts against societies established for seditious and treasonable purposes, and against seditious meetings and assemblies.

The Roman sense of Seditio (*sed* or *se*, and *itio*, a going apart, a separation) is properly a disunion among the citizens, a riot, or turbulent assemblage of people for the purpose of accomplishing some object by violence or causing fear. It was included among other forbidden acts in the Lex Julia de Majestate. (Dig. 48, tit. 4.) It is often used in connection with "tumultus" and "turba;" and the three terms seem to have the same signification. (Rein, *Römische Criminalrecht*, p. 522.)

SEDUCTION. [PARENT AND CHILD.]

SEIGNORAGE. [MONEY, p. 350.]

SEIGNORY. [TENURE.]

SEISIN is a term properly applied to estates of freehold only, so that a man is said to be *seised* of an estate of inheritance or for life, and to be *possessed* of a chattel interest, such as a term of years. This distinction does not appear to have existed in the time of Bracton; at least he uses the two words as identical in meaning ('possessio sive seisina multiplex est,' lib ii., fol. 38).

The seisin of the tenant of a freehold is the legal possession of the land. It is actual seisin, called seisin in deed, when he has corporeal possession of the land, or, as Bracton expresses it, 'corporalis rei detentio: corporis et animi cum iuris adminiculo concurrente.' It is seisin in law when lands have descended to a person, but he has not yet actually entered into possession of them, and no person has usurped the possession. When an estate of inheritance is divided into several estates, as for instance an estate for life, and a remainder or reversion in fee, the tenant in possession has the actual seisin of the lands; but the persons in remainder or reversion have also

seisin of their respective estates. The seisin of a rent which issues out of lands is quite distinct from the seisin of the lands; and therefore a disseisin of the estate in the land is not a disseisin of the rent.

In the conveyance of land by feoffment, the delivery of the possession, or livery of seisin, as it is termed, is the efficient part of the conveyance. [FEOFFMENT.]

The word seisin is also applied to the services due from the tenant to the lord. When the lord has received the tenant's oath of fealty, he has obtained seisin of all his services.

Seisin in deed is obtained by actually entering into lands, and an entry into part in the name of the whole is sufficient; by the receipt of rents or profits; and by the actual entry of a lessee to whom the lands are demised by a person who is entitled to but has not obtained actual possession.

Seisin may also be acquired under the Statute of Uses, 27 Hen. VIII., which enacts that when any person shall be seised of any lands to the use, &c. of another, by reason of any bargain, sale, feoffment, &c., the person having the use, &c. shall thenceforth have the lawful seisin, &c. of the lands in the same quality, manner, and form as he had before in the use.

A disseisin supposes a prior seisin in another, and a seisin by the disseisor which terminates such prior seisin. To constitute a disseisin, it was necessary that the disseisor should not have a right of entry; that the disseisee should not voluntarily give up his seisin, and that the disseisor should make himself the tenant of the land; or in other words, should put himself, with respect to the lord, in the same situation as the person disseised. "But," it is well remarked (Co. Litt., 266 *b*, Butler's note), "how this substitution was effected, it is difficult, perhaps impossible, now to discover. From what we know of the feudal law, it does not appear how a disseisin could be effected without the consent or connivance of the lord; yet we find that the relationship of lord and tenant remained after the disseisin. Thus after the disseisin the lord might release the rent and services to the disseisee; might avow upon him; and if he died, his heir within age, the lord was entitled to the wardship of the heir." But the doctrine of disseisin is in many respects very obscure, and at present of little practical importance.

SEPARATION A MENSA ET THORO. [DIVORCE.]

SEPOY, or SIPOY, the name of the native soldier in the East Indies. Bishop Heber derives the word from "sip," the bow and arrow, which were originally in almost universal use by the native soldiers of India in offensive warfare. Those Bhiels and Kholees who are employed in Guzerat in the service of the police and in protecting gentlemen's houses and gardens are also called sepoys, and with more propriety, as they still use the bow and arrow. The native soldiers in the pay of the British government now form a large army, well trained in European discipline: the men are of a size somewhat below that of European soldiers, but they are quite as brave, as hardy, and as active, capable of undergoing as much fatigue and of sustaining even greater privations. To the attachment and bravery of this army Great Britain is chiefly indebted for the possession of her Indian empire, and it now secures to her the sovereignty over a territory vastly more extensive than her own, and separated from her by the distance of nearly half the globe.

The pay of the Sepoy is two pagodas, or seven rupees, per month, which is double the wages of the class of persons from whom they are generally drawn.

The Indian army in 1840, according to the 'East India Calendar,' was as follows:—

Bombay.

26 regiments of native infantry.
3 regiments of native cavalry.
2 regiments of European infantry.
1 regiment of artillery.
1 corps of engineers.
1 corps of invalids.

Madras.

52 regiments of native infantry.
8 regiments of native cavalry.
2 regiments of European infantry.
1 regiment of horse artillery.
4 regiments of foot artillery.
1 corps of engineers.
1 corps of invalids.

Bengal.

74 regiments of native infantry.
10 regiments of native cavalry.
2 regiments of European infantry.
1 regiment of horse artillery.
5 battalions of foot artillery.
1 corps of engineers.
1 corps of invalids.

Each regiment consists of two battalions of 500 men each. In 1842 the number of native soldiers in the pay of the East India Company was 181,612, besides 4450 native officers, in all 186,062. The number of European solders was 19,164, besides 5531 European officers, in all 24,695. The entire Indian army in 1842 consequently amounted to 210,757.

SEQUESTRATION. [BENEFICE, p. 347.]

SEQUESTRATION. [BANKRUPT (SCOTLAND), p. 296.]

SERJEANT, or SERGEANT, is a non-commissioned officer in a troop of cavalry or in a company of infantry. The duties of serjeants are to drill or instruct in discipline the recruits of a regiment; and on parade they act as markers or guides in the performance of the evolutions. The serjeants of infantry are now armed with muskets like the rest of the troops. In each company, when a battalion is in line, a covering serjeant is always stationed behind the officer commanding the company; when the ranks take open order, and that officer advances before the front rank, the serjeant steps into his place; but upon the ranks being closed, he falls again to the rear. Four or six serjeants are charged with the important duty of guarding the colours of the regiment: they constantly attend the officers who carry them, and are called colour-serjeants. One serjeant in each troop or company is appointed to pay the men; also to keep the accounts relating to their allowances, the state of their necessaries, &c.

The name of sergens or servientes was, in the armies of France during the reign of Philip Augustus, applied to gentlemen who served on horseback, but were below the rank of knights; and also, as a general term, to the infantry soldiers who were furnished by the towns.

In the reign of Philip and Mary the serjeant-major of the army was an officer whose post corresponded to that of the modern major-general; and the serjeant-major of a regiment was a field-officer, who would now be designated the major. At present the serjeant-major is an assistant to the adjutant, and keeps the roster for the duties of the serjeants, corporals, and privates. The quartermaster-serjeant is one who acts immediately under the quartermaster of a regiment in all the details relating to the quarters of the officers and men, the supplies of food, clothing, &c.

SERJEANT, or SERGEANT. The word "serjeant" comes to us from "sergent," into which the French had modified the Latin "serviens." The word serjeanty, in French "sergenterie," was formed from "sergent," but was always used with reference to a particular species of service.

In the creation of serjeants, some antient practices are still retained in those cases where the writ of the serjeant-elect issues in term-time; but by statute 6 Geo. IV. c. 95, barristers who receive writs issued in vacation commanding them to appear in the Court of Chancery, and to take upon themselves the estate and dignity of a serjeant-at-law, are, upon appearing before the lord chancellor and taking the oaths usually administered to persons called to that degree and office, declared to be serjeants-at-law sworn, without any further ceremony.

Serjeants at law are the only advocates recognised in the court of Common Pleas. In that court they retain their right of exclusive audience. This privilege extends to trials at bar, but not to trials at nisi prius, either at the assizes or at the sittings in London and Middlesex.

The serjeants formerly occupied three inns, or collegiate buildings, for practice, and for occasional residence, situate in Chancery Lane, Fleet Street, and Holborn. They have now no other building than Serjeants' Inn, Chancery Lane, which has been lately rebuilt. Here all the common-law judges have chambers, in which they dispose in a summary way, and with closed doors, of such matters as the legislature has expressly entrusted to a single judge, and of all business which

is not thought of sufficient magnitude to be brought before more than one judge, or which is supposed to be of a nature too urgent to admit of postponement.

The inn contains, besides accommodations for the judges, chambers for fourteen serjeants, the junior serjeants, while waiting for a vacancy, being dispersed in the different inns of courts.

In Serjeants' Inn Hall the judges and serjeants, as members of the Society of Serjeants' Inn, dine together during term-time. Out of term the hall is or was frequently used as a place for holding the revenue sittings of the court of Exchequer.

A full account of the various kinds of serjeants and of the origin of their functions is given in Manning's 'Serviens ad Legem.' [BARRISTER.] See also SERJEANT, in 'Penny Cyclopædia.'

SERJEANTS-AT-ARMS are limited by statute 13 Rich. II. c. 6, to thirty. Their office is to attend the person of the king, to arrest offenders, and to attend the lord high steward when sitting in judgment upon a peer. Two of these serjeants-at-arms, by the king's permission, attend the two houses of parliament. In the House of Commons the office of the serjeant-at-arms (as he is emphatically called) is to keep the doors of the house, and to execute such commands, especially touching the apprehension of any offenders against the privileges of the Commons, as the House, through its Speaker, may enjoin.

In some offices about the royal person the principal officer of the department is distinguished by the appellation of serjeant, as the serjeant-surgeon.

SERJEANTY, GRAND. [GRAND SERJEANTY.]

SERVANT, one who has contracted to serve another. The person whom he has contracted to serve is styled master. Servants are of various kinds: apprentices [APPRENTICE], domestic servants who reside within the house of the master, servants in husbandry, workmen or artificers, and clerks, warehousemen, &c. From the relation of master and servant a variety of rights and duties arise, some of which are founded on the common law, and some on statute.

A contract of hiring and service need not be in writing unless it be for a period longer than a year, or for a year to commence at some future time. If in writing, it is not liable to any stamp duty, unless it apply to the superior classes of clerks, &c. All such contracts imply an undertaking on the part of the servant faithfully to serve the master, and to do his lawful and reasonable commands within the range of the employment contracted for; on the part of the master, to protect the servant and pay him his hire or wages. In all hirings where no time is expressed, except those of domestic servants, it is a rule of law that the contract shall continue for a year. In the case of domestic servants it is determinable by a month's warning, or the payment of a month's wages. Servants in husbandry can only be discharged or quit the service upon a quarter's notice. This rule as to time may of course be rebutted by any circumstances in the contract inconsistent with its existence. In the case of immorality, or any kind of offence amounting to a misdemeanor committed during the time of the service, or of continued neglect, or determined disobedience, a servant may be immediately discharged. If the servant is a domestic, he is nevertheless entitled to wages for the time during which he has served. But in other cases, where the contract is entire for a year, the wages cannot be apportioned, and the service having been determined before the expiration of the time contracted for, in consequence of the fault of the servant, he is not entitled to claim wages for any portion of the time during which he has served. The contract still continues to exist, notwithstanding the disability of the servant to perform his duties from illness, and he is therefore still entitled to receive his wages. The master, however, is not bound to pay the charges incurred by medicine or attendance upon his sick servant. In case the goods of the master are lost or broken by the carelessness of the servant, the master is not entitled to deduct their value from the wages of the servant, unless there has been a contract between them to that effect. His only remedy is by an action at law against the servant. Where a master becomes bankrupt, the commissioners are authorised,

on proof that they are due, to pay six months' wages to his clerks and servants. If the wages for any longer period are due, they must be proved like other debts under the fiat. If a servant has left his service for a considerable time without making any demand for wages, it will be presumed that they are paid. A master may chastise his apprentice for neglect or misconduct, but he will not be justified in striking any other description of servant. Servants who steal or embezzle their master's goods are subject to a greater degree of punishment than others who commit those crimes. Masters are not compellable to give a character to servants who leave their employment. If they choose to do so, and they give one which is false, they may be liable to an action at the suit of the servant; but in order to recover in such an action, the servant must prove that the character was maliciously given for the purpose of injuring him. If the master, merely for the purpose of confidentially communicating, *bonâ fide* state what he believes to be the truth respecting a servant, he is not responsible for the consequences of his communication.

By a great variety of statutes, the provisions of which are collected and explained in Burn's *Justice*, tit. 'Servants,' a special jurisdiction is given to magistrates over servants in husbandry, and also in many classes of manufactures and and other employments. None of these rules of law apply to domestic servants. The object of them, as relates to servants in husbandry, is to compel persons who have no ostensible means of subsistence to enter into service, to regulate the time and mode of their service, to punish negligence and refusal to serve, to determine disputes between masters and servants, to enable servants to recover their wages, and to authorise magistrates under certain circumstances to put an end to the service.

Those statutes which relate to servants in manufactures and other employments prohibit the payment of wages in goods, and provide for their payment in money, and for the regulation of disputes concerning them. They also contain various enactments applicable to the cases of workmen, &c., absconding, neglecting or mismanaging their work, injuring or embezzling the materials, tools, &c., entrusted to them, and fraudulently receiving those entrusted to others. With respect also to this class of servants, magistrates have authority to put an end to the contracts of hiring and service. As to combinations of masters or workmen, see COMBINATION LAWS, p. 570.

A master is not guilty of the offence of maintenance, though he maintain and support his servant in an action brought by him against a third party. When a servant is assaulted, his master is justified in assisting his servant, and repelling the assault by force, although he himself be not attacked; and under similar circumstances a servant may justify an assault committed in defence of his master. A master is answerable, both civilly and criminally, for those acts of his servant which are done within the range of his employment. Thus a master is indictable if a servant commit a nuisance by throwing dirt on the highway; and a bookseller or newsvender is liable, criminally as well as civilly, for libels which are sold by his servant in his shop. This liability of the master does not release the servant from his own liability to punishment for the same offence. The servant is also liable when he commits a trespass by the command of his master. A master, although liable civilly for any injuries arising from the negligence or unskilfulness of his servant, is not responsible for the consequences of a wilful act of his servant done without the direction or assent of the master; but the servant alone is liable. Difficulties have sometimes occurred in determining who is responsible in the character of master for damages done to third persons by a servant. The following is an instance:—When a coachman is sent by the owner of horses let out for the purpose of drawing a private carriage, and, while driving the hirer in his private carriage, does some damage to a third party, it has been held that the owner of the horses was liable; for the servant is the servant of the horse owner, and not of him whom he is driving. Where a servant makes a contract within the range of his employ-

ment, what he does will bind his master, just as if he had expressly authorised the servant. But in all cases where there is no express evidence of the delegation of the master's authority, there must be facts from which such delegation can be inferred. Where a servant obtains goods for his master, which the master uses, and he afterwards gives money to the servant to pay for them, the master will be liable to pay for them, though the money should have been embezzled by the servant. If a coachman go in his master's livery to hire horses, which his master afterwards uses, the master will be liable to pay for them, though the coachman has received a large salary for the purpose of providing horses; unless, indeed, that fact were known to the party who let out the horses. If a master is in the habit of paying ready money for articles furnished to his family, and gives money to a servant, on a particular occasion, for the purpose of paying for the articles which he is sent to procure, the master will not be liable to the tradesman if the servant should embezzle the money. If articles furnished to a certain amount have always been paid for in ready money, and a tradesman allows other articles of the same character to be delivered without payment, the master will not be liable, unless the tradesman ascertains that the articles are for the master's own use. Where a tradesman, who had not before been employed by a master, was directed by a servant to do some work, and afterwards did it without any communication with the master, it was held that the master was not liable, though the thing upon which the work was done was the property of the master.

Any person who interferes with the master's right to the services of his servant, does him an injury for which he is responsible in an action for damages. A master may be deprived of the services of a servant, either by some hurt done to a servant, or by his being enticed out of the service. An action, therefore, may be brought by a master where a servant has received some personal injury disqualifying him from the discharge of his duties as a servant, as where he has been disabled by the overturn of a coach, or the bite of a third person's dog. The action by a parent against the seducer of his daughter is of this class. [PARENT AND CHILD.]

An action will not lie against a party for enticing away a servant, if the servant has paid to the master the penalty stipulated for by the agreement of hiring and service in case of his quitting his master's service. If a servant has been enticed away from the service, an action lies against him for his breach of contract, as well as against the party who has enticed him away.

The statute 32 Geo. III. c. 56, is "for preventing the counterfeiting the certificates of the characters of servants." Independently of this statute, a person who wilfully gives a false character with a servant is liable to an action at the suit of the party who has been induced by the false character to employ the servant, for any damages which he may suffer in consequence of employing him.

Formerly a settlement was gained by residence in a parish under a contract of hiring and service for a year, but by the Poor Law Amendment Act no settlement can for the future be gained by such means. (Blackstone, *Com.*, book, i., c. 14; Burn's *Justice*, tit. 'Servants.')

SERVICE. [SERVANT.]

SERVICES. [TENURE.]

SESSION, COURT OF, SCOTLAND. [JUSTICIAR OF SCOTLAND.]

SESSION, KIRK. [GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND.]

SESSIONS. A session is the period during which any court of law sits for the transaction of judicial business; but the term Sessions is commonly used to denote the meeting of the justices of a county, or other district which has a separate commission of the peace, for the execution of the authorities conferred by the crown by that commission and of other authorities given by act of parliament.

County Sessions.—The commission of the peace issued by the crown for the purpose of creating county magistrates, consists of two branches. The former relates to the powers to be exercised by justices individually and separately. [JUSTICES.] The second branch of the commission creates the powers of the justices

when assembled in sessions. It begins as follows:—We have also assigned you, and every two or more of you (of whom any one of you, the aforesaid A. B., C. D., E. F., &c. we will shall be one), our justices, to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be better known, of all and all manner of felonies, poisonings, inchantments, sorceries, arts magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever, and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, &c.

The words "of whom any one of you the aforesaid A. B., C. D., E. F., &c. we will shall be one," constitute the Quorum clause, so called because when the commission was in Latin, the clause ran "*quorum* A. B. vel C. D. vel E. F., &c. unum esse volumus."

The statute 1 Mary, sess. 2, c. 8, s. 2, prohibits sheriffs from exercising the office of justice of the peace during the time that they act as sheriffs. If a man be created a duke, archbishop, marquess, earl, viscount, baron, bishop, knight, judge, or serjeant-at-law, his authority as justice of the peace remains. (1 Edw. VI. c. 7.) By 5 Geo. II c. 18, s. 2, attorneys, solicitors, and proctors are prohibited from acting as justices of the peace for any county during the time that they continue in practice.

A meeting of the justices held for the purpose of acting judicially for the whole district comprised within their commission constitutes a court of General Session of the peace. By 12 Rich. II. c. 10, sessions are required to be held in every quarter of the year, or oftener if need be. The four sessions so held are styled courts of general Quarter-session of the peace, or "quarter-sessions." By different statutes the quarter-sessions are directed to be held at uniform periods. The times at which they are directed to be held are, the first week after the 11th of October, the first week after the 28th of December, the first week after the 31st of March, the first week after the 24th of June. Though the justices act irregularly in omitting to convene the quarter-sessions at the prescribed periods (except the April sessions, in respect of which power is expressly given to the justices to alter the time to any day between the 7th of March and the 22nd of April), sessions held as quarter-sessions in other periods of the quarter are legal quarter-sessions. When the business to be transacted at a court of quarter-sessions is not completed before the time at which it is thought desirable for the justices to separate, the court is usually adjourned to a subsequent day; this is also done when there is reason to expect that new matters will arise which it will be desirable to dispose of before the next quarter-sessions. Two justices, one of them being of the quorum, may at any time convene a general session of the peace; but at such additional session no business can be transacted which is directed by any act of parliament to be transacted at quarter-sessions.

Both general sessions and general quarter-sessions are held by virtue of a precept under the hands of two justices, requiring the sheriff to return a grand jury before them and their fellow-justices at a day certain, not less than fifteen days after the date of the precept, at a certain place within the district to which the commission extends, and to summon all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within the county.

Persons bound to attend at the sessions are:—First, all justices of the peace for the county or district. Secondly, the custos rotulorum of the county, who is bound to attend by himself or his deputy, with the rolls of the sessions. Thirdly, the sheriff by himself or his under-sheriff, to return the precept and lists of persons liable to serve on the grand or petty jury, to execute process, &c. Fourthly, the several coroners of the county or district. Fifthly, the constables of hundreds or high constables. Sixthly, all bailiffs of hundreds and liberties. Seventhly, the keepers of gaols, to bring and receive prisoners. Eighthly, the keeper of the house of correction, to give in a calendar and account of persons in his custody. Ninthly, all persons returned by the sheriff as jurors. Tenthly, all persons who have entered into a recognizance to

answer charges to be made against them, or to prosecute or give evidence upon charges against others.

Persons summoned on grand or petty juries ought to be males between 21 and 60 years of age, who are possessed of 10*l.* a year in lands or rents, or 20*l.* a year in leaseholds for an unexpired term or terms of 21 years or more, or who are householders, rated to the poor on a value of not less than 20*l.* (in Middlesex 30*l.*), or who occupy houses containing not less than fifteen windows, and who are not peers, judges of the superior courts, clergymen, Roman Catholic priests, dissenting ministers following no secular employment but that of schoolmasters, and many others.

The justices in sessions have criminal jurisdiction, to be exercised partly according to the rules of common law and partly pursuant to different acts of parliament; they have also jurisdiction in certain civil matters created by different statutes; they have an administrative power in certain county matters; and they have power to fine and imprison for contempt.

I. The criminal jurisdiction of justices in general and quarter-sessions is now defined by the 5 & 6 Vict. c. 38, which enacts "that after the passing of this Act neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any session of the peace nor the adjournment thereof try any person or persons for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the offences mentioned under the 18 heads contained in the first section of the act. The second section provides that any judge of the supreme courts at Westminster, acting under a commission of oyer and terminer and gaol delivery for any county, may issue a writ or writs of certiorari or other process directed to the justices of the peace acting in and for such county, &c. or to the recorder of any court within the same county, commanding the said justices and recorder severally to certify and return into such court of oyer and terminer, &c. all indictments and presentments found or taken by such justices or recorder of offences which after the passing of this act they will not have jurisdiction to try, and the several recognizances, examinations, and depositions relative to such indictments and presentments; and, if necessary, by writ or writs of Habeas Corpus may cause any person in the custody of any gaol or prison, charged with any such offence, to be removed into the custody of the common gaol of the county, that such offences may be tried under the said commission. The fourth section empowers any court of general or quarter-session or adjourned session of the peace to divide such court into two courts, which may sit apart for the better despatch of business, in the manner and subject to the conditions in this section mentioned.

Previously to the 6 & 7 Will. IV. c. 114, it was in the discretion of the magistrate before whom the depositions were taken, whether he would allow them to be inspected; even the party accused had no right to demand a copy of the depositions, though in cases of treason or felony he was entitled to demand a list containing the names of the witnesses for the prosecution. But by that act (s. 3) "all persons held to bail or committed to prison for any offence, are authorised to require and have, on demand, from the person who has the lawful custody thereof, copies of the examinations of the witnesses respectively upon whose depositions they were held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three halfpence for each folio of ninety words; subject to a proviso, that if such demand be not made before the day appointed for the commencement of the sessions at which the trial of the person on whose behalf such demand is made is to take place, such person is not to be entitled to have any copy of such examination of witnesses, unless the person to preside at such trial be of opinion that such copy may be made and delivered without delay or inconvenience to such trial. The chairman is, however, authorised to postpone the trial on account of such copy of the examination of witnesses not hav-

ing been previously had by the party charged:" and by sec. 5, all persons under trial are authorised, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial is had.

A prisoner or defendant, charged with a felony or a misdemeanor, cannot have the assistance of counsel to examine the witnesses, and reserve to himself the right of addressing the jury. But if he conduct his defence himself, and any point of law arises which he professes himself unable to argue, the court will hear it argued by counsel on his behalf.

II. The quarter-sessions have an original jurisdiction in all matters required to be done by two or more justices, except in cases in which a power is given of appealing to the sessions.

III. Statutes which give summary jurisdiction to one or more magistrates, in most cases allow their decision to be brought before the sessions by way of appeal. Notice of appeal is generally required, and the court is precluded from entertaining any objections not specified in the notice. Subject to this restriction, the case is heard as if the question were raised for the first time. When questions of difficulty in matter of law present themselves upon the hearing of an appeal, the party against whom the sessions decide frequently applies for leave to state a special case for the decision of the Court of King's Bench: the majority of the justices may either grant or reject the application; and if no special case be stated, the judgment of the quarter-sessions upon an appeal, or upon any other matter in which they proceed in a course prescribed by statute, different from the course of the common law, cannot be reviewed by any other court. Where the quarter-sessions act as a court of criminal jurisdiction under the powers given by the commission, and according to the course of common law, a writ of error lies upon the judgment of the sessions to the court of King's Bench, and from that court to the Exchequer Chamber, and ultimately to the House of Lords.

IV. The quarter-sessions have jurisdiction over the appropriation of the county stock, an annual fund raised principally by county rates. This part of the business of the court is usually disposed of before any other, and in practice the first day of the sessions is exclusively devoted to what is called "the county business."

V. In common with other courts of record, justices of the peace, whether assembled in sessions, or sitting as individual magistrates, may fine and imprison for contempt. No superior court can inquire into the existence or non-existence of the fact which has been so treated as a contempt, or into the reasonableness of the fine imposed or imprisonment awarded. The court of quarter-sessions has no power to punish contempts or other offences committed by one of their own body.

The justices being assembled in sessions elect a chairman. The grand-jury being sworn, the royal proclamation against vice and immorality is read by the clerk of the peace. The chairman delivers his charge to the grand-jury, in which, as he is in possession of the depositions taken when the prisoners were committed, he calls their attention to such cases as appear to present any difficulty, and explains such points of law as are necessary for their guidance. The grand-jury then retire to their room to receive such bills of indictment as may be brought before them.

When the business of the sessions is such as to be likely to occupy one court more than three days, it is usual to appoint a second chairman to preside in a separate court, under the authority of 59 Geo. III. c. 28. The bills of indictment for offences to be prosecuted at the sessions being prepared, the witnesses in support of the charge are sworn in court. The bills of indictment on parchment, with the names of the witnesses indorsed thereon, are taken to the grand-jury. The form of proceeding before the grand-jury is explained under JURY.

The bill, being indorsed by the grand-jury, is brought into court by the grand-jury, and delivered to the clerk of the peace, who reads the indorsement with the name of the prisoner and the nature of the charge. The prisoner is then ar-

raigned, and the trial proceeds in the same manner as at the assizes. If the prisoner be found not guilty, he is immediately set at liberty. unless there be some other matter before the court upon which he ought to be detained. If a verdict of guilty be returned, the sentence is pronounced by the chairman, such sentence, where the amount of punishment attached to the offence is not fixed, being first determined by the opinion of the majority of the justices present.

The sessions cannot be held without the presence of two justices at least; nor can they be adjourned by one justice, though two or more may previously have been present. Every act done as an act of sessions, before two justices have met, or after two have ceased to be present, is void.

The crown may grant a commission of the peace not only for an entire county, but also for a particular district within the county. In order, however, to exclude the interference of the county justices in the particular district, it is necessary either to introduce into the commission of the peace for the particular district a clause excluding the jurisdiction of the county magistrates, which is called a ne-intromittant clause, or to grant a new commission to the county magistrates excluding the particular district. If the former, which is the usual course, be taken, the county magistrates may still hold their sessions within the particular district, though they can exercise no jurisdiction in respect of matters arising within the district.

Petty and Special Sessions.—A meeting held by justices for the transaction of magisterial business arising within a particular district which forms a subdivision of the county or district comprised in the commission of the peace, is called a petty session; and if the meeting be convened for some particular or special object, as the appointment of overseers of the poor, of waywardens, of examiners of weights and measures, &c., it is called a special session. A meeting of magistrates cannot legally act as a special session, unless all the magistrates of the particular division are present, or have had reasonable notice to attend.

Borough Sessions.—The Municipal Corporation Act (5 & 6 Wm. IV., c. 76) directs that the recorder of any city or borough to which a separate court of quarter-sessions is granted under the provisions of that act, shall be the sole judge of such court [RECORDER], leaving the ordinary duties of magistrates out of sessions to be performed by the justices of the peace appointed by the crown for such city or borough. The recorder is required to hold a court of quarter-sessions once in every quarter of a year, or at such other and more frequent times as he may think fit, or as the crown may direct. Borough quarter-sessions are not, however, like county quarter-sessions, appointed to be held in particular weeks. In case of sickness or unavoidable absence, the recorder is authorised, with the consent of the town council, to appoint a barrister of five years' standing to act as deputy recorder at the next session, but no longer. In the absence of the recorder and of any deputy recorder, the court may be opened, and adjourned, and the recognisances respited, by the mayor; but the mayor is not authorised to do any other judicial act. Where it appears to the recorder that the sessions are likely to last more than three days, he may appoint an "assistant barrister" of five years' standing to hold a second court, for the trial of such felonies and misdemeanors as shall be referred to him, provided it has been certified to the recorder, by the mayor and two aldermen, that the council have resolved that such a course is expedient, and the name of the intended assistant barrister has been approved of by a secretary of state.

Every burgess of a borough (or citizen of a city), having a court of quarter-session (unless exempt or disqualified otherwise than in respect of property), is liable to serve on grand and petty juries. Members of the town-council, and the justices of the peace, treasurer, and town-clerk of the borough, are exempt and disqualified from serving on juries within the borough; and they and all burgesses of boroughs having separate quarter-sessions are exempt from liability to serve on petty juries at the county sessions.

Other matters required by statute to be

done at quarter-sessions, and not expressly transferred to the town-council, devolve upon the recorder, as the appointment of inspectors of weights and measures, &c. Persons imprisoned in a borough gaol by county magistrates, under 6 and 7 Will. IV., cap. 105, may be tried at the borough sessions for offences committed out of the borough.

All criminal jurisdiction, which, before the passing of the Municipal Corporation Act, existed in any borough to which no court of quarter-sessions has since been granted, is taken away by the 107th section of that act.

SETTLEMENT. [Poor Laws.]

SEWER, a place, according to Lord Coke, where water issues, or, as is said vulgarly, "sues," whence the word suera, or sewer. The word has acquired notoriety as giving the title to "The Law of Sewers," an important branch of English law. According to that law, the superintendence of the defences of the land against the sea, and against inundation by land-floods, and of the free course of navigable rivers, has been immemorially, "from the beginning of laws," says Callis, a matter of public concern: and from very early periods commissions under the common law have from time to time been issued by the crown, empowering persons to enforce the law on such subjects. Many statutes have been passed relating to sewers. The first, according to Lord Coke, is "Magna Charta," c. 23, which provides for the taking down of weirs. But the most important of these is 23 Hen. VIII. c. 5, commonly called "The Statute of Sewers," by which the law was extended, explained, and settled. Several statutes have been since passed, but the most comprehensive is the 3 & 4 Wm. IV. c. 22. From these two statutes, the decisions especially on that of Henry VIII., and the text-books, the general law of sewers must be ascertained. The Act of William IV. does not affect any private or local Act for sewers concerning any county or district, &c., or any commission of sewers in the county of Middlesex within ten miles of the Royal Exchange, except such as lie within any commission of sewers of the county of Essex, or any navigable river, canal, &c., under the management of trustees, by virtue of any local or private act, or any law, custom, &c., of Romney Marsh or Bedford Level.

The appointment of commissioners of sewers by the late Act is vested in the lord chancellor, the lord treasurer, and the two chief justices, or any three of them, of whom the chancellor must be one. Such as have not acted as commissioners before the passing of the statute of William IV. must be possessed, in the same county or the county adjoining that for which the commission issues, of landed estate in fee, or for a term of 60 years, of 100*l.* yearly value, or of a term of 21 years, 10 of which are unexpired, of 200*l.* yearly value, or be heir apparent to an estate of 200*l.* yearly value. Bodies corporate and absentee proprietors possessed of a landed estate of 300*l.* yearly value taxed to sewers may qualify an agent to act as commissioner, provided such agent is named in the commission; persons named ex-officio in any commission as mayor, &c., may act without any further qualification. Coincidently with every commission there issues from the crown-office a writ of dedimus potestatem, addressed to a list of persons therein named, who are part of the commissioners named in the commission, and authorised to administer the oaths to the commissioners. Previous to entering on office each commissioner takes an oath before these parties for the due performance of his duty, and that he is possessed of the requisite qualification. A commission continues in force for ten years from the date of it; and the laws, decrees, and ordinances made under it, notwithstanding the expiration of the commission, continue in force until they are repealed.

Commissioners may be appointed to act in any part of the kingdom of England and Wales or the islands within that kingdom. The English seas are also said to be included within the kingdom of England. Each commission specifies the district to which it applies. The authority of the commissioners extends over all defences, whether natural or artificial, situate by the coasts of the sea, all rivers, water-courses, &c., either navigable or entered by the tide, or which

directly or indirectly communicate with such rivers, &c. But they have no jurisdiction over any ornamental works situate near a house and erected previous to the Act of William IV., except with the consent in writing of the owner. They have power to repair and reform the defences, and to remake them, when decayed, in a different manner, if this can be done more commodiously. They may also cause rivers, &c., to be cleansed and deepened, and remove any obstructions, such as weirs, mill-dams, and the like, which have been erected since the time of Edward I.; or, if such antient obstructions have been since increased, they may remove the increase. If any navigable river is deficient in water, they may supply it from another where there is an excess. But the object to be attained by all these acts must be of a general nature, and have for its purpose the furtherance of public general defence, drainage, or navigation. The commissioners have authority also to make and maintain new, and to order the abandonment of old works, and to determine in what way the expenses of the new works shall be contributed: but they cannot undertake any new work without the consent in writing of three-fourths of the owners and occupiers of the lands to be charged. They may also contract for the purchase of lands where necessary to the accomplishment of their objects; the price of which, if not agreed on, must be determined by a jury summoned for that purpose. In them is vested the property in such lands, and in all the works, tools, materials, &c., of which they are possessed by virtue of their office. The commissioners have power to make general laws, ordinances, and provisions relating to matters connected with sewers in their district, as well as to determine in particular instances. These laws are to be in accordance with the laws and customs of Romney Marsh, in Kent, or "after their own wisdoms and discretions." The mention of discretion occurs very frequently in the statute of Henry VIII., and would seem to vest, as in truth it does vest, a very large and undefined power in the hands of the commissioners. Notwithstanding, however, this reference to their discretion, they have no authority to do anything which is not both just and reasonable, and also in accordance with the laws of the land.

To accomplish the purposes for which they are created, the commissioners have power to appoint a clerk, and various officers called surveyors, collectors, bailiffs, &c.; and they themselves, or any six of them, when duly assembled, constitute a court of record. By their own view, or the report of their surveyor, they may ascertain what old defences need repair, what new ones are necessary, what impediments or annoyances require removal, what money or materials must be provided for such purposes. To form a court, ten days' notice to the owners or occupiers of lands within the district who are required to attend are necessary, except in a case of emergency, when it may be summoned by two commissioners immediately. It is the duty of the sheriff, on receipt of the precept of the commissioners, to summon a jury from the body of the county to attend in their court. Before any charge can be laid, the commissioners must further inquire, through means of the jury, by witnesses examined on oath before them, where it is that any defence is needed or any nuisance exists; and by whose neglect or default, if any, such things have occurred, and what parties are liable to contribute to the expenses of putting all in a proper condition. The general fundamental criterion by which the liabilities of parties to contribute must be ascertained, is the circumstance of their deriving benefit or avoiding injury from the works of sewers. When a party has been once presented as liable by a jury, he is presumed to continue liable during the existence of that commission. The liabilities of parties to contribute may arise either by holding lands on condition of contributing to repairs of a bank, &c.; or by custom, or prescription, or by covenant. If a man holding lands charge them by covenant for himself and his heirs, and the lands descend to the heir, he is liable to their amount. Parties also may be charged by reason of their ownership of the bank, &c, requiring repairs, or because they have the use or

profit of it; or because they are frontagers, that is, have lands joining the sea where the defences are needed. If no one appears to be liable for any of these causes, the expenses are then to be imposed on all the level, that is, all the land lying upon the same level. The reason for this imposition is, that all such land is liable alike to suffer by any injury to the defences against the sea, or by any defect in the drainage, and benefits alike by their restoration and maintenance; the whole of it therefore ought to contribute towards the expenses incurred. Even in those cases where a special liability, such as has been above stated, rests on particular individuals, the whole level is still bound to contribute in any case of immediate danger; or where, in spite of the due repairs having been done by the party liable, an injury has occurred by some sudden and inevitable accident, as an extraordinary tide or flood, or where the land liable is insufficient for the expenses necessary. Any new work also must be made and maintained at the expense of the whole level; and where extraordinary repairs are necessary to a great part of the sea, not the level only, but the whole county is liable. The parties liable within the level are all those who have within it any lands or tenements, or profits *à prendre*, such as rights of common, of fishery, &c., provided they receive benefit by the repair or injury by the non-repair; but a party may be exempted from contributing to a general assessment, on the ground of a special custom under which he is bound to do some particular act, such as repairs of a bank for the general service. The duty of the jury, after hearing witnesses, is to present the parties liable to repair; and in cases where the whole level is liable, to present the particular quantity of land or other profit that every one has who is liable within the level. It is sufficient to charge the ostensible owner or occupier. These presentments may be traversed or contested by the party whom they charge, and he may attempt to disprove the facts stated in them, and so show that he is not liable to the extent charged, or not liable at all. After the necessary facts are ascertained, the commissioners make a decree for the assessment of every person in the proportion to which he appears to be liable. The apportionment must be made by the commissioners: it is not sufficient for them to assess a certain sum upon a township or other district, leaving it to the parties themselves to apportion. Where, by reason of immediate necessity, works have been done without any presentment of a jury, the commissioners may afterwards make a rate to defray the expenses. In cases of emergency, the commissioners, by their order, may compel the service of carts, horses, and labourers: they may take soil, &c., and cut down timber within the level, if necessary for their purposes, subject of course to a proper remuneration, which may be recovered before them.

After an assessment has been duly made and demanded, the commissioners may by their warrant direct their bailiff to distrain and sell the goods of those who neglect to pay (the distress may be made without the district of the commissioners); or the party may be amerced for non-payment, or the lands themselves which are liable may be sold. In case of such a sale, a certificate of it must be made by the commissioners into Chancery. Constables within the district are bound to obey the orders of the commissioners. In cases where an obstruction or impediment has been, after presentment by the jury, ordered to be removed, the party causing it may be amerced; or if he is unknown, then the person who most suffers by the injury may be empowered by the commissioners to remove it; or the surveyor, after notice, may do what repairs, &c., are necessary, at the expense of the parties making the default: and for any act of negligence or default or misfeazance, an amercement may be imposed by the jury. The commissioners themselves may enforce parties to fulfil the duties lawfully imposed upon them. Thus they may fine a juryman who refuses to act, or a sheriff who fails to summon a jury; and they may maintain order in their court by fining and imprisoning those persons who attempt openly to disturb it.

If the commissioners make an order in a matter out of their jurisdiction, the

order may be removed by certiorari into the Court of King's Bench, and there quashed; and the commissioners are fineable for contempt if they proceed after a certiorari has been allowed. But a certiorari cannot be demanded of right: it is within the discretion of the Court of King's Bench to refuse it, and the impropriety of the order must be made out very distinctly before a certiorari will be granted. Where the order is for repairs, and is made upon an inquisition before a jury who find that the party ought to repair, the court will not proceed in the matter unless the party charged consents to repair in the meantime. If it afterwards appears that he ought not to repair, he will be entitled to reimbursement, which may be awarded to him by the commissioners. An order which is good in part may be confirmed for so much, although it is quashed for the remainder.

An action may be brought against the commissioners for anything done by them beyond their authority. They may sue and be sued in the name of their clerk, who, nevertheless, may be a witness for them. (Callis *On Sewers*; 4 *Inst.*; Comyns's *Digest*, 'Sewers;' Viner's *Abr.*, 'Sewer.')

The sewers of the city of London and its liberties are under the care of commissioners appointed by the corporation, who were first empowered to make the appointment by the 19 Chas. II., c. 31, the act for rebuilding the city after the great fire. They were entrusted with this power by that Act for seven years only. A few years afterwards it was made perpetual; and by 7 Anne, c. 9, the commissioners of sewers for the city of London were invested within the city and its liberties with all the authorities possessed by the ordinary commissioners elsewhere. The Roman law (*Dig.* 43, tit. 12, 13, 14, 15, 21, 23) contains certain provisions as to public rivers, cuts for navigation, and private and public drains in towns (cloacæ).

SHERIFF, the Shire-Reve (scyr-gerefa), from the Saxon word *reafan*, "to levy, to seize," whence also greve. The German word is *graf*. The gerefa seems to have been a fiscal officer. In the Saxon period he represented the lord of a district, whether township or hundred, at the folkmote of the county; and within his district he levied the lord's dues, and performed some of his judicial functions. (Palgrave, *Rise and Progr.*, i. 82.) He was usually not appointed by the lord, but elected by the freeholders of the district; and, accompanied by four of them, was required to be present on its behalf, as well as on the lord's, at the folkmote or county court. In like manner the Saxon prince or king employed in the shires or larger districts his gerefa or reve, who levied his dues, fines, and amerciaments; to whom his writs were addressed; who excercised on his behalf regal rights in the shire, for the preservation of the peace and the punishment of offenders; presided over the courts-leet or views of frankpledge, and (at least in the absence of the earl in antient times, and since the Conquest instead of the earl) presided over the hundred and county courts. It is difficult to determine how far the functions of the sheriff were concurrent with, and how far derived from, the ealderman or earl of Saxon and Danish times; and the confusion between these offices has been increased by the translation, in our antient laws, of the word sheriff in the Latin into *vice comes*, and in Norman French into *visconte* or *viscount* (deputy of the earl); whereas certainly many of the sheriff's powers even in Saxon times were derived from the freeholders, or from the crown alone, and the word graf (gerefa) in German was equivalent to our earl. That before and for a century after the Conquest the sheriff had powers independent of the earl, is obvious from the fact, that in the circuit (tourn) which he made periodically (Spelman's *Gl.*, 'Vice Comes') of his shire for the administration of justice (as the Saxon king made a circuit of his realm), he was accompanied not only by the freeholders, but by the bishop, the earl, and barons, until these noblemen were exempted from the duty by statute 52 Henry III. c. 10 (A.D. 1267).

Sometimes the shrievalty, by grant of the crown, was hereditary; it was often held for life, or for many years, and there were sometimes more sheriffs than one in a county, the persons chosen for the office

being, according to Spelman, "totius regni proceres:" but the sheriff was usually chosen by the freeholders of the shire. The statute 28 Edward I. c. 8, which says that "the king hath granted unto his people that they shall have election of their sheriff in every shire (where the sheriff is not fixed in fee) if they list," is rather declaratory of the people's right than a grant of a new privilege. By the 14 Edward III. c. 7, it is enacted that no sheriff tarry in his bailiwick more than a year, and then another, who hath land sufficient in his bailiwick, shall be ordained on the morrow of All Souls (3rd November) by the chancellor, treasurer, and chief baron of the exchequer, taking to them the chief justices of either bench if they be present.

At present the crown in most cases appoints the sheriffs, and also fills up any vacancy which is occasioned by the death of a sheriff during his year of office. To some corporations of cities which are counties of themselves charters have given the power to elect their own sheriffs; and the city of London has the perpetual right to elect the sheriff of Middlesex. In the county of Durham the bishop was sheriff until he was deprived of palatine powers in 1836; and in Westmoreland the office is hereditary in the family of the earl of Thanet as heir-general of the Viponts, to whom the shrievalty was granted by King John. The annual appointment of sheriffs is now in most counties made thus:—On the morrow of St. Martin (12th November), the lord chancellor, first lord of the treasury, and chancellor of the exchequer, together with all the judges of the three courts of common law, meet in the exchequer chamber, the chancellor of the exchequer presiding. The judges then report the names of three fit persons in each county, and of these the first on the list is chosen, unless he assigns good reasons for exemption. The list thus made is again considered at a meeting of the Cabinet held on the morrow of the Purification (3rd February), at the president of the council's, and attended by the clerks of the council, when the excuses of the parties nominated are again examined, and the names are finally determined on for the approval of the queen, who, at a meeting of the privy council, pierces the parchment with a punch opposite the name of the person selected for each county; and hence has arisen the expression of "pricking the sheriffs." The judges of assize annually add the requisite number of names to their lists by inserting those of persons recommended by the sheriff who goes out of office.

The sheriff derives his authority from two patents, one of which commits to him the custody of the county, and the other commands the inhabitants to aid him. He takes an oath of office, the greater part of which relates to his collection of the crown revenue, and he gives security to the crown that he will duly account. He then appoints an under-sheriff, by whom in fact the duties of the office are performed. These duties are various and important. Lord Coke quaintly says that the sheriff has a triple custody—1st, of the *life of justice*, because to him are addressed the writs which commence all actions, and he returns the juries for the trial of men's lives, liberties, lands, and goods; 2ndly, of the *life of the law*, because he executes judgments of the courts; and 3rdly, of the *life of the republic*, because he is in his county the principal conservator of the peace. He presides in his own court as a judge, and he not only tries all causes of 40*s.* in value, but also much larger questions under the writ of Scire facias. By Magna Charta he is prohibited from holding pleas of the crown. He presides at all elections of members of parliament for the county and coroners, and hence he cannot during the year of his office be elected a knight of the shire. He apprehends all wrong doers, and for that purpose, in criminal cases, he is entitled to break open outer doors to seize the offender; he defends the county against riot or rebellion or invasion [LORD-LIEUTENANT], and to this end may require the assistance of all persons in it who are more than fifteen years of age, and who, when thus assembled under the sheriff's command, are called the *posse comitatûs*. To refuse to the sheriff the aid which he requires is an offence punishable by fine and imprisonment. The sheriff takes precedence of

all persons in the county. He seizes all lands which have fallen to the crown, and levies all fines and forfeitures; but he is not permitted to act as a justice of the peace. He executes all writs that issue from the superior courts, whether they are writs that commence an action or writs of execution; he is likewise responsible for the execution of criminals. He receives and entertains the judges of assize, on whom he is constantly in attendance whilst they remain in his shire.

To assist him in the performance of his duties, the sheriff employs an under-sheriff and also a bailiff and gaolers, from whom he takes security for their good conduct. He is prohibited by very antient statutes from selling his office or the profits of any part of it.

The liability of the sheriff for breach or neglect of his duties is a frequent source of litigation. Few assizes occur without actions being brought against him for illegal arrests or levies, or for wrongfully abstaining from executing the process addressed to him. Thus the decisions affecting him are numerous and complicated, and there are many treatises concerning the office, of which Dalton's 'Office and Authority of Sheriff' (1682), is the most relied on.

(Spelman's *Glossary*, articles 'Graphio,' 'Comes,' 'Vice-Comes;' *Coke upon Littleton*, Hargr. and Thomas's edition, vol. i.; Bacon's *Abridgement;* Palgrave's *Rise and Progress of the English Constitution*, i.)

SHERIFF (SCOTLAND). In Scotland the duties of the sheriff are not, as in England, almost entirely executive. He exercises an extensive judicial authority, and a large portion of the general litigation of the country proceeds before this class of local judges. In earlier times his authority appears to have been merely of an executive character, and, appointed by the crown, he was the person to whom the royal writs, issuing from the supreme courts, were usually directed. He was the ordinary conservator of the peace within the local limits of his authority. He was an important fiscal officer, having in the general case the duty of levying the feudal casualties, forfeitures, and other items of revenue; and by statute he was vested with the power of mustering the military force of the country to the weapon-showing. In very early times, his tenure of office appears to have been limited by the grant; at a period comparatively later, the office became, in the general case, hereditary. The precise principle on which that division into shires, by which the boundaries of each sheriff's authority were marked, is not generally known. In all Latin documents he was called the vice-comes, and it might thence be inferred that each sheriff was the deputy of a *comes* or earl. There has, however, no trace been found of the dignity of an earl in Scotland involving the right to exercise judicial or executive functions, nor did that title, like the authority of the sheriff, bear any reference to the boundaries of the shire or to any other territorial allotment. The terms of the Act for abolishing heritable jurisdictions in Scotland, which will be noticed below, might encourage the supposition that they were founded on the idea of the sheriff being a depute or subordinate officer, if it were not pretty clear that the structure of that Act was in some measure affected by a confusion between the office of high sheriff in England and that of sheriff in Scotland. The Act, viewing the appointment of a sheriff-principal or high sheriff from among the unprofessional gentry, and of the acting judicial officer from the legal profession, provides that "it shall not be lawful for any principal or high sheriff or stewart in Scotland personally to judge in any cause, civil or criminal, within his shire or stewartry in virtue of such his office; any law or usage in any ways to the contrary notwithstanding." (20 Geo. II. c. 43, § 30.) By the same statute the principal or high sheriff can only be appointed during pleasure, or for a period not exceeding a year. It is not easy to discover how such a nominal office came into existence, if it actually was in existence before the passing of the Act. The commissioners who reported on the courts of justice in Scotland in 1818 stated that they could not discover any functions which it was the duty or privilege of the holder of that office to perform; and in reference to the provisions

of the Act, they say "It is to be noticed that his majesty's right of appointing an officer called a principal or high sheriff was not touched by the statute of George II., although it was no longer competent to confer such an office *heritably*. These appointments continued to be made subsequent to the statute, and it was well known that commissions of this kind have, even in very recent times, been granted by the crown, for purposes of the executive government, and connected with the office of lord-lieutenant. But whatever may have been the views of the legislature as to the proper ministerial or other functions of such an officer in time coming, it is certain that by the enactment referred to the whole judicial powers of the ordinary magistrate for the county are thus expressly reserved and excepted from any grant to be thereafter made of the office of sheriff in this part of the kingdom. And these provisions were in strict conformity with the previous and most ancient state of the law." The Act above referred to, generally called the Jurisdiction Act, was passed for the purpose of abolishing all those remnants of the feudal courts of Scotland which were hereditary, or in any other shape of the nature of property; of bringing all judicial offices within the appointment of the crown, and their holders under responsibility to the public. It was passed in consequence of the insurrection of 1745, and it is the point from which we have to date the equal administration of justice in Scotland. By the same statute, the sheriff is authorised to appoint one or more Substitutes. This was in conformity with old practice, by which the sheriff, who might not himself be trained to the law, generally appointed a legal practitioner to act as his substitute. At the present day there is a substitute in every county, and in the larger counties there are two or more. Both the sheriff and his substitute are lawyers, but the latter is the local resident judge, the former generally frequenting the courts in Edinburgh, where he hears appeals from his substitute, and making occasional visits to his county. By the Jurisdiction Act it was provided that each sheriff should reside in his county during four months in each year. This provision fell into desuetude, and it became the usage for such sheriffs as continued to practise at the bar to remain in Edinburgh, while the greater portion, who had given up or had not obtained practice, resided at their country seats, or wherever choice or convenience dictated. This circumstance was the object of much animadversion by the friends of law reform, and a wide difference of opinion was expressed on the matter, some maintaining that the sheriff as well as his Substitute ought to be a resident judge, while, in the words of the Report above cited, the former (who is styled Sheriff Depute) in Edinburgh "was in some degree countenanced by high legal authorities, who consider the attendance of the sheriffs-depute in the court of session, during the sittings, to be more useful than a literal adherence to the statutory rule." It has been supposed that such an attendance tends both towards a higher degree of legal learning in the sheriffs and to uniformity of practice being promoted by their occasionally consulting each other. It was very clear, however, that it was disadvantageous to the public that there should be any of these judges who neither reside within their counties nor at the fountain of Scottish legal learning in Edinburgh, and by the 1 & 2 Vict. c. 119, it was enacted that each sheriff appointed after the 31st of December, 1838, shall remain in attendance on the court of session, but shall hold eight courts in his county during the year. The sheriffs of Edinburgh and Lanark are exempted from attendance on the court of session, in the understanding that the business of their respective courts is sufficient fully to occupy their time. It may be mentioned that many law reformers maintain that these two sheriffships are a type of what the others ought to be. The incumbents receive much higher salaries than the other sheriffs, and have their time fully occupied. It has been held that, in regard to the other counties, instead of appointing persons who are endeavouring to have business at the bar, and giving them duties which only occupy part of their time, and salaries for which they would not generally agree to

give up their profession, it would be wiser to unite several counties together, and employ lawyers with salaries equal to the full value of their whole time, to these enlarged districts. These various opinions were very actively discussed from ten to fifteen years ago, but it is now pretty clear that it is in the persons of the sheriffs-substitute, or permanent local judges, that the public look for the beneficial working of the system. In civil questions an appeal lies (without new pleadings) from the sheriff-substitute to the sheriff, but wherever the former is a sound lawyer and an industrious man, the privilege is seldom used. The salaries of the sheriffs-substitute have lately been raised, according to a sound policy advocated by many of the most cautious and economical politicians of the country; they average at present about 450*l.* The salaries of the principal sheriffs vary widely, but the whole amount of their aggregate incomes, as returned to parliament in 1843 (*Parliamentary Papers*, 270), when divided by their whole number, gives 551*l.* to each. From the state in which the profession of the bar of Scotland has been for the past ten years, several of its members have been induced to accept the office of sheriff-substitute as vacancies have occurred. Formerly the office fell to country practitioners, who, not quite contented with the emoluments, eked them out by private practice; a state of matters seriously detrimental to the equal administration of justice. In some instances, even retired officers in the army or unprofessional country gentlemen were the best qualified persons who would undertake the office. By the Act of 1 & 2 Victoria, it was provided that no sheriff-substitute should act as a law-agent, conveyancer, or banker. By the same Act it was provided that though the sheriff-substitute should continue to be appointed by the sheriff, he should not be removable, except with the consent of the lord president and lord justice clerk of the court of session. In terms of the same Act, the substitute must not be absent from his county more than six weeks in one year, or more than two weeks at a time, unless he obtain the consent of the sheriff, who must then act personally or appoint another substitute. It may be observed, for the sake of preventing some confusion which the phraseology of the statute law in relation to sheriffs may occasion to the general reader, that in one or two instances, as in that of Kirkcudbright, the person who exercises the functions of sheriff is called the Stewart. This designation owes its origin to certain peculiarities of territorial tenure which cannot be briefly explained and are subject to doubt and dispute. After the Reformation, the sheriffs were generally appointed commissaries of the local commissariat districts which most nearly conformed with their respective jurisdictions, and in 1823 (4 Geo. IV. c. 97) the commissariat functions were appointed to be merged in those of the sheriff.

The jurisdiction of the sheriff in civil matters does not extend to questions regarding heritable or real property. By the 1 & 2 Vict. c. 119, jurisdiction in all questions as to nuisance or damage arising from the undue exercise of the rights of property, and as to servitudes, was specially conferred on him. He cannot judge in actions which are declaratory of rights, or which are of a rescissory nature—for the purpose of nullifying deeds or legal proceedings. In other respects his jurisdiction extends to all actions on debt or obligation, without any limit as to the importance of the interests involved. He does not act by a jury, though it appears that such an institution was formerly connected with the civil jurisdiction of the sheriff. He has authority by special statute summarily to decide small debt cases, *i. e.* cases where the pecuniary value of the matter at issue does not exceed a hundred pounds Scots, or 8*l.* 6*s.* 8*d.* When he acts in the small debts' court, he makes circuits through his county; his ordinary court is stationary. By railway statutes and other acts of local administration special functions are frequently conferred on him, and in the clauses for taking lands he is usually appointed to act as presiding judge when a jury is appointed to be empannelled. By two Acts of the 1 & 2 Vict., viz. caps. 114 and 119, much was done to clear up and render efficacious the practical administration of the powers of the

sheriffs. They were enabled, by indorsation, to put the writs from other sheriffdoms in force in their respective counties, and were invested with increased powers for putting their judgments and other proceedings in execution. The decisions of the sheriff, when no proceedings have been taken to enforce them, may be carried into the court of session by advocation.

The authority of the sheriff in matters criminal is practically to a great extent measured by the proceedings of the crown lawyers, in leaving prosecutions to proceed before his court, or removing them to the Court of Justiciary. It is not very clearly to be traced how far, in old practice, the sheriff's jurisdiction was inferior to that of the Court of Justiciary: he had undoubtedly the power of punishing with death, though it has been long disused. The power of transporting, which is of comparatively late introduction, he never possessed, not having any criminal authority beyond his county. By degrees it came to be considered that the jurisdiction in the four pleas of the crown—murder, rape, robbery, and wilful fire-raising, was exclusively in the higher court. Important cases in the sheriff court are tried by jury. In more trifling matters the sheriff performs the functions of a police magistrate. In these cases the punishment must not exceed a fine of 10*l.* or sixty days' imprisonment (9 Geo. IV. c. 29). There is an intermediate system, by which the sheriff may try more important cases without a jury, but it is so encumbered with formalities—among others, a written authentication of the evidence—as not to hold out much inducement for its practical adoption.

SHIPS. The law of England relating to merchant ships and seamen is partly founded on principles of maritime law common to the whole civilised world, and partly on acts of parliament. The subject may conveniently be divided into four parts:—

1. That relating to the ownership of ships and its incidents.

2. To the persons employed in the navigation, &c., of merchant ships.

3. To the carriage of goods and passengers in merchant ships, the rights and duties, &c., of freighters and passengers, of owners and their servants.

4. To the employment and wages, &c., of merchant seamen.

1. A ship belongs to those at whose expense it has been built, but it may pass into other hands by purchase, by the death or bankruptcy of the owners, or by capture by an enemy. The general law relating to chattels applies to ships with certain modifications. A sale by a party who has the mere possession of a ship can in no instance vest the property in the purchaser. The master, except when the clearest necessity exists, cannot sell the ship which he commands. Even if he be a part-owner, his sale is valid only so far as his own part is concerned; and in the case of a registered ship, even supposing him to have an authority from the owners to sell, still he must observe the forms prescribed by the registry acts. A necessity for a sale may arise when the ship is in a foreign country, where there are no correspondents of the owners, and the master is unable to proceed from want of repairs, and no money can be obtained by hypothecating her or her cargo. In case a sale under such circumstances should be litigated, the proper questions for the jury to determine are, whether such a necessity existed as would have induced the owner himself, if he had been present, to sell; and whether the actual sale has been made *bonâ fide*. No inquisition by any court abroad in such matters is conclusive upon those whose property is in question. The property in a ship is now always proved by written documents; and by means of these the property in any ship may be conveyed. But when actual possession is possible, a delivery of it is also necessary to convey a perfect title; otherwise, in the case of the bankruptcy of a seller who is allowed to remain in possession, the property may vest in the assignees. Previous to the passing of the registry acts, 4 Geo. IV. c. 41, and 6 Geo. IV. c. 110, 3 & 4 Wm. IV. c. 55, the same consequences might have ensued from the continued possession of the original owner, in the case of ships mortgaged or conveyed to trustees for the payment of debts. But by the 42nd and 43rd sections of the last act,

provisions are made for a statement of the object and nature of the transfer in the book of registry, and for indorsement on the certificate of registry, by which such consequences are prevented. Enactments to the like effect are made in the bankrupt act, 6 Geo. IV. c. 16, § 72.

In order to complete a title by capture, it is necessary that a sentence of condemnation should be obtained in a court of the nation by whom the capture has been made. This court decides according to the general law of nations. [PRIZE.]

Where repairs have been done, or necessaries supplied to a ship, the legal owners, upon proof of their title to the ship, are *primâ facie* presumed to be liable. But this presumption may be rebutted by proof that they were done or supplied under the authority and upon the credit of another. The question to be decided, in order to determine the liability is, upon whose credit the work was done or the necessaries supplied. If a ship is let out for hire, the owners are no more liable for the work done by order of the hirers, than a landlord of a house would be for work done by order of his tenant. Like observations are applicable with respect to the liability of mortgagees and charterers.

A variety of privileges of trade are confined to ships either of British build, or taken as prizes in war, &c. The first statute passed with a view to effect this object was 26 Geo. III. c. 60. Other statutes, 4 Geo. IV. c. 41, 6 Geo. IV. c. 110, and 3 & 4 Wm. IV. c. 55, were subsequently passed for the same purpose. The object of the legislature has been to confine the privileges of British ships to ships duly registered and possessing a certificate of registry. No ship is to be considered a British ship unless duly registered and navigated as such. There are some exceptions from this enactment: 1, British-built vessels under 15 tons burden, and manned by British subjects, navigating the coasts and rivers of the United Kingdom or of the British possessions abroad; 2, British-built vessels owned and manned by British subjects, not more than 30 tons burden, employed in fishing or the coast-trade about Newfoundland, Canada, &c.; and, 3, Ships built at Honduras, which, under certain circumstances, are entitled to the privileges of British registered ships. The registry of a ship is not compulsory; the only consequence of non-registry is, that a non-registered ship can enjoy none of the privileges of a British ship. No ships can be registered which are built elsewhere than in the United Kingdom or in some of its colonies or dependencies, or have been condemned as prize, &c., or as forfeited for breach of the laws relating to the slave-trade. They must also wholly belong to British subjects who reside within the British dominions, or are members of some British factory, or agents for some house carrying on trade in the United Kingdom. A registered ship may cease to enjoy the privileges of British ships, by sale under the decree of a court for benefit of the owners in consequence of being stranded, by capture, by repair to the amount of 20s. per ton in a foreign country, unless she was sea-worthy when she left the British dominions, and the repairs were necessary for her return. Every ship is considered to be divided into 64 equal parts, and no individual or partnership firm can be registered as owner or owners of less than a 64th part. Proper officers, who generally are the officers of customs on the spot in question, are appointed for the purpose of making the registry and granting certificates of registry to the owners. The registry and certificate must be made at the port to which a ship belongs, which is that port at or near which the owner resides who takes the oath required by the act. The certificate states the name, occupation, and residence of each owner, and the share or shares which he holds, the name of the master, the name of the ship and of her port, the time and place of her build or condemnation, the name of the surveying-officer, her tonnage, and it contains a particular description of her in other respects. On the back of the certificate are stated the names of the owners, and the share or shares held by each. The name of the ship cannot afterwards be altered. When the property in a ship or any part of it is transferred, it must be done by a bill of sale, which recites the contents of the cer-

tificate. The property in the ship is not conveyed until the instrument has been produced to the proper officer at the port where the ship was registered or is about to be registered afresh. The officer then makes a registry in accordance with the altered circumstances of ownership, and indorses them on the certificate; of this he must give notice to the commissioners of customs. The transfer is rendered complete by an indorsement on the bill of sale certifying the entry in the registry and the indorsement. If the master of a ship is changed, notice of it must be given to the proper authorites, and a memorandum and indorsement of the change must be made in the registry and on the certificate. If a certificate is lost, a fresh registry must be made for the purpose of granting another; and the same form is necessary in case of any alteration in the ship which creates a variance in the particulars stated in the previous registry. The only conclusive evidence of ownership of a ship is the registry and certificate; but a production of the registry alone is not even *primâ facie* evidence to render a party liable as owner of a ship. There must be some proof either that he has caused his name to be entered, or has assented to its entry; neither is it evidence to support an allegation of title by the party producing it; as, for instance, to prove interest in a plaintiff in an action on a policy of insurance.

Where a ship is the property of several part-owners, the rules of most nations have made provision for the administration of the joint property in case of a disagreement as to the management among the joint-owners. The English law contains similar provisions. The majority in value are authorised to employ the ship 'upon any probable design;' but they are only entitled to do so upon giving security to the minority in a sum equal in value to the united shares of the latter. The mode of obtaining this security is by procuring a warrant from the court of Admiralty for the arrest of the ship. After the security has been given, the minority bear no share either in the expenses or profits of the adventure. If no application of this kind is made to the court, the minority ought expressly to give notice of their dissent both to their joint-owners and all other parties engaged in the proceedings, and they will then be relieved from the necessity of contributing in case of a loss. If they take no steps of the kind, their joint-owners, as in the case of partnership of any other chattel, will not be responsible to them for any consequences short of an absolute destruction by their means of the ship. The same proceedings are proper to be taken where the joint-owners are equally divided in opinion, or the minority have obtained possession of the ship. One part-owner may make the others liable for repairs, &c., done at his order: the usual practice, however, is for the part-owners to unite in appointing one person as a general agent for them all. This person is styled the ship's husband, and his duty, when not specially defined, is to attend to all matters connected with the outfit and freighting of the ship. It is not, however, within his authority to effect an insurance. If he makes any advances he can sue those part-owners on whose behalf those advances are made for what is due to him. In case of disagreement among the part-owners as to the settlement of the accounts concerning the expenses and earnings of a ship, the ordinary remedy is by a suit in equity.

2. *As to the persons employed in the navigation, &c., of ships.*—The master is the commander of the ship; he has the sole management of it. He is responsible for any injury done to the ship or cargo in consequence of his negligence or incompetence. The master of a British ship must be a British subject, and three-fourths of the crew must be British seamen; to this rule there are some exceptions and limitations.

The master can bind the owners by entering into engagements relative to the employment of the ship. Such engagements are of two kinds:—1. A contract by which the whole ship is let to hire during an entire voyage, which generally is accomplished by a sealed instrument called a charter-party. 2. A contract with distinct persons to convey the goods of each, in which case the ship is called a general ship. Such contracts made by the master are legally considered to be

made by the owners who employ him; and in either case they or the master are liable in respect of these contracts. If the charter-party is made in the name of the master only, it will not support a direct action upon it against the owners. Still if the contract is duly made, and under such cirstances as afford either direct proof of authority or evidence from which such authority may be inferred, the owners may be made responsible either by a special action on the case or by a suit in equity. The master can also render the owners liable for repairs done and provisions and other things furnished for her use, or for the money which he has expended for such purposes. In this case also the remedy of the creditor is against the master, unless by express contract the owners alone are rendered liable, and also against the owners. A party who has done the repairs upon a ship has a right to retain the possession of it until his demands are paid; but if he gives up possession, he is on the same footing as other creditors. When, however, the ship is abroad, and the necessary expenses cannot otherwise be defrayed, the master has the same power which the owners or part-owners to the extent of their shares under all circumstances have, to hypothecate the ship and freight as security for debts contracted on behalf of the ship. The contract of hypothecation is called a contract of bottomry, by which the ship upon its arrival in port is answerable for the money advanced, with such interest as may have been agreed on. [BOTTOMRY.] By such hypothecation the creditor acquires a claim on the ship. When the claim has been created by the master abroad, it may be enforced by suit in the Admiralty; but if the ship has been hypothecated by the owners at home, the parties can only have recourse to the common law or equity courts. The Admiralty and courts of equity will recognise the interest of the assignee of a bottomry bond, though at common law he cannot sue in his own name. When money is lent on bottomry, the owners are not personally responsible. The credit is given to the master and the ship, and the remedy is against them only. Still if a party is not content with such security, the master may also render the owners liable. If the sums secured by the bond are not repaid, an application must be made to the Court of Admiralty, founded on the instrument of contract and an affidavit of the facts, upon which a warrant issues to arrest the ship, and the persons interested are cited to appear before the court, which then decides what is to be done. If the necessary amount of money cannot be raised by hypothecating the ship and freight, the master may also sell part of the cargo or pledge it.

The whole of the services of the master are due to his employers; and if he occupy himself on his own account, and the money earned by him is paid to his employers, they can retain it. It is his duty to give information to the owners of every matter which it may be material for them to know.

The 7 & 8 Vict. c. 112, entitled 'An Act to amend and consolidate the laws relating to Merchant Seamen and for keeping a Register of Seamen' repeals the 5 & 6 Wm. IV. c. 19, except so far as such act repeals the acts thereby repealed, and except so far as relates to the establishment, maintenance, and regulations of the office called 'The General Register Office of Merchant Seamen.' This new act contains the regulations as to the hiring of seamen, their rights and duties.

3. *Of the Carriage of Goods and Passengers, &c.* The contracts under which goods are conveyed in a ship are the contract by charter-party and the contract for their conveyance by a general ship. A charter-party is "a contract by which an entire ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places." A charter-party is a written instrument, generally, though not necessarily, under seal, which is executed by the owners or the master, or the owners and the master of the one part, and by the merchant or his agent of the other part. The word charter-party is derived from two words *charta partita*, "divided charter," because the duplicates of the agreement were formerly written on one piece of paper or parchment and afterwards divided by cutting through some word or figure so as to enable each party

to identify the agreement produced by the other. If the charter-party is by deed, and executed by the master, and the owners are not parties to it, they cannot bring a direct action upon the instrument; indeed, the owners can never bring an action upon it unless their names appear as the parties executing it. But an action may in all cases be brought against the owners for a breach of their duties generally as ship-owners relating to matters not inconsistent with the terms of the charter-party. The charter-party states the port or ports of destination and the freight to be paid, which may be either a gross sum or so much per ton, or so much for each tub or cask of goods. If the agreement is not to pay a certain sum for the entire ship, or a certain portion of it, but to pay so much per ton, the merchant generally covenants to load a fixed amount or a full cargo. The merchant may load with his own goods or those of others, or he may underlet the ship altogether. The master or owner usually covenants "that the ship shall be tight and staunch, furnished with all necessaries for the intended voyage, ready by a day appointed to receive the cargo, and wait a certain number of days to take it on board. That after lading she shall sail with first fair wind and opportunity to the destined port (the dangers of the sea excepted), and there deliver the goods to the merchant or his assigns in the same condition they were received on board; and further, that during the course of the voyage the ship shall be kept tight and staunch, and furnished with sufficient men and other necessaries to the best of the owner's endeavours." The merchant usually covenants to load and unload the ship within a specified time.

The owner of the ship has always a lien on the goods in the ship, when the freight is to be paid before or on the delivery at their place of destination of the goods, or even, as Lord Tenterden himself decided (2 Barn. and Ald., 603), where there is "nothing to show that the delivery of the goods was to precede the payment of that hire." All difficulties may be avoided by inserting a clause in the charter-party which shall state whether it is meant that the owner should have a lien upon the lading for his freight and expenses. The owner does not lose his right of lien by depositing the lading in a public warehouse, provided he gives notice that it is to be detained until his claim for freight is satisfied.

As to DEMURRAGE, see that article.

When a ship or a principal part of it is not let out by charter-party, the owners contract with several merchants respectively for the conveyance of their goods. A ship so employed is called a general ship. The terms of the contract appear from the instrument called a bill of lading. [BILL OF LADING.]

The master has authority over the passengers as well as over the crew. A passenger may quit the ship, but while he remains on board, he is bound in case of necessity to do work that is required for the service of the ship and to fight in her defence. If he thwart the master in the exercise of his authority, or otherwise misconduct himself, he may be put under restraint or imprisoned. If a passenger feels himself aggrieved by the manner in which he has been treated, he may bring an action against the master, and it will be for the jury, under the direction of the judge, to say whether he has any ground for complaint. In addition to this general right of action, several statutes have been passed to regulate the conveyance of passengers. The 6 Geo. IV. c. 116, relates to ships carrying passengers from places in the United Kingdom to places out of Europe, and not within the Straits of Gibraltar. It regulates the proportion of passengers carried to the tonnage of the ship, provides security for the sea-worthiness, cleanliness, &c., and proper storing of the ship, for the presence of a surgeon and medicines, for the delivery of a list of passengers to the collector of customs at the port of departure, and attaches penalties to a violation of the regulations which it contains. Ships in the service of the crown, or the post-master-general, or the East India Company, or bound to the Newfoundland fisheries or the coast of Labrador, are excepted from the operation of the act. As to the statutes concerning passengers who emigrate, see

EMIGRATION, p. 831. The 5 & 6 Wm. IV. c. 53, subjects the master to a penalty in cases of his improperly landing passengers at any place not contracted for, or wilfully delaying to sail; and provides for the maintenance of the passengers for 48 hours after their arrival at the destined port. The 4 Geo. IV. c. 88, regulates the carriage of passengers between Great Britain and Ireland. If a passenger fails to pay his fare, the master or owners have a lien on his luggage for the amount. It is the duty of those who have contracted to convey, to do everything and be provided with everything necessary for the safe and expeditious accomplishment of the voyage; and if, through their failure to perform these duties, any damage results to the merchant, they will be answerable for it. At the commencement of the voyage the ship must be sea-worthy, tight, staunch, and sufficient, and properly equipped with all necessary tackle. The ship must be also provided with a master and crew competent to command and work her, and also with a pilot when necessary, either from circumstances or from the law of the country. After the goods are loaded, they must be properly guarded; if they are stolen while the ship is lying in some place within a country, the master and owners are responsible.

It is the duty of the master, unless in case of any usage which relieves him from such duty, to provide things necessary for the lading of the vessel, and to stow away the goods so that they do not injure each other, or suffer from the motion or leakage of the ship. The master must procure and keep all documents, papers, clearances, &c., required by the authorities in respect of the ship and cargo; and he must abstain from taking or keeping on board contraband goods or false papers. He must wait during the time appointed for loading the vessel, and, if required, also during that appointed for demurrage. He must pay the charges and duties to which the ship is subject. The statutes 3 and 4 Wm. IV. c. 52, and 1 and 2 Vict. c. 113, contain the enactments relative to what is necessary to be done in respect of the custom-house regulations by ships carrying goods from the United Kingdom beyond seas. When all things are prepared, the voyage must be commenced as soon as the weather is favourable. After the commencement of the voyage, the master is bound, without delays, deviations, or stoppages, to sail direct to the port of destination. But stress of weather, the appearance of enemies or pirates, or the presence of any urgent necessity, will justify him in breaking through this rule; and he ought to do so for the purpose of succouring another ship which he finds in imminent peril or distress.

If the ship is lost, or the goods injured during a deviation, without any of these grounds of justification, the owner and master will be answerable for the loss to the merchant, even if it does not appear to have been a necessary consequence of the deviation. If the ship during the voyage is so damaged that she is unable to proceed without repairs, the master may detain the cargo, if not of a perishable character, till the repairs are made. If the cargo is of a perishable kind, he ought to tranship or sell it, as may appear the most beneficial course. He may also in all cases, where the circumstances require it, exercise a discretion as to transhipping the cargo; as, for instance, when the ship is wrecked, or in imminent danger.

Hypothecation of a cargo, like hypothecation of a ship, is "a pledge without immediate change of possession." The party to whom the goods are hypothecated immediately acquires a right to have possession of them them if the money advanced is not paid at the time agreed on. This power of the master under circumstances of urgent necessity to sell or hypothecate the goods must be exercised with great circumspection; and the exercise of it can only be justified when it is consistent with what would have been the conduct of a discreet and able man under the circumstances. Where goods have been hypothecated, the merchant is entitled, on the arrival of the ship at its destination, to receive at his option either the sum for which they were hypothecated, or their market price at that place. During the voyage the

master is bound to take every possible care of the cargo, and to do all things necessary for its preservation, and he and the owners will be answerable for all damage which might have been avoided by the exercise of skill, attention, and forethought. When the voyage is completed, the master must see that the ship is properly moored, and all things done relative to her which are required by the law or usages of the country. The statute 3 and 4 Wm. IV. c. 52, contains the regulations relative to customs to which it is necessary to conform in this country. Upon payment of freight and the production of bills of lading, the cargo must be without delay delivered to the parties entitled to receive it. In the case of a general ship, the usage often prevails for the master, before delivery, to take security from the merchants that they will pay their share of average after it shall have been adjusted. [AVERAGE.] If the freight due on any goods is not ready to be paid, the master may detain the goods, or any part of them. The goods may be detained either on board the ship or in any other safe place.

When the master is compelled, by an act of parliament, to land the goods at any particular wharf, he does not thereby part with the possession of the goods, and consequently does not lose whatever right he may have to detain them. If goods are sold by the custom-house officers before the freight is paid, the master is entitled to receive the first proceeds of the sale in discharge of the freight. In foreign countries, where any accidents have occurred to frustrate or interfere with the objects of the voyage, or any one of the parties to the contract feels himself aggrieved by the conduct of any other, it is customary to draw up a narrative of the circumstances before a public notary. This narrative is called a protest, and in foreign courts is admissible in evidence, even, as it would seem, on behalf of the parties by whom it is made. In our courts it is not admissible on their behalf, but is evidence against them.

Certain circumstances operate as an excuse to the master and owners for non-fulfilment of their contract. "The act of God" is understood to mean those accidents over which man has no control, such as "lightning, earthquake, and tempest." The "perils of the sea," interpreted strictly, apply only to the dangers caused merely by the elements, but these words have received a wider application, and in litigated cases the jury, after hearing evidence as to the usage which prevails among merchants, will determine what interpretation has been intended to be given to them. Juries have determined that the taking of ships by pirates is a consequence of the perils of the sea; and the verdict has been the same where the loss was caused by collision of two ships without any fault being attributable to those who navigated either of them; and also where the accident was caused wholly by the fault of those on board another ship. But all cases in which the loss happens by natural causes are not to be considered as arising from the perils of the sea. If the ship is placed in a dangerous situation by the carelessness or unskilfulness of the master, and is in consequence lost, this is not a loss from the perils of the sea, although the violence of the elements may have been the immediate cause of it. If a ship is reasonably sufficient for the purposes of the voyage, the master will not be liable for a loss arising from the perils of the sea, because a ship might have been built strong enough to resist them. By the 26 Geo. III. c. 86, owners are relieved from losses proceeding from fire, and also from the robbery, theft, or embezzlement of "gold, silver, diamonds, watches, jewels, or precious stones," unless at the time of shipping them their quality and value are made known in writing to the master or owners. The "restraint of princes and rulers" is understood to mean a really existing restraint, not one which is anticipated, however reasonably or honestly. By the civil law, and also by the antient common law of England, the owners, in case of their being liable for any loss to the shippers, were responsible to its full amount. By the laws, however, of most nations their responsibility is now limited to the value of the ship and freight. The first statute which was passed on the subject was 7 Geo. II. c. 15, which was followed by the 26 Geo. III. c. 86, and

the 53 Geo. III. c. 159 supplied some deficiencies in the former statute, limiting the responsibility still further than the first statute had done. The last statute applies only to registered ships, and as to them may be considered as containing almost all the law upon the subject. By this act the responsibility is limited to the value of the ship and freight. It contains also provisions for the distribution, by means of an application to a Court of Equity, of the recompense due to the several parties entitled, where more than one claim, and directions as to the mode of calculating the value of the ship and freight. It does not extend to vessels employed solely in inland navigation, and none of the acts apply to lighters or gabbets. In cases where ships receive injury from collision with each other, the maritime law, which is acted on in the Court of Admiralty, differs in one respect from the law of England. Where the collision has occurred without any fault on either side, as, for instance, from a tempest, each party must bear the injury which he has sustained. Where it happens wholly from the fault of one ship only, her owners are liable, as far as the value of the ship and freight, to which, by 53 Geo. III. c. 159, their liability is limited, for the amount of injury caused by their own conduct. Thus far the laws are in accordance with each other. If the collision has been caused by the faults of both ships, then, according to the law of England, each party must sustain his own loss. But by the maritime law the loss occasioned is after computation divided equally, and the owners of each ship sustain half.

By 1 & 2 Geo. IV. c. 75, s. 52, where damage has been done by a foreign ship, a judge has power to order the ship to be arrested, until the master, owner, or consignee undertake to become defendant in any action for the damage, and give security for the damages and costs sought to be recovered.

The merchant must use the ship only for lawful purposes, and not do anything for which it may be forfeited or detained, or the owners made liable for penalties. In case of any violation of the agreement, by employment of the ship for purposes other than those contemplated, or failure to perform the terms as to lading, &c., the amount of compensation, in case of dispute, is determined, as the circumstances of the case may require, by a jury. The words primage and average, which appear in the bill of lading, mean, the first, a small sum paid to the master; the second, as there used, certain charges, varying according to the usage of different places, for towing, beaconage, &c.

When an agreement for conveyance is expressed in the general form, or when there is no actual agreement, but only one implied by law from the circumstances of the case, there results from it a duty upon the master and owners, firstly, to deliver the goods at the place of destination, whether the ship is hired by the voyage or by the month. It is only by the entire performance of this duty that they can entitle themselves to the payment of freight. The parties may, however, so express the contract that the payment of all or part of the freight may be made before or during the course of the voyage. Although perhaps in such case the word freight is used in a sense which does not properly belong to it; strictly speaking it means only money accruing for the conveyance of goods in consequence of their delivery at the place of their destination. Where a provision is made by the contract for payment of freight at the place of shipment, the question has arisen whether the meaning of the parties was that the sum should be paid at all events on delivery of the goods on board, whatever might afterwards befall them; or whether it was merely to point out the place of payment in case the freight should become due by reason of the arrival of the goods at the port of destination. In all such cases the intention of the parties must be interpreted by the jury from the words and circumstances of the contract, and the usages of the place where it was made. The same observation will apply to cases where money has been advanced by the merchant, and it is disputed whether the money is to be considered as a loan or part payment of the freight. The owners will not lose their right to freight by a mere interruption or suspension of the voyage not caused by their own fault, as by capture and recap-

ture, if the goods be ultimately delivered at the place of destination. Where the contract of conveyance is by charter-party, under which the merchant has agreed to pay a certain sum for the whole or the principal part of a ship, that sum will be payable even although he has not supplied enough for a full lading. If he has undertaken to furnish a full cargo, and to pay a certain sum per ton or per bale, he will in like manner under similar circumstances be bound to pay for as many tons or bales as the ship, or part hired, was capable of containing, even although he has not been able to put on board any lading at all; provided the ship has thereby been forced to come home without cargo, and this has not been caused by the fault of the master or owner. In case of an action against him for such a failure of his agreement, the jury will ascertain what, under all the circumstances, is a proper compensation to the owners, allowing for the profit of the conveyance of any other goods which may have been laden by other parties. If, under a contract to furnish a full cargo, the freight to be paid for per ton, &c., the merchant is ready to furnish a full cargo, and he is prevented from doing so by the master, the merchant is still liable to pay for the cargo conveyed, and his remedy for the injury which he has suffered by such prevention is by an action on the agreement against the master or owners. Where, from the terms of the agreement, the master has a right to refuse the delivery of the goods until the freight is paid, he is not bound to do so; and if he chooses to deliver the goods to the consignee or holder of the bill of lading, &c., and cannot afterwards get the freight from them, the merchant who chartered the ship is not released from his liability to pay the freight. If, however, under such circumstances the master does not insist upon payment of the freight in cash, but takes a bill of exchange in payment, the merchant-charterer is thereby discharged, and the owners will have no claim upon him in case the bill is not paid. But if he takes the bill simply because he cannot get payment in cash, the merchant-charterer still remains liable. Payment of freight by the charterer to the owners at their request is an answer to a demand by the master, unless the agreement has been made under seal between the charterer and the master; and even in that case a court of equity would interfere to relieve the charterer from a subsequent demand by the master. A purchaser of goods, by the transfer to him of a bill of lading which contains a contract for delivery of the goods to the consignees or their assigns on payment of freight, is liable for the freight. But the mere receipt of the goods alone will not bind the receiver to pay the freight, especially if there be an express agreement under seal for the payment of freight between the charterer and the master or owners. The Court of Admiralty, where a question of freight arises before it in the case of captured vessels, will make an equitable arrangement between the owners and merchant. Where two nations are at war, and goods belonging to a subject of one of them, on board a neutral ship, are captured by the enemy, the goods become lawful prize, and the captors, so representing the original owners, are bound to pay the full freight for them. The full freight is due, since it is by reason of the act of the captors that the goods have not reached their destination. On the other hand, if the goods of a neutral are captured on board a hostile ship, and the captors convey the goods to their destination, they are entitled to freight. But no freight is payable where the goods on board a neutral ship consist of warlike stores, or where the neutral ship was engaged in a traffic not open to the neutral nation in time of peace. Freight is not recoverable where the voyage from any cause is illegal. If the goods which have been laden are duly delivered, the owners will not be deprived of their right to freight simply because the goods have been damaged during the voyage; but if this damage proceeds from any improper act or omission by the master or owners, they will be liable to make recompense to the merchant. The merchant in this country seems to have no right to abandon the goods in lieu of paying freight, if, although the ship did not arrive, they have been conveyed by other means to the place of destination, and if no charge save that of freight is claimed

upon them. But if the ship has been wrecked, and the goods are saved, and afterwards conveyed to the place of their destination, the merchant may abandon them, and is not bound to pay the freight if any expense of salvage has been incurred. If, in the case of a general ship, or where, though a ship is chartered, the hire for her is to be paid at so much per ton, &c., the merchant is bound to pay the freight of such goods as may be delivered, even though they form a part only of the whole cargo. Where the whole or principal part of the ship is let to the charterer without reference to the quantity of goods to be laden, and a part of the goods are afterwards lost by perils of the sea, it seems to have been held that no freight will be due for the remainder.

There is some doubt, however, whether this authority would be followed unless such a conclusion arose from the construction of the agreement between the parties. If the ship, without any fault in the master or owners, becomes unable to complete her voyage, and the merchant receives the goods at some other place than the place of destination, he is bound, according to the maritime law, to pay freight for the portion of the voyage which has been performed. The principle which establishes the owner's right under such circumstances to freight for a portion of the voyage has been admitted in the courts of common law in this country, but that right "must arise out of some new contract between the master and the merchant, either expressly made or to be inferred from their conduct." In the latter case, there being no direct means of ascertaining the intentions of the parties, they must be collected from the circumstances of the case considered with reference to the general principle which obtains in the maritime law. In doing this it is obvious that the degree of benefit derived to the merchant must be taken into calculation, as well as the amount of time, labour, and expense bestowed by the owner; and, therefore, when it is said that freight is to be paid according to the portion of the voyage performed, it must not be understood that time and space are the only measures for ascertaining the portion of the freight payable.

If the master unnecessarily sell the goods, and so prevent both himself from earning the whole freight, and the merchant from accepting the goods, the merchant is entitled to the entire produce of his goods without any allowance for freight. Where a portion of the voyage only has been performed, the merchant cannot be inferred to have contracted to pay freight for that portion unless he has accepted the goods at the place short of their destination. The principles upon which the Court of Admiralty, which possesses an authority over the ship and cargo, proceeds, differ from those of courts of common law. That court exercises an equitable jurisdiction; and where no contract has either been made, or can be implied, applicable to the existing circumstances, "considers itself bound to provide, as well as it can, for that relation of interests which has unexpectedly taken place, under a state of facts out of the contemplation of the contracting parties." (Lord Stowell, in the case of the Friends *v.* Creighton, 1 Edwd., *Ad. Rep.*, 246.) If the ship has actually never commenced the voyage, the owners are not entitled to any payment whatever, although they may have incurred great expenses in lading her, and though her failure to commence the voyage is not attributable to any neglect or misconduct of theirs. Where the contract of hiring is for a voyage out and home, at so much to be paid monthly, &c., during the time the ship is employed, if by the terms of the contract the whole forms one entire voyage, no freight is due, unless the ship returns home, even though she may have delivered her cargo at the outport. But if the voyages out and home are distinct, freight will be earned on the delivery of the cargo at the outport.

Salvage is that reasonable compensation which persons are entitled to receive who save a ship or her cargo from loss by peril of the sea, which may be called civil salvage, or recover them after capture, which may be called hostile salvage. There is no fixed amount of salvage applicable to all cases. What is reasonable

can only be determined by a reference to the circumstances. Sir J. Nichol (3 Hag. *Ad.*, *Rep.* 117) defines the ingredients in estimating a civil salvage service to be, "1st, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow-creatures, and to rescue the property of their fellow-subjects; 2nd, the degree of danger and distress from which the property is rescued, whether it was in imminent peril, and almost certainly lost if not at the time rescued and preserved; 3rd, the degree of labour and skill which the salvors incur and display, and the time occupied; lastly, the value."

Unless in cases where the services have been trifling, the salvage is generally not less than a third, and not more than one-half of the property saved. If the parties cannot agree as to the amount, the salvors may retain the property until compensation is made; or they may bring an action, or commence a suit in the Admiralty Court, against the proprietors for the amount. In case the property is retained, the proprietors may, upon tender of what they think sufficient, demand it, and, if it is refused, bring an action to recover it, in which action the jury will determine as to the amount due. The costs of the action will be paid by the salvor or the proprietors, according as the amount tendered is or is not determined to be sufficient. The Court of Admiralty has jurisdiction in those cases only where the salvage has been effected at sea, or within high and low water mark. A passenger is not entitled to salvage for his assistance during the time he is unable to quit the ship. But if he remain voluntarily on board, he may recover salvage for the assistance which he has given. Though a king's ship is bound to assist a merchant-ship in distress, it still has a claim for recompense. If freight is in progress of being earned, and afterwards does become due, salvage is payable in respect of freight also. When proceedings for salvage have been commenced in the Admiralty Court, the defendants may tender by act of the court any sum which they consider sufficient, and the court will then enter upon an inquiry, and determine as they think fit. If the sum tendered has been sufficient, the court may hold the salvors liable to the expenses of the proceeding. Several statutes have been passed providing for what is to be done in case of ships in distress, and for the purpose of regulating and facilitating the adjustment of demands of salvage. The 12 Anne, c. 18, s. 2, applies to cases where the assistance has been rendered by the persons mentioned in that act. The 26 Geo. II. c. 19, provides for the case of persons voluntarily rendering assistance. The 48 Geo. III. c. 130, and 1 & 2 Geo. IV. c. 76, are applicable to cases where assistance is given at the request of persons belonging to the ship. The statutes 53 Geo. III. c. 87, and 1 & 2 Geo. IV. c. 75, contain some enactments relative to the same subject. None of these acts apply to the Cinque-Ports. Upon application by the principal officer of a ship which is stranded or in danger of being so, the sheriffs, magistrates, and officers of the customs and other persons mentioned in the acts are bound to order the constables to call together persons and go to her assistance; and if any other ship is near, the officers of the customs or constables are required to demand assistance by men and boats from her chief officer, who is liable to forfeit 100*l.* to the chief officer of the ship in distress if he does not give assistance. All the persons employed are to be subject to the command of the master or other officers or owners of the ship which is in distress; and in case of their absence, the acts name a number of persons, beginning with the officer of customs, whom, in order according as they happen to be present, all persons are to obey. The power of the county (*posse comitatus*) may, if needful, be summoned by the sheriff, or in his absence by any magistrate, to enforce the execution of the statutes; and the person in command is authorised to use force, if necessary, to repel persons who improperly obtrude themselves. An account of the names of the ship, master, and owners, &c., of the cargo, &c., and of the circumstances of the distress, is to be taken by the officer of the customs on oath of the parties cognizant of the cir-

cumstances before a magistrate. This account is to be forwarded to the secretary of the Admiralty, and by him published in the next London Gazette. The persons who assist are to be paid by the master, seamen, or owners, a reasonable reward within thirty days; and if this is not paid, the ship or goods remain as a security in the hands of the officer of the customs. In case of disagreement as to amount, the nearest magistrate is to call a meeting of magistrates and some other officers named, who, or any five of them, are empowered to examine witnesses on oath, and to determine the amount of salvage. Provision is made for cases where no owner of the property appears. Perishable goods may be sold. No lord of a manor claiming a title to wreck can appropriate it until an account in writing of the property, and of the place where it was found, and it has been since deposited, has been sent to the vice-admiral or his agent, or, if none such reside within 50 miles, then to the Trinity-house, and a year and a day has elapsed after the delivery of the account. It is the duty of the vice-admiral or his agent to forward it to the secretary of the Trinity-house, who is bound to place it in some conspicuous situation. A variety of similar provisions are enacted relative to goods, parts of ships' furniture, &c., which are found or recovered, whether they may have belonged to ships in distress or not. The statutes which relate to the Cinque-Ports are 49 Geo. III. c. 122, s. 14; 1 and 2 Geo. IV. c. 75, s. 13; and 1 and 2 Geo. IV. c. 76.

In case of capture by the antient maritime law the ship and goods became the absolute property of the captor. The old practice in this country was, when ships were in pay of the king, to divide in certain proportions, which varied at different times, the value of the capture between the king, the owners, and the captors. Where the capture was made by ships not in the king's pay, he received no share, but a small proportion was paid to the admiral. In the reign of George II. provision was for the first time made by various statutes for the restoration of the recaptured ship and cargo to the owners, and the rates of salvage were fixed, varying according to the length of time that had elapsed since the capture. In the reign of George III. these rates were done away with, and by various acts the rate of salvage was fixed at one-eighth of the value in the case of king's ships, and one-sixth for private ships; where the re-capture was effected by the joint operation of king's and private ships, the Court of Admiralty were to order such salvage as was reasonable. Convoying ships are entitled to salvage for the recapture of ships which accompanied them. A ship, which has once been used as a ship of war, is not subject to be restored if afterwards recaptured. If a ship is deserted by the enemy after capture and subsequently taken possession of, this is not a recapture, but those who take possession are entitled to recompense as in an ordinary case of salvage. If after the recapture the ship is again taken and condemned, the right of salvage is extinguished. Where the ship of a power in alliance with Great Britain is taken by the common enemy and afterwards recaptured by a British ship, the rule for restitution on payment of salvage is the same as in the case of the capture of a British ship; provided the allied power chooses to adopt that rule in reciprocal cases. If it does not, the same rule which is acted upon in the courts of the allied power is adopted in the British courts. If the ship of a neutral nation be taken as prize by an enemy of Great Britain and be retaken by British subjects, it is restored to the owners without salvage, unless there is reason to suppose that under the circumstances the ship would have been condemned in the courts of the capturing nation. Where it appears that such would have been the case, the British subjects are entitled to salvage. Ships and merchandise taken from pirates are subject, by 6 Geo. IV. c. 49, to a payment of one-eighth of the value.

4. *As to the Employment and Wages, &c., of Merchant Seamen.*—The 5 & 6 Wm. IV. c. 19 repealed all former acts which regulated the hiring of seamen; and the 5 & 6 Wm. IV. c. 19 has been repealed, with the exceptions above stated (p. 696), by the 7 & 8 Vict. c. 112, which contains the present law relating to mer-

chant-seamen and for keeping a Register of them. This act contains sixty-four sections. This act regulates (s. 2, &c.) the agreement of hiring with seamen; (s. 6, &c.) the punishment of seamen for refusing to join the ship, or absenting themselves from it; (s. 9) forfeiture for desertion; (s. 11) the periods within which wages must be paid; (s. 15) summary mode of recovering wages not exceeding twenty pounds; (s. 17) provides for seamen being sent home when the ship is sold in a foreign port; (s. 18) regulates the supply of medicines, lime or lemon juice, and other things necessary for the health of the crew, and declares in what cases there shall be a physician, surgeon, or apothecary on board; (s. 19, &c.) provides for a general register and record office of seamen; (s. 31) provides for the disposal of the effects of seamen who die abroad elsewhere than on board a British ship, and leaving money or effects not on board such ship; (s. 32, &c.) provide for apprenticing parish boys to the sea-service; (s. 46) provides against masters of ships discharging seamen at any of her Majesty's colonies or plantations, or at any other place abroad, except as herein provided; (s. 50) provides for seamen being at liberty to leave any ship and enter the naval service of her Majesty; (s. 58) provides for offences against the property or person of any subject of her majesty, or of any foreigner, committed at any port or place, either ashore or afloat, out of the dominions of her majesty, by the master and crew; (s. 61) declares in what cases this act shall not apply.

The seaman may recover his wages by suit either in the common law courts or in the Admiralty courts. If in the former, his only remedy is against his debtor personally; if in the latter, he may proceed also against the ship itself. The Admiralty have only authority to "meddle" with "a thing done upon the sea." (13 Ric. II. st. 2, c. 5; 15 Ric. II. c. 3.) Upon the strict construction of the words of the latter of these statutes, neither the master nor the seamen would be entitled to avail themselves of the process of the Admiralty Court, the claims of both being founded, as they usually are, upon a contract made on shore, or in a port within a country. The remedy of the master against the owners is confined to an action against them personally in the ordinary law courts; but seamen may bring a suit, in which they all may join, in the Admiralty court; and they can either arrest the ship, or proceed personally against the owners or the master. Foreign seamen may also proceed in that court for wages due under the general maritime law, but not for those the claim to which is founded on the law of some particular country. In the case of British seamen, if the contract be made by deed containing terms and conditions different from those resulting in contemplation of law from an ordinary service, the Court of Admiralty, which is considered as unfit to construe such instruments, ceases to have jurisdiction. But in order to deprive the Court of Admiralty of its jurisdiction, the defendants ought to show that the special contract is in existence. If the court does not allow the plea, and cease to entertain the case, the Court of Queen's Bench will grant a prohibition. Where the ship itself is proceeded against, the claims of the seamen for wages take precedence of all others. Proceedings in this court are subject to the same limitation of six years which applies to other like actions. When the action is brought in an ordinary court of law, it is conducted according to the rules of those courts; but the master or owners of the ship are in all cases of proceedings for wages bound to produce the contract on which the claim is founded. (Abbott *On Shipping.*)

Marine Insurance.—The law of Marine Insurance constitutes an important part of the general law of shipping.

A maritime insurance is a contract by which one party, who is called the insurer, in consideration of a premium agreed upon, undertakes to make good to another, who is called the insured or assured, the loss or damage which may befal his ship or goods on their passage from one place to another. The instrument containing such a contract is called, in common with instruments for fire or life insurance, a policy. It is usually not under seal, unless the insurers are an

incorporated company. Formerly the Royal Exchange Assurance Company and the London Assurance Company were the only companies for insuring ships, the legislature having given them a monopoly as against all except individual insurers. This monopoly has been abolished by 5 Geo. IV. c. 114. A great proportion of the business connected with the shipping insurance of this country is transacted at Lloyd's underwriters' establishment in the Royal Exchange, London. Insurers are commonly called underwriters, from the circumstance of their writing at the foot of the policy their names and the portion they are severally willing to take of the amount for which the merchant desires to insure.

The form of policy usually adopted is of antient origin, and rather obscure in its phraseology, but most of its terms have acquired a certain meaning from judicial interpretation, and it is therefore found convenient to retain them.

The ordinary form is found in treatises on the Law of Shipping.

The conditions of the policy may be varied according to the particular agreement between the parties.

The words in the policy, "the said ship and goods and merchandises *shall be valued at*," make this a "valued policy:" that is, a policy which enables the merchant, in case of loss, to recover the stipulated amount without proof of the value of the things insured. A policy without words expressive of an agreement between the parties as to value, is called an open policy, and leaves the question of value open.

The subjects of marine insurance are, generally speaking, whatever is put in risk, as the ship, tackle, provisions, &c., cargo, freights, profits, and money lent at bottomry or respondentia. As for the purpose of stimulating the seaman to exert himself to the utmost for the safety of the ship, a rule has been established, that he is entitled to no wages unless the adventure be completed and the ship earn freight, so an insurance which would nullify that rule is declared illegal. A seaman therefore cannot insure his wages.

The subject matter of the insurance, whether the ship only, or goods, or freight, must be accurately described, and so must the voyage, and the times and places at which the risk is to begin and end.

The words "*lost or not lost*," in the policy, have the effect of rendering the underwriter liable, though the ship be lost before the insurance is entered into, provided the loss were not then known to the assured.

Perils of the sea signify losses occasioned by winds and waves, rocks, sands, &c. If the ship is run down, this is considered a peril of the sea. *Jettison* signifies the voluntary throwing of goods or of any part of the ship overboard for *any* justifiable reason, as either to prevent their falling into the hands of an enemy, or to save the rest of the cargo or the ship. *Barratry* denotes any sort of fraud in the master or seaman by which the owners of the ship or cargo are injured. Thus barratry may be committed by running away with the ship, by defeating or delaying the voyage with a criminal intent, or by doing any act to forfeit the insurance.

The loss or damage in every case is ascribed to the proximate cause. Where the ship is checked in her rate of sailing by sea-damage, and in consequence is overtaken by an enemy and captured, this is considered a loss by capture.

The memorandum at the foot of the policy is inserted to protect the underwriter from minute liability in respect of perishable articles, as to which it would often be difficult to say whether the damage was occasioned by intrinsic or extrinsic causes, the indemnity of the underwriter extending to the latter description of causes only. "Warranted *free from average, unless general*," protects the underwriter from making good any damage, short of a total loss, to the excepted article. A damage to any specific article itself is called a particular average. *General average*, to which the exception in the memorandum of the policy does not extend, takes place where part of the ship, as the mast, or where part of the cargo, has been thrown overboard for the common benefit, in which case the owner of the property sacrificed is entitled to contribution from all others who have pro-

perty embarked in the adventure. This contribution is called general average.

The policy will be vitiated by misrepresentation or concealment on the part of the assured of any fact material to a correct estimate of the risk; and the underwriter will be discharged from liability if the ship do not proceed on the same voyage with that described, or if there be any unnecesssry stopping or deviation.

(Park, *On Marine Insurance;* M'Culloch's *Commercial Dictionary*, art. 'Marine Insurance.')

The system of the Navigation Act, as it is termed, had its foundation during the Protectorate; but the Act so called was the 12 Chas. II. c. 18. This act declared that no produce of Asia, Africa, or America should be imported into Great Britain except in British ships, navigated by a British subject, and having at least three-fourths of their crew composed of British seamen. It also laid higher duties on all goods imported from Europe than if they were imported in British ships. To this act many persons have attributed the great growth of British shipping. When the American colonies became independent, their ships lost the advantage which they had when the States were colonies, and their shipping was thus placed on the same footing as other foreign ships. The consequence was that American ships sailing to Great Britain came in ballast, while British ships carried merchandize both ways. But restriction is a game that two parties can play at, and accordingly the United States placed British shipping under the same disadvantages in their ports that American shipping was under in British ports. The consequence of this was that British ships sailed to America in ballast when they went to the United States to get a cargo, and American ships came to Great Britain in ballast when they wanted a British cargo. The consumer of the foreign produce in both countries accordingly paid double freight for it. This lasted till 1815, when it was agreed by treaty between Great Britain and the United States that the ships of the respective countries should be placed on the same footing in the ports of Great Britain and the United States, and all the discriminating duties were mutually repealed. In 1822, Mr. Wallace, president of the Board of Trade, introduced four bills, which made other important alterations. The 3 Geo. IV. c. 41 repealed certain statutes relating to foreign commerce, which were passed before the Navigation Act. The 3 Geo. IV. c. 42 repealed various laws that had been passed since the Navigation Act, and also that part of the Navigation Act which enacted that goods of the growth, produce, or manufacture of Asia, Africa, and America should only be imported in British ships, and that no goods of foreign growth, production, or manufacture should be brought into Great Britain from Europe in any foreign ship, except from the place of their production or from the ports from which they were usually brought, and in ships belonging to the country of production or accustomed shipment. The 3 Geo. IV. c. 43, permitted certain goods then enumerated to be brought to Great Britain from any port in Europe in ships belonging to the port of shipment. The 3 Geo. IV. c. 44, permitted the importation, subject to certain duties, into certain ports, of various articles from any foreign country in America or port in the West Indies, either in British vessels or in vessels belonging to the country or place of shipment, and such goods might be again imported to any other colony or the United Kingdom. The 3 Geo. IV. c. 45, permitted the exportation in British ships from any West India colony to any foreign port in Europe and Africa, of any goods that had been legally imported into the colony, or which were of its growth or manufacture; and it permitted the exportation of certain articles, enumerated in the act, in British ships to any such colony from any foreign port in Europe or Africa.

In 1823 Prussia retaliated, as the United States had done, which led Mr. Huskisson to propose the passing of what are called the Reciprocity Acts, 4 Geo. IV. c. 77, and 5 Geo. IV. c. 1, which empowered the king, by order in council, to authorize the importation and exportation of goods in foreign ships, from the

United Kingdom or from any other of his majesty's dominions, on the same terms as in British ships, provided it shall first be proved to his majesty and the privy council that the foreign country in whose favour such order shall be made shall have placed British ships in its ports on the same footing as its own ships. Since that time reciprocal treaties of navigation have been made with the following countries: Prussia, Denmark, Hanover, Oldenburg, Mecklenburg, Greece, Bremen, Hamburg, Lübeck, States of La Plata, Colombia, Holland, France, Sweden and Norway, Mexico, Brazil, Austria, Russia, and Portugal. That with the United States of North America, as already observed, dates from 1815.

Since the passing of the Reciprocity Acts the ship-owners have always cried out that those measures have ruined *their* interest. But they cannot possibly have injured any body else. On the contrary, the consumer has had the advantage of merchandize being carried at the cheapest rate that competition could produce. The following facts, however, show that since the Reciprocity Acts passed there has been an enormous increase in British shipping—a fact which proves that the investment of money in ships has been at least as profitable as in other branches of industry.

BRITISH SHIPPING.

Period from 1804 to 1823 under the Navigation Act and Restrictive System.

	Tonnage.
1804 . . .	2,268,570
1823 . . .	2,506,760
Increase, .	238,190
or 10 per cent.	

Period from 1823 to 1844 under the Reciprocity Acts and Free Trade System.

	Tonnage.
1823 . . .	2,506,760
1844 . . .	3,637,231
Increase, .	1,130,471
or 45 per cent.	

It further appears that the total tonnage of British and foreign ships entered inwards and outwards, *exclusive* of ships in ballast, in the years 1832 and 1845, is as follows:—

	British. Tons.
1832 . . .	3,573,939
1845 . . .	6,617,110
Increase .	3,043,171

	Foreign. Tons.
1832 . . .	1,027,380
1845 . . .	2,715,675
Increase .	1,688,295

It has been asserted that this great increase of British shipping is caused by the numerous voyages of Continental passenger-boats, especially of those in the Channel; but this cannot be so, because those vessels clear in ballast and do not carry cargoes, and are therefore not included in the foregoing statement. It appears then that all parties, both British and foreign, have gained by the Reciprocity Acts, so far as the mere amount of shipping is concerned; but the British ship-owner has gained most. But we must not forget the advantages which the merchant, manufacturer, and consumer have gained by the cheaper conveyance of commodities, which is a necessary consequence of competition among carriers.

A further examination of this important subject in all its details shows still more conclusively the great advantages which British shipping and British industry have derived from the Reciprocity Acts. (Porter, *Progress of the Nation*, sections iii. & iv. p. 158; an excellent article in the 'Economist' newspaper of March, 1846, also reprinted in the 'League' newspaper, March 28, 1846.)

Seamen in the Royal Navy and *Impressment.*—It is stated by Blackstone, on the authority of Foster, "that the practice of impressing and granting power to the admiralty for that purpose is of very ancient date, and hath been uniformly continued by a series of precedents to the present time, whence he concludes it to be a part of the common law." As impressment is effected by the king's commission, the power of impressment belongs to the crown. Barrington, in his 'Observations on Ancient

Statutes,' p. 334, 5th ed., shows that the king used once to exercise the power of impressing men for the land service also, and even for his own private service, as in the case of goldsmiths. The legality of impressment is fully established, though the practice cannot be defended even on the ground of the safety of the state, until it has been shown that seamen for the royal navy cannot be procured by other means. The general rule is that all seamen are liable to impressment. There are several legal decisions as to the question who are seamen, and who may be privileged.

Volunteer seamen are induced to enter the royal navy by higher wages; and every foreign seaman who shall have served in a ship of war, a merchant ship, or privateer for two years during a war, is thereby naturalized. The 7 & 8 Vict. c. 112, s. 32, enacts that overseers of the poor, or other persons having the authority of overseers of the poor, in and for any district, union, parish, township, or place in the United Kingdom, may put out as an apprentice in the British merchant sea service, any boy who is twelve years of age and of sufficient health and strength, with his consent, who, or his parent or parents is or are chargeable to or maintained by such district, &c., or who shall beg for alms therein: the apprenticeship is to last till such boy attain the age of twenty-one years, or shall have served seven years as an apprentice, whichever shall first happen. Section 33 of the same act provides for turning over, with their consent, of parish apprentices, who shall have been bound to a service on shore, to the sea-service, to be employed as is provided in the case of apprentices to the sea service under § 32, for the period then remaining unexpired of their apprenticeship. Section 37 provides that all British ships of the burden of eighty tons and upwards, except pleasure-yachts, shall have apprentices in proportion to their tonnage, as in this section provided; all which apprentices must at the time of being bound to British subjects be above twelve and under seventeen years of age, and be duly bound for four years at least. Section 50 provides, "That nothing in this Act, or in any agreement contained, shall prevent any seaman or person belonging to any ship or vessel whatever from entering or being received into the naval service of her majesty, nor shall any such entry be deemed a desertion from the ship or vessel, nor shall such seaman or other person thereby incur any penalty or forfeiture whatsoever either of wages, clothes, or effects, or other matter or thing."

The commerce of Great Britain gives regular employment to a vast body of seamen, and the habits and occupation of a large number of people on the sea-coast give them a relish and a capacity for sea service. With the great increase of the commercial navy of Great Britain, which has taken place of late years, and the prospect of still greater increase of commerce by the restrictions on trade being removed, we may always reckon on a sufficient number of seamen in the commercial navy to make up the deficiency in the royal navy in case of a sudden war. The apprenticeship system also is well devised to keep up a regular supply of young seamen. It is probable that ten or twenty thousand men might be at once drawn from the commercial navy for the royal navy on any emergency by offering them better wages, and thus the necessity of impressment might be removed. The amount of inconvenience that may be sustained by the merchant service by the withdrawal of a great number of seamen at once, is the same, whether the seamen are impressed or go as volunteers; but to the inconvenience arising from the actual withdrawal of seamen by impressment must be added the loss and inconvenience to the merchant service which may arise from seamen keeping out of the way in order to avoid being impressed.

SHIRE, from the Saxon *schyran*, to divide (whence also *to shear*), is the name of districts into which the whole of Great Britain and Ireland is divided. The word shire is in most cases equivalent to *county*, a name often substituted for it in Great Britain, and always in Ireland. The origin of this distribution of the country cannot be ascertained. In England it has been customary to attribute it to Alfred, upon the authority of a passage

in Ingulphus, the monk of Croyland, who wrote about a century and a half after the reign of that king. Asser however, the biographer of Alfred, does not mention this most important fact; and, in truth, shires were certainly known before Alfred's time. Sir Francis Palgrave shows them to be identical, in many cases, with Saxon states; thus Kent, Sussex, Essex, Norfolk, Suffolk, Middlesex, and Surrey were antient kingdoms: Lincolnshire, under the name of Lindesse, was an independent state, and Worcestershire (*Huiccas*) was the jurisdiction of the bishop of Worcester. Another class of shires were formed out of large divisions, either for the sake of more easy management when the population of the particular district had increased, or for the sake of giving territory to an earl. Yorkshire was part of the kingdom of Deira, and Derbyshire of Mercia. Lancashire was made a county subsequently to the Conquest. On the other hand, some shires have merged in others: Winchelcombeshire is a part of Gloucestershire; and in the act for abolishing the palatine jurisdiction of the bishop of Durham (6 and 7 William IV., c. 19, s. 1) no less than five shires are mentioned, viz. Craikshire, Bedlingtonshire, Norhamshire, Allertonshire, and Islandshire, which have long ceased to possess, if indeed they ever had, separate jurisdictions.

The uses of the division into shires may be learnt by an enumeration of the principal officers in each: 1, the lord lieutenant, to whom is entrusted its military array [LORD LIEUTENANT]; 2, the custos rotulorum, or keeper of the rolls or archives of the county [CUSTOS ROTULORUM], such as the county court rolls—this officer is appointed by letters-patent under the great seal, and is now always identical with the lord-lieutenant, except in counties of cities, where the high steward is usually custos rotulorum; 3, the sheriff, or, as he is often called, the high sheriff [SHERIFF]; 4, the receiver-general of taxes, who is appointed by the crown, and accounts to it for the taxes levied within his district—he also receives the county rates, and disburses them as the magistrates in quarter sessions, or as any other competent authority, direct; 5, the coroner [CORONER]; 6, the justices of the peace, whose commission extends only to their own county, and who, assembled in sessions, have jurisdiction over many offences, and control over the county funds [SESSIONS]; 7, the under-sheriff, who is appointed by and performs nearly all the duties of sheriff; and 8, the clerk of the peace, an officer (almost always an attorney) appointed by the custos rotulorum, whose duty it is to file and produce recognizances, returning them, when forfeited, to the sheriff to be levied [RECOGNIZANCE]: he likewise prepares or files indictments to be tried at the sessions or assizes, and in general acts as the officer of the justices in quarter-sessions. To this list of officers may be added the knights of the shire, or representatives of the county in parliament.

County rates are assessments made by the justices in quarter-sessions assembled, according to estimates laid before them. [COUNTY RATE.]

The judicial tribunals in each county are the assize court [ASSIZE]; the county-court, presided over by the sheriff, and, until Magna Charta, a court of record; the hundred courts, and courts-leet. [COURTS LEET.]

The principal subdivision in a county is the hundred, a district which in its origin bore relation rather to the population than to any uniform geographical limits. Mr. Hallam considers it to have been a district inhabited by 100 free families, and that a different system prevailed in the northern from that of the southern counties; in proof of which he contrasts Sussex, which contains 65 hundreds, and Dorsetshire, which contains 43, with Yorkshire, which contains only 26, and Lancashire, only 6. In the counties north of the Trent, and especially in Scotland, this subdivision is often called a wapentake. Kent is divided into five lathes, which are subdivided into hundreds. That the division into hundreds was known among the Germans, even in the time of the Roman invasion, is inferred, but improperly, from two passages in Tacitus ('*De Mor. Germ.*,') "ex omni juventute delectos ante aciem locant—Definitur et numerus; *centeni* ex

singulis pagis sunt." And again, "Centeni singulis (principibus) adsunt ex plebe comites, consilium simul et auctoritas." "Nihil nisi armati agunt;" and hence Spelman infers the identity of the *wapentách*, or military array (taking of weapons) and the hundred court. Sir Francis Palgrave says that the burgh was only the enclosed and fortified resort, the stockade of the inhabitants of the hundred. The subdivision of the hundred was the tithing, composed, as it is alleged, of ten free families, and having for an officer the tithing man, a head constable.

Whether in the barbarous times to which it is attributed, so elaborate a system as we have sketched could have prevailed, is at least most doubtful; but the theory is that somewhere about the time of Edgar (A.D. 950), the county was divided into tithings, of which twelve made a hundred—for the Saxon hundred meant 120, and hence perhaps the frequent use of the number 12 in our legal processes. These hundreds were presided over by their decanus, or headborough, or hundred-man, and were represented in the shiremote; and this aggregate body, the shire, presided over by its earl and bishop or sheriff, conducted its own internal affairs.

There are three counties-palatine, the earl of which had within his shire all the fiscal and judicial powers of the crown:—Chester, created by William the Conqueror; the duchy of Lancaster, created by Edward III.—these two have been long annexed to the crown; and Durham, heretofore governed by the bishop, but annexed to the crown by statute in 1836. In the latter year, a part of the see of Ely, which had been a royal franchise, was annexed to the crown, as Hexhamshire in Northumberland had been in the reign of Elizabeth.

SIGN-MANUAL means, in its widest sense, the signature or mark made by a person upon any legal instrument to show his concurrence in it. Before the art of writing was so commonly practised as it now is, the sign-manual or signature was usually a cross, attested either by the seal of the party containing his armorial bearings, or by the signature of another person declaring to whom the mark belonged. The latter indeed is still the practice with persons who cannot write.

Sign-manual now, however, is used to denote the signature of a reigning prince. It is usually in this country the prince's name, or its initial letter, with the initial of his style or title in Latin. Thus the sign-manual of George IV., when prince regent, was George P. R., or G. P. R.; that of the present queen is Victoria R., or V. R.

The royal sign-manual is usually placed at the top left-hand corner of the instrument, together with the privy seal; and it is requisite in all cases where the privy seal and afterwards the great seal are used. The sign-manual must be countersigned by a principal secretary of state, or by the lords of the treasury, when attached to a grant or warrant, and it must also be accompanied by the signet or privy seal. But where the sign-manual only directs that another act shall be done, as for letters-patent to be made, it must be countersigned by some person, though not necessarily by these great officers of state. The authenticity of the sign-manual is admitted in courts of law upon production of the instrument to which it is attached. (Comyns's *Digest.*)

SIMONY. [BENEFICE, p. 351.]

SIMPLE CONTRACT debts are those which are contracted without any engagement under the seal of the debtor or of his ancestor [DEED], and which are not of record by any judgment of a court. Money due for goods bought by the debtor is the most usual of simple contract debts; and the declaration against a defendant, in an action for goods sold, usually alleges that the defendant undertook (or contracted) to pay the plaintiff the sum due. Simple contract debts are the last which are payable out of a deceased person's estate, when the assets are insufficient.

SINECURE BENEFICE. [BENEFICE, p. 341.]

SINKING FUND. [NATIONAL DEBT.]

SLANDER consists in the malicious speaking of such words as render the party who speaks them in the hearing of others liable to an action at the suit of

the party to whom they apply. The mere speaking of the defamatory words instead of the writing of them is that which constitutes the difference between Libel and Slander. [LIBEL.]

Slander is of two kinds: one, which is actionable, as necessarily importing some general damage to the party who is slandered; the other, which is only actionable where it has actually caused some special damage. The first kind includes all such words as impute to a party the commission of some crime or misdemeanour for which he might legally be convicted and suffer punishment, as where one asserts that another has committed treason, or felony, or perjury. It also includes such words spoken of a party, with reference to his office, profession, or trade, as impute to him malpractice, incompetence, or bankruptcy; as of a magistrate, that he is partial, or corrupt; of a clergyman, that "he preaches lies in the pulpit;" of a barrister, that "he is a dunce, and will get nothing by the law;" and so on: or that tend to the disherison of a party, as where it is said of one who holds lands by descent, that he is illegitimate. Where a party is in possession of lands which he desires to sell, he may maintain an action against any one who slanders his title to the lands; as by stating that he is not the owner. With respect to the second kind of slander, the law will not allow damage to be inferred from words which are not in themselves actionable, even although the words are untrue and spoken maliciously. But if, in consequence of such words being so spoken, a party has actually sustained some injury, he may maintain an action of slander against the person who has uttered them. In such case the injury must be some certain actual loss, and it must also arise as a natural and lawful consequence of speaking the words. No unlawful act done by a third person, although he really was moved to do it by the words spoken, is such an injury as a party can recover for in this action. Thus, the loss of the society and entertainment of friends, of an appointment to some office, the breach of a marriage engagement caused by the slanderer's statement, are injuries for which a party may recover damages. But he can have no action because in consequence of such statement certain persons, to use an illustration of Lord Ellenborough's, "have thrown him into a horse-pond by way of punishment for his supposed transgression."

With respect to both kinds of slander, it is immaterial in what way the charge is conveyed, whether by direct statement, or obliquely, as by question, epithet, or exclamation. But the actual words used must be stated in the declaration, and upon the failure to prove them as stated, the plaintiff will be nonsuited at the trial: it is not sufficient to state the meaning and inference of the words. They will be interpreted in the sense in which they are commonly used, but where they are susceptible of two meanings, one innocent, the other defamatory, the innocent interpretation is to be preferred. Where words are equivocal either in their meaning or their application, a parenthetical explanation may be inserted in the declaration. This is called an inuendo. It may be employed to explain and define, but not to enlarge or alter, the meaning or application of the words spoken. The declaration must state the publication of the words, that is, that they were spoken in the hearing of others, and spoken maliciously. Two cannot join in bringing one action of slander, except in the case of husband and wife, or of partners for an injury done to their joint trade; nor can an action be brought against two, except a husband and wife, where slanderous words have been spoken by the wife. Where the knowledge of extraneous facts is necessary to show the application of the slander, these should be stated in the introductory part of the declaration.

In answer to an action of slander the defendant may plead that the words spoken were true, or that they were spoken in the course of a trial in a court of justice, and were pertinent to the case; or formed the subject of a confidential communication, as where a party on application *bonâ fide* states what he believes to be true relative to the character of a servant, or makes known facts merely for the purpose of honestly warning another in whom he is interested. (Com., *Dig.*,

'Action on the case for Defamation,' D. 1, &c.)

SLAVE, SLAVERY, SLAVE TRADE. The word slavery has various acceptations, but its complete meaning is the condition of an individual who is the property of another or others. Such was the condition of the "servi," or slaves among the Romans and Greeks; such is still that of the slaves in Eastern countries, and that of the negro slaves in many parts of Africa and America. A mitigated form of this condition exists in the case of the serfs in Russia and Poland, and of a similar class in India and some other parts of Asia. The Russian and Polish serf is bound to the soil on which he is born; he may be sold or let with it, but cannot be sold away from it without his consent; he is obliged to work three or four days a-week for his master, who allows him a piece of land, which he cultivates. He can marry, and his wife and children are under his authority till they are of age. He can bequeath his chattels and savings at his death. His life is protected by the law. The slave of the Greek and Roman nations had none of these advantages, any more than the negro slave of our own times; he was bought and sold in the market, and was transferred at his owner's pleasure; he could acquire no property; all that he had was his master's; all the produce of his labour belonged to his master, who could inflict corporeal punishment upon him; he could not marry; and if he cohabited with a woman, he could be separated from her and his children at any time, and the woman and children sold. The distinction therefore between the slave and the serf is essential. The villeins (villani) of the middle ages were a kind of serfs, but their condition seems to have varied considerably according to times and localities. In the present article we treat only of the real slave of antient and modern times.

Slavery, properly so called, appears to have been, from the earliest ages, the condition of a large proportion of mankind in almost every country, until times comparatively recent, when it has been gradually abolished by all Christian states, at least in Europe. The condition of slavery constitutes one great difference between antient and modern society. Slavery existed among the Jews: it existed before Moses, in the time of the Patriarchs; and it existed, and still continues to exist, in many parts of Asia. The "servants" mentioned in Scripture history were mostly slaves: they were strangers, either taken prisoners in war or purchased from the neighbouring nations. They and their offspring were the property of their masters, who could sell them, and inflict upon them corporeal punishment, and even in some cases could put them to death. But the Hebrews had also slaves of their own nation. These were men who sold themselves through poverty, or they were insolvent debtors, or men who had committed a theft, and had not the means of making restitution as required by the law, which was to double the amount, and in some cases much more. (*Exod.* xxii.) Not only the person of the debtor was liable to the claims of the creditor, but his right extended also to the debtor's wife and children. Moses regulated the condition of slavery. He drew a wide distinction between the alien slave and the native servant. The latter could not be a perpetual bondman, but might be redeemed; and if not redeemed, he became free on the completion of the seventh year of his servitude. Again, every fifty years the jubilee caused a general emancipation of all native servants.

The sources of the supply of slaves have been the same both in antient and modern times. In antient times all prisoners were reduced to slavery, being either distributed among the officers and men of the conquering army, or sold. When the early Æolian and Ionian colonies settled in the islands of the Ægean Sea, and on the coast of Asia Minor, it was a frequent practice with them to kill the adult males of the aboriginal population, and to keep the women and children. As, however, dealing in slaves became a profitable trade, the vanquished, instead of being killed, were sold, and this was so far an improvement. Another source of slavery was the practice of kidnapping men and women, especially young persons, who were seized on the coast, or enticed on board by the crews

of piratical vessels. The Phœnicians, and the Etruscans or Tyrrhenians, had the character of being men-stealers; and also the Cretans, Cilicians, Rhodians, and other maritime states. Another source was, sale of men, either by themselves through poverty and distress, or by their relatives and superiors, as is done now by the petty African chiefs, who sell not only their prisoners, but their own subjects, and even their children, to the slave-dealers. Herodotus (v. 6) states that some of the Thracian tribes sold their children to foreign dealers.

Among the Greeks slavery existed from the heroic times, and the purchase and use of slaves are repeatedly mentioned by Homer. The labours of husbandry were performed in some instances by poor freemen for hire, but in most places, especially in the Doric states, by a class of bondmen, the descendants of the older inhabitants of the country, resembling the serfs of the middle ages, who lived upon and cultivated the lands which the conquering race had appropriated to themselves; they paid a rent to the respective proprietors, whom they also attended in war. They could not be put to death without trial, nor be sold out of the country, nor separated from their families; they could acquire property, and were often richer than their masters. Such were the Clarotæ of Crete, the Penestæ of Thessaly Proper, and the Helots of Sparta, who must not be confounded with the Periœci, or country inhabitants of Laconica in general, who were political subjects of the Doric community of Sparta, without however being bondmen. In the colonies of the Dorians beyond the limits of Greece, the condition of the conquered natives was often more degraded than that of the bondmen of the parent states, because the former were not Greeks, but barbarians, and they were reduced to the condition of slaves. Such was the case of the Kallirioi or Kallikurioi of Syracuse, and of the native Bithynians at Byzantium. At Heraclea in Pontus, the Mariandyni submitted to the Greeks on condition that they should not be sold beyond the borders, and that they should pay a fixed tribute to the ruling race.

The Doric states of Greece had few purchased slaves, but Athens, Corinth, and other commercial states had a large number, who were mostly natives of barbarous countries. The slave population in Attica has been variously estimated as to numbers, and it varied of course considerably at different periods; but it appears that in Athens, at least in the time of its greatest power, they were much more numerous than the freemen. From a fragment of Hyperides preserved by Suidas (*v.* ἀπεψηφίσατο), the number of slaves appears to have been at one time 150,000, who were employed in the fields and mines of Attica alone. Even the poorer citizens had a slave for their household affairs. The wealthier citizens had as many as fifty slaves to each family and some had more. We read of philosophers keeping ten slaves. There were private slaves belonging to families, and public slaves belonging to the community or state. The latter were employed on board the fleet, in the docks and arsenal, and in the construction of public buildings and roads. At the sea fight of Arginusæ there were many slaves serving in the Athenian fleet, and they were emancipated after the battle. Again, at Cheronæa the Athenians granted liberty to their slaves who served in the army.

Slaves were dealt with like any other property: they worked either on their master's account or on their own, in which latter case they paid a certain sum to their master; or they were let out on hire as servants or workmen, or sent to serve in the navy of the state, the master receiving payment for their services. Mines were worked by slaves, some of whom belonged to the lessees of the mine, and the rest were hired from the great slave proprietors, to whom the lessees paid a rent of so much a head, besides providing for the maintenance of the slave, which was no great matter. They worked in chains, and many of them died from the effect of the unwholesome atmosphere. Nicias the elder had 1000 slaves in the mines of Laurium; others had several hundreds, whom they let to the contractors for an obolus a-day each. At one time the mining slaves of Attica murdered their guards, took possession of

the fortifications of Sunium, and ravaged the surrounding country. (Fragment of Posidonius's Continuation of Polybius; see Boeckh's *Public Economy of Athens*, b. i.) The thirty-two or thirty-three iron-workers or sword-cutlers of Demosthenes annually produced a net profit of thirty minæ, their purchase value being 190 minæ; whilst his twenty chair-makers, whose value was estimated at 40 minæ, brought in a net profit of 12 minæ. (Demosthenes *Against Aphobus*, i.)

The antients were so habituated to the sight of slavery, that none of the Greek philosophers make any objection to its existence. Plato, in his 'Perfect State,' desires only that no Greeks should be made slaves.

The Etruscans and other antient Italian nations had slaves, as is proved by those of Vulsinii revolting against their masters, and by the tradition that the Bruttii were runaway slaves of the Lucanians. The Campanians had both slaves and gladiators previous to the Roman conquest. But the Romans by their system of continual war caused an enormous influx of slaves into Italy, where the slave population at last nearly superseded the free labourers.

The Roman system of slavery had peculiarities which distinguished it from that of Greece. The Greeks considered slavery to be founded on permanent diversities in the races of men. (Aristotle, *Polit.*, i. 5.) The Romans admitted in principle that all men were originally free (*Instit.*, i., tit. ii.) by natural law (jure naturali), and they ascribed the power of masters over their slaves entirely to the will of society, to the "jus gentium," if the slaves were captives taken in war, whom the conquerors, instead of killing them, as they might have done, spared for the purpose of selling them, or to the "jus civile," when a man of full age sold himself. It was a rule of Roman law that the offspring of a slave woman followed the condition of the mother. (*Inst.*, i., tit. 3.) Emancipation was much more frequent at Rome than in Greece: the emancipated slave became a freedman (libertus), but whether he became a Roman citizen, a Latinus, or a Dediticius, depended on circumstances. If the manumitted slave was above thirty years of age, if he was the Quiritarian property of his manumittor, and if he was manumitted in due form, he became a Roman citizen. (Gaius, i. 17.) At Athens, on the contrary, emancipation from the dominion of the master was seldom followed by the privileges of citizenship even to a limited extent, and these privileges could only be conferred by public authority. It is true, that at Rome, under the empire, from the enactment of the Lex Aelia Sentia, passed in the time of Augustus, there were restrictions, in point of number, upon the master's power of freeing his bondmen and raising them to the rank of Roman citizens; still in every age there was a prospect to the slave of being able to obtain his freedom.

Slaves were not considered members of the community: they had no rights, and were in most respects considered as things or chattels. They could neither sue nor be sued. When an alleged slave claimed his freedom on the plea of unjust detention, he was obliged to have a free protector to sue for him, until Justinian (*Code*, vii., tit. 1. 7, "De adsertione tollenda") dispensed with that formality. Slaves had no connubium, that is, they could not contract a Roman marriage; their union with a person of their own rank was styled contubernium; and even the Christian church for several centuries did not declare the validity of slave marriages. At last the emperor Basilius allowed slaves to marry and receive the blessing of the priest, and Alexius Comnenus renewed the permission. As slaves had no connubium, they had not the parental power (patria potestas) over their offspring, no ties of blood were recognised among them, except with respect to incest and parricide, which were considered as crimes by the law of nature. Though slaves were incapable of holding property they were not incapacitated from acquiring property, but what they did acquire belonged to their masters. They were allowed to enjoy property as their own, "peculium," consisting sometimes of other slaves, but they held it only by permission, and any legal proceedings connected with it could only be conducted in the name of the master, who was the only legal

proprietor. Until the latter period of the republic, slaves and even freedmen were not admitted into the ranks of the army. In cases of urgent public danger, such as after the defeat of Cannæ, slaves were purchased by the state and sent to the army, and if they behaved well, they were emancipated. (Livy, xxii. 57, and xxiv. 14–16.)

They were not, however, denied the rites of burial, and numerous inscriptions attest that monuments were often erected to the memory of deceased slaves by their masters, their fellows, or friends, some of which bear the letters D. M., "Diis Manibus." Slaves were often buried in the family burying-place of their masters. The "sepulchretum" or burial-vault of the slaves and freedmen of Augustus and his wife Livia, discovered in 1726 near the Via Appia, and which has been illustrated by Bianchini and Gori, and another in the same neighbourhood also belonging to the household of the early Cæsars, and containing at least 3000 urns with numerous inscriptions, which have been illustrated by Fabretti, throw much light upon the condition and domestic habits of Roman slaves in the service of great families.

With regard to the classification and occupations of slaves, the first division was into public and private. Public slaves were those which belonged to the state or to public bodies, such as provinces, municipia, collegia, decuriæ, &c., or to the emperor in his sovereign capacity, and employed in public duties, and not attached to his household or private estate. Public slaves were either derived from the share of captives taken in war which was reserved for the community or state, or were acquired by purchase and other civil process. Public slaves of an inferior description were engaged as rowers on board the fleet, or in the construction and repair of roads and national buildings. Those of a superior description were employed as keepers of public buildings, prisons, and other property of the state, or to attend magistrates, priests, and other public officers, as watchmen, lictors, executioners, watermen, scavengers, &c.

Private slaves were generally distributed into urban and rustic; the former served in the town houses, and the others in the country. Long lists of the different duties performed by slaves of each class are given by Pignorius, 'De Servis et eorum apud Veteres Ministeriis,' Amsterdam, 1674; Popma, 'De Operis Servorum,' ibid., 1672; and Blair, 'An Inquiry into the State of Slavery amongst the Romans,' Edinburgh, 1833, which is a very useful little book. For all the necessities of domestic life, agriculture, and handicraft, and for all the imaginable luxuries of a refined and licentious people, there was a corresponding denomination of slaves. Large sums were occasionally paid for slaves of certain peculiar kinds, some of which we should consider the least useful. Eunuchs were always very dear; the practice of emasculating boys was borrowed by the Romans from the Asiatics, among whom it was a trade as early as the time of Herodotus (viii. 105): it continued to the time of Domitian, who forbade it; but eunuchs continued to be imported from the East. A "morio," or fool, was sometimes sold for 20,000 nummi, or about 160 pounds. Dwarfs and giants were also in great request. Marcus Antonius paid for a pair of handsome youths 200 sestertia, or 1600 pounds. Actors and actresses and dancers sold very dear, as well as females of great personal attractions, who were likely to bring in great gains to their owners by prostitution. A good cook was valued at four talents, or 772 pounds. Medical men, grammarians, amanuenses, anagnostæ, or readers, and short-hand writers, were in considerable request. With regard to ordinary slaves, the price varied from fifty to twenty pounds, according to their abilities and other circumstances. After a victorious campaign, when thousands of captives were sold at once on the spot for the purpose of prize-money, to the slave-dealers who followed the armies, the price sank very low. Thus in the camp of Lucullus in Pontus (Plutarch, *Lucullus*, c. 14) slaves were sold for four drachmæ, or two shillings and sevenpence, a head; but the same slaves, if brought to the Roman market, would fetch a much higher price. Home-born slaves, distinguished by the name of "vernæ," in contradistinction to "servi empti," or "venales," or im-

ported slaves, were generally treated with greater indulgence by their masters in whose families they had been brought up; and they generally were considered of inferior value to the imported slaves, being considered as spoilt and troublesome. The number of slaves born in Roman families appears at all times to have been far inferior to that of the imported slaves. In general the propagation of slaves was not much encouraged by masters, many of whom considered slaves born at home to cost more than those who were imported.

There was a brisk trade in slaves carried on from the coasts of Africa, the Euxine, Syria, and Asia Minor. The island of Delos was at one time a great mart for slaves, who were imported thither by the Cilician pirates. (Strabo, p. 668, Casaub.) The Illyrians procured numerous slaves for the Italian market, whom they bought or stole from the barbarous tribes in their neighbourhood. But the chief supply of slaves was derived from Asia and Africa. In most countries it was customary for indigent parents to sell their children to slave-dealers. Criminals were also in certain cases condemned to slavery, like the galley-slaves of our own times.

Both law and custom forbade prisoners taken in civil wars, especially in Italy, to be dealt with as slaves; and this was perhaps one reason of the wholesale massacres of captives by Sulla and the Triumviri. In the war between the party of Otho and Vitellius, Antonius, who commanded the army of the latter, having take Cremona, ordered that none of the captives should be detained, upon which the soldiers began to kill those who were not privately ransomed by their friends.

In the later period of the empire freeborn persons of low condition were glad to secure a subsistence by labour on the estates of the great landowners, to which, after a continued residence for thirty years, they and their families became bound by a tacit agreement under the name of Coloni, Rustici, Adscriptitii, &c. The phrase "servi terræ," which is applied to them, shows their connection with the soil. They could marry, which slaves could not. Though they bear a considerable resemblance to the serfs and villeins (villani) of the middle ages, yet there are some important points of difference and there is no evidence of any historical connection between the Coloni and Villani. The subject of the Coloni is discussed by Savigny, *Ueber den Römischen Colonat; Zeitschrift für Geschicht. Rechtswissenschaft*, vol. vi.

The customary allowance of food for a slave appears to have been four Roman bushels, "modii," of corn, mostly "far," per month for country slaves, and one Roman libra or pound daily for those in town. Salt and oil were occasionally allowed, as well as weak wine. Neither meat nor vegetables formed part of their regular allowance; but they got, according to seasons, fruit, such as figs, olives, apples, pears, &c. (Cato, Columella, and Varro.) Labourers and artizans in the country were shut up at night in a house ("ergastulum"), in which each slave appears to have had a separate cell. Males were kept apart from females, excepting those whom the master allowed to form temporary connections. Columella adverts to some distinction between the ergastulum for ordinary labourers and that for ill-behaved slaves, which latter was in fact a prison, often under ground; but generally speaking the ergastula in the later times of the republic and under the empire appear to have been no better than prisons in which freemen were sometimes confined after being kidnapped. The men often worked in chains. The overseers of farms and herdsmen had separate cabins allotted to them. Slaves enjoyed relaxation from toil on certain festivities, such as the Saturnalia.

The number of slaves possessed by the wealthy Romans was enormous. Some individuals are said to have possessed 10,000 slaves. Scaurus possessed above 4000 domestic and as many rustic slaves. In the reign of Augustus, a freedman who had sustained great losses during the civil wars left 4116 slaves, besides other property.

A master had, as a general rule, the power of manumitting his slave, and this he could effect in several forms, by Vin-

dicta, Census, or by Testamentum. The Lex Aelia Sentia, as already mentioned, laid various restrictions on manumission. Among other things it prevented persons under twenty years of age from manumitting a slave except by the Vindicta, and with the approbation of the Consilium, which at Rome consisted of five senators and five Roman equites of legal age (puberes), and in the provinces consisted of twenty recuperatores, who were Roman citizens. (Gaius), i. 20, 38.) The Lex Aelia Sentia also made all manumissions void which were effected to cheat creditors or defraud patrons of their rights. The Lex Furia Caninia, which was passed about A.D. 7, limited the whole number of slaves who could be manumitted by testament to 100, and when a man had fewer than 500 slaves, it determined by a scale the number that he could manumit. This Lex only applied to manumission by testament. (Gaius, i. 42, &c.)

In the earlier ages of the Republic, slaves were not very numerous, and were chiefly employed in household offices or as mechanics in the towns. But after the conquests of Rome spread beyond the limits of Italy the influx of captives was so great, and their price fell so low, that they were looked upon as a cheap and easily renewed commodity, and treated as such. The condition of the Roman slave, generally speaking, became worse in the later ages of the republic; and many of the emperors, even some of the worst of them, interfered on behalf of the slave. Augustus established courts for the trial of slaves who were charged with serious offences, intending thus to supersede arbitrary punishment by the masters, but the law was not made obligatory upon the masters to bring their slaves before the courts, and it was often evaded. By a law passed in the time of Claudius, a master who exposed his sick or infirm slaves forfeited all right over them in the event of their recovery. The Lex Petronia, probably passed in the time of Augustus, or in the reign of Nero, prohibited masters from compelling their slaves to fight with wild beasts, except with the consent of the judicial authorities, and on a sufficient case being made out against the slave. Domitian forbade the mutilation of slaves. Hadrian suppressed the ergastula, or private prisons for the confinement of slaves; he also restrained proprietors from selling their slaves to keepers of gladiators, or to brothel-keepers, except as a punishment, in which case the sanction of a judge (judex) was required. Antoninus Pius adopted an old law of the Athenians by which the judge who should be satisfied of a slave being cruelly treated by his owner, had power to oblige the owner to sell him to some other person. The judge, however, was left entirely to his own discretion in determining what measure of harshness in the owner should be a proper ground for judicial interposition. Septimius Severus forbade the forcible subjection of slaves to prostitution. The Christian emperors went further in protecting the persons of slaves. Constantine placed the wilful murder of a slave on a level with that of a freeman; and Justinian confirmed this law, including within its provisions cases of slaves who died under excessive punishment. Constantine made also two laws, both nearly in the same words, to prevent the forcible separation of the members of servile families by sale or partition of property. One of the laws, dated A.D. 334, was retained by Justinian in his code. The Church also powerfully interfered for the protection of slaves, by threatening excommunication against owners who put to death their slaves without the consent of the judge; and by affording asylum within sacred precincts to slaves from the anger of unmerciful masters. A law of Theodosius I. authorized a slave who had taken refuge in a church to call for the protection of the judge, that he might proceed unmolested to his tribunal in order that his case might be investigated. After Christianity became the predominant religion in the Roman world, it exercised in various ways a beneficial influence upon the condition of the slaves, without however interfering, at least for centuries, with the institution of slavery itself. Even the laws of the Christian emperors which abolished the master's power of life and death over his slave were long evaded. Salvianus (*De Gubernatione Dei*, iv.)

informs us that in the provinces of Gaul, in the fifth century, masters still fancied that they had a right to put their slaves to death. Macrobius (*Saturn.*, i. 11) makes one of his interlocutors, though a heathen, expatiate with great eloquence on the cruel and unjust treatment of slaves. In Spain, in the early period of the Visigothic kings, the practice of putting slaves to death still existed, for in the 'Foro Judicum' (b. vi. tit. 5) it is said that as some cruel masters in the impetuosity of their pride put to death their slaves without reason, it is enacted that a public and regular trial shall take place previous to their condemnation. Several laws and ecclesiastical canons forbade the sale of Christians as slaves to Jews or Saracens and other unbelievers.

The northern tribes which invaded the Western empire had their own slaves, who were chiefly Slavonian captives, distinct from the slaves of the Romans or conquered inhabitants. In course of time, however, the various classes of slaves merged into one class, that of the "adscripti glebæ," or serfs of the middle ages, and the institution of Roman slavery in its unmitigated form became obliterated. The precise period of this change cannot be fixed; it took place at various times in different countries. Slaves were exported from Britain to the Continent in the Saxon period, and the young English slaves whom Pope Gregory I. saw in the market at Rome were probably brought thither by slave-dealers. Giraldus Cambrensis, William of Malmesbury, and others accuse the Anglo-Saxons of selling their female servants and even their children to strangers, and especially to the Irish, and the practice continued even after the Norman conquest. In the canons of a council held at London, A.D. 1102, it is said, "Let no one from henceforth presume to carry on that wicked traffic by which men in England have been hitherto sold like brute animals." (Wilkins's *Concilia*, i. p. 383.)

But although the traffic in slaves ceased among the Christian nations of Europe, it continued to be carried on by the Venetians across the Mediterranean in the age of the Crusades. The Venetians supplied the markets of the Saracens with slaves purchased from the Slavonian tribes which bordered on the Adriatic. Besides, as personal slavery and the traffic in slaves continued in all Mohammedan countries, Christian captives taken by Musselmans were sold in the markets of Asia and Northern Africa, and have continued to be sold till within our own times, when Christian slavery has been abolished in Barbary, Egypt, and the Ottoman empire, by the interference of the Christian powers, the emancipation of Greece, and the conquest of Algiers by the French.

With the discovery of America, a new description of slavery and slave-trade arose. Christian nations purchased African negroes for the purpose of employing them in the mines and plantations of the New World. The natives of America were too weak and too indolent to undergo the hard work which their Spanish task-masters exacted of them, and they died in great numbers. Las Casas, a Dominican, advocated with a persevering energy before the court of Spain the cause of the American aborigines, and reprobated the system of the "repartimientos," by which they were distributed in lots like cattle among their new masters. But it was necessary for the settlements to be made profitable in order to satisfy the conquerors, and it was suggested that negroes from Africa, a more robust and active race than the American Indians, might be substituted for them. It was stated that an able-bodied negro could do as much work as four Indians. The Portuguese were at that time possessed of a great part of the coast of Africa, where they easily obtained by force or barter a considerable number of slaves. The trade in slaves among the nations of Africa had existed from time immemorial. It had been carried on in antient times: the Garamantes used to supply the slave-dealers of Carthage, Cyrene, and Egypt with black slaves which they brought from the interior. The demand for slaves by the Portuguese in the Atlantic harbours gave the trade a fresh direction. The petty chiefs of the interior made predatory incursions into each other's territories, and sold their

captives, and sometimes their own subjects, to the European traders. The first negroes were imported by the Portuguese from Africa to the West Indies in 1503, and in 1511 Ferdinand the Catholic allowed a larger importation. These, however, were private and partial speculations; it is said that Cardinal Ximenes was opposed to the trade because he considered it unjust. Charles V., however, being pressed on one side by the demand for labour in the American settlements, and on the other by Las Casas and others who pleaded the cause of the Indian natives, granted to one of his Flemish courtiers the exclusive privilege of importing 4000 blacks to the West Indies. The Fleming sold his privilege for 25,000 ducats to some Genoese merchants, who organised a regular slave-trade between Africa and America. As the European settlements in America increased and extended, the demand for slaves also increased; and all European nations who had colonies in America shared in the slave-trade. The details of that trade, the sufferings of the slaves in their journey from the interior to the coast, and afterwards in their passage across the Atlantic—their treatment in America, which varied not only according to the disposition of their individual masters, but also according to different colonies,—are matters of notoriety which have been amply discussed in every country of Europe during the last and present centuries. It is generally understood that the slaves of the Spaniards, especially in Continental America, were the best treated of all. But the negro slaves in general were exactly in the same condition as the Roman slaves of old, being saleable, and punishable at the will of their owners. Restrictions, however, were gradually introduced by the laws of the respective states, in order to protect the life of the negro slave against the caprice or brutality of his owner. In the British colonies, especially in the latter part of the last century and the beginning of the present, much was done by the legislature; courts were established to hear the complaints of the slaves, flogging of females was forbidden, the punishment of males was also limited within certain bounds, and the condition of the slave population was greatly ameliorated. Still the advocates of emancipation objected to the principle of slavery as being unjust and unchristian; and they also appealed to experience to show that a human being cannot be safely trusted solely to the mercy of another.

But long before they attempted to emancipate the slaves, the efforts of philanthropists were directed to abolish the slave traffic, which desolated Africa, wholly prevented its advance in civilization, and encouraged the maltreatment of the negroes in the colonies, by affording an unlimited supply, and making it not the planter's interest to keep up his stock in the natural way. The attention of mankind was first effectually awakened to the horrors of this trade by Thomas Clarkson. His labours, with the aid of the zealous men, chiefly Quakers, who early joined him, prepared the way for Mr. Wilberforce, who brought the subject before parliament in 1788, and although, after his notice, the motion, owing to his accidental illness, was first brought forward by Mr. Pitt, Mr. Wilberforce was throughout the great parliamentary leader in the cause, powerfully supported in the country by Thomas Clarkson and others, as Richard Phillips, George Harrison, William Allen, all of the Society of Friends, Mr. Stephen, who had been in the West Indies as a barrister, and Mr. Z. Macaulay, who had been governor of Sierra Leone, and had also resided in Jamaica. A bill was first carried (brought in by Sir W. Dolben) to regulate the trade until it could be abolished, and this in some degree diminished the horrors of the middle passage. But the question of abolition was repeatedly defeated, until 1804, when Mr. Wilberforce first carried the bill through the Commons; it was thrown out in the Lords, and next year it was again lost even in the Commons. Meanwhile the capture of the foreign colonies, especially the Dutch, during the war, frightfully increased the amount of the trade, by opening these settlements to British capital; and at one time the whole importation of slaves by British vessels amounted to nearly 60,000 yearly, of which about a third was for the supply

of our old colonies. At length, in 1805, an order in council prohibited the slave-trade in the conquered colonies. Next year the administration of Lord Grenville and Mr. Fox carried a bill through, prohibiting British subjects from engaging in the trade for supplying either foreign settlements or the conquered colonies. A resolution moved by Mr. Fox, the last time he took any part in public debate, was also carried in 1806, pledging the Commons to a total abolition of the trade early next session, and this was, on Lord Grenville's motion, adopted by the Lords. Accordingly next year the General Abolition Bill was brought in by Lord Howick (afterwards Earl Grey), and being passed by both houses, received the royal assent on the 25th of March, 1807. This Act prohibited slave-trading from and after the 1st of January, 1808; but as it only subjected offenders to pecuniary penalties, it was found that something more was required to put down a traffic the gains of which were so great as to cover all losses by capture. In 1810 the House of Commons, on the motion of Mr. Brougham, passed unanimously a resolution, pledging itself early next session effectually to prevent "such daring violations of the law;" and he next year carried a bill making slave-trading felony, punishable by fourteen years' transportation, or imprisonment with hard labour. In 1824 the laws relating to the slave-trade were consolidated, and it was further declared to be piracy, and punishable capitally, if committed within the Admiralty jurisdiction. In 1837 this was changed to transportation for life, by the acts diminishing the number of capital punishments. Since the Felony Act of 1811, the British colonies have entirely ceased to have any concern in this traffic. If any British subjects have engaged in it, or any British capital has been embarked in it, the offence has been committed in the foreign trade.

The Duke of Wellington, while ambassador at Paris, in 1814, used every effort to obtain from the restored Bourbon government a prohibition of the traffic in slaves; but the French West Indian interest and commercial jealousy of England frustrated all his attempts. The first French law abolishing the slave-trade was a decree issued by Napoleon on the 29th of March, 1815, during the Hundred Days, after his return from Elba. It prohibited any vessel from fitting out for the trade, either in the ports of France or in those of her colonies; and the introduction or sale in the French colonies of any negro obtained by the trade, whether carried on by French subjects or foreigners. The influence of Great Britain was again strenuously exerted at the peace in 1815, to obtain the concurrence of foreign powers in the abolition; and the object has been steadily kept in view by this country, and every opportunity of forwarding it taken advantage of, down to the present time. The consequence has been that now nearly all the powers in Europe and America have passed laws, or entered into treaties, prohibiting the traffic.

To the General Treaty signed by the representatives of Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, and Sweden, assembled in Congress at Vienna, on the 9th of June, 1815, was annexed, as having the same force as if textually inserted, a Declaration, signed at the same place by the Plenipotentiaries of certain of the powers, on the 8th of February preceding, to the following effect:—that, seeing several European governments had already, virtually, come to the resolution of putting a stop to the slave-trade, and that, successively, all the powers possessing colonies in different parts of the world had acknowledged, either by legislative acts, or by treaties or other formal engagements, the duty and necessity of abolishing it; and that by a separate article of the late treaty of Paris (30th May, 1814), Great Britain and France had engaged to unite their efforts at this Congress of Vienna to induce all the powers of Christendom to proclaim its universal and definitive abolition; the members of the Congress now declared, in the face of Europe, that they were animated with the sincere desire of concurring in the most prompt and effectual execution of this measure by all the means at their disposal. And this Declaration was renewed by the Plenipotentiaries of Austria, France, Great Bri-

tain, Prussia, and Russia, assembled in Congress at Verona, in resolutions adopted in a conference held on the 28th of November, 1822; in which, however, it is admitted that, "notwithstanding this declaration, and in spite of the legislative measures which have in consequence been adopted in various countries, and of the several treaties concluded since that period between the maritime powers, this commerce, solemnly proscribed, has continued to this very day; that it has gained in activity what it may have lost in extent; that it has even taken a still more odious character, and more dreadful from the nature of the means to which those who carry it on are compelled to have recourse."

The following will be found, we believe, to be a correct and complete list of the treaties and conventions for the suppression of the slave-trade that have been made by this country with other states since the general peace:—

In 1814, with France, by Additional Articles to the Definitive Treaty of Peace signed at Paris 30th May (engaging that the slave-trade should be abolished by the French government in the course of five years); and with the Netherlands, by treaty of London, 13th August. Its abolition had also been stipulated in the Treaty of Kiel, concluded with Denmark on the 14th of January.

In 1815, with France, by Additional Article to Definitive Treaty signed at Paris 20th November (by which the two powers, having each already, in their repective dominions, prohibited, without restriction, their colonies and subjects from taking any part whatever in the slave-trade, engage to renew their efforts, through their ministers at the courts of London and Paris, for its entire and definitive abolition); and with Portugal, by Treaty signed at Vienna 22nd January (referring to Treaty of Alliance concluded at Rio de Janeiro 19th February, 1810, in which the Prince Regent of Portugal had declared his determination to adopt the most efficacious means for bringing about a gradual abolition of the slave-trade; and making it now unlawful for any of the subjects of the crown of Portugal to purchase slaves, or to carry on the slave-trade, on any part of the coast of Africa to the northward of the equator).

In 1817, with Portugal, by Convention signed at London 28th July (prohibiting universally the carrying on of the slave-trade by Portuguese vessels bound for any port not in the dominions of his Most Faithful Majesty; and restricting it in other circumstances); with Portugal, by Separate Article, signed at London 11th September (referring to arrangements to be adopted "as soon as the total abolition of the slave-trade, for the subjects of the crown of Portugal, shall have taken place"); with Spain, by Treaty signed at Madrid 23rd September (by which his Catholic Majesty engages that the slave-trade shall be abolished throughout the entire dominions of Spain on the 30th of May, 1820, and that in the mean time it shall not be lawful for any of the subjects of the crown of Spain to purchase slaves, or to carry on the slave-trade, on any part of the coast of Africa to the north of the equator, or in vessels bound for any port not in the dominions of his Catholic Majesty; and by which the restrictions under which the trade may be carried on in other circumstances are specified); and with Radama, king of Madagascar and its dependencies, by Treaty signed at Tamatave 23rd October.

In 1818, with the Netherlands, by Treaty signed at the Hague 4th May (specifying restrictions under which the reciprocal right of visitation and search is to be exercised).

In 1820, with Madagascar, by Additional Articles signed at Tananarivoux 11th October.

In 1822, with Imaum of Muscat, by Treaty signed at Muscat 10th September; with Netherlands, by Explanatory and Additional Articles, signed at Brussels 31st December; and with Spain, by Explanatory Article signed at Madrid 10th December.

In 1823, with Netherlands, by Additional Article signed at Brussels 25th January; with Portugal, by Additional Articles signed at Lisbon 15th March; and with Madagascar, by Additional Articles signed at Tamatave 31st May.

In 1824, with Sweden, by Treaty of

Stockholm, 6th November (arranging reciprocal right of visitation by the ships of war of the two countries).

In 1826, with Brazil, by Treaty of Rio de Janeiro, 23rd November (renewing, on the separation of that empire from Portugal, the stipulations of the treaties subsisting with the latter power).

In 1831, with France, by Convention of Paris, 30th November (stipulating mutual right of search, within certain seas, by a number of ships of war to be fixed every year for each nation by special agreement).

In 1833, with France, by Supplementary Convention of Paris, 22nd March (further regulating the right of visitation by duly authorized cruisers).

In 1834, with Denmark, by Treaty of Copenhagen, 26th July (containing the accession of his Danish Majesty to the Conventions between Great Britain and France of 1831 and 1833); with Sardinia, by Treaty of Turin, 8th August (containing accession of that power to same conventions); and with Sardinia, by Additional Article, signed at Turin, 8th December (respecting place of landing of negroes found in vessels with Sardinian flag).

In 1835, with Spain, by Treaty of Madrid, 28th June (abolishing slave-trade on part of Spain henceforward, totally and finally, in all parts of the world; and regulating a reciprocal right of search); and with Sweden, by Additional Article to Treaty of 1824, signed at Stockholm 15th June.

In 1837, with Tuscany, by Convention signed at Florence 24th November, containing accession of the Grand Duke of Tuscany to French Conventions of 1831 and 1833); with Hanse Towns, by Convention signed at Hamburg 9th June (to same effect); and with Netherlands, by Additional Article to Treaty of 1818, signed at the Hague 7th February.

In 1838, with Kingdom of the Two Sicilies, by Convention signed at Naples 14th February (containing accession of his Sicilian Majesty to French Conventions of 1831 and 1833).

In 1839, with Republic of Venezuela, by Treaty signed at Caracas 15th March (abolishing for ever the traffic in slaves, so far as it consists in the conveyance of negroes from Africa; expressing the determination of Venezuela to preserve in force the provisions of a law passed in February, 1825, declaring Venezuelans found engaged in that trade to be pirates and punishable with death, and regulating a mutual right of visitation); with Chile, by Treaty signed at Santiago 19th January; with Uruguay, by Treaty signed at Montevideo 13th July; with Argentine Confederation, by Treaty signed at Buenos Ayres 24th May; and with Hayti, by Convention signed at Port-au-Prince 23rd December.

In 1840, with Bolivia, by Treaty signed at Sucre 25th September; and with Texas, by Treaty signed at London 16th November.

In 1841, with France, by Treaty signed at Paris 20th December, which however the French government afterwards refused to ratify; with Mexico, by Treaty signed at Mexico 24th February; and with Austria, Prussia, and Russia, by Treaty signed at London 20th December.

In 1842, with the United States of North America, by Treaty signed at Washington 9th August (stipulating that each party shall maintain on the coast of Africa a naval force, carrying in all not less than eighty guns, "to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the slave-trade; the said squadrons to be independent of each other," but "to act in concert and co-operation, upon mutual consultation, as exigencies may arise"); with the Argentine Republic; and with the Republic of Hayti.

In 1842, with Portugal, by Treaty signed at Lisbon 3rd July.

In 1845, with Brazil; and with France, by a Convention signed at London on the 29th of May (by which each power is to keep up an equal naval force on the western coast of Africa, and the right of visitation is to be exercised only by cruisers of the nation whose flag is carried by the suspected vessel).

The History of the Abolition is to be found in the work under that title by T. Clarkson (edition 1834), and the state of the law, as well as the treatment of slaves

practically in the colonies, is most fully treated of in a work on that subject by Mr. Stephen. The writings of the late Sir John Jeremie also contain much useful information on the condition of slavery in the British colonies just before the Emancipation Act. T. Clarkson's other works on the nature of the traffic, which first exposed it to the people of this country, were published in 1787.

The slave-trade was suppressed, but slavery continued to exist in the British colonies. In 1834 the British parliament passed an act by which slavery was abolished in all British colonies, and twenty millions sterling were voted as compensation money to the owners. This act (3 & 4 Wm. IV. c. 73) stands prominent in the history of our age. No other nation has imitated the example. The emancipated negroes in the British colonies were put on the footing of apprenticed labourers. By a subsequent act (1 Vic. c. 19) all apprenticeships were to cease after the 1st of August, 1840, but the day was anticipated in all the West Indian colonies by acts of the colonial legislatures. Slavery exists in the French, Dutch, Spanish, and Portuguese colonies, and in the southern states of the North American Union. The new republics of Spanish America, generally speaking, emancipated their slaves at the time of the revolution. As the slave population in general does not maintain its numbers by natural increase, and as plantations in America are extended, there is a demand for a fresh annual importation of slaves from Africa, which are taken to Brazil, Cuba, Puerto Rico, and Monte Video. In a recent work, 'The African Slave-Trade and its Remedy,' by Sir T. Fowell Buxton (who, after Mr. Wilberforce's retirement, took a most active part in parliament on the subject of slavery), it is calculated, apparently on sufficient data, that not less than 150,000 negro slaves are annually imported from Africa into the above-mentioned countries in contravention to the laws and the treaties existing between Great Britain and Spain and Portugal, the local authorities either winking at the practice or being unable to prevent it. Since the slave-trade has been declared to be illegal, the sufferings of the slaves on their passage across the Atlantic have been greatly increased, owing to its being necessary for masters of slave-traders to conceal their cargoes by cooping up the negroes in a small compass, and avoiding the British cruisers; they are often thrown overboard in a chace. There is a considerable loss of life incident to the seizing of slaves by force in the hunting excursions after negroes, and in the wars between the chieftains of the interior for the purpose of making captives. There is a loss on their march to the sea-coast; the loss in the middle passage is reckoned on an average at one-fourth of the cargo; and, besides this, there is a further loss, after landing, in what is called the "seasoning" of the slaves. The Portuguese and Brazilian flags have been openly used, with the connivance of the authorities, for carrying on the slave-trade. The Spanish flag has also been used, though less openly, and with greater caution, owing to the treaty between England and Spain which formally abolishes the slave-trade on the part of Spain. A mixed commission court of Spaniards and British exists at Havana to try slavers; but pretexts are never wanting to elude the provisions of the treaty. There seems indeed to be a great difficulty in obtaining the sincere co-operation of all Christian powers to put down the slave-trade effectually, although it is certain that in all but the Portuguese and Spanish settlements the traffic has now almost entirely ceased.

Besides the slave-trade on the Atlantic, there is another periodical exportation of slaves by caravans from Soudan to the Barbary states and Egypt, the annual number of which is variously estimated at between twenty and thirty thousand. There is also a trade carried on by the subjects of the Imaum of Muscat, who export slaves in Arab vessels from Zanzebar and other ports of the eastern coast of Africa, to Arabia, Persia, India, Java, and other places. In a despatch, dated Zanzebar, May, 1839, Captain Cogan estimates the slaves annually sold in that market to be 50,000. The Portuguese also export slaves from their settlements on the Mozambique coast, to Goa, Diu, and their other Indian possessions.

By a law of the Korán, which, however, is not always observed in all Mohammedan countries, no Mussulman is allowed to enslave one of his own faith. The Moslem negro kingdoms of Soudan supply the slave-trade at the expense of their pagan subjects or neighbours, whom they sell to the Moorish traders. Mohammedan powers will probably never suppress this trade of their own accord.

There is a considerable internal slave-trade in the United States of North America. Negroes are bred and sold in Maryland and Virginia, and some other of the slave-holding states, and carried to the more fertile lands of Alabama, Louisiana, and other southern states.

It is maintained by some that the African slave-trade cannot be effectually put down by force, and that the only chance of its ultimate suppression is by civilizing central Africa, by encouraging agricultural industry and legitimate branches of commerce, and at the same time spreading education and Christianity; and also by giving the protection of the British flag to those negroes who would avail themselves of it. It is certain that if other countries will not exert themselves, the abolition must be postponed to this remote period. The Africans sell men because they have no other means of procuring European commodities, and there seems no doubt that one result of the slave-trade is to keep central Africa in a state of barbarism.

The amount of the slave population now existing in America is not easily ascertained. By the census of 1835 Brazil contained 2,100,000 slaves. The slaves in Cuba, in 1826, were, according to Humboldt, about 260,000. In the United States the number of slaves was 2,487,355 by the census of 1840, which is 478,324 more than the number according to the census of 1830.

Societies for the ultimate and universal abolition of slavery exist in England, France, and the United States, and they publish their Reports; and a congress was held in London, June, 1840, of delegates from many countries to confer upon the means of effecting it. The American Society has formed a colony called Liberia, near Cape Mesurado, on the west coast of Africa, where negroes who have obtained their freedom in the United States are sent, if they are willing to go. The English government has a colony for a similar purpose at Sierra Leone, where negroes who have been seized on board slavers by English cruisers are settled.

SMALL DEBTS. [INSOLVENCY; REQUESTS, COURTS OF.]

SMUGGLING is the clandestine introduction of prohibited goods; or the illicit introduction of goods by the evasion of the legal duties. Excessive duties present a temptation to men to evade them; and the law loses a great part of its moral influence when it first tempts to violation of it and then punishes the offence. In parts of a country where a "free trade" is extensively carried on, the smuggler is rather a popular person than otherwise; in some countries, as in Spain, still more than in England. His neighbours do not usually regard his mode of acquiring a livelihood disgraceful, but rather look upon him as a benefactor who supplies them with necessaries and luxuries at a cheap rate. "To pretend," says Adam Smith, "to have any scruple about buying smuggled goods would in most countries be regarded as one of those pedantic pieces of hypocrisy which, instead of gaining credit with anybody, serve only to expose the person who pretends to practise them to the suspicion of being a greater knave than the rest of his neighbours." This is probably rather too strongly expressed; but many persons even attach a fictitious value to goods which have been smuggled, on account of their cheapness and supposed excellence; and indeed articles which have duly passed through the custom-house are frequently offered for sale as contraband. It is the crimes and the moral evils which are the offspring of smuggling that are to be dreaded rather than smuggling itself. The true remedy is a wise tariff. It annihilates a traffic which no ingenuity can ever put down; for all experience proves that so long as a profit can be made by smuggling sufficiently high to counterbalance the necessary risk, it will not fail to flourish. The decrees of Berlin and Milan, instead of annihilating commerce, only forced it

into extraordinary channels. Silk from Italy, for example, instead of being received in England by the most direct means, often arrived by way of Archangel and Smyrna; in the former instance being two years, and in the latter twelve months on its passage. The slave-trade is another instance of the impossibility of putting a stop to any traffic which is a source of great profit. The slave-traders of the Havanna gave from 35 to 40 per cent. as a premium of insurance on their African risks; but at this rate the assurance companies did not realise a profit, though they sustained no serious loss. This proves that nearly two out of every three adventurers are successful; and as one out of three would at least have covered all loss, the difference makes a profit of at least cent. per cent. to the slave-dealer. Until this profit be reduced, the slave-trade cannot be effectually suppressed. (Turnbull's *Cuba*, 1840.) Whenever duties exceed 30 per cent. ad valorem, it is impossible to prevent a contraband trade.

We have only to examine the tariff of any country to know if smuggling is practised; and if a bad system of commercial policy has been long pursued, there the smuggler will be found. The *contrabandista* of Spain figures in novels and tales of adventure. In no country is the illicit trade so general and extensive. The exports to Gibraltar from England considerably exceed a million sterling per annum, and a very large proportion of British goods is introduced by smugglers into the interior. Mr. Porter states (*Progress of the Nation*, ii. 111) that nearly the whole of the tobacco imported into Gibraltar, amounting to from 6 to 8 million lbs. per annum, is subsequently smuggled into Spain, where the article is one of the royal monopolies. On the French frontier the illicit trade is equally active.

The vicinity of France and England, and the injudicious character of their respective tariffs, have encouraged smuggling to a large extent on both sides of the Channel. Spirits, tea, tobacco, and silk goods, and more particularly brandy, from the high duties imposed on it in this country, have constituted the most important articles of smuggling from France to England. The total amount of duties evaded in 1831 by the smuggling of French goods into the United Kingdom was estimated to exceed 800,000*l.*, exclusive of tobacco, "whole cargoes of which are sometimes introduced from the French bonding warehouses into Ireland." (*Report on the Commercial Relations between France and England*, by Mr. Poulett Thomson (late Lord Sydenham) and Dr. Bowring.) English goods are also largely smuggled into France. The extensive land frontier of France, and the offices for collecting the *octroi* duties in inland towns, give rise to some peculiarities in the smuggling-trade in France. It is not sufficient to land merchandise on the coast, as in England, but it has to pass the local custom-houses at the barriers of the large towns. This adds greatly to the difficulty and expenses of smuggling. It is stated that in 1831 the premium on landing English woollens on the French coast was 55 per cent.; at the barriers of Paris 63 per cent.; and within the walls 10 per cent. additional; making in all 73 per cent.; the premium on cotton goods being 65 per cent. English goods are chiefly introduced by the Belgian frontier, and the smugglers have their depôts at Cambray, St. Quentin, Ypres, Tournay, Mons, and other towns in the adjacent departments. In the Report of 1831, already quoted, it is stated that in that year the amount of British goods smuggled into France by this frontier exceeded 2,000,000*l.* in value; but if the ports on the Channel were included (of which no estimate is given), this amount would be greatly increased. Cotton-twist is the most important article in the illicit trade. Cotton-yarns, when once lodged in the manufacturer's warehouse, cannot be seized, and in consequence of the article being essential to the progress of manufacturing industry in France, the government, instead of reducing the duty, in some degree connives at its illicit introduction.

The nature of the frontier by which a country is bounded necessarily exercises considerable influence on the character of its tariff. It would, for example, be nearly impossible to prevent the smug-

gling of British goods into the United States on the Canadian frontier, if the duties on importation were excessive.'

In 1822 the cost of preventing smuggling in England was enormous. The Preventive Service and the Coast Blockade were organized for this purpose, and were aided by a fleet of fifty-two revenue cruisers. In 1822 and 1823 there were captured on the English coast 52 vessels and 385 boats engaged in smuggling. For the half-year ending April, 1823, the cost of this department of the public service amounted to 227,145*l.*, and the seizures were valued at 67,000*l.* The Coast Blockade consisted of 1500 officers and seamen of the royal navy, who were employed on shore under the orders of the Admiralty; and the Coast Guard was under the authority of the Board of Customs. In 1832 upwards of 181,000*l.* had been expended in building cottages for the officers and men of the Coast Guard in Kent and Sussex. Lord Congleton estimated the total annual cost of protecting the revenue in 1831 at from 700,000*l.* to 800,000*l.*

For several years frequent conflicts took place between the officers of the revenue and smugglers, who were generally aided by the country-people. In 1830 there were 116 persons under confinement in England, and 64 serving in the navy as a penalty for smuggling offences. The counties on the Scottish border were at one period rapidly becoming demoralized by smuggling, the duties on spirits being much higher in England than in Scotland. In two years 163 informations were laid in the counties of Northumberland and Cumberland for smuggling spirits. The duties being reduced more nearly to an equality, these evils ceased on the border; and the quantity of spirits charged with duty in Scotland rose from 2½ million gallons in 1822, to nearly six million gallons in 1825. The reduction of the duties on silks, tea, and other articles, has done more to repress smuggling than all the efforts of the revenue officers aided by a large armed force. In 1841 the number of persons under confinement in England for offences against the Customs laws was 65, all for periods under six months, with two exceptions; in Ireland there were none under confinement.

The direct cost incurred for the protection of the Customs revenue was as follows in 1840:—Harbour vessels, 7250*l.*; Cruisers, 118,543*l.*; Preventive Water-Guard, 349,474*l.*; Land Guard, 19,662*l.*: total, 494,930*l.* The Board of Excise employs cruisers for the protection of the revenue collected under its authority, the cost of which amounted to 5458*l.* in 1840; and also a force in Ireland called the Revenue Police, whose maintenance in the above year cost 42,095*l.* The total charge for collecting and protecting the Customs and Excise revenues of the United Kingdom was 2,309,611*l.*; namely, 1,286,353*l.*, or 5*l.* 8*s.* 8¾*d.* per cent., for the Customs; and 1,023,258*l.*, or 6*l.* 10*s.* 11¼*d.* per cent., for the Excise. In 1835 the number of persons employed in the department of the Customs was 11,600; and in the Excise 6072. The present Acts relating to smuggling are 3 & 4 Wm. IV. c. 53, and 4 & 5 Wm. IV. c. 13.

SOCCAGE (more correctly *socage*) in its original signification, according to Bracton, Littleton, and others, is service rendered by a tenant to his lord by the soc (soke) or ploughshare. The term was afterwards extended to all services rendered which were of an ignoble or non-military character, and were fixed in their nature and quality. The certainty of the services to be rendered distinguished socage tenure from tenure in chivalry, or by knight's service, on the one hand, and from tenure in pure villenage by arbitrary service, on the other; and therefore Littleton says, § 118, "A man may hold of his lord by fealty [FEALTY] only; and such tenure is a tenure in socage; for every tenure which is not a tenure in chivalry is a tenure in socage."

Socage is said by old writers to be of three kinds: socage in frank tenure; socage in antient tenure; and socage in base tenure. (*Old Tenures*, 125, 126; *Old Natura Brevium*, title *Garde*.) The second and third kinds are now called respectively tenure in antient demesne and copyhold tenure. The first kind is called free and common socage, to distinguish it from the two others, though as the term

socage has long ceased to be applied to the two latter, socage and free and common socage now mean one and the same thing.

Besides fealty, which the tenant in socage, like every other tenant, is bound to do when required, the tenant in socage, or, as he was formerly called, the socager or sockman, is bound to give his attendance at his lord's court-baron, if the lord holds a court-baron either for a manor [MANOR] or for a seigniory in gross. A tenant in socage may hold by fealty only (Littleton, § 130), for fealty is a service. If the tenant in socage holds by fealty and certain rent to pay yearly, &c., the lord shall have of the heir of his tenant as much as the rent amounts unto which he payeth yearly. This payment on the death of a tenant is a relief. Many of these rents are of little value, as a pound of pepper, a number of capons or hens, or a pair of gloves (Littleton, § 128).

Both forfeiture and escheat are incident to tenure in socage, as they were also to tenure by knight's service. [ESCHEAT.] In that species of socage tenure which is called gavelkind [GAVELKIND] there is no forfeiture.

Wardship is also incident to this tenure. But this incident is not, as formerly in knight's service, a benefit given to the lord, but a burthen imposed on the infant's next friend of full age, who must however be a person not capable of inheriting the estate upon his young kinsman's death.

By the mutual consent of lord and tenant, socage tenure might have been converted into tenure by knight's service, or tenure by knight's service into tenure in socage. It sometimes happened that the tenant held by knight's service of a lord who held in socage; and, more frequently, that a tenant held in socage of a lord who held by knight's service.

In particular districts some of the incidents of tenure by knight's service were by custom annexed to the tenure in socage. Thus in the diocese of Winchester the lord claimed the wardship and marriage of his socagers.

Before the abolition of feudal burthens by the Commonwealth, confirmed upon the Restoration by 12 Car. II. c. 24, tenants in socage were bound to pay 20*s.* upon every 20*l.* of annual value, as an aid for making the lord's son a knight, and the same for marrying the lord's eldest daughter. This tenure was also subject to the payment of fines upon alienations.

By the above statute, the provisions of which were extended to Ireland by the Irish act of 14 & 15 Car. II. c. 19, tenure by knight's service was abolished, and all lands, with the exception of ecclesiastical lands held in free alms [FRANK-ALMOIGNE], were directed to be held in free and common socage, which, with the limited exception in favour of lands held in frankalmoigne, is now the universal tenure of real property throughout England and Ireland, and those colonies which have been settled by the English.

It is true that a large portion of the soil of all those countries is held by leaseholders, and in England also by copyholders; but the freehold of the land held by leaseholders and copyholders is in their lords or lessors, who hold that freehold by socage tenures. (On socage tenures, see Coke on Littleton, § 117, &c., and the notes in Butler's edition.)

SOCIAL CONTRACT, OR ORIGINAL CONTRACT. Blackstone (*Com.* i. p. 48) writes as follows:—"Though Society had not its formal beginning from any convention of individuals actuated by their wants and fears, yet it is the *sense* of their weakness and imperfection that *keeps* mankind together, that demonstrates the necessity of this union, and that therefore is the solid and natural foundation as well as the cement of civil society. And this is what we mean by the original contract of society; which though perhaps in no instance it has ever been formally expressed at the first institution of a state, yet in nature and reason must always be understood and applied in the very act of associating together—namely, that the whole should protect its parts, and that every part should pay obedience to the will of the whole; or in other words, that the community should guard the rights of each individual member, and that, in return for this protection, each individual should submit to the laws of the community; without which submission of all it were

impossible that protection could be certainly extended to any." Blackstone in a previous passage denies "that there ever was a time when there was no such thing as society, either natural or civil;" and in the passage just quoted he denies that it "had its formal beginning from any convention of individuals." The necessity of the "union" is demonstrated from the sense of weakness and imperfection which keeps mankind together: and *this* (it is not exactly clear what) is what he means by the original contract, which he further proceeds to tell us, "perhaps in no instance has ever been formally expressed." Bentham, in his 'Fragment on Government' (chap. i.), has in a very amusing manner exposed the absurdities and contradictions which characterise Blackstone's chapter 'Of the Nature of Laws in General.'

Locke's doctrine is more distinctly expressed (*Essay on Civil Government*, ch. 8, 'Of the beginning of Political Societies'). He says that "men being by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent." By *can* he does not mean to say that it may not happen that one man shall be subjected to the political power of another, but that he cannot properly or justly be subjected without his consent; which appears from what follows:—"Whosoever therefore out of a state of nature unite into a community must be understood to give up all the power necessary to the ends for which they unite in society, to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is or needs be between the individuals that enter into or make up a commonwealth. And thus that which begins and actually constitutes any political society, is nothing but the consent of any number of free men capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world." This doctrine is open to obvious objection. The conclusion as to the origin of "*lawful* government" by implication contains the notion that some governments are not lawful, whereas all men must and do admit that all governments which can maintain themselves are governments, and the term lawful is not applicable to that power which can declare what is lawful. The two objections which Locke mentions as being made to the theory are, 1—"That there are no instances to be found in story of a company of men independent and equal one amongst another, that met together, and in this way began and set up a government." 2. That "it is impossible of right that men should do so, because all men being born under government, they are to submit to that, and are not at liberty to begin a new one." Locke replies to both objections with considerable ingenuity, but there are few political writers at present who will be inclined to consider his answer conclusive.

Hume, in his 'Essay on the Original Contract,' admits that "the people, if we trace government to its first origin in the woods and deserts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty, and received laws from their equal and companion. The conditions upon which they were willing to submit were either expressed or were so clear and obvious that it might well be esteemed superfluous to express them. If this, then, be meant by the original contract, it cannot be denied that all government is at first founded on a contract, and that the most antient rude combinations of mankind were formed entirely by that principle." And yet he adds, "in vain are we sent to seek for this charter of our liberties—it preceded the use of writing and all the other civilised arts of life." Consequently we cannot trace "government to its first origin," and therefore we cannot tell how Government originated. But we do know, as Hume shows, that all governments of which we can trace the origin have been founded in some other way than by an original contract among all the members who are included in them. Hume further says, "that if the agreement by which savage men first associated and

conjoined their force be meant (by the term Original Contract), this is acknowledged to be real; but being so antient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would say anything to the purpose, we must assert that every particular government which is lawful, and which imposes any duty of allegiance on the subject, was at first founded on consent and a voluntary compact." This is the real question. Those who found what they very incorrectly term "lawful government" on *an* original contract, must show us the contract. So far Hume's objection is good, and whether there was *an* original contract or not is immaterial. The question is, what was the origin of any particular government? Those who maintain that any particular government originated in a contract of all the persons who, at the time of the formation of the government, were included in it, cannot prove their case. Those who deny the original contract can show that many particular governments have originated "without any pretence of a fair consent or voluntary subjection of the people."

But an original contract, such as Hume admits, is as far removed from the possibility of proof as the origin of any particular government by virtue of a contract; nor have we any record of savage men associating to form a government. If one set of savage men did this, others would do it, and there must have been many original contracts, which contracts are the remote origin of all particular governments; but inasmuch as that origin of any particular government, which we do know, was not made by contract, and did not recognise the original contract, such government is unlawful, as those who contend for the theory of an original contract would affirm, or ought to affirm, if they would be consistent. Thus the practical consequences of the doctrine of an original contract, if we rigorously follow them out, are almost as mischievous as the doctrine that every particular government was founded on an original contract. It is true that the theory of an original contract of savage people being the foundation of government is a mere harmless absurdity, when at the same time we deny that any particular government has so originated, provided we admit that such particular government is not to be resisted simply because it is not founded on contract. Those who maintain that all existing governments rest on no other foundation than a contract, affirm that all men are still born equal—that they owe no allegiance to a power or government, unless they are bound by a promise—that they give up their natural liberty for some advantage—that the sovereign promises him these advantages, and if he fails in the execution, he has broken the articles of engagement, and has freed his subjects from all obligations to allegiance. "Such, according to these philosophers, is the foundation of authority in every government; and such is the right of resistance possessed by the subject" (Hume). This is a good exposition of the consequences that follow from the theory of every government being founded on contract.

Governments, as we now see them, exist in various forms, and they exist by virtue of their power to maintain themselves. This power may be mere force in the government and fear in the governed. Combined with the power of the government there may be the opinion of a majority in favour of the government, or of a number sufficiently large and united to control the rest; and this opinion may be founded either on the advantage which such number or majority conceive that they derive from the actual form of government, or the advantage which they and all the rest are supposed to derive from such government. The opinion of a considerable number may be strong enough to overthrow a government or to maintain it, but in either case it is not the opinion of all.

The real origin of government lies in the constitution of man's nature. Man is a social animal, and cannot exist out of society. He is of necessity born in a society, that is, a family, the smallest element to which we can reduce a state. He who requires not to live in a society, says Aristotle, must be a beast or a god (*Politik*, i. 2). The nature of man com-

pels him to seek union with the other sex. A man by himself is not a complete being: by the constitution of their nature man and woman must unite; and this is the foundation of a family. Those who accept the Mosaic account of the creation have there a clear statement of the origin of a family; and the father's authority is as much in accordance with the constitution of our nature as the union of the father and the mother. The various modes in which the descendants of a common pair might be detached from their primitive seats are infinite; and the modes in which they might be formed into political societies are infinite also. But if we have no account of them, it is useless to speculate what the precise modes may have been. Man, says Aristotle, is by nature a political animal; and by his nature he has an impulse to political union. He therefore follows the law of his nature by living in political society, as much as he obeys it by uniting himself with a woman. The form of any particular government, and the mode in which it may have been established, are the accidents, not the essentials, of political union, the real foundation of which is in our nature. But inasmuch as every community exists for some good end (Aristotle), we estimate the value of any particular government by its fitness for this end, and the accidents of its form are subordinate to that for which pursuant to its nature it exists. Its origin may in many cases have been as obscure, and as little perceived, as the origin of those customs which exist in such endless variety in the world. Nobody supposes that customs originated in universal consent, or that people who follow them, or at least the majority who follow them, ever consider why they follow them. He who can trace the origin of customs can trace the origin of government.

The theory of men living in a state of nature and thence proceeding to form political societies has apparently derived some countenance from the condition of many savages. There are perhaps people who may be said to have no government, if it be true that among some savages there is no bond of union except that of families. If this is so, each family is ruled by its head, like the families of the Cyclops (Aristotle, *Politik.* i. 1), so long as the head can maintain his dominion. This state, if it exists anywhere, is perhaps what some people call a state of nature; but it is in fact a very imperfect state of nature, for the perfect state of nature is a political society, because it is that state to which the nature of our constitution impels us as the best. The savage in his lowest condition bears the same relation to the man who is a member of a political body that the man who has not his senses bears to the man who has his full understanding. Both the savage and the idiot are imperfect men: they are the deviations from the course of nature.

SOCIETIES, ASSOCIATIONS. The great increase of Societies or Associations for all kinds of purposes is characteristic of the present condition of Europeans in Europe and of Europeans who have settled in other parts of the world. Association for particular objects is analogous to the great associations of political societies, but with this difference, that their object is something particular, and that they are really established and exist by the consent of the individuals who compose them. [SOCIAL CONTRACT.]

Societies have been formed and exist for nearly every variety of object. There are societies for objects scientific and literary, sometimes called academies; for objects religious and moral; and for objects which are directly material, but in their results are generally beneficial to the whole of mankind. There are societies for objects which the members consider useful, but which other people consider to be mischievous. Generally, in this country, it may be stated that any number of individuals are permitted to contribute their money and their personal exertions for any object which is not expressly forbidden by some statute, or which would not be declared illegal by some court of justice, if the legality of such association came in question before it. The objects for which persons may and do associate are accordingly as numerous as the objects which individuals may design to accomplish, but cannot accomplish without uniting their efforts.

In some cases the State has aided in the formation of such associations, and has given them greater security for carrying their purposes into effect, as in the case of savings' banks and friendly societies. Sometimes the State grants a charter of incorporation to associations, which in many respects enables the body to transact its matters of business more conveniently. Sometimes the State perceives that it can extract some revenue from persons who associate for particular purposes, as in the case of fire-insurance offices, for all persons who insure their property in them (except farming stock, &c.) must pay the state 200 per cent. on the sum which they pay to secure their property against the accidents of fire. [INSURANCE, FIRE.] If a man should think it prudent to invest a part of his annual savings in a life insurance, the state makes him pay a tax on the policy. A great many associations of individuals for benevolent, scientific, and such like purposes are left to direct their associations according to the common principles of law.

If lists were made of all the associations in Great Britain and Ireland, including those which are purely commercial, with an account of their objects, income, and applications of income, we should have the evidence of an amount of activity and combination that was never equalled before. How far it might be prudent to give to all associations for lawful purposes greater facilities for the management of their property and the making of contracts, subject to certain regulations as to registration of their rules and approval of their objects, is a matter well deserving of the attention of the legislature.

SOLDIER is a term applied to every man employed in the military service of a prince or state, but it was at first given to such persons only as were expressly engaged for pay, to follow some chief in his warlike expeditions. Cæsar mentions a band of 600 men called "soldurii," who bound themselves to attend their leader in action and to live or die with him (*De Bello Gallico*, iii. 22), but it does not appear that they served for pay. By some the word has been thought to come from "solidus," the name of a coin under the Roman empire, which may have been received as the payment for the service.

In the article ARMY, a sketch is given of the origin of standing armies in Europe and in England. The present article treats of the condition of the English soldier in modern times. Little change seems to have taken place in the pay of the English soldiers between the times of Edward III. and Mary. During the reign of this queen the daily pay of a captain of heavy cavalry was 10*s.*, and of a cavalry soldier 1*s.* 6*d.* The pay of a captain of light cavalry was 6*s.*, and of a soldier 1*s.* The pay of a captain of foot was 4*s.*, of a lieutenant 2*s.*, of an ensign 1*s.*, and of a foot soldier 8*d.*; a halbardier and a hackbutter, on horseback, had each 1*s.* daily. In the times of Elizabeth, James I., and Charles I., the pay of the officers was a little raised, but that of a private foot-soldier was still 8*d.* per day: during the civil wars the pay of the latter was 9*d.*, but in the reign of William III. it was again reduced to 8*d.* At that time the pay of a private trooper was 2*s.* 6*d.*, and that of a private dragoon was 1*s.* 6*d.*, including in both cases the allowance for the horse. The pay of the private soldier in later times has by no means been raised in the inverse ratio of the value of money.

While armour was in general use, the common soldiers of England were distinguished only by scarfs or by badges, on which were impressed the arms of their several leaders; but in the reign of Henry VIII. something like a uniform was worn, and it appears that the colour of the men's upper garments was then generally white; the soldiers in the king's particular service only, had on their coats a representation of the cross of St. George. However, on an army being raised in 1544, the soldiers were ordered to wear coats of blue cloth bordered with red. White cloaks marked with red crosses continued to be the uniform of the troops during the reign of Queen Mary; but in the time of Elizabeth the infantry soldiers wore a cassock and long trowsers, both of which were of Kentish grey: the cavalry were furnished with red cloaks reaching down to the knee and without sleeves. Grey coats, with breeches of the same colour,

continued to be the uniform as late as the end of the reign of William III., but soon after that time red became the general colour for the coats of the British infantry soldiers.

The low condition of the first soldiers in France has been mentioned in the article INFANTRY: with respect to those of England in the times of Henry VIII. and Edward VI., we have a more favourable account; for Sir John Smithe, in the preface to his tract on 'Military Instruction' (1591), observes that the order and discipline in the armies during the reigns of those kings were so good, that the men, on being discharged, were never seen to become rogues or to go begging under pretence that they had been soldiers, as, he observes, they now most commonly do. In the preface to his 'Discourses on the Forms and Effects of Weapons' (1590) he complains that, in his time, the commanders of troops serving abroad, instead of publishing regulations for the conduct of the men, gave a few laws artfully tending to deter the soldiers from demanding their pay, but in no way prohibiting them from plundering the people of the country: he adds that they esteemed those soldiers to be the best who, by robbery, could live longest without pay. He complains also that while the commanders were gallant in appearance, and had their purses full of gold, the soldiers were without armour, ragged, and barefooted; and that when money was to be received, they used to send the men on desperate enterprises, in order that they might obtain the pay of those who were killed. He adds, that in the summer before the Earl of Leicester went over (to Holland) the commanders devised a manner of paying the soldiers which had never before been heard of; instead of money, the men were paid in *provand*, under pretence that they knew not how to make purchases; by which means, the food supplied being of an inferior kind, great part of the soldiers' pay was put in their own pockets. It appears that Queen Elizabeth, on being informed of these abuses, caused the practice of paying in provand to be abolished. But subsequently, even in the time of George I., the pay both of officers and private soldiers was frequently postponed for years, and was sometimes entirely withheld. Such injustice no longer exists in the British army: the pay of the soldier is assured to him by the nation; and a well-appointed commissariat provides, as far as possible, for his wants while in the field.

Till lately the condition of a private soldier, both in this country and on the Continent, was unfavourable for inspiring a love of the service. Obliged to be furnished with good clothing and to preserve a becoming appearance, that which remained of his scanty pay scarcely sufficed for procuring the food necessary for his support. In his barracks he was subject to numerous petty details of duty, which produced weariness and disgust; and, at all times, to the restraints of discipline, which deprived him of the recreations enjoyed by other men. The soldier also had often the mortification to find himself despised for his poverty by persons with whom men of his condition are accustomed to associate. These disadvantages are now however in a great measure removed; and the pay of the soldier suffices to afford him the means of obtaining the comforts of life in a degree at least equal to those which are enjoyed by an ordinary peasant or mechanic. With the improvement of his condition, a corresponding improvement in the character of the soldiers has taken place: men of steady habits are induced to enlist, and officers are enabled to select the best among those persons who present themselves as recruits.

The duties of the soldier are now rendered as little burthensome as is consistent with the good of the service; and the army regulations prescribe that he shall at all times be treated with mildness and humanity: even the non-commissioned officers are required to use patience and forbearance in instructing the recruits in their military exercises. When breaches of discipline on the part of the soldier oblige a commander to order the infliction of punishment, attention is paid as much as possible to render it a means of promoting a reformation of character: the lash is now very sparingly used. Wherever a regiment is quartered there is established for the soldiers a school, which

the men are obliged, as part of their duty, to attend, and which is generally furnished with a library for their use. The library and school are formed and supported by the subscriptions of the officers, and both have been found to contribute greatly to the preservation of sobriety and good conduct among the men.

In time of peace the soldier, being surrounded by the members of civil society, must, like them, conform to the law; and, being under the influence of public opinion, he is, unconsciously to himself, held in obedience by it; so that no extraordinary coercion is necessary to keep him within the bounds of civil or military law. But in the colonies the soldier, even though he be serving in a time of peace, has many temptations to fall into a neglect or breach of discipline: he is far removed from the friends of his early life, who may have exercised upon his mind a moral influence for good: he sees around him only the conduct, too frequently licentious, of the lower orders of people in the country where he is stationed; and he may not possess the principles which should have been implanted in his mind by a sound education. The probability of a return to his native land before many years have passed is small, and the diseases to which he is exposed from the unhealthiness of the climate frequently terminate fatally: hence he becomes reckless from despair, and the facilities with which wine or spirituous liquors may often be obtained lead him into excesses which, while they accelerate the ruin of his health and render him unfit for duty, cause him to commit offences both against discipline and morals. Thus in the colonies there arises a necessity for greater restraints on the freedom of the soldier, and for the infliction of heavier punishments than are required at home. (Major-Gen. Sir Chas. Napier, *Remarks on Military Law.*) In time of war and on foreign service a vigorous discipline is necessary: the privations to which soldiers are then exposed strongly induce those who are not thoroughly imbued with moral and religious principles to plunder the country-people, in order to supply their immediate wants, or to drown the sense of their sufferings in liquor. It ought also to be observed that, in war-time, many turbulent spirits are induced to enter the army in the hope of enjoying the licence which the military life abroad appears to hold out. These men are the ringleaders in all excesses, and they frequently cause many of those who are weak in principle to join them; in such cases therefore the most severe measures must be immediately applied, if discipline is to be preserved in the army. The efforts made by the British commanders, during the war against the French in Spain, to maintain order, and prevent the people of the country from being injured, were great and praiseworthy. Perhaps fewer crimes were committed by the British troops than by those of their allies or their enemies; but still there were many occasions in which the national character was disgraced by the misconduct of the soldiery.

SOLICITOR. [ATTORNEY.]

SOVEREIGNTY. *Supranus* is a low Latin word, formed from *supra*, like *subtranus*, another low Latin word, formed from *subtra*. (Ducange *in vv.*) These words however, though they do not belong to classical Latinity, are formed according to the same analogy as the classical word *supernus* from *super*. From *supranus* have been derived the Italian *soprano* or *sovrano*, and the French *souverain*, from the latter of which has been borrowed the English word *sovereign*. In the old English writers the word is correctly spelt *soverain* or *soverein* (Richardson *in v.*); the received orthography seems to be founded on the erroneous supposition that the last syllable of the word is connected with *reign*, *regnum*. Milton spells the word *sovran*, deriving it from the Italian; but it passed into our language from the French.

Having explained the etymology of the word *sovereign*, and its derivative, *sovereignty*, we proceed to consider the meaning of the term sovereignty as it is understood by political and juridical writers.

In every society not being in a state of nature or a state of anarchy [ANARCHY], some person or persons must possess the supreme or *sovereign* power.

The marks by which the possession of the sovereign power may be distinguished are mainly two, the one positive and the other negative; viz.:

1. A habit of obedience to some determinate person or persons, by the community which he or they assume to govern.

2. The absence of a habit of obedience, on the part of the same person or persons, to any person or government.

Whenever these two marks meet in any person or body of persons, such person or body possesses the sovereign power; on the other hand, if either of the two marks be wanting, the person or body is not sovereign. For example, the local government of Jamaica or Canada, being in the habit of obeying the English parliament, is not a sovereign or supreme government; whereas the government of Tuscany, or the States of the Church, although it may occasionally defer to the wishes of Austria, is not in a habit of obedience to that or any other state, and therefore is a sovereign government. Again, a body of persons calling themselves a government, but unable through their weakness to secure the habitual obedience of the people, are not sovereign, and would not be recognised as a sovereign government by foreign states.

Inasmuch as it is impossible to fix the precise moment at which a habit of obedience to a foreign government ceases, it is difficult for foreign states to determine when they will recognise the sovereignty of a territory, once dependent, which has achieved its independence.

The sovereign powers include all the powers which can be exercised by a government. They include the legislative power, the executive power, the power of making *privilegia* [LAW; LEGISLATION], the power of declaring peace and war, and of concluding treaties with foreign states, the power of making contracts with private individuals, and the power of instituting inquiries.

The sovereign power is unlimited by any legal check or control. The securities for its beneficial exercise are derived exclusively from the balance of interests and the influence of public opinion.

Sovereign or supreme governments are divided into MONARCHIES and REPUBLICS; and REPUBLICS are divided into ARISTOCRACIES and DEMOCRACIES.

It is commonly, but erroneously, thought that the sovereignty resides in every person who bears the name of *king;* in other words, that every king is a monarch. Accordingly those kingdoms in which the king is not strictly a monarch are called "limited monarchies;" and the king is supposed to be a sovereign whose power is checked or controlled by certain popular bodies; whereas, in truth, the sovereignty is divided between the king and the popular body, and the former does not possess the entire sovereignty. This subject is further explained in MONARCHY and ROYALTY.

A sovereign government may cease to exist as such by becoming a subordinate government (as was, for example, the case with the governments of the islands of the Ægean, conquered by Athens, and the governments of the states which became Roman provinces), or by its dissolution, in consequence of a successful rebellion of its own subjects, or any other cause.

The subject of sovereignty will be found best explained in Mr. Austin's 'Province of Jurisprudence determined.' The received doctrines upon the subject will likewise be found in the treatises on international law. The *Leviathan* of Hobbes contains a very correct view of the nature of sovereignty, which has been often misunderstood and misrepresented by later writers.

SPEAKER. [PARLIAMENT.]

SPECIALTY, SPECIALTY DEBT, or debt by special contract, is a debt which becomes due or is acknowledged to be due by an instrument under seal. [DEED, p. 730.]

The nature of a debt by simple contract is explained under SIMPLE CONTRACT.

Blackstone (ii. 464) considers a debt of record, that is, a debt which appears to be due by the judgment of a court of record, as a "contract of the highest nature, being established by the sentence of a court of

judicature." This is, however, an erroneous view of the matter. It is simply a rule of law that a debt, for which the judgment of a court of record has been obtained, has a priority over other debts.

SPECIFICATION. [PATENT.]

SPIRITS. [WINE AND SPIRITS.]

SPY. In the discussion of this and many other questions of international law, the terms Right, Law, Lawful, and others of the same class, must be understood in a different sense from their proper technical meaning. What writers on International Law speak of as a Right is very often merely what appears fair, reasonable, or expedient to be done, or to be permitted. It is this reasonableness or expediency alone which is the foundation of those various usages which are recognised by independent civilized nations in their intercourse one among another, and constitute what is called the Law of Nations. Thus a person or a power is said to have a right according to the Law of Nations, which means that the usage of civilized nations permits the act, and this is the least objectionable sense in which the word Right is used. But when writers use the word Right merely in the sense of what is expedient, without reference to its being the foundation of a recognised usage, they are confounding the reason or foundation of a usage with the usage itself.

No doubt, we believe, has ever been intimated by any writer of authority on International Law, as to the right of nations at war with each other to avail themselves of the service of spies in carrying on their hostile operations. "Spies, whom it is, without doubt, permitted by the law of nations to employ; Moses made use of such, and Joshua himself acted in that capacity." This is the expression of Grotius in the only passage in which he touches on the subject (*Bell. et Pac.* iii. 4, 818, par. 3). Vattel says: —"If those whom he (a general) employs make a voluntary tender of their services, or if they be neither subject to nor in any wise connected with the enemy, he may unquestionably take advantage of their exertions without any violation of justice or honour" (*Le Droit des Gens*, iii. 10, § 179, in the common English translation as edited by Chitty, 8vo., London, 1834).

But it is generally held that the right can only be exercised under limitations of various kinds.

First, as to the right of the general, or of the sovereign for whom he acts, to compel any one subject to his authority to serve as a spy. Grotius, in the passage to which we have referred, admits that spies when caught are wont to be treated with extreme severity; and he adds, that this is sometimes done justly by those who have a manifestly just cause of war—by others, in the licence which the law of war tolerates (licentia illa quam dat belli jus); a useless distinction, upon which no practical rule can be founded. In fact, as Grotius himself notices, the custom is, when a spy is caught, to put him to death. Vattel attempts to assign the reason for this severity: "Spies," he says, "are generally condemned to capital punishment, and with great justice, since we have scarcely any other means of guarding against the mischief they may do us." A man of honour, Vattel proceeds to observe, always declines serving as a spy, as well as from his reluctance to expose himself to this chance of an ignominious death, as because, moreover, the office cannot be performed without some degree of treachery: "the sovereign, therefore, has no right to require such a service of his subjects, unless perhaps in some singular case, and that of the highest importance." Such loose exceptions as that here stated abound in the writers on International Law, and detract very much from the practical value as well as from the scientific character of their speculations. In ordinary cases, Vattel therefore decides, the general must be left to procure spies in the best way he can, by tempting mercenary souls by rewards.

Secondly, the employment of spies is conceived to be subject to certain limitations in respect to the manner of it and the object attempted to be gained by it. 'We may lawfully endeavour," says Vattel, "to weaken the enemy by all possible means, provided they do not affect the common safety of human society, as do poison and assassination." Accordingly, the proper business of a spy is merely to

obtain intelligence, and such secret emissaries must not be employed to take the lives of any of the enemy, although that, done in another way, is commonly the main immediate object of the war. Yet it might be somewhat difficult to establish a clear distinction between what would be called an act of assassination by a spy, and many of those surprises of an enemy which, so far from being condemned or deemed dishonourable, have usually been admired. But it has been maintained that an officer or soldier cannot be treated as a spy in any circumstances, if he had his uniform on when apprehended. See Martens, *Précis du Droit des Gens Modernes de l'Europe* (traduit de l'Allemand) Paris, 1831, liv. viii., ch. iv., § 274; where references are made to Bruckner, *De Explorationibus et Exploratoribus*, Jen., 1700; to Hannov. *Gel. Anzeigen*, 1751, pp. 383 et seq.; and, in regard to the celebrated case of André in the American war, to Martens, *Erzählungen merkwürdiger Fälle*, i. 303, and to Kamptz, *Beyträge zum Staats und Völkerrecht*, tom. i., No. 3.

A question closely connected with the so-called lawfulness of employing spies, and indeed forming in one view a part of that question, is that of the lawfulness of soliciting the enemy's subjects to act as spies, or to betray him. Vattel discusses this matter in reference to considerations both of law and of honour, or conscience. "It is asked in general," he begins, "whether it be lawful to seduce the enemy's men, for the purpose of engaging them to transgress their duty by an infamous treachery." It has been already stated that he lays down the principle that we may lawfully endeavour to weaken the enemy by any means not affecting the common safety of human society; and he determines that seducing an enemy's subject does not come under this exception. Such measures, accordingly, he observes, are practised in all wars. But still he argues, they are not honourable, nor compatible with the laws of a pure conscience; an evidence of which we have in the fact that generals are never heard to boast of having practised them. "If such practices," concludes Vattel, "are at all excusable, it can be only in a very just war, and when the immediate object is to save our country when threatened with ruin by a lawless conqueror. On such an occasion (as it should seem) the guilt of the subject or general who should betray his sovereign when engaged in an evidently unjust cause would not be of so very odious a nature." But who ever heard of a war that was not thought by those engaged in it to be a just war on their own side and an unjust war on the part of their adversaries? So that this distinction settles nothing. It is held however to be perfectly allowable in every point of view merely to accept the offers of a traitor. In this case Vattel argues, "We do not seduce him; and we may take the advantage of his crime, while at the same time we detest it. Fugitives and deserters commit a crime against their sovereign; yet we receive and harbour them *by the law of war*, as the civil law expresses it." If such offers have ever been rejected, as that of the physician of Pyrrhus, who offered to poison his master, was by the Romans, he holds the act to be one of magnanimity indeed, but yet as one which no general or sovereign is bound to imitate. Or, as Grotius has expressed it, such a course may evince loftiness of mind in those who pursue it, or their confidence of being able to compass their objects by open force, but has nothing to do with the question of what is lawful or unlawful. Martens holds with still less qualification, that we cannot condemn as an illegitimate means of carrying on a war the corruption employed to seduce the officers or other subjects of the enemy, and to tempt them either to reveal a secret or to surrender a post, or even to get up a revolt; it is the business of each state, he argues, to protect itself from such attempts by a careful choice of the persons it employs or trusts, and by the severity of the penalties with which it punishes their treachery. "But," he adds, "it is without doubt to overleap by a great way the bounds of the law of war, and to declare itself an enemy of the whole human race, for a nation to try to stir up every other people to revolt by a general promise of assistance, as was done by the French National Convention in their decree of the 19th of November,

1792." Yet wildly absurd as this decree was, its violation of the law of nations seems to have consisted merely in its not being confined to the case of such foreign countries only as the French republic might be then at war with; unless indeed it was intended to be taken, as it could not fail to be, for a declaration of war against all existing governments.

The proper question as to the so-called law of nations with regard to spies, is what practices are sanctioned by the general usage of independent civilized nations. Such practices as are now permitted by such usage constitute a part of this so-called international law. Those practices which are not generally permitted or acknowledged are not yet a part of such law. Persons who have occasion to write or think on this subject will find that much of the indistinctness and confusion observable in the treatises on the law of nations will be removed if they will first form for themselves a clear conception of the proper meaning of the word Law, and of the improper meanings which it has also acquired; and they will thus be enabled to give the necessary precision to terms which are used so vaguely by writers on international law. [LAW; RIGHT.]

SQUADRON, the principal division of a regiment of cavalry: the numerical strength of a squadron has varied at different times, but at present it consists of one hundred and sixty men, of whom about one-sixth are not under arms. This body of men is divided into two troops, each of which is commanded by its captain, who has under him a lieutenant and a cornet. The word is supposed to be derived from "squadra" (Italian), which is itself corrupted from the Latin word "quadratum;" acies quadrata denoted a body of men drawn up in a square form. The term "escadron" occurs in Froissart's 'Chronicles,' and probably it was very early used in the French armies to designate a body of cavalry.

The strength of an army, with respect to cavalry, is usually expressed by the number of squadrons in the field, as it is with respect to infantry by the number of battalions. Each regiment of cavalry consists of three or four squadrons; and when in line, one yard in the length of the front is allotted for each man and horse: the interval in line between every two squadrons is equal to one-quarter of the extent occupied by each squadron.

STABBING. [MAIM.]

STAFF, MILITARY. In the British empire this consists, under the king and the general commanding-in-chief, of those general, field, and regimental officers to whom is confided the care of providing the means of rendering the military force of the nation efficient, of maintaining discipline in the army, and regulating the duties in every branch of the service.

Besides the commander-in-chief, his military secretaries and aides-de-camp, the general staff consists of the adjutant and quartermaster-generals, with their respective deputies, assistants, and deputy-assistants; the director-general of the medical department, and chaplain-general of the forces. The staff of the Ordnance department consists of the master-general and lieutenant-general, with their deputies and assistants; the inspector of fortifications, and the director of the engineers. The head-quarters for the general staff are in London. There are also, for the several military districts into which Great Britain is divided, inspecting field-officers, assistant adjutants-general, and majors of brigade, together with the officers attached to the recruiting service. The head-quarters for Scotland are at Edinburgh. For Ireland, besides the lord-lieutenant and his aides-de-camp, the chiefs of the staff consist of a deputy-adjutant and a deputy quartermaster-general, with their assistants. Their head-quarters are at Dublin; and there are, besides, the several officers for the military districts of that part of the empire. Lastly, in each of the colonies there is a staff graduated in accordance with the general staff of the army, and consisting of the general commanding, his aides-de-camp, military secretaries, and majors of brigade, an inspecting field officer, a deputy-adjutant and a deputy-quartermaster-general.

The adjutant-general of the army is charged with the duty of recruiting, clothing, and arming the troops, superintending their discipline, granting leave of absence, and discharging the men when the

period of their service is expired. To the quartermaster-general is confided the duty of regulating the marches of the troops, providing the supplies of provisions, and assigning the quarters, or places of encampment.

All military commanders of territories or of bodies of troops in Great Britain, Ireland, or in foreign stations, transmit periodically to the adjutant-general of the army circumstantial accounts of the state of the territory and of the troops which they command; and the reports are regularly submitted to the general commanding-in chief.

The staff of a regiment consists of the adjutant, quartermaster, paymaster, chaplain, and surgeon.

About the year 1800 the British government first formed a particular school for the purpose of instructing officers in the art of surveying ground in connection with that part of tactics which relates to the choice of routes and of advantageous positions for troops. These officers were independent of the master-general of the ordnance, and served under the orders of the quartermaster-general or adjutant-general; they were called staff-officers, and were selected from the cavalry or infantry after having done duty with a regiment at least four years. They were first employed in Egypt, where they rendered considerable service; and the school was afterwards united to the Royal Military College, which had been then recently instituted for the instruction of cadets who were to serve in the cavalry or the infantry of the line. At that institution a limited number of officers, under the name of the senior department, continue to be instructed in the duties of the staff, and in the sciences connected with the military art.

During the war in Spain, from 1808 to 1813, the staff-officers were constantly employed, previously to a march or a retreat, in surveying the country at least one day's journey in front of the army. After the death of the Duke of York, the staff corps ceased to be kept up, and for several years it was reduced to a single company, which was charged with the duty of repairing the military canal at Hythe. This company was afterwards incorporated with the corps of sappers and miners.

The duties of officers belonging to the quartermaster-general's staff are very different from those of the military engineers; the latter are employed in the construction of permanent fortifications, batteries, and field-works; while the former survey ground in order to discover roads, or sites for military positions, for fields of battle, or quarters for the troops. The education of a staff-officer is such as may qualify him for appreciating the military character of ground: for this purpose he learns to trace the directions of roads and the courses of rivers or streams; and in mountainous countries to distinguish the principal chains from their ramifications, to examine the entrances of gorges, and to determine the heights of eminences or the depths of ravines. He has, besides, to acquire a facility in determining or estimating the resources of a district with respect to the means it affords of supplying provisions or quarters for the troops.

The staff-officer ought also to know how to correct the illusions to which the eye is subject in examining ground, from the different states of the air, and the number and nature of the objects which may intervene between himself and those whose positions are required. He ought to be able to estimate the number of men which a visible tract of ground can contain, and to form a judgment concerning the dispositions and stratagems which it may permit an army to put in practice.

STAGE-CARRIAGE. HACKNEY-COACH. CABRIOLET. A Stage Carriage is defined by the 2 and 3 Wm. IV. c. 102, as a carriage of any construction for conveying passengers for hire to or from any place in Great Britain, which shall travel at the rate of not less than three miles in the hour and be impelled by animal power, provided each passenger pay a distinct fare for his place therein. Railway carriages and vehicles moved by steam are excluded from the definition.

By the 1 and 2 Wm. IV. c. 22, it is declared that every carriage with two or more wheels, used for plying for hire in any public street at any place within five miles from the General Post-office in London, of whatever form or construc-

tion, or whatever may be the number of persons which it shall be calculated to convey, or the number of horses by which it shall be drawn, shall be deemed a *hackney-carriage*. This class of public vehicles appears to have originated in London. The rise and progress of their use in London may be pretty distinctly traced from notices in Macpherson's 'Annals of Commerce,' and in Anderson's 'History of Commerce,' of which work the early volumes of Macpherson are a reprint with but few alterations. Under the year 1625 Macpherson, or rather Anderson, observes that "Our historiographers of the city of London relate that it was in this year that hackney-coaches first began to ply in London streets, or rather at the inns, to be called for as they were wanted; and they were at this time only twenty in number." In 1652 the number of hackney-coaches daily plying in the streets was limited to 200; in 1654 it was increased to 300, allowing however only 600 horses; in 1661 to 400; and in 1694 to 700. By an act of the 9th year of Anne (c. 23) the number was to be increased to 800 on the expiration, in 1715, of the licences then in force, and 200 hackney-chairs were also licensed. The number of chairs was shortly increased to 300, and by the act 12 Geo. I. c. 12, to 400. In 1771 the number of coaches was further increased to 1000.

A lighter kind of vehicle, drawn by one horse, was brought into extensive use in Paris. Efforts were made to introduce similar vehicles into this country, but owing to a regard for the "vested rights" of the hackney-coach owners, it was long found impossible to get licences for them. With great difficulty Messrs. Bradshaw and Rotch (the latter a member of parliament) obtained licences for eight cabriolets in 1823, and started them at fares one-third lower than those of hackney-coaches. The name "cab" is now commonly applied to all hackney-carriages drawn by one horse, whether on two or four wheels. During the first few years of the employment of such carriages their number was restricted to sixty-five, while the number of coach-licences was increased to twelve hundred; but in 1832 all restriction as to the number of hackney-carriages was removed. The number of hackney-carriages licensed for use during the year ending January 4, 1845, was 2450, all of which, with the exception of less than 200, were cabs, or one-horse vehicles. The number of drivers licensed during the year ending May, 1844, was 4627, besides 371 watermen.

The generally low standard of moral character among cab-drivers leads to the adoption of a system of remuneration which is not calculated to promote honesty and good feeling. The vehicles and horses are lent out at a fixed sum per day; or rather, the men are expected to bring home the stipulated amount. The experiment of paying liberal wages, and trusting to the honour of men, is said to have been tried and found utterly impracticable.

An attempt was made, about the year 1800, to introduce a more commodious kind of vehicle, resembling an omnibus, instead of the old stage-coaches, which could only carry four or at most six inside passengers, but the project failed. When re-introduced from Paris the omnibus was drawn by three horses abreast, but this arrangement was soon abandoned.

The first successful omnibus in London was started by a coach-builder named Shillibeer, in July, 1829, to run between Greenwich and Charing-Cross, at fares considerably less than those of the old short stages; in addition to which advantage, the greater part of the passengers were sheltered from the weather. By the judicious arrangement of making the same charge for inside and outside places, Shillibeer soon obtained extensive patronage, and began to break down the petty feeling of exclusiveness which formerly distinguished inside from outside passengers. Success in the first experiment led Shillibeer to establish omnibuses between Paddington and the Bank. After much opposition the new system of travelling was fully established.

(Some of the facts in the preceding part of this article are derived from two papers in Chambers's 'Edinburgh Journal' for 1845 (Nos. 76 and 78), but much of the historical matter is to be found in Knight's 'London' and the 'Penny Magazine,' vol. vi.)

In 1799 the act of parliament was passed (19 Geo. III. c. 51) which first

imposed a duty on hired carriages of any description. This duty has at times been variously regulated, and is now settled by the above act, amended by 2 & 3 Wm. IV. c. 120, and 3 & 4 Wm. IV. c. 48.

The laws which relate to hackney-carriages and metropolitan stage-carriages are chiefly comprised in two acts of parliament: 1 & 2 Wm. IV. c. 22, which came into operation January 5th, 1832, entitled "An Act to amend the Laws relating to Hackney-Carriages, and to Waggons, Carts, and Drays, and to place the Collection of the Duties on Hackney-Carriages and on Hawkers and Pedlars in England under the Commissioners of Stamps;" and 6 & 7 Vict. c. 86, entitled "An Act for regulating Hackney and State Carriages in and near London."

In the former act are contained the greater part of the enactments which relate to hackney-carriages; in the latter, those which more especially apply to metropolitan stage-carriages (omnibuses).

The limits of hackney-carriages (hackney-coaches and cabriolets) are five miles from the General Post-office, London; and drivers of hackney-carriages are compellable to drive five miles from the place where hired or from the General Post-office; but if any hackney-carriage shall be discharged at any place beyond the limits of the metropolis (that is, beyond a circle of which the radius is three miles from the General Post-office), after eight in the evening and before five in the morning, back-fare may be demanded to the nearest part of the said limits or to any standing-place beyond the limits where the carriage may have been hired, at the option of the hirer.

The fares of hackney-carriages are fixed by the act 1 & 2 Wm. IV. c. 22. For every hackney-carriage drawn by two horses, for any distance not exceeding one mile, 1*s.*; for any distance exceeding one mile, at the rate of 6*d.* for every half-mile and for every fractional part of half a mile over and above any number of half-miles completed. By time, the fare is, for not exceeding thirty minutes, 1*s.*; not exceeding forty-five minutes, 1*s.* 6*d.*; not exceeding one hour, 2*s.*; and for any further time after the rate of 6*d.* for every fifteen minutes completed, and 6*d.* for any fractional part of fifteen minutes. The fares for hackney-carriages drawn by one horse (cabriolets) are one-third less, so that for the first mile they are 8*d.*, for a mile and a half, 1*s.*, and so on.

Every hackney-carriage and metropolitan stage-carriage is licensed by a registrar, deputy-registrar, or other officer appointed by one of Her Majesty's principal Secretaries of State; and every driver of a hackney-coach, and every driver and conductor of a metropolitan stage-carriage, and every waterman, at the time of granting the licence receives a metal ticket, which every such driver, conductor, or waterman is to wear on his breast in such manner that all the writing thereon may be distinctly visible. A stamp-duty of 5*s.* is charged on every licence. Plates are to be affixed to hackney-carriages with the name and abode of the proprietor and number of the licence; and "Metropolitan Stage-Carriage," or such other words as the registrar shall direct, are to be painted on omnibuses. Proprietors of metropolitan stage-carriages fix their own fares, but those fares are to be distinctly painted on or in the carriage, as well as the number of persons for whom the carriage is licensed.

Hackney-carriages standing in the street, though not on any stand, to be deemed plying for hire. Drivers may ply on Sundays, and, if plying, are compellable to drive when hired. Agreement to pay more than legal fare not binding, but driver may agree to drive any distance at discretion for a stated sum, and must not charge more than that sum, though less than legal fare. Deposit to be paid for carriage kept waiting, and driver must take the deposit and wait.

The act 6 & 7 Vict. c. 86, repeals a previous act (1 & 2 Vict. c. 79), and extends the enactments not specifically repealed of the 1 & 2 Wm. IV. c. 22, to the 6 & 7 Vict. c. 86. Other provisions of the acts relate chiefly to the restoration of property left in carriages, to furious driving, intoxication, insulting language, loitering, and other acts of misbehaviour; to proceedings of proprietors, drivers, and conductors, as to licences, payment of duties, contracts with each other; and to

modes of granting summonses, powers of magistrates, punishments, penalties, &c.

STAMPS. STAMP ACTS. Stamps are impressions made upon paper or parchment by the government or its officers for the purposes of revenue. They always denote the price of the particular stamp, or in other words, the tax levied upon a particular instrument stamped, and sometimes they denote the nature of the instrument itself. If the instrument is written upon paper, the stamp is impressed in relief upon the paper itself; but to a parchment instrument the stamp is attached by paste and a small piece of lead which itself forms part of the impression. These stamps are easily forged, and at various times forgeries of them upon a large scale have been discovered. The punishment for the forgery of stamps was made a capital offence by the Act of William and Mary, and continued so until the year 1830 (11 Geo. IV. & 1 Wm. IV. c. 66), when it was made punishable by transportation.

In France stamps are used both for the authentication of instruments and as a source of revenue.

The stamp tax was introduced into this country in the reign of William and Mary (5 W. & M. c. 21): such an impost had previously existed in Holland. The Act 5 W. & M. c. 21, imposes stamps upon grants from the crown, diplomas, contracts, probates of wills and letters of administration, and upon all writs, proceedings, and records in courts of law and equity; it does not, however, seem to impose stamps upon deeds, unless they are enrolled in the courts at Westminster or other courts of record. Two years afterwards, however, conveyances, deeds, and leases were subjected to the stamp duty, and by a series of acts in the succeeding reigns every instrument recording a transaction between two individuals was subjected to a stamp duty before it could be used in a court of justice. By the 38 Geo. III. c. 78, a stamp duty is imposed on newspapers, and by a subsequent act inventories and appraisements are required to be stamped. Legacies are largely taxed by means of stamped receipts. Stamps are also used as a convenient method of imposing a tax upon a particular class of persons: thus, articles of apprenticeship are subject to duty, and articles of clerkship to a solicitor to a tax of 120*l.* Solicitors are required to take out annually a certificate, stamped either with a 12*l.*, 8*l.*, or 6*l.*. stamp according to circumstances. Before a person commences practice as a physician, an advocate, a barrister-at-law, or an attorney, he must pay a tax varying from 50*l.* to 10*l.*, under the form of a stamp upon admission. Notaries public, bankers, pawnbrokers, and others, must obtain a yearly licence in order to exercise their callings.

The schedule to the Act 55 Geo. III. c. 124, which consolidates all the previous acts, occupies nearly 100 octavo pages. Since the year 1815 the stamp duties have been mitigated. The 5 Geo. IV. c. 41, exempts law proceedings from stamps; and the stamps upon newspapers were reduced from fourpence to a penny by 6 & 7 Wm. IV. c. 76 (1836), which duty exempts the paper from postage. As to the stamp duties on advertisements and newspapers, see ADVERTISEMENTS and NEWSPAPERS.

In order to protect the revenue, the stamp acts usually impose a penalty upon any fraudulent evasion of their provisions; and the 44 Geo. III. c. 98 enacts that the proceedings shall be in the name of the attorney-general in England, or the king's advocate in Scotland, and that the penalty shall go entirely to the crown.

The acts render an unstamped instrument invalid, and in order to increase the revenue they multiply the number of instruments to authenticate any transaction. Hence the stamp acts have given rise to many questions in courts of law as to the amount of stamps required for particular instruments, the nature of those stamps, the effect which the insufficiency or erroneous nature of the stamp may produce upon the instrument, and the use which may be made in a court of justice of a paper not stamped, but nevertheless unquestionably recording a particular fact.

The courts of law have usually interpreted the stamp acts with the same strictness with which penal statutes are interpreted, giving to exemptions as large an extension as the words will admit. On the other hand, feeling it a duty to en-

force the payment of this branch of the revenue, judges oppose the admission of an instrument so constructed as to evade the payment of the stamp duty.

The main rule in the levying of these duties is that each distinct transaction between separate parties, recorded by a written instrument, shall have a separate stamp attached to it.

An agreement not under seal may be stamped within twenty-one days after it has been signed; but in all other cases the instrument must be written upon paper previously stamped; nor will the attaching a blank piece of paper properly stamped to the instrument already executed render the instrument admissible as evidence in a court of law. We shall presently mention the penalties by payment of which the severity of these provisions may be mitigated. The value of spoilt stamps, if claimed within twelve months, may be recovered, if the absence of all fraud is established on oath.

If the court has sufficient evidence that an instrument has been properly stamped, but has been lost, or is withheld by the opposite party, it will receive an unstamped copy as evidence. If a debt which has been contracted under a written agreement can be established by parole evidence, so that the existence of the agreement shall not come under the notice of the court, the plaintiff may recover without production of the agreement; but if the existence of the written agreement appears from the testimony of the plaintiff's witnesses, or from some condition coming into question which necessarily implies the existence of a written instrument, then the agreement must be produced as the best evidence; and the plaintiff cannot recover unless it is duly stamped. Nevertheless an unstamped instrument, such as a receipt or a signed account, may be used by a witness to refresh his memory as to the amounts paid in his presence or acknowledged in his presence to have been received; in such instances the case rests not on the document, but on the testimony of the witness.

An unstamped instrument, though an insufficient foundation for proceedings at law, may be used as evidence to defeat fraud, and with certain limitations to establish a criminal charge. An unstamped agreement containing matter not requiring a stamp, may be used as evidence of that matter, although it is invalid as evidence of the terms of the agreement. An indictment for forgery likewise may be maintained, although the instrument forged may be invalid for want of a proper stamp; but such an invalid instrument is not sufficient to support an indictment for larceny.

Originally a stamp was invalid if the denomination was erroneous, although the amount paid was correct; but by the 55 Geo. III., wrong stamps, if of sufficient value, are rendered valid, unless upon the face of them they are appropriated to a different instrument from that to which they are attached. In this case the stamp is forfeited, but the instrument may be re-stamped upon payment of the penalty; by a previous act (37 Geo. III., c. 127, s. 2) any instrument, excepting bills and promissory notes, is allowed to be stamped upon payment of the duty, and a penalty of 10*l.* (or if it is a deed, 10*l.* for each skin); if it is to be stamped within a twelvemonth after its execution, the commissioners are allowed to remit the penalty (44 Geo. III., c. 19). Thus even during a trial an instrument may be stamped so as to render it admissible; but as this is rarely possible, it has been suggested that an officer of the court ought to be enabled to affix the proper stamp and levy the penalty; so that justice may not be defeated, or at least deferred, from the want of this formal circumstance.

The general principles which regulate the courts in the interpretation of the Stamp Acts are, that fraudulent evasion of the stamp duties shall be punished by forfeiture of all benefit from the document which ought to have been stamped; and that a just claim shall not be evaded or a fraud be effected because the just claimant has unintentionally violated the stamp laws.

The stamp duties and the custody of the dies are placed under the superintendence of commissioners appointed under the great seal. The 4 & 5 Wm. IV., c. 60, amended by 5 & 6 Wm. IV., c. 20,

consolidated the Board of Stamps. The commissioners transact their business in Somerset House, London. The endeavour to impose stamp duties upon our American colonies in 1765, was one of the approximate causes of the American revolution.

The law respecting stamps, and a reference to the principal cases cited, are contained in Chitty's *Practical Treatise on the Stamp Laws*. That work has been mainly used for this article.

The stamp duties act very unequally on small and on large transactions, and fully justify the statement that the legislature that imposed them were desirous to shift the burden of taxation from the rich to the middling classes. The stamp duty on the sale of land of the value of 50*l.* (taking a certain average length of conveyance) is 12½*l.* per cent.; of the value of 100*l.* it is 5 per cent.; of the value of 500*l.* it is 1*l.* 14*s.* 3*d.* per cent.; but of the value of 5000*l.* it is only one per cent. The same unequal scale applies to mortgages. "A mortgage of 50*l.* would cost in stamps and law expenses, 30 per cent.; a mortgage for 12,500*l.* would cost one per cent.; and for 100,000*l.* it would cost 12*s.* per cent." This scale of taxation is manifestly framed to shift the burden from great landowners and capitalists to those of very moderate means. These facts appear from a Report of a Committee of the Lords (1846) on the peculiar burdens which the land has to bear. The result of this inquiry shows clearly the peculiar burdens which the comparatively poor sustain in consequence of the legislation of the rich.

The net produce of the stamp duties in the year which ended October 10, 1844, was 6,533,385*l.*; in the year which ended October 10, 1845, it was 6,961,370*l.*

STANDING ORDERS. [BILL IN PARLIAMENT.]

STANNARY, from the Latin *Stannum*, "tin." This term sometimes denotes a tin-mine, sometimes the tin-mines of a district, sometimes the royal rights in respect of tin-mines within such district. But it is more commonly used as including the tin-mines within a particular district, the tinners employed in working them, and the customs and privileges attached to the mines, and to those employed in digging and purifying the ore.

The great stannaries of England are those of Devon and Cornwall, of which the stannary of Cornwall is the more important. The stannaries of Cornwall and Devon, were granted by Edward III. to the Black Prince, upon the creation of the duchy of Cornwall, and are perpetually incorporated with that duchy. In general both stannaries are under one duchy-officer, called the lord-warden of the stannaries, with a separate vice-warden for each county. The stannary of Cornwall is subdivided into the stannary of Blackmore, in the eastern parts of the county, and the stannaries of Tywarnhaile, Penwith, and Helston, in the west.

All tin in Cornwall and Devon, whoever might be the owner of the land, appears to have formerly belonged to the king, by a usage peculiar to these counties; for the general prerogative of the crown extends only to mines of gold or silver, or other mines in which the value of the gold or silver exceeds that of the inferior metal with which it is combined. (12 Coke's *Rep.*, 9.)

King John, in 1201, granted a charter to his tinners in Cornwall and Devonshire, authorising them to dig tin and turves to melt the tin anywhere in the moors and in the fees of bishops, abbots, and earls, as they had been used and accustomed. (Maddox, *Exch.*, 279 t. 283 l.) This charter was confirmed by Edward I., Richard II., and Henry IV.

In Cornwall the right of digging in other men's land is now regulated by a peculiar usage, called the custom of *bounding*. This custom attaches only to such land as now is or antiently was *wastrel*, that is, land open or uninclosed. The mode of acquiring a right to *tin-bounds* is this: an agent goes on the spot to be bounded and digs up the turf or surface, making little pits at the four corners towards the east, west, north, and south, of a reasonable extent; and the area or space within the four corners will be the contents of the bounds. Having made these corners, the agent describes on paper the situation of the bounds, states the day when, and the person by whom, they were marked out or cut, and makes a declara-

tion for whose use this was done, expressing therein that the spot was free of all lawful bounds. At the next stannary court he procures this description to be put on parchment, when a first proclamation is made of it in open court, the parchment, or paper being stuck up in a conspicuous place in the court, and a minute of the transaction is made by the steward in the regular court paper. On the next court day, three weeks afterwards, a second proclamation is in like manner made, and so also at the third court; when, if there be no successful opposition, judgment is given, and a writ of possession issues to the bailiff of the stannary, who delivers possession accordingly. In this mode the bound-owner, acquires a right to search for and take all the tin he can find, paying the lord of the soil one-fifteenth, or to permit others to do so; and to resist all who attempt to interrupt him. The bounds must be renewed annually, by a bounder employed on behalf of the bound-owner, or the lord may re-enter.

As part of the stannary rights, the duke of Cornwall, as grantee of the crown, has or had the pre-emption of tin throughout the county, a privilege supposed to have been reserved to the crown out of an original right of property in tin-mines, but in modern times it is never exercised.

Formerly for the redressing of grievances and the general regulation of the stannaries, representative assemblies of the tinners were summoned both in Devonshire and in Cornwall. These assemblies were called parliaments, or convocations of tinners, and were summoned by the lord-warden of the stannaries, under a writ, issued by the duke of Cornwall, or by the king, when there was no duke authorising, and requiring him so to do. The last convocation was held in 1752. (*Appendix* to the case of Rowe *v.* Brenton; 3 Manning and Ryland's *Reports.*)

The duties payable to the duke of Cornwall on the stamping or coinage of tin were abolished by 1 & 2 Vict. c. 120, and the stannary courts were re-modelled by 6 & 7 Wm. IV. c. 106. Further regulations for these courts have been introduced by 2 & 3 Vict. c. 58.

STAPLE, "anciently written *estaple*, cometh," says Lord Coke, "of the French word *estape*, which signifies a mart or market." It appears to have been used to indicate those marts both in this country and at Bruges, Antwerp, Calais, &c., on the Continent, where the principal products of a country were sold. Probably in the first instance these were held at such places as possessed some convenience of situation for the purpose. Afterwards they appear to have been confirmed, or others appointed for the purpose by the authorities of the country. In England this was done by the king (2 Edw. III. c. 9). All merchandize sold for the purpose of exportation was compelled either to be sold at the staple, or afterwards brought there before exportation. This was done with the double view of accommodating the foreign merchants and also enabling the duties on exportation to be more conveniently and certainly collected. Afterwards the word staple was applied to the merchandize itself which was sold at the staple. The staple merchandize of England at these early times, when little manufacture was carried on here, is said by Lord Coke to have been wool, woolfells or sheepskins, leather, lead, and tin. Incident to the staple was a court called "the court of the mayor of the staple." This court was held for the convenience of the merchants, both native and foreign, attending the staple. It was of great antiquity; the date of its commencement does not appear to have been certainly known. Many early enactments exist regulating the proceedings at the staple and the court held there. Most of these were passed during the reigns of the two Edwards, the first and third of that name. These kings appear to have been extremely anxious to facilitate and encourage foreign commerce in this kingdom; and by these statutes great immunities and privileges are given, especially to foreign, but also to native merchants attending the staple. The first enactment of importance is called the Statute of Merchants, or the Statute of Acton-Burnel, and was passed in the 11th year of Edw. I., A.D. 1283. [BURNEL, ACTON, STATUTE OF.] The statute passed in the 27th year of Edw. III. cap. 2, is entitled the Statute of Staple. One object of it

was to remove the staple, previously held at Calais, to various towns in England, Wales, and Ireland, which are appointed by the statute. The statute directed proceedings similar to those prescribed for obtaining a Statute Merchant by means of a sealed recognizance, in consequence of which execution might be obtained against the lands and tenements of the debtor in the same manner as under a Statute Merchant.

A variety of other statutes were passed in the same and succeeding reigns, in some respects confirming, in others altering the provisions of the leading statute. As commerce became more extended, the staples appear to have fallen into disuse. Lord Coke, a great worshipper of antiquity, complains that in his time the staple had become a shadow; we have only now, he says, stapulam umbratilem, whereas formerly it was said that wealth followed the staple. The practice however of taking recognizances by statute staple, from the many advantages attending them, long continued. (11 Edw. I.; 27 Edw. III. caps. 1, 3, to 6, 8, 9; 2 *Inst.*, 322; *Com. Dig.*, tit. 'Stat. Staple;' 2 Saund. by Wms., 69; Reeves, *Hist. Eng. Law*, v. 2, pp. 161, 393.)

STAR-CHAMBER. The Star-Chamber is said to have been in early times one of the apartments of the king's palace at Westminster which was used for the despatch of public business. The Painted Chamber, the White Chamber, and the Chambre Markolph were occupied by the triers and receivers of petitions, and the king's council held its sittings in the Camera Stellata, or Chambre des Estoylles, which was so called probably from some remarkable feature in its architecture or embellishment. Whatever may be the etymology of the term, there can be little doubt that the court of Star-Chamber derived its name from the place in which it was holden. "The lords sitting in the Star-Chamber" is used as a well-known phrase in records of the time of Edward III., and the name became permanently attached to the jurisdiction, and continued long after the local situation of the court was changed.

The judicature of the court of Star-Chamber appears to have originated in the exercise of a criminal and civil jurisdiction by the king's council, or by that section of it which Lord Hale calls the *Concilium Ordinarium* in order to distinguish it from the *Privy Council*, who were the deliberate advisers of the crown, (Hale's *Jurisdiction of the Lord's House*, chap. v.; Palgrave's *Essay on the Original Authority of the King's Council.*) This exercise of jurisdiction by the king's council was considered as an encroachment upon the common law, and being the subject of frequent complaint by the Commons, was greatly abridged by several acts of parliament in the reign of Edward III. It was discouraged also by the common-law judges, although they were usually members of the council; and from the joint operation of these and some other causes the power of the Concilium Regis as a court of justice had materially declined previously to the reign of Henry VII., although, as Lord Hale observes, there remain "some straggling foot-steps of their proceedings" till near that time. The statute of the 3 Henry VII. c. 1, empowered the chancellor, treasurer, and keeper of the privy-seal, or any two of them, calling to them a bishop and temporal lord of the council and the two chief justices, or two other justices in their absence (to whom the president of the council was added by stat. 21 Henry VIII. c. 20), upon bill or information exhibited to the lord chancellor or any other, against any person for maintenance, giving of liveries, and retainers by indentures or promises, or other embraceries, untrue demeanings of sheriffs in making panels and other untrue returns, for taking of money by juries, or for great riots or unlawful assemblies, to call the offenders before them and examine them, and punish them according to their demerits. The object and effect of this enactment are extremely doubtful; but it is perhaps the best opinion that the court created by the 3 Henry VII. c. 1, was not the court of Star-Chamber; that this court by statute fell into disuse after the middle of the reign of Henry VIII.; that the court of Star-Chamber was the old *concilium ordinarium*, against whose jurisdiction many statutes had been enacted from the time of Edward III., and that no part of the

jurisdiction exercised by the Star-Chamber could be maintained on the authority of the statute of Henry VII. At the beginning of the reign of Elizabeth, the court of Star-Chamber was unquestionably in full operation, in the form in which it was known in the succeeding reigns; and at this period, before it had degenerated into a mere engine of state, it was by no means destitute of utility. It was the only court in which great and powerful offenders had no means of setting at defiance the administration of justice or corrupting its course. And during the reign of Elizabeth, when the jurisdiction of the Star-Chamber had reached its maturity, it seems, except in political cases, to have been administered with wisdom and discretion. (Palgrave's *Essay on the King's Council*, p. 105.)

The proceedings in the Court of Star-Chamber were by information, or bill and answer; interrogatories in writing were also exhibited to the defendant and witnesses, which were answered on oath. The attorney-general had the power of exhibiting ex-officio informations; as had also the king's almoner to recover deodands and goods of a felo-de-se, which were supposed to go in support of the king's alms. In cases of confession by accused persons, the information and proceedings were oral; and hence arose one of the most oppressive abuses of the court in political prosecutions. The proceeding by written information and interrogatories was tedious and troublesome, often involving much nicety in pleading, and always requiring a degree of precision in setting forth the accusation, which was embarrassing in a state prosecution. It was with a view to these difficulties that Lord Bacon discouraged the king from adopting this mode of proceeding in the matter of the pursuevants, saying that "the Star Chamber without confession was long seas." (Bacon's *Works*, vol. iii. p. 372.) In political charges therefore the attorney-general derived a great advantage over the accused by proceeding *ore tenus* or orally. The consequence was, that no pains were spared to procure confessions, and pressure of every kind, including torture, was unscrupulously applied. According to the laws of the court, no person could be orally charged unless he acknowledged his confession at the bar, "freely and voluntarily, without constraint." (Hudson's *Treatise of the Court of Star-Chamber.*) But this check upon confessions improperly obtained seems to have been much neglected in practice during the later periods of the history of this court. Upon admissions of immaterial circumstance aggravated and distorted into confessions of guilt, the Earl of Northumberland was prosecuted *ore tenus*, in the Star-Chamber, for being privy to the Gunpowder Plot, and was sentenced to pay a fine of 30,000*l.*, and to be imprisoned for life; "but by what rule," says Hudson (*Coll. Jurid.* vol. ii. p. 63), "that sentence was, I know not, for it was *ore tenus*, and yet not upon confession." And it frequently happened during the last century of the existence of the Star-Chamber, that enormous fines, imprisonments for life or during the king's pleasure, banishment, mutilation, and every variety of punishment short of death were inflicted by a court composed of members of the king's council, upon a mere oral proceeding, without hearing the accused, without a written charge or record of any kind, and without appeal.

The judges of the Court of Star-Chamber were the lord chancellor or lord keeper, who presided, and when the voices were equal gave the casting vote, the lord treasurer, the lord privy seal, and the president of the council, who were members of the court, *ex officio*, In addition to these were associated, in early periods of the history of the court, any peers of the realm who chose to attend. According to Sir Thomas Smith, the judges in his time were the "lord chancellor, the lord treasurer, all the king's majesty's council, and the barons of this land." (*Commonwealth of England*, b. iii. c. 5.) Hudson states that the number of attendant judges "in the reigns of Henry VII. and Henry VIII. have been well near to forty; at some one time thirty; in the reign of Queen Elizabeth often times, but now (*i. e.* in the time of James I.) much lessened, since the barons and earls, not being privy councillors, have forborne

their attendance." He further states, that "in the times of Henry VII. and Henry VIII. the court was most commonly frequented by seven or eight bishops and prelates every sitting-day;" and adds, "that in those times, the fines trenched not to the destruction of the offender's estate, and utter ruin of him and his prosperity, as now they do, but to his correction and amendment, the clergy's song being of mercy." (*Coll. Jurid.* vol. ii. p. 36.) The settled course during the latter part of the reign of Elizabeth and the reigns of James I. and Charles I., seems to have been to admit only such peers as judges of the court as were members of the privy council.

The civil jurisdiction of the Star-Chamber comprehended mercantile controversies between English and foreign merchants, testamentary causes, and differences between the heads and commonalty of corporations, both lay and spiritual. The court also disposed of the claims of the king's almoner to deodands, and also such claims as were made by subjects to deodands and *catalla felonum* (chattels of felons) by virtue of charters from the crown. The criminal jurisdiction of the court was very extensive. If the king chose to remit the capital punishment, the court had jurisdiction to punish as crimes even treason, murder, and felony. Under the comprehensive name of contempts of the king's authority, all offences against the state were included. Forgery, perjury, riots, maintenance, embracery, fraud, libels, conspiracy, and false accusation, misconduct by judges, justices of the peace, sheriffs, jurors, and other persons connected with the administration of justice, were all punishable in the Star-Chamber.

It was also usual for the judges of assize, previously to their circuits, to repair to the Star-Chamber, and there to receive from the court directions respecting the enforcement or restraint of penal laws. Numerous instances of this unwarrantable interference with the administration of the criminal law occur with reference to the statutes against recusants in the reigns of Elizabeth and James I.

A court of criminal judicature, composed of the immediate agents of the prerogative, possessing a jurisdiction very extensive, and at the same time imperfectly defined, and authorized to inflict any amount of punishment short of death, must, even when best administered, have always been viewed with apprehension and distrust; and accordingly in the earlier periods of its history we find constant remonstrances by the Commons against its encroachments. As civilization, knowledge, and power increased among the people, the jurisdiction of the lords of the council became intolerable. A measure which was introduced into the House of Commons in the last parliament of Charles I., to limit and regulate the authority of this court, terminated in a proposal for its entire abolition, which was eventually adopted without opposition in both Houses. The statute 16 Car. I. c. 10, after reciting Magna Charta and several early statutes in support of the ordinary system of judicature by the common law, goes on to state that "the judges of the Star-Chamber had not kept themselves within the points limited by the statute 3 Henry VII., but had undertaken to punish where no law warranted, and to make decrees having no such authority, and to inflict heavier punishments than by any law was warranted; and that the proceedings, censures, and decrees of that court had by experience been found to be an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government." The statute then enacts, "that the said court called the Star-Chamber, and all jurisdiction, power, and authority belonging unto or exercised in the same court, or by any of the judges, officers, or ministers thereof, should be clearly and absolutely dissolved, taken away, and determined; and that all statutes giving such jurisdiction should be repealed."

STATE. [SOVEREIGNTY.]

STATES GENERAL. This term is from the French *Etats Généraux*, the assembly of the three orders of the kingdom: the clergy, the nobility, and the third estate. The States General of France were convoked in 1614 under Louis XIII., and they did not meet again till 1785. The memorable convocation

of the States General of France in 1789 led to the Revolution. A dispute arose between the two privileged orders and the third estate (tiers état) about their mode of sitting and voting. It was at first proposed by the Breton members that the third estate should assume the name of National Assembly without regard to the other two orders. Mirabeau opposed this proposition, but finally in the same year (17th June, 1789) the deputies of the tiers état with such deputies of the clergy as chose to join them, for none of the nobles accepted the invitation to join, assumed the name of the National Assembly, a term which had sometimes been used to designate the States General. The king, Louis XVI., afterwards sanctioned the union of the three estates in one National Assembly. One of the early acts of the National Assembly was the publication of the 'Declaration of the Rights of the Man and the Citizen;' a piece of absurd and incongruous declamation which Mirabeau's good sense made him despise, and all sober thinking people will be of his mind. [LIBERTY.] The National Assembly continued its labours several months after the death of Mirabeau, 2nd April, 1791. In September, 1791, the assembly presented to the king for his sanction the new constitution, which the king accepted, and the assembly dissolved itself on the 30th of the same month. The first National Assembly is generally called 'l'assemblée constituante,' from its having framed the constitution. The constitution lasted about twelve months, and was followed by the Republic.

STATISTICS is that department of political science which is concerned in collecting and arranging facts illustrative of the condition and resources of a state. To reason upon such facts and to draw conclusions from them is not within the province of statistics; but is the business of the statesman and of the political economist.

That it is necessary for a government, in order to govern well, to acquire information upon matters affecting the condition and interests of the people is obvious. Indeed, the civilization of a country may almost be measured by the completeness of its statistics; for where valuable statistical records of antient date are found concerning a country not yet advanced in civilization, which would appear to contradict this position, we owe them to sovereigns or governments of uncommon vigour and sagacity. However rude the government of a country may be, it cannot attempt to make laws without having acquired the means of forming a judgment, however imperfect, as to the matters brought under its consideration. In this sense statistics may be said to be coeval with legislation; but as legislation has rarely been conducted upon any fixed principles, or partaken of the character of science, in the earlier ages of the world, we must attribute to statistics, as a department of political science, a much later origin. It is chiefly to the rise of political economy that we are indebted for the cultivation of statistics. The principles of that science, which are directly concerned about the prosperity and happiness of mankind, were not reduced to any system until the middle of the last century: since that time, political economy has been cultivated as an inductive science. The correctness of preconceived theories has been tested by the observation and analysis of facts; and new principles have been discovered and established by the same means. A limited knowledge of facts had previously been an obstacle to the progress of political economy; and, on the other hand, the neglect of that science caused indifference to statistical inquiries. Statistics, which had been neglected until political economy rose into favour, have since been cultivated with continually increasing care and method, as that science has been further developed, and the knowledge of its fundamental principles more widely diffused.

This connection between political theories and statistics, while it has led to the collection of many data which would not otherwise have been obtained, has often introduced a partial and deceptive statement of facts, in order to support preconceived opinions. This is sometimes unjustly objected to statistics, as if it were a defect peculiar to them. That facilities for deception are afforded by statistics

cannot be denied; but fallacies of this kind, like all others, are open to scrutiny and exposure. Reliance need not be placed upon statements of facts nor on numbers, unless supported by evidence; and inferences from them should only be admitted according to the rules by which all sound reasoning is governed. Fallacies are difficult to detect in proportion to the ingenuity of the sophist and the ignorance or inexpertness of his opponents; but in political matters, opposite theories and opinions are maintained with equal ability, and facts and arguments are investigated with so much jealousy, that, in the end, truth can hardly fail to be established. Neither does any suspicion of partiality attach to such facts as are collected by a government without reference to particular theories. Until some one has shown the value of noting a certain class of facts with a view to his own inquiries, no pains are taken to obtain information of that nature from the best sources; but as soon as the importance of seeking any data is acknowledged, the collection of them becomes the business of impartial persons. The statist must be acquainted with the purposes to which the facts collected and arranged by him are likely to be applied, in order that the proper distinctions and details may be noted in such a manner as to give the fullest means of analysis and inference; but his services are greatest when he does not labour in support of a theory.

It thus becomes part of the business of government to apply all the means in its power in aid of statistics, not only for the administration of the affairs of state, but also for the improvement of political science. Abundance and accuracy must be the object of a government in collecting statistical facts.

We would lay much stress upon the collection of facts by the supreme power, because the classes of facts most important in political inquiries can scarcely ever be searched out by other persons, who have not access to the offices of government, and who are without authority to demand information; while the government has ample means at its disposal, and can, without difficulty, and in the ordinary course of administration, obtain statistical information of the highest value. In this and many other countries the respective governments are applying themselves earnestly to statistical investigations. In England a statistical department has been established at the Board of Trade to collect and arrange all the documents of a statistical nature that can be obtained through any department or agency of government. The admirably organised departments of the French government have abundance of statistical materials systematically collected, which they never fail to arrange in a very lucid manner, and to analyse with much ability. Great credit is due to the Belgian government for the diligence with which its several departments have engaged in statistics; and in March, 1841, the king appointed a central statistical commission. "The object of this commission," said the minister of the interior, in his Report to the king, "will be to bring together in one common depository all the scattered information which is at present collected by the different departments of government; and it will propose models for the statements and tables employed in collecting and classifying the elements of official publications." He adds, that "if the commission carries out satisfactorily the object proposed, the government, the legislative chambers, and the country, will find in the official statistical publications, authentic documents calculated to throw light on all matters of discussion, to encourage useful works, and to make known annually the situation, the strength, and the material and moral resources of the kingdom." The useful results of this commission, it may be hoped, will not be confined to Belgium. The world at large is interested in the statistics of any country; and improved methods of conducting statistical inquiries must be generally applicable.

But while governments are thus engaged, there is ample room for the labours of individuals. Local statistics of all kinds are open to them. The books and records of public institutions, facts relating to particular trades, to the moral and social state of different classes of society, and other matters apparently of local interest only, often present results

as important as those derived from inquiries on a more extended scale. Good service also may often be done by a judicious selection and comparison of matters not brought together in official statements, with a view to the illustration of principles of science or experiments in legislation, and by suggestions and criticism, which may direct the attention of government to particular branches of inquiry, to improvements in the mode of carrying them on, or in the form in which they are published.

It would be useless to attempt an enumeration of the various matters that are included in the province of statistics, but for the more convenient consideration of the subject it may be divided into—1, Historical statistics, or facts illustrative of the former condition of a state; 2, Statistics of population; 3, of revenue; 4, of trade, commerce, and navigation; 5, of the moral, social, and physical condition of the people. Each of these divisions will furnish ample materials for inquiry. The article CENSUS will serve as an example of the use to which such materials may be applied, and the article INTERMENT.

STATUTE. Bills which have passed through the houses of lords and commons and received the royal assent become Acts of parliament, and are sometimes spoken of collectively as forming the body of statutes of the realm. But a more restricted application of the word is generally in use, by which private acts of parliament [BILL IN PARLIAMENT] are excluded, and even public acts when their purpose is temporary. The application is still more restricted when the measures of the early parliaments are the subject in question, for many acts passed and received the royal assent which belong to the class of public acts and are found at large on the Rolls of Parliament, which are not accounted statutes in the sense in which that word is ordinarily used.

No strict definition can be given of those results of the deliberations in parliament to which the king has signified his assent, which are now called the Statutes of the realm. We may distinguish them from other enactments of early times, as follows: they were at a very remote period separated from the rest, written in books apart from the rest, and received by the courts of law as of equal authority with the antient customs of the realm.

Probably also they have, with very few exceptions, a more general bearing than the other public acts which are found upon the rolls of parliament.

Three volumes, preserved in the court of Exchequer, and now in the custody of the Master of the Rolls, contain the body of those enactments which are called statutes. One volume contains the statutes passed before the beginning of the reign of Edward III.; and the other two, those from 1 Edward III. to 7 Henry VIII., all very fairly written. These may be considered as the manuscripts of the early statutes of superior value, if not of superior antiquity as to the earlier portions, to the many similar collections which are in the libraries of the inns of court, of the universities, of the British Museum, and in some other depositories public and private. These numerous manuscript copies of the statutes are in substance pretty nearly the same, though some of these collections contain statutes which are not admitted into others. These books are not considered in the light of authorised enrolments of the statutes. For the authentic and authoritative copies, if any question arises, recourse must be had (1) to what are called the Statute Rolls at the Tower, which are six rolls containing the statutes from 6 Edward I. to 8 Edward IV., except from 8 to 25 Henry VI.; (2) to the enrolments of acts of parliament which are preserved at the Rolls chapel from 1 Richard III.; (3) to exemplifications and transcripts with writs annexed, signifying that they were transmitted by authority to certain courts or other parties, who were required to take notice of them, of which many remain in the Exchequer and elsewhere; (4) in those since 12 Henry VII., to the original acts in the parliament office; (5) the rolls and journals of parliament; (6) the close, patent, fine, and charter rolls at the Tower; on which statutes are sometimes found.

With the parliament of the reign of

Richard III. began the practice of printing, and in that manner publishing, the acts passed in each session. This followed very soon on the introduction of printing into England. Before that time it had been a frequent practice to transmit copies of the acts as passed to the sheriffs of the different shrievalties to be by them promulgated. The practice of printing the sessional statutes has continued to the present time.

Before the first of Richard III. the aid of the press had been called in to give extended circulation to the older statutes. Before 1481 it is believed that an abridgment of the statutes was printed by Letton and Machlinia, which contains none later than 33 Henry VI., 1455. To the next year is assigned, by those who have considered this subject, a collection, not abridged, from 1 Edward III. to 22 Edward IV. Next to these in point of antiquity is to be placed a collection printed by Pynson about 1497, who also, in 1508, printed what he entitled 'Antiqua Statuta,' containing Magna Charta, Charta de Foresta, the Statutes of Merton, Marlbridge, and Westminster primum and secundum. This was the first publication of those very early statutes.

In the reign of Henry VIII. the first English abridgment of the statutes was printed by Rastall; and during that reign and in the succeeding half century there were numerous impressions published of the old and recent statutes in the original Latin and French, or in English translations. Barker, about 1587, first used the title 'Statutes at Large.'

In 1618 two large collections of statutes, ending in 7 James I., were published, called Rastall's and Pulton's. Pulton's collection was several times reprinted with additions.

In the eighteenth century an addition, in six folio volumes, was published by Mr. Serjeant Hawkins in 1735, containing the statutes to 7 George II. Cay's edition, in 1758, in the same number of volumes, contains the statutes to 30 George II. Continuations of these works were published as fresh statutes were passed; and another work in 4to., of the same kind, was begun in 1762, well known by the designation of Ruffhead's 'Statutes at Large.' Pickering's edition is in 8vo., and ends with 1 George III.

None of these collections had ever been published by authority of the state, and though able men had been employed upon them, they have been thought by many competent judges not adequate to the importance of the subject, and to be liable moreover to some serious objections. This led a committee of the House of Commons, who, in 1800, were appointed to inquire into the state of the Public Records, to recommend, among other things, that "a complete and authoritative edition of all the statutes should be published." When the commission was appointed for carrying into effect the recommendations of this committee, they proceeded to the execution of this project; and finally, between the years 1810 and 1824, they produced, in a series of large volumes, a critical edition of the statutes (including the early public charters), ending with the close of the reign of Queen Anne. This is what is now considered the most *authentic* edition of the statutes, and it is supplied with a valuable index. It forms ten folio volumes. In the large introduction to that work there is a more particular account of the former editions of the statutes and of the means for making such a work as this complete.

The statutes passed in the Imperial Parliament of Great Britain are printed by the queen's printers, in foolscap folio, and sold at the Act Office, near Gough Square, Fleet Street, London, in separate acts, at the rate of three halfpence a sheet (4 pages) for public acts and three pence a sheet for private acts. An 8vo. edition is also published, which is sold at the rate of one penny a sheet (16 pages 8vo.), at Richards's, in Fleet Street, London, and any sheet or sheets may be purchased, so as to include one or more acts. The acts are not published separately in this edition, as they are in the folio edition.

The statutes of the realm are generally divided into two classes—Public and Private [PARLIAMENT, p. 468]; but they may more conveniently be distributed into three classes—Public General, Public Local, and Private. The two former only come within the term "laws," in the pro-

per acceptation of the term. The private acts embody special privileges conferred on individuals, or the sanction of the legislature to private arrangements regarding property; and before they can be enforced, they must be pleaded before the courts of law, like contracts, or the titles of estates. The Public Local statutes, though published separately, and though the standing orders of the Houses of Parliament require that on account of the private interests which they are often likely to affect, certain preliminary notices and other proceedings should take place before they are passed through their stages, are yet, in contemplation of law, in the same position as the Public General Statutes. Formerly all the public statutes, local and general, were published together and numbered consecutively; but from the year 1798 downwards, the local acts have been separately enumerated in distinct volumes. The legislation of a session generally fills one volume with general, and three or four with local statutes. The latter are not always the more numerous, but from the quantity of detailed arrangements regarding local places and circumstances, and the rights and obligations of parties embodied in them, they are generally much larger than the general statutes. As, from the quantity of railway and other joint-stock schemes this branch of legislation is rapidly increasing, the means of simplifying and abbreviating it have occupied the attention of law reformers, and some steps have been taken to accomplish this end. It had been observed that there are some clauses that are or ought to be common to all local acts. In embodying the matters which should be of the same character in every one of the local statutes, different draftsmen used different expressions; and the courts of law had on this account often to give a practically different effect to clauses which were intended to accomplish the same thing. Great intricacy and confusion were thus gradually finding their way into the institutions of the country; and in a considerable department of the law of the United Kingdom, Voltaire's sarcasm on the provincial laws of France, that a traveller changes laws as often as he changes horses, was likely to be verified. During the session of parliament of 1845 an effort was made to remedy this defect in local legislation. Three public general acts were passed, of which the following are the titles: 'An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public Nature;' 'An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature;' and 'An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the making of Railways.' To prevent confusion, a distinct series of these acts was passed applicable to Scotland. In each of these Acts there is a provision that it shall have reference to all local acts for the undertakings to which it applies. "And all the provisions of this Act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorised thereby so far as the same shall be applicable to such undertaking; and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act." It is hoped that this arrangement may in some measure economise local legislation; but its most important influence will be in the production of uniformity in the law of joint-stock companies authorised by statute.

STATUTE (SCOTLAND). It would be difficult to explain the character of the older legislation of Scotland, the method in which it was sanctioned, or the constitution of the bodies by which it was passed. All the light that probably is to be obtained on the early history of the statute-law has lately been embodied by Mr. Innes, in his preface to the edition of the 'Scottish Statutes and old Laws,' published by the Record Commission. "Whatever," he says, "may be the case in other countries, it is not easy in Scotland to distinguish the antient legislative court or council of the sovereign from that which discharged

the duty of counselling the king in judicial proceedings. The early lawgivers, indeed, enacted statutes by the advice of the 'bishops, earls, thanes, and whole community,' or 'through the common counsel of the Kynryk;' but during the reigns previous to Alexander III. we find the king also deciding causes in a similar assembly of magnates: while laws of the greatest importance, and affecting the interests of whole classes of the community, bear to be enacted by the king and his judges.'" It is probable that the practice of the assembly, legislative or judicial, of the principal barons, though irregular, was in general an imitation of the parliament of England. Before the war of independence the lands of the southern districts of Scotland had been in a great measure partitioned among Norman adventurers, some of whom owed a double allegiance to the crowns both of England and Scotland; and it was natural that they should bring with them the practices and opinions of the country with which they were earliest connected. A large proportion of the lowland population of Scotland were at the same time Saxon refugees from England. So early as the reign of David I. (1125) we begin to find that the municipal corporations had a voice in the ratification of the laws. "The parliament," says Mr. Innes, "assembled by John Balliol at Scone, on the 9th of February, 1292, was probably the first of the national councils of Scotland which bore that name in the country at the time, although later historians have bestowed it freely on all assemblies of a legislative character. We have no reason to believe that any change in its constitution occasioned the adoption of the new term, which soon became in Scotland, as in England, the received designation of the great legislative council solemnly assembled. It was not till a few years later, on occasion of negotiating an alliance with France, that Balliol, probably at the desire of the French king, procured the treaty to be ratified, not only by the prelates, earls, and barons, but by certain of the burghs of his kingdom. That treaty was finally ratified at Dunfermline on the 23rd day of February, 1295: and the seals of six burghs were then affixed to the deed, along with those of four bishops, four monasteries, four earls, and eleven barons. Notwithstanding this very formal ratification, however, it may be doubted, both from the peculiar phraseology of the deed itself, and from the silence of historians as to any meeting of a parliamentary nature in which it could have been voted, whether the parties stated as consenting, and especially whether representatives of those six burghs, were actually present as in a national assembly or parliament."

The acts which were thus sanctioned—sometimes, perhaps, by the separate adhesion of the principal interests of the country, sometimes in assemblies—were of a mixed character. Some were judgments in particular disputes, accompanied probably by the announcement of a principle on which such questions should thenceforth be decided; others were acts of executive authority; and others might be regulations having the character of fixed and general laws. When these proceedings related to matters of private right, the recording instrument would be put into the hands of the party interested. "When the proceedings of the national council," says the authority already cited, "related to matters of a more public nature, such as negotiations with foreign states, its earliest records were probably of a similar kind, and consisted of nothing more than the indentures or other diplomacy which embodied the results of its deliberations. Perhaps the earliest instances of this kind that now remain are those important deeds of the reign of Alexander III., when, however, a more artificial system must have been beginning to prevail. It would be still more interesting to ascertain the modes in which the more general ordinances and laws of the realm were enacted and recorded; but on this head the loss of every original document has left us entirely to conjecture. Judging, however, from the mutilated and imperfect transcripts of a later age, and from the analogy of the other states of Europe, it would appear that the more important and general statutes were framed into short capitulars, and ingrossed into a writ, addressed, in the name of the king, to the chief ministers

of the law in the different districts of the kingdom, requiring the publication and observance of them. The laws of the burghs, the assizes of David I. and of William, and the statutes of Alexander II., as found in the old manuscript compilations of lawyers, seem to be the fragments of various capitulars of this kind." The assizes of David I., 'Assisé Regis David,' are reported to be the oldest fragments of legislation in Scotland, and are partly, but not entirely, traceable to so early a period as the reign of the king with whose name they are associated. The burgal laws, 'Leges Quatuor Burgorum,' constitute the oldest systematic collection of laws. They too may be referred to the reign of David, and though historians give him the credit of having planned the whole system of the municipal corporations, it is more likely that this code of laws embodies the privileges and restrictions which had gradually come into existence with the growing influence of the burghs. The coincidence between these early vestiges of Scottish legislation and the old law of England is remarkable. Both in the assize, and in the burgh laws, technical phraseology is frequently used, which still belongs to the law and practice of England, but has long been disused in Scotland. Indeed, it is very clear that, before the attempt of Edward I. to be master of Scotland, there was much harmony in tone and spirit between the two nations, and that Scotland generally followed or accompanied England in her constitutional progress. There is a still more remarkable coincidence of legislation in the celebrated *Regiam Majestatem*, or general code of the old laws of Scotland. It was, like the fragments mentioned above, attributed to David I., who had obtained the character of the Justinian of Scotland; but it is undoubtedly of later date. In the sixteenth and seventeenth centuries it was very popular, as an undoubted early national code; but it was subsequently discovered to have many features in common with the compilation, 'De Legibus et Consuetudinibus Angliæ,' attributed to Ranulph de Glanvil, justiciar of England, and then it acquired the evil reputation of being a code prepared by Edward I., for the purpose of subjecting Scotland to the law of England. "Upon an accurate collation of the books," says Mr. Innes, "it appears that the fourteen books of Glanvil contain in systematic arrangement, with some inconsiderable exceptions, the same matter, almost in the same words, which the compiler of the 'Regiam' has put into four books (in imitation of the Institutes of the Roman law), but divested of all systematic order. Many minute variations are found, and when these are intentional, they are plainly caused by a desire to suit the text of the English law-book to the local circumstances of Scotland; when they have happened accidentally, the vitiated or unintelligible text of the Scotch book is readily corrected by a comparison with the English author. There are, however, chapters in the 'Regiam' which are not in Glanvil. Part of these are extracts from the civil and canon law, and the remainder, joined inartificially to the surrounding text, appear to be genuine chapters of antient Scotch laws, most of which can be traced to their sources in the statutes of the early kings now collected." Mr. Innes does not believe in the theory that the 'Regiam' was prepared under the authority of Edward I., but thinks its resemblance to the English compilation may be attributed to the spirit of imitation.

The 'Regiam Majestatem,' so named from the words with which it commences, is, along with the burgh laws, and other vestiges of early legislation, printed in the first volume of the edition of the Scottish statutes issued by the Record Commission. None of the contents of this first volume, however, come within the description of the accepted statute law of Scotland. They are curious vestiges of constitutional history; and if it be necessary for ascertaining the just application of any settled principle of law by a reference to its origin, these old collections are sometimes referred to; but they are not admitted as direct authority in the substance of the law. In 1566 a commission was issued for the collection and publication of the statute law, and they speedily published a series of statutes reaching from 1424 to 1564. It is at the former date that the statute law, properly speaking, commences, and it

proceeds thence in a regular series to the Union with England. Several of the most important statutes still in force—as, for instance, that which secures to the agricultural tenant the continuance of his lease, notwithstanding the death of the landlord by whom it may have been granted—date back to the earlier part of the fifteenth century. The Scottish acts are referred to by the date of the parliament in which they are passed, and their numerical order; as, 'The Act 1424, c. 25;' 'The Act 1661, c. 16.' The early statutes are brief and sententious, and were admired by Bacon for "their excellent brevity." The following are two successive Acts of the Parliament of 1424, given in full:—

"Item, it is decreeted be the haill parliament, and forbidden be our soveraine lorde the king, that ony leagues or bandes be maid amongst his lieges in the realme; and gif onie has bene maid in time bygane, that they be not keeped nor halden in time to cum."

"Item, it is ordained that na horse be sauld out of the realme, quhill at the least they be three yeir auld outgane, under the peine of escheitte of them to the king."

From the date of the accession of Bruce, after the war with England, the Scots long entertained a feeling of national jealousy and enmity towards England; and though some of the kings introduced Southern practices, we do not find that steady imitation and adoption of the constitutional movements of the English parliament which characterise the earlier period, but rather an isolated creation of, and adherence to, national peculiarities. The Scottish parliament was not divided like the English into two houses, but the three estates—the clergy, the barons and other freeholders, and the burgesses—formed one assemblage. The method of conducting legislative business was very different from that which came into use in England. At the commencement of the sittings a committee was chosen, called Lords of the Articles, who had the duty of preparing and arranging the matters to be laid before the House for its approval. It thus appears to have generally happened that the full assemblage only met on the first and the last days of a session: on the former the lords of the articles were chosen; on the latter, the statutes or other proceedings prepared by this committee were voted on, and sanctioned or rejected. The royal assent was given by touching the act with the sceptre; but some constitutional writers maintain that this was a mere court ceremony, and that an act which had passed the three estates became law without any sanction from the king. It became a principle which widely distinguished the legislation of Scotland from that of England, that in the former country statutes might cease to be law by merely falling into desuetude. Of the statutes of the Scottish parliament, those only are now law which are said to be *in viridi observantiâ*. By this principle the statute law has silently modified itself to the character of the times; and, though not formally repealed, the barbarous laws of periods of bigotry or violence have ceased to be enforceable. Since the Union of 1707, it has been considered, in conformity with the English doctrine, that an act passed by the British parliament must be held as law, and judicially enforceable, until it is repealed.

The law of Scotland, the judicial and executive system, and the ecclesiastical polity, being quite distinct from the corresponding institutions of England, many statutes are from time to time passed by the British legislature solely applicable to Scotland, prepared by persons professionally acquainted with the institutions of that part of the empire. The revenue laws of Scotland were formerly distinct; but now, with few exceptions, one system embodied in one series of acts applies to the United Kingdom. In matters of national policy, and frequently in the criminal law and in legislation for internal economy, acts are made applicable both to England and Scotland at the same time. In these departments of legislation much confusion has arisen from its either being left doubtful whether a statute applies to Scotland, or from terms being used which are not the proper technical phraseology of Scottish law. This uncertainty has been a considerable source of litigation in Scotland; and the courts have

been, from the want of uniformity in the composition of the statutes, hitherto unable to form any rule serving as a criterion for the extension of such acts to Scotland. In many cases—such as the Bankrupt Act, the Tithes Commutation Act, &c.—the institutions to which the legislation refers distinctly limit its application to England. In other instances, however, general laws are made which are as applicable to Scotland as to England, while the machinery by which the act directs them to be enforced is to be found only in England. In many instances these acts have only been capable of enforcement in Scotland by reading, instead of English institutions, those of Scotland which most nearly correspond with them—as, by substituting "The Court of Session" for "The Courts of Record at Westminster." The remedy for this evil appears to be, to incorporate with each act a clause stating the territorial extent of its application; and, whenever it is intended that it shall apply to Scotland, to have clauses especially applicable to its enforcement in that part of the empire.

STATUTE (IRELAND). In Ireland, the method by which the early irregular convocations, called Parliaments, passed their acts, appears to have been a close imitation of the English practice. The authenticated printed statutes begin in the year 1310—3 Edw. II. After five short acts of this parliament there is a hiatus until the year 1429, although it is known in history that repeated parliaments were held in the interval. Many of these statutes are characteristic indications of the state of the country, and throw light on the domination of the English over the natives—*e.g.*, the 25 Hen. VI. c. 4, 'An Act, that he that will be taken for an Englishman, shall not use a Beard upon his upper Lip alone; the Offender shall be taken as an Irish Enemy:' 28 Hen. VI. c. 3, 'An Act, that it shall be lawful for every Liegeman to kill or take notorious Thieves, and Thieves found robbing, spoiling, or breaking Houses, or taken with the manner:' and in later times (the 7 Wm. III. c. 21), 'An Act for the better suppressing Tories, Robbers, and Rapparees; and for preventing Robberies, Burglaries, and other heinous Crimes.' The Statute of Drogheda, commonly called Poyning's Law, passed in 1495 (10 Hen. VII.), had a marked influence on the later legislation and constitutional history of Ireland. By chap. 22 it was enacted, that all the acts then or late passed in England, "concerning or belonging to the common and public weal of the same," should be law in Ireland. By chap. 4 it was provided, that no parliament should afterwards be held in Ireland until the lord-lieutenant and council had certified the king of the causes and considerations for holding it, and of the acts proposed to be passed at it, and a licence had been obtained from England accordingly. Thus no measure could be proposed for the adoption of parliament until it had first received the royal assent in England. It is believed that this badge of servitude prevented the passing of many exterminating acts, which, in times of anarchy, discord, or tyranny, the Irish ministry, and their partisan-parliaments, would have readily passed. This act was repealed, and the independence of the Irish legislature restored by the celebrated measure of 1783. By the Act of Union, in 1800, the Irish Parliament was merged in the United Parliament of Great Britain and Ireland. [PARLIAMENT OF IRELAND.]

STATUTE OF FRAUDS. This name is applicable to any statute the object of which is to prevent fraud, but it is particularly applied to the 29 Car. II. c. 3, which is entitled the 'Statute of Frauds and Perjuries.' One object of the statute was to prevent disputes and frauds by requiring in many cases written evidence of an agreement. Before the passing of this statute many conveyances of land were made without any writing as evidence of the conveyance. An estate in fee-simple could be conveyed by livery of seisin, accompanied with proper words, and a use could also be declared by parol. No writing wa snecessary to convey any estate in possession, for such estate is technically said to lie in livery; but a reversion could only be conveyed by deed. The Statute of Frauds declared that all leases, estates, and in-

terests of freehold or terms of years or any uncertain interest in any lands or hereditaments, made by livery and seisin only, or by parol, and not put in writing and signed by the parties, &c., shall have the force of leases or estates at will only. But leases for not more than three years, whereon the rent reserved shall be two-thirds of the full improved value of the thing demised, are excepted by the statute. Further, no lease, estates, or interest either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest, shall be assigned, granted, or surrendered except by deed or note in writing. Another section of the statute provides that all declarations or creations of trust or confidences of any land, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or they shall be void. The 5th section of this statute declared that all devices of lands or tenements, as more particularly described in this section, should be in writing and signed in the manner here prescribed by three or four credible witnesses; and the 6th section related to the revocation of a devise in writing of lands or tenements. Both these sections are repealed by the last Wills' Act, 1 Vict. c. 26, which makes alterations in other provisions also of the Statute of Frauds.

There are several other important provisions in this statute, which may be omitted here, as the object is to show merely that the purpose of the statute is to prevent fraud by requiring the evidence of writing, which is a better kind of evidence than men's memory.

STATUTE MERCHANT. [BURNEL, ACTON, STATUTE OF.]

STATUTE STAPLE. [STAPLE].

STATUTES OF LIMITATION. There appear to have been no times limited by the common law within which actions might be brought; for though it is said by Bracton (lib. 2, fol. 228), that, "omnes actiones in mundo infra certa tempora limitationem habent;" yet with the exception of the period of a year and a day, mentioned by Spelman (*Gloss.*, 32), as fixed by the antient law for the heir of a tenant to claim after the death of his ancestor, and for the tenant to make his claim upon a disseisor, all the limitations of actions in the English law have been established by statute. Certain remarkable periods were first fixed upon, within which the cause of action must have arisen. Thus in the time of Henry III., the limitations in a writ of right, which was then from the time of Henry I., was by the Statute of Merton, c. 8, reduced to the time of Henry II.; and by the Statute of Westminster, 1, c. 8, the period within which writs of right might be sued out was brought down to the time of Richard I. (Co. Lit., 114, b.)

Since the 4 Hen. VII., c. 24, which limited the time within which persons might make their claim to land of which a fine had been levied with proclamations, various statutes have been passed for the purpose of limiting the time within which actions and suits relating to real property may be commenced. The 21 Jac. I., c. 16, limited the period for all writs of formedon to twenty years; and it was enacted generally that no person should make entry into any lands, but within twenty years next after his right of entry accrued. The act contained a saving of the rights of certain persons therein enumerated.

By the 9 Geo. III. c. 16, the right of the crown to sue or implead for any manors, lands, or other hereditaments (except liberties or franchises) was limited to sixty years. Before this act, the rule that *nullum tempus occurrit regi* was universal; and it still prevails as a maxim of law, except where abridged by statute. The same maxim applies to the duchy of Cornwall, which, though it vests in the crown from time to time, so long as there is no eldest son of the king, or other person entitled to the dignity, is not within the above statute.

The next statute upon this subject is the important act of the 3 and 4 Wm. IV. c. 27, by which great changes were made in the remedies for trying the rights to real property, and which embodies the greater part of the present law of limitations relating thereto.

By section 2, no person can make an entry or distress, or bring an action to

recover any land or rent, but within twenty years after the right to make such entry or distress, or bring such action, has accrued to the claimant, or some person through whom he claims. The meaning of the terms "land," "rent,' and "person," is explained in the first section of this act. It is sufficient to state here the general object of the act. The explanation of its particular provisions belongs to law treatises.

An administrator for the purposes of this act is to claim from the death of the intestate (sect. 6). This section removes, for the purposes of the act, that distinction which existed, under the old law, between executors and administrators, by which the right of the former was considered to commence from the death of the testator, and that of the latter from the grant of adminstration.

The enactments contained in the sections from the 3rd to the 13th included, are intended to remove one of the great difficulties that attended the investigation of titles under the old law, namely, the determination of the time at which adverse possession commenced. Whether possession was adverse or not, was frequently a question of fact to be determined by a jury, and subject to great uncertainty, and the question was often further embarrassed by the various rules of law, as well as by the principle formerly laid down, that possession, rightful in its commencement, did not become wrongful or adverse as against the true owner by being continued beyond the period at which the right of the party in possession ceased.

Persons under the disability of infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond seas, or persons claiming under them, notwithstanding the period of twenty years shall have expired, are to be allowed ten years after the person to whom the right first accrued has ceased to be under any disability or has died (which shall have first happened) (sect. 16). It is to be observed that imprisonment is not a disability under this act, as it was under 21 Jac. I. c. 16, s. 2.

But no entry, distress, or action is to be made or brought by any person under disability at the time of his right accruing, or by any person claiming under him, but within forty years from the time at which the right first accrued, though such disability should have continued during the whole of such forty years, or although the term of ten years from the time at which the person to whom the right first accrued ceased to be under any disability, or died, should not have expired (sect. 17).

In the case of a person under disability at the time that his right accrued dying under such disability, no further time beyond the said term of twenty years next after the right accrued, or the said term of ten years after the death of such person, is to be allowed by reason of the disability of any other person (sect. 18).

No part of Great Britain and Ireland, nor the adjacent islands, is to be deemed beyond seas, within the meaning of the act (sect. 19).

No suit in equity is to be brought for the recovery of any land or rent but within the time when the plaintiff, if entitled at law, might have brought an action (sect. 24). This clause confirms the doctrine already established in courts of equity.

In cases of express trust, the right of the *cestuy que trust* to bring a suit against a trustee, or person claiming through him, is not to be deemed to have accrued till a conveyance has been made to a purchaser for a valuable consideration, and then only as against such purchaser and persons claiming under him (sect. 26). In cases of express trust, no time, as between the *cestuy que trust* and trustee, can operate as a bar to the right of the former; and the above-mentioned clause applies as between the *cestuy que trust* and strangers only. The possession of the trustee is that of the *cestuy que trust*, and the possession of the *cestuy que trust* cannot be adverse to the trustee, unless where there has been actual ouster of the trustee by the *cestuy que trust*, or where the latter denies the title of the trustee. Though no time bars a direct trust, as between trustee and *cestuy que trust*, a court of equity will not allow a man to make out a case of constructive trust at a great distance of time, and after

long acquiescence, but will in such cases apply rules as to length of time by analogy to the statutes of limitation. (17 Ves., 97.)

In cases of concealed fraud, the right of a person to bring a suit in equity for the recovery of land or rent of which he, or the person through whom he claims, has been deprived by such fraud, is to be deemed to have accrued at the time when the fraud was, or, with reasonable diligence, might have been discovered; but nothing in this clause is to affect the title of a purchaser for valuable consideration who was not a party to the fraud, and had, at the time of his purchase, no notice of such fraud (sect. 26). This principle had already been established in courts of equity.

By section 36, all real and mixed actions, except Ejectment, and the actions of Dower and Quare Impedit, were abolished after the 31st of December 1834.

Since the 31st of December, 1833, no money secured upon land by any mortgage, judgment, lien, or otherwise, or charged upon land by way of legacy, can be recovered by action or suit, but within twenty years after the right to receive the same accrued, unless in the meantime some part of the money or interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person liable to payment or his agent, to the person entitled thereto or his agent; in which case the action or suit must be brought within twenty years after such payment or acknowledgment (sect 40). This clause is a statutory confirmation of what was formerly established by decision as to money secured upon land; namely, that possession of the land by the mortgagor or person otherwise liable for payment of the money, without payment or demand of principal or interest for twenty years, was sufficient to raise the presumption of satisfaction. It has been determined that the limitation in this clause applies to bills of foreclosure, which are in substance suits to recover the money secured by mortgage. (9 Sim., 570.) With respect to legacies, there has been some variety of decision. Formerly it seems to have been thought that there was no limitation as to the time within which a legacy might be demanded, but in the later cases the courts of equity appear to have adopted twenty years as the limit.

The above-mentioned section secures to the mortgagee to whom a payment of principal or interest has been made, or an acknowledgment in writing has been given, his right of action or suit as to the money for twenty years from the time of such payment or acknowledgment, and in the latter case his right of entry, distress, or action for the recovery of the land is during the same period secured to him by the 14th section; but it being considered doubtful whether the 2nd section did not bar this right, when the act relied on as taking the case out of the statute was a payment of principal or interest, the 7 Wm. IV. and 1 Vict. c. 28, was passed, reserving to the mortgagee the right of entry, distress, and action for the recovery of the land for twenty years from the last payment of principal or interest, although more than twenty years may have elapsed since the right first accrued.

Arrears of dower, or damages for such arrears, are not to be recoverable by any action or suit beyond six years before the commencement of the action or suit. Before the act, there was no limitation either at law or in equity to a claim for arrears of dower during the life of the heir (sect 41).

Since the 31st day of December, 1833, no arrears of rent or of interest in respect of any money charged in any manner on land or rent, or any damages in respect of such arrear of rent or interest, can be recovered by any distress, action, or suit, but within six years next after the same respectively became due, or next after an acknowledgment in writing given to the person entitled thereto or his agent, signed by the person by whom the same was payable, or his agent; except where there has been a prior mortgagee or other incumbrancer in possession within one year next before an action or suit is brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, in which case the arrears of interest may be recovered for the whole time during which such prior mortgagee or incumbrancer was in pos-

session, though it exceed the term of six years (sect. 42). It had already been established in equity, by analogy to the rule at law, that an account of rents and profits could not go back beyond six years before the filing of the bill, and in many cases where a party had neglected his rights, and where there was no disability on the one side, or fraud on the other, the court has refused to carry the account farther back than the filing of the bill. (1 Ball and B., 130.) This discretionary jurisdiction seems to be within the saving of the 27th clause of the act. It seems that the above section refers to rents charged upon land only, to which it had been held that the former statutes did not apply, and not to conventional rents (2 Bing., *N. C.*, 688), the limitations as to which are provided for by the 21 Jac. c. 16, s. 3, and the 3 and 4 Wm. IV. c. 42, s. 3.

This clause contains no exception in favour of persons under disabilities.

Limitations as to tithes and other ecclesiastical property are now regulated by 2 and 3 Wm. IV., c. 100; and 3 and 4 Wm. IV., c. 27.

As to limitations as to advowsons, the 3 and 4 Wm. IV. c. 27, s. 30, enacts that from the 31st day of December, 1833, no *Quare Impedit* or other action, nor any suit to enforce a right of presentation to any church, vicarage, or other ecclesiastical benefice, is to be brought after the expiration of the period during which three clerks in succession shall have held the same, all of whom obtained possession adversely to the right of the person claiming, or of the person through whom he claims, if the times of such incumbencies together shall amount to sixty years, and if not, then after such further period as with the times of such incumbencies shall make up the period of sixty years.

Limitations as to other incorporeal rights are now mainly regulated by 2 and 3 Wm. IV., c. 71. [PRESCRIPTION.]

II. As to Limitations of Personal Actions and Suits relating to Personal Property.

1. Of actions of assault and battery.

By the 21 Jac. I. c. 16, s. 3, all actions of trespass, of assault, battery, wounding, imprisonment, or any of them, must be commenced and sued within four years after the cause of action arises.

2. Of actions of slander.

By the 21 Jac. I. c. 16, s. 3, all actions on the case for words must be commenced and sued within two years next after the words spoken.

3. Of actions arising upon simple contract, and actions founded in wrong.

By the 21 Jac. I. c. 16, s. 3, all actions of trespass *quare clausum fregit*, actions of trespass, detenue, trover, and replevin for taking away goods and cattle, actions of account and upon the case (except merchants' accounts), actions of debt grounded upon lending or contract without specialty, and actions of debt for arrearages of rent, must be commenced and sued within six years next after the cause of action arises.

Formerly there was no limitation applicable to a suit for a legacy, though in some cases presumption of payment was admitted; but the 3 and 4 Wm. IV. c. 27, s. 40, which fixes the period of limitation to twenty years, is applicable to all legacies, whether charged on real estate or not. Before the statute of the 3 and 4 Wm. IV. c. 42, there was no remedy for injuries done to the real estate of a person deceased, in his lifetime, nor against the estate of a person deceased, in respect of wrongs done by him in his lifetime to the property of another; but now, by sect. 2, executors may bring an action of trespass, or trespass on the case, for an injury done to the real estate of a deceased person in his lifetime, and for which he might have maintained an action, at any time within a year after the death of such person; and any such action may be brought against the executors or administrators of a person deceased, for an injury done by him in his lifetime to the real or personal property of the plaintiff, within six calendar months after they shall have taken upon themselves the administration of the deceased's estate, provided in each case that the injury was committed within six months of the death of such person.

The limitation as to arrears of rent in the statute of James does not apply to rents reserved by indenture.

To settle questions which arose upon the effect of subsequent promises and

acknowledgments, it was enacted by 9 Geo. IV. c. 14, s. 1, reciting the act of James, that in actions of debt, or upon the case, grounded on any simple contract, no acknowledgment should be deemed sufficient, unless it were in writing, signed by the party chargeable thereby; and that where there were two or more joint contractors, or executors, or administrators of any contractor, the written promise of one or more of them should not bind the others. But it was expressly provided that nothing in the act contained should alter, take away, or lessen the effect of any payment of principal or interest by any person whatsoever; so that it would seem that this species of acknowledgment will, according to the old doctrine (2 Saund., 63, *j. n.* (*t*), be effectual, not against the party making it only, but his co-contractor. Also (by sect. 6) no indorsement or memorandum of payment upon a promissory note, bill of exchange, or other writing made by or on behalf of the party to whom payment should be made, should be deemed proof of such payment to take the case out of the statute; and (sect. 4) that the act of James and that act should apply to simple contract debts alleged on the part of a defendant by way of set-off.

4. As to actions arising upon specialty.

Before the 3 and 4 Wm. IV. c. 42, there was no statutable limitation to actions upon specialties, though the courts held that payment was *primâ facie* to be presumed after twenty years.

By the 3rd section of the above act actions of debt for rent upon an indenture of demise, actions of covenant or debt upon bond or other specialty, and actions of debt or *scire facias* upon recognizance must be commenced and sued within twenty years after the cause of such actions or suits arises. If the 3 and 4 Wm. IV. c. 27, s. 42, applies to actions on specialty, it is so far repealed by this act; but the better opinion seems to be that the former act applies to rents which are a charge upon land only, and not to conventional rents, whether reserved by indenture or otherwise. (2 Bing., *N. C.*, 688.)

By sect. 5, it is provided, in accordance with the enactment of 9 Geo. IV. c. 14, as to actions on simple contract, that if any acknowledgment has been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment, or part satisfaction, on account of any principal or interest then due thereon, the person entitled may bring his action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such acknowledgment, or part payment; and in case of the plaintiff being under any of the disabilities mentioned in the 4th section of the same act, or absence of the defendant beyond seas at the time of such acknowledgment being made, then within twenty years of the removal of such disability, or the return of the defendant from beyond seas.

III. Of Limitations of Actions on Penal Statutes.

By the 31 Eliz. c. 5, s. 5 (which act repeals a previous one, the 7 Hen. VIII., c. 3, upon the same subject), all actions, suits, bills, indictments, or informations for any forfeiture upon any statute penal, whether made before or since the act, whereby the forfeiture is limited to the queen, her heirs, and successors only, must be brought within two years after the commission of the offence; and all actions, suits, bills, indictments, or informations for any forfeiture upon any penal statute, whether made before or since the act (except the statute of tillage), the benefit and suit whereof is limited to the queen, her heirs, and successors, and *to any other that shall prosecute in that behalf*, must be brought by the person suing within one year after the commission of the offence; and in default of such prosecution, the same may be brought by the queen, her heirs, or successors, at any time within two years after the end of that year; and any action, suit, bill, indictment, or information brought after the time limited is to be void. It is provided that where a shorter time is limited by any penal statute, the prosecution must be within the time so limited.

A prosecution by the party grieved was not within the restraint of the statute; but now, by the 3 and 4 Wm. IV. c. 42, s. 3, all actions for penalties, damages, or sums of money given to the party grieved

by any statute now or hereafter to be in force must be brought within two years after the cause of such actions or suits. It is provided that nothing in that section should extend to actions the time for bringing which is especially limited by any statute. The saving in that act in the case of the disability of the plaintiff and the absence of the defendant beyond seas, and also the limitation as to further proceedings after judgment or outlawry reversed, apply to actions by the party grieved.

By the 24 Geo. II. c. 44, s. 1, actions against justices of the peace and constables or others acting in obedience to their warrants are limited to six calendar months.

There is no time limited by any statute for indictments for felonies and other misdemeanours when there is no forfeiture to the queen or to the prosecutor, but the acts of general pardon which have been passed from time to time have the effect of limitations. The last of such acts was the 20 Geo. II. c. 52.

IV. Of the exceptions to the operation of the Statutes of Limitation.

The exceptions in the several statutes of limitation may be stated generally to comprehend infants and other persons under disabilities.

In cases of express trust, the statutes of limitation have no application as between trustee and *cestuy que trust;* and in cases of fraud they operate only from the time of the discovery of the fraud. If a debtor creates by his will a trust of real or personal estate for the payment of his debts, such a trust will prevent the statutes from operating upon a debt not barred at the time of the creation of the trust, that is, from the death of the testator.

In general, in personal actions the Statutes of Limitation do not run against the estate of a person who has died intestate, in respect of claims accrued after his death, until the appointment of an administrator, though the rule is altered by 3 & 4 Wm. IV., c. 27, s. 6, as to rights to chattel interests in land, and apparently also as to money charges on land, besides arrears of dower and arrears of rent or interest of money charged on land. And if there be no personal representative against whom actions may be brought, the rights of claimants against the deceased's estate are unaffected by the statutes, as no laches can be attributed to them until an administrator is appointed. (5 B. and Ald., 204.)

A charity is never considered in equity as absolutely barred by the statutes, or by any rule of limitation analogous to them; but the court takes notice of a long adverse possession in considering the effect and construction of instruments under which claims are set up on its behalf. (2 J. and W., 321.)

By the 3 and 4 William IV. c. 27, s. 43, persons claiming tithes, legacies, or any other property for the recovery of which an action or suit at law or in equity might have been brought, cannot bring a suit or other proceeding in any spiritual court for the same but within the period during which they might have brought their action at law or suit in equity. Also, by the 27 Geo. III. c. 44, s. 1, suits in the Ecclesiastical Court for defamatory words must be commenced within six calendar months, and (sect. 2) suits for fornication, incontinence, or for striking or brawling in a church or churchyard, must be brought within eight calendar months after the commission of the offence. But, except in these cases, it does not appear that the Statutes of Limitation have any application to suits in the Ecclesiastical or Admiralty Courts.

The Statutes of Limitation must in general be pleaded positively by the defendant in any action at law, who wishes to take advantage of them, and it has been held in equity that unless the defendant claims the benefit of the statutes by plea or answer, he cannot insist upon them in bar of the plaintiff's demand. (Mitf., 277.)

(Bacon, *Ab.*, art. 'Limitation;' Chitty's *Statutes;* and *Report of Real Property Commissioners.*)

STERLING, a word applied to all lawful money of Great Britain. In Ruding's work on 'Coinage,' vol. i., p. 13, 4to. edit., the various supposed derivations of the word are given, with a list of the old writers who have adopted each. Ruding himself, after an elaborate examination, says, "its origin and derivation are still

unsettled;" but he inclines, with the majority of the authorities, to attribute it to an abbreviation of Esterlings, people of the north-east of Europe, some of whom were employed in the twelfth century in regulating the coinage of England. The word was not in use before the Conquest, though some have given it a Saxon derivation. In the twelfth century its use was common, and in the following century a writer ascribes its origin to the Esterlings. From the twelfth century English money was designated all over Europe as sterling. By the statute called the Assize of Weights and Measures, which is attributed, in some copies, to the reign of Henry III. (1216–1272), in others to that of Edward I. (1272–1307), "the king's measure was made so that an English penny, which is called the sterling, shall weigh thirty-two grains of wheat dry in the midst of the ear." This is the origin of the pennyweight, though it now weighs twenty-four grains.

STEWARD, LORD HIGH, OF ENGLAND, one of the antient great officers of state. Under the Norman kings and the early kings of the Plantagenet line it seems to have been an hereditary office. Hugh Grentmesnell held the office in the reign of Henry II., and it passed with his daughter and co-heir in marriage to Robert de Bellomont, who was earl of Leicester. Robert's son held it, on whose death without issue it passed to the husband of his sister, the elder Simon de Montfort, who had also the dignity of earl of Leicester. From him it passed to his son, the second Simon de Montfort, who was slain at the battle of Evesham in 1265. This high dignity then reverted to the crown, but was immediately granted to Edmund, king Henry the Third's younger son, together with Montfort's earldom of Leicester, in whose descendants, the earls of Lancaster and Leicester, it continued, and in the person of Henry the Fourth, who was duke of Lancaster, was absorbed into the regal dignity.

From this time no person has been invested with this high dignity as an heritable possession, or even for his own life, or during good behaviour. It is only conferred for some special occasion, and the office ceases when the business which required it is ended; and this occasion has usually been when a person was to be tried before the House of Peers. On this occasion there is a lord high steward created, who presides, and when the proceedings are closed, breaks his wand, and dissolves the court; but if the trial take place during the session of parliament, though a lord steward is appointed, it is not considered as his court, for he has no judicial functions and only votes with the rest as a peer, although he presides.

STOCK BROKER. [BROKER.]

STOCKS. [NATIONAL DEBT.]

STOPPAGE IN TRA'NSITU is the seizure by the seller of goods sold on credit during the course of their passage (transitus) to the buyer. This principle is said to have been established about 1690 in the Court of Chancery (2 Vern., 203); and it has since been acknowledged in the courts of common law. The transitus is defined to be the passage of the goods to the place agreed upon by the buyer and seller or the place at which they are to come into the possession of the buyer. This definition does not mean that the term transitus implies continual motion: goods are in transitu while they are at rest, if they are still on the road to the place to which they have been sent. This doctrine of stoppage in transitu entitles a seller, in case of the insolvency or bankruptcy of the buyer, to stop the goods before they come into the buyer's possession. The right of stoppage in transitu is not confined to cases of buying and selling. A factor either at home or abroad, if he consigns goods to his principal by the order of the principal and has got the goods in his own name or on his own credit, has the same right of stoppage in transitu as if he were the seller of the goods. Questions of stoppage in transitu sometimes involve difficult points of law. The right of stoppage implies that the goods are in the possession of the seller or factor when he exercises this right. Accordingly the law of Stoppage involves the law of Possession of moveable things. The following references will supply all the necessary information on this subject. (Abbot, *On*

Shipping; Cross, *On Lien and Stoppage in Transitu;* Smith's *Leading Cases,* note to Lickbarrow *v.* Mason; Russell's *Treatise on the Laws Relating to Factors and Brokers.*)

SUBINFEUDATION. [FEUDAL SYSTEM.]

SUBORNATION OF PERJURY. [PERJURY.]

SUBPŒNA. [WITNESS.]

SUBSIDY, from *subsidium,* a Latin word signifying aid or assistance. "Subsidies," says Lord Coke, "were antiently called auxilia, aides, granted by act of parliament upon need and necessity; as also for that originally and principally they were granted for the defence of the realm and the safe keeping of the seas." &c. [AIDS.] The word used in its general sense was applied to aids of every description; these were of two kinds, one perpetual, the other temporary. Those which were perpetual were the antient or grand customs, the new or petty customs, and the custom on broad-cloth. The temporary included tonnage and poundage; a rate of four shillings in the pound on lands, and two shillings and eight pence on goods; and the fifteenths or tenths, &c., of moveable goods. The limited sense, which is also the more common sense, of the word subsidy, attaches only to the rate on lands and goods. The grand customs were duties payable on the exportation of wool, sheepskins, and leather. The petty customs were paid by merchant strangers only, and consisted of one-half over and above the grand customs payable by native merchants.

Tunnage and poundage was a duty varying in amount at different times from one shilling and sixpence to three shillings upon every tun of wine, and from sixpence to a shilling upon every pound of merchandise coming into the kingdom. The object in granting it was said to be, that the king might have money ready in case of a sudden occasion demanding it for the defence of the realm or the guarding of the sea. This kind of subsidy appears to have had a parliamentary origin. The earliest statute mentioned by Lord Coke as having granted it is 47 Ed. III. In the early instances it was granted for limited periods, and express provision was made that it should have intermission, and vary, lest the king should claim it as his duties. The duties of tonnage and poundage were granted to Henry V. for his life with a proviso that it should not be drawn into a precedent for the future. However, notwithstanding the proviso, it was never afterwards granted to any king for a less period. These duties were farmed while Lord Coke was commissioner of the treasury, for 160,000*l.* a year. In the course of the argument in the case of ship-money in 13 Charles I., the king's duties are said to amount to 300,000*l.* This probably was the aggregate of the customs and tonnage and prisage.

Subsidy in its more usual and limited sense consisted of a rate of 4*s.* in the pound on the lands, and 2*s.* 8*d.* on goods, and double upon the goods of aliens. The taxes called tenths, fifteenths, were the tenth or fifteenth part of the value of moveable goods. Other portions, such as the fifth, eighth, eleventh part, were sometimes, but rarely, also levied. These taxes seem to have had a parliamentary origin. There are no appearances of the king ever having attempted to collect them as of right. Henry III. received a fifteenth in return for granting Magna Charta and the Charta de Foresta. In the earlier periods never more than one subsidy and two fifteenths were granted. About the time of the expectation of the Armada (31 Eliz.), a double subsidy and four fifteenths were granted. The then chancellor of the exchequer, Sir Walter Mildmay, when moving for it, said, "his heart did quake to move it, not knowing the inconvenience that should grow upon it." The inconvenience did grow very fast, for treble and quadruple subsidies and six fifteenths were granted in the same reign. These grants seem to have been at intervals of about four years at that period. Subsidies and fifteenths were originally assessed upon each individual, but subsequently to the 8 Edward III., when a taxation was made upon all the towns, cities, and boroughs, by commissioners, the fifteenth became a sum certain, being the fifteenth part of their then existing value. After the fifteenth

was granted by parliament, the inhabitants rated themselves. The subsidy, never having been thus fixed, continued uncertain, and was levied upon each person in respect of his lands and goods. But it appears that a person paid only in the county in which he lived, even though he possessed property in other counties. And, as Hume observes, probably where a man's property increased he paid no more, though where it was diminished he paid less. It is certain that the subsidy continually decreased in amount. In the eighth year of the reign of Elizabeth it amounted to 120,000*l.*, in the fortieth to 78,000*l.* only. Lord Coke estimates a subsidy (probably in the reign of James I. or Charles I.) at 70,000*l.*: the subsidy raised by the clergy, which was distinct from that of the laity, at 20,000*l.*; a fifteenth at about 29,000*l.* Eventually the subsidy was abolished, and a land tax substituted for it.

(2 *Inst.*; 4 *Inst.*; 'Bate's Case,' &c., 2 *State Trials*, 371, ed. 1809; 'The Case of Ship Money,' 3 *State Trials*, 826, ed. 1809; Venn's *Abrt.*, tit. 'Prerogative;' Comyn's *Dig.*, tit. 'Parliament,' 'Prerogative.') [CUSTOMS.]

SUCCESSION. This is a legal term derived from the Roman "Successio," which signifies a coming into the place of another, and Successor is he who comes into such place.

The Roman term signifies a coming into the place of another so as to have the same rights and obligations with respect to property which that other had. There might be successio either by coming into the place of a person living, or by becoming the successor of one who was dead. Gaius (iii. 77, &c.) gives instances of successio in the case of persons living, one instance of which is the Bonorum Cessio according to the Lex Julia. Succession was again either Universal or Singular. The instances of universal succession (per universitatem) which Gaius (ii. 97) enumerates, are the being made a person's heres, getting the possessio of the bona of another, buying all a man's property, adopting a person by adrogatio, and admitting a woman into the manus as a wife; in all which cases all the property of the several persons enumerated passed at once to the person who was made heres, or got the bonorum possessio, or bought the whole property, or adopted another by adrogation, or married the woman. An instance of singular succession is the taking of a legacy under a man's will.

The term Succession is used in our language. We speak of the succession to the crown or the regal dignity, and the term implies that the successor in all things represents the predecessor. Indeed, the king, as a political person, never dies, and upon the natural death of a king the heir immediately succeeds. The English heir at law takes the descendible lands of his ancestor as universal successor; and the executor takes the chattels real and other personal property of his testator as universal successor. The general assignee or assignees of a bankrupt or insolvent take by universal succession.

Blackstone says that "corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever." It is true that when members of a corporate body die others are appointed to fill up their places, but they do not succeed to the others in the Roman sense of succession—they simply become members of the corporation. But it has been established in some cases [CORPORATIONS, p. 679] that the use of the word "successors" implies that the legislature meant to establish a corporation; and yet it is certain that a feoffment of land to a corporation aggregate without the word "successors" is a valid grant. In a feoffment to a corporation sole the word "successors" is necessary. The succession in the case of a corporation sole follows the nature of the Roman succession. In the case of a corporation aggregate there is no succession, and the rule that a corporation may be established by the use of the word "successors" in a statute is founded on an erroneous understanding of the term "successors."

SUFFRAGAN. [BISHOP.]

SUICIDE is the death of a person caused by his own act, voluntary or involuntary.

A rescript of Hadrian expressly directed that those soldiers who, either from impatience of pain, from disgust of

life, from disease, from madness, from dread of infamy or disgrace, had wounded themselves or otherwise attempted to put a period to their existence, should only be punished with ignominia (*Dig.*, 49, tit. 16, s. 6, 'De Re Militari'); but the attempt of a soldier at self-destruction on other grounds was a capital offence. Persons who, being under prosecution for heinous offences, or being taken in the commission of a great crime, put an end to their existence from fear of punishment, forfeited all their property to the Fiscus, if the offence was such as would have been followed by confiscation if they had been convicted. (*Dig.*, 48, tit. 21, s. 3.) Suicide was not uncommon among the Romans in the later republican period; and it became very common under the emperors, as we see from the examples in Tacitus and in the younger Pliny, who mentions the case of Corellius Rufus (*Ep.*, i. 12), Silius Italicus (iii. 7), Arria (iii. 16), and the woman (vi. 24) who succeeded in persuading her husband, who was labouring under an incurable disease, to throw himself, tied to her, into a lake. Except in the cases mentioned in the two titles of the 'Digest' above cited, suicide was not forbidden by the Roman law; nor was it discountenanced by public opinion. (Rein, *Das Römische Criminalrecht*, p. 883.)

Voluntary suicide, by the law of England, is a crime; and every suicide is presumed to be voluntary until the contrary is made apparent. This crime is called self-murder and felonia de se (self-felony), neither of which terms is calculated to convey a correct notion of the legal character of this offence, or of the mode in which it is punished.

A felo de se (self-felon) is a person who, being of years of discretion and in his senses, destroys his own life, either intending to do so, or intending to do some other act of a character both unlawful and malicious; as if, in attempting to kill another, under circumstances which would have rendered such killing either murder or manslaughter, a gun bursts in the assailant's own hand, or he runs upon a knife *casually* in the hand of the person whom he intended to kill. But in no case is self-felony considered to be committed if death do not ensue within a year and a day of the blow or injury; or, in other words, if a whole year intervene between the day on which the blow, &c., is given, and the day on which death takes place.

The legal effect of a self-felony is a forfeiture to the crown of all the personal property which the party had at the time when he committed the act by which the death was caused, including debts due to him; but though the crime is called felony, it was never attended with forfeiture of freehold, and never worked any corruption of blood. It appears, however, that formerly the crown was entitled to the year, day, and waste of the freehold lands of a self-felon. The fact that a self felony has been committed is ascertained by an inquest taken before the coroner or other officer who has authority to hold inquests, upon view of the dead body. [CORONER.]

When a self-felony is found by the inquisition, the jury ought also to inquire and find whether the party had any, and, if any, what goods and chattels at the time when the felony was committed.

The crown takes the property of the self-felon subject to no liability in respect of his debts or engagements. Upon a memorial presented to the treasury by a creditor of the deceased, a warrant under the sign-manual is generally obtained, which authorises the ecclesiastical court to grant letters of administration to such creditor, who, upon such grant being made, acquires the ordinary rights, and becomes subject to the ordinary liabilities of a personal representative.

Involuntary suicide is death occasioned by the act of the party, either without an actual intention of destroying life or of committing any other wilful malicious act, or without the legal capacity of intending to do so. Neither self-felony nor any other crime can be committed by a child who has not attained years of discretion; nor can it be committed by a person who, by disease or otherwise, has lost, or has been prevented from acquiring, the faculty of discerning right from wrong.

At common law, which in this respect follows the canon law, a person found by

inquest to be felo de se is considered as having died in mortal sin; and his remains were formerly interred in the public highway without the rites of Christian burial, and a stake was driven through the body: but by the 4 Geo. IV. c. 52, the coroner or other officer by whom the inquest is held is required to give directions for the private interment of the remains of any person against whom a finding of felo de se shall be had, without any stake being driven through the body, in the churchyard or other burial-ground of the parish in which the remains of such person might by the laws or customs of England be interred, if the verdict of felo de se had not been found; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place within the hours of nine and twelve at night, without performance of any of the rites of Christian burial.

The Code Pénal of France contains no legislation on the subject of suicide. Of the modern codes of Germany, some contain no provisions, and others vary in their particular provisions. In the Bavarian and Saxon codes suicide is not mentioned. The Prussian code forbids all mutilation of the dead body of a self-murderer under ordinary circumstances; but declares that it shall be buried without any marks of respect otherwise suitable to the rank of the deceased; and it directs that if any sentence has been pronounced, it shall, as far as it is feasible, be executed, due regard being had to decency and propriety, on the dead body. The body of a criminal who commits self-murder to escape the execution of a sentence pronounced against him is to be buried at night by the common executioner, at the usual place of execution for criminals. The Austrian code simply provides that the body of a self-murderer shall be buried by the officers of justice, but not in a churchyard or other place of mmon interment.

SUIT is a legal term used in different senses. The word *secta*, which is the Latin form, is from "sequor," to follow; and hence the general meaning of the word may be deduced.

1. A suit in the sense of litigation, is a proceeding by which any legal or equitable right is pursued, or sought to be enforced in a court of justice. Where the remedy is sought in a court of Law, the term Suit is synonymous with Action; but when the proceeding is in a court of equity the term Suit is alone used. The term is also applied to proceedings in the ecclesiastical and admiralty courts.

2. Suit of court, in the sense of an obligation to follow, that is, to attend, and to assist in constituting, a court, is either real or personal.

Suit-real, or rather suit-regal, is the obligation under which all the residents within a leet or town are bound, in respect of their allegiance as subjects, to attend the king's criminal court for the district, whether held before the king's officer and called the sheriff's tourn, or held before the grantees of leets or the officers of such grantees, and called courts-leet. [LEET.]

Suit-personal is an obligation to attend the civil courts of the lord under whom the suitor holds lands or tenements; and this is either suit-service or suit-custom. If freehold lands, &c. be held of the king immediately, or, as it is feudally termed, in chief, suit-service is performed by attendance at the county court, the court held by the king's officer, the sheriff, unless the lands, &c., constituted an entire barony, in which case the suit demandable from the tenant was, his attendance as a lord of parliament. If freehold lands, &c., are held mediately only of the king, but immediately (or in chief) of an inferior lord, the suit demandable is attendance at the court baron of the lord: in either case suit-service is expressly or impliedly reserved upon the creation of the tenure, as part of the services to be rendered for the estate. In manors [MANORS] where there are copyhold, that is, customary estates, the custom of the manor imposes upon the copyholder an obligation to attend the lord's customary court; but as this obligation is not annexed by tenure to the land held by the copyholder, but is annexed by custom to his position as tenant, the suit is not suit-service but suit-custom. In the case of freeholders attending as suitors the county court or the court-baron (as in the case of

the antient tenants per baroniam attending parliament), the suitors are the judges of the court, both for law and for fact, and the sheriff or the under-sheriff in the county court, and the lord or his steward in the court-baron, are only presiding officers with no judicial authority. But in the criminal jurisdiction of the tourn and leet, the sheriff and the grantee of the leet, or his steward, are the judges; and the suitors act only a subordinate part.

In the customary court, though its functions are confined to matters of a civil nature, yet, on account of the original baseness of the copyhold tenure, the judicial power is wholly in the lord or his steward.

3. Besides suit of court, secta ad curiam, there are other species of personal suit, which, like suit of court, are divisible into suit-service and suit-custom. Of these the most usual is suit of mill, secta ad molendinum, which is where, by tenure or by custom, the freehold or customary tenant is bound to grind his corn at the lord's mill.

SUIT and SERVICE. [SUIT.]

SUMMARY CONVICTIONS. [LAW, CRIMINAL.]

SUPERANNUATIONS. [PENSION.]

SUPERCARGO. [SHIPS.]

SUPERSE'DEAS, in law, the name of a writ used for the purpose of superseding proceedings in an action (Tidd's *Practice*; Archbold's *Practice*): in bankruptcy it is the writ used for the purpose of superseding the fiat. It is obtained on application by petition to the court of bankruptcy, and is granted on the ground that the fiat is invalid in point of law, has not been duly prosecuted, &c. [BANKRUPTCY.] (Deacon's *Law of Bankruptcy*; Eden's *Bankruptcy Law*.)

Supersedeas also in its more general sense is used to express that which supersedes legal proceedings, although no writ of supersedeas may have been used for that purpose. Thus if a writ of certiorari be delivered to an inferior court for the purpose of removing a record to a superior court, the writ of certiorari is said to be a supersedeas of the proceedings before the inferior court.

SUPPLY. [PARLIAMENT.]

SUPREMACY is a term used to designate supreme ecclesiastical authority; and is either papal or regal. Papal supremacy is the authority exercised until nearly the middle of the sixteenth century by the pope over the churches of England, Scotland, and Ireland, as branches and integral parts of the Western or Latin church, and which continues to be exercised to some degree over that portion of the inhabitants of those countries who are in communion with the Church of Rome. The extent of the legislative authority of the pope was never exactly defined.

The papal supremacy was abolished by the legislatures of the three kingdoms in the sixteenth century. In order to ensure acquiescence in that abolition, particularly on the part of persons holding offices in England and Ireland, an oath has been required to be taken, which is generally called the oath of supremacy, a designation calculated to mislead, it being in fact an oath of *non*-supremacy; since, though in its second branch it negatives the supremacy of the pope, it is silent as to any supremacy in the king. This oath is therefore taken without scruple by persons who are not Roman Catholics, whether members of the Anglican church or not. The form of the oath was established in England by 1 Wm. & Mary, c. 8; it is as follows:—"I, A. B., do swear that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God." Under this and many former statutes, all subjects were bound to take the oath of supremacy when tendered; but by the 31 Geo. III. c. 32. s. 18, no person, since the 24th June, 1791, is liable to be summoned to take the oath of supremacy, or prosecuted for not obeying such summons; and Roman Catholics, upon taking the oath introduced by that Act,

s. 1, in which the *civil* and *temporal* authority of the pope are abjured, may hold office without taking the oath of supremacy. As to other cases concerning the oath of supremacy see LAW, CRIMINAL, p. 218.

Henry VIII. was acknowledged as supreme head of the church by the clergy in 1528. This supremacy was confirmed by parliament in 1534, when, by the statute of 26 Hen. VIII. c. 1, it was enacted "that the king our sovereign lord, his heirs, and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England, and shall have and enjoy, annexed to the imperial crown of this realm, as well the style and title thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of supreme head of the same church belonging and appertaining; and shall have power from time to time to visit, repress, redress, reform, order, correct, restrain, and amend all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which, by any manner of spiritual authority or jurisdiction, may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm; any usage, custom, foreign laws, foreign authority, prescription, or any other thing to the contrary notwithstanding."

SURETY. A surety is one who undertakes to be answerable for the acts or omissions of another, who is called his principal. Such undertaking must be in writing, and it may be either by bond or by simple writing. A contract is not binding unless made upon some sufficient consideration; but in the case of a bond this consideration is inferred from the circumstances of deliberation incident to its execution as a deed. When the undertaking is not by bond, it is necessary that the consideration should appear upon the face of the written instrument, or be necessarily implied from the terms of it, and that the instrument should be signed by the party who becomes the surety. The instrument by which the surety becomes bound, when it has reference to civil matters, is generally called a guarantee, and ordinarily consists of an undertaking to become answerable for the payment of goods furnished to the principal, or for his integrity, skill, attention, and other like matters. In such cases the consideration expressed would probably be the furnishing of the goods to the principal, or his employment by the party guaranteed. In the construction of guarantees the same rule of law prevails as in the case of all written instruments,—that they shall be understood in the sense most favourable to the party making them which the words will reasonably bear.

With respect to the rights of the surety against the principal, Mr. Justice Buller has distinctly laid down the law, "wherever a person gives a security by way of indemnity for another, and pays the money, the law raises an assumpsit," that is, implies a promise on the part of the principal to repay to the surety all the money that he has expended on his behalf, and this money may be recovered in an action against the principal for money paid to his use. But in no case is the surety entitled to more than an indemnity from his principal. The court of chancery will interfere to give the surety relief out of any funds of the principal which he cannot reach at common law.

Where more persons than one become sureties for the same principal, they are called co-sureties. If one of these has paid the whole of the debt due from the principal, he may recover in an action of assumpsit from his co-sureties the amounts for which they were respectively liable. A court of equity will also interfere to regulate the proportions partly due from each. And in case any of them are unable to pay from insolvency, &c., it will compel the others to contribute proportionally the amount for which the defaulters were liable. The law is the same as to co-sureties, whether all have been created by the same instrument in writing, or each one by a distinct instrument.

(Fell, *On Guarantees; Mayhew* v. *Crickett*, 2 Swanston, 185.)

SURETY OF THE PEACE is the acknowledging of a recognizance or bond to the king, taken by a competent judge of record for keeping the peace. [RECOGNIZANCE.] Such recognizance may be obtained by any party from another on application to a magistrate, and stating on oath that he has just cause to fear that such other "will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief." The fear must be of a present or future danger. Upon the neglect or refusal of the party so summoned to enter into the recognizances demanded, he may be committed to prison by the magistrate for a specified period, unless he sooner complies. Sureties also may be similarly required for the good behaviour of parties who have been guilty of conduct tending to a breach of the peace, abusing those in the administration of justice, &c.

(Burn's *Justice*, tit. 'Surety of the Peace.')

SURGEONS, COLLEGE OF. The present College of Surgeons of England, had its origin in the Company of Barber-Surgeons, which was incorporated by royal charter in the first year of Edward IV. By this charter of 1 Edward IV., the barbers practising surgery in London, who had before associated themselves in a company, were legally incorporated as the Company of the Barbers in London. Their authority extended to the right of examining all instruments and remedies employed, and of bringing actions against whoever practised illegally and ignorantly; and none were allowed to practise who had not been previously admitted and judged competent by the masters of the company.

This charter was several times confirmed by succeeding kings, but in spite of it many persons practised surgery independently of the company, and at length associated themselves as members of a separate body, and called themselves the surgeons of London. In the 3rd year of Henry VIII. it was enacted "that no person within the city of London, or within seven miles of the same, should take upon him to exercise or occupy as a physician or surgeon, except he be first examined, approved, and admitted by the bishop of London or by the dean of St. Paul's for the time being, calling to him four doctors of physic, and for surgery other expert persons in that faculty." All who under this act obtained licence to practise were of course equally qualified, whether members of the company of barbers or not; and in the 32nd year of Henry VIII. the members of the latter company, and those who had incorporated themselves as the company of surgeons, were united in one company, "by the name of masters or governors of the mystery and commonalty of barbers and surgeons of London."

In the 18th year of George II. an act was passed by which the union of the barbers and surgeons was dissolved, and the surgeons were constituted a separate company; and in the 40th year of George III. a charter was granted by which it was confirmed in all the privileges which had been conferred upon it by the act of George II. By this charter the title of the company was altered from that of the masters, governors, and commonalty of the Art and Science of Surgeons to that of the Royal College of Surgeons in London. Under this charter it was governed by a council or court of assistants, consisting of twenty-one members, of whom ten composed the court of examiners. Of these ten one was annually elected president, or principal master, and two were annually chosen vice-presidents or governors. By the bye-laws which the council were empowered by the charter to make, the members of the council were to be chosen for life from those members of the College whose practice was confined to surgery, and were to be elected by ballot at a meeting of the council. The examiners were generally chosen in order of seniority from the members of the council: the presidents and vice-presidents were chosen in rotation from the court of examiners, the president for the current year having been the senior vice-president during the past year.

A new charter was granted to the College of Surgeons in the 7th year of

Victoria, by which it is declared, that the name of the college shall henceforth be The Royal College of Surgeons of England; and that a portion of the members of the said college shall be fellows thereof, by the name of The Fellows of the Royal College of Surgeons of England. The charter declares that the present president and two vice-presidents and all other the present members of the council of the said college, and also such other persons, not being less than 250 nor more than 300, and being members of the said college, as the council of the college, at any time before the expiration of three calendar months from the date of the charter, shall elect and declare to be fellows in manner by the charter directed; together with any such other persons as the council of the said college, after the expiration of the said three calendar months and within one year from the date of the charter, shall appoint in manner by the charter authorized, shall be fellows of the said college. But no person, except as hereinbefore named, is to become a fellow, unless he shall have attained the age of twenty-five years, and complied with such rules as the council of the college shall think fit, and by a bye-law or bye-laws direct; nor unless he shall have passed a special examination by the examiners of the said college. Every person admitted as a fellow, as last mentioned, is to become a member of the College by such admission, if he is not already a member. Henceforth, no member of the College, who is not a fellow, is to be eligible as a member of the council. There are also (10) some other restrictions as to eligibility. The present members of the council are to continue life members as heretofore; and the number of members of council is to be increased from twenty-one to twenty-four, and all future members are to be elective, and to be elected periodically, in the manner prescribed by the charter (12) when the number of elective members of the council shall be completed and made up to twenty-four. Three members shall go out annually, but they may be re-elected immediately. The members of council are to be elected by the fellows, including the members of the council as such, in the manner prescribed by the charter (15); and the election is to be by ballot (17). There are various special provisions as to the eligibility of fellows for which we refer to the charter. There are to be ten examiners of surgeons for the college, and the present examiners are to continue for life; and all future examiners are to be elected by the council, either from the members of the council, or from the other fellows of the college, or from both of them; and all future examiners of the College shall hold their office during the pleasure of the council. The charter contains other regulations, and confirms the powers of the college and the council, except so far as they are altered by the charter; and it declares that no bye-law or ordinance hereafter to be made by the council shall be of any force until the crown shall have signified its approval thereof to the College under the hand of one of the principal secretaries of state, or otherwise as in the charter stated (22). "The Bye-Laws and Ordinances of the Royal College of Surgeons of England" contain the regulations as to the candidates for the fellowship (sect. 1), for the examination of candidates for the fellowship (2), admission of fellows (3), election of members of council (5). By section 1, it is required that every candidate for the fellowship, among other certificates, shall produce a certificate, satisfactory to the court of examiners, that he has attained a competent knowledge of the Greek, Latin, and French languages, and of the elements of mathematics. The subjects of examination for the fellowship are Anatomy and Physiology on the first day, and Pathology and Therapeutics and Surgery on the second day. The examination is to be by written answers to written or printed questions; but any candidate may be interrogated by the examiners, on any matter connected with the questions or answers. In the anatomical examination the candidate must also perform dissections and operations on the dead body in the presence of the examiners.

The members of the College are admitted by diploma after examination before the court of examiners, and their diploma confers upon them the right of

practising surgery in any part of the British dominions.

The council of the College have at various times required certain qualifications of age, education, &c., from candidates for examination. The regulations last issued are dated October, 1841.

The examinations of members are conducted *vivâ voce*, or, if the candidate desire it, in writing. The questions are almost exclusively anatomical and surgical: and the examination of each candidate occupies about an hour and a half, during which time he is usually questioned by four of the examiners in succession.

According to the financial statement (June, 1843), the receipts of the College for the previous year were as follows:—

	£	s.	d.
Court of examiners; fees for diplomas, at 20 guineas each, exclusive of stamps . . .	14,093	11	0
Rent	12	10	0
Incidental, sale of lists, catalogues, &c. . .	160	6	6
Dividends on investments in government securities, &c. . .	1,499	0	4
	£15,765	7	10

And the disbursements were as follows:—

College department, including council, court of examiners, auditors, diploma-stamps, salaries, &c.	7,402	19	1
Museum department, including catalogues, specimens, spirit, salaries, studentships, &c. .	3,653	0	10
Library department, including the purchase and binding of books, salaries, &c. . .	1,120	12	7
Miscellaneous expenses, taxes, rent, &c. .	698	18	1
Repairs and alterations	253	10	6
Hunterian oration, lectures, Jacksonian prize, &c.	264	4	0
	£13,393	5	1

The museum of the College consists of the collection made by John Hunter, which was given in trust by government, who purchased it for 15,000*l.*, and of numerous additions made to it by donations of members and others, and by purchase. The parts of it which illustrate physiology, palæontology, and morbid anatomy are probably the most valuable collections of the kind in Europe.

Lectures on anatomy, for which 510*l.* were left to the company of barber surgeons by Edward Arris, and 16*l.* per annum by John Gale, are delivered annually by one of the members of the council or some other member selected by them. Twenty-four museum lectures are also, in compliance with the deed of trust, annually delivered by the Hunterian professor, the subjects of which must be illustrated by preparations from the Hunterian collection, and from the other contents of the museum. An oration in commemoration of John Hunter, or of others who have been distinguished in medical science, is delivered annually on the 14th of February, the anniversary of Hunter's birth.

Abstracts of the several acts and charters relating to the College of Surgeons may be found in Willcock 'On the Laws relating to the Medical Profession,' London, 1830, 8vo., and in Paris and Fonblanque's 'Medical Jurisprudence,' vol. iii. The bye-laws, the list of members, the catalogues of the museum and library, &c., are published by the college. The dissection of human bodies is now regulated by 2 & 3 Wm. IV. c. 75 [ANATOMY ACT].

SURRENDER. "*Sursum redditio* properly is a yielding up of an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement between them." (Co. Litt., 337 b.) A surrender and a release both have the effect of uniting the particular estates with that in reversion or remainder; but they differ in this, that whereas a release generally operates by the greater estate descending on the less, a surrender is the falling of the less estate into the greater. [As to the difference between SURRENDER and RESIGNATION, see RESIGNATION.]

Coke mentions three kinds of surrender: 1. A surrender at common law, which is the surrender properly so called; 2. A surrender by custom of copyhold lands or customary estates; and, 3. A surrender improperly taken, as of a deed, a patent, of a rent newly created, and of a fee-simple to the king. (Co. Litt. 338 a.)

As to surrender of copyholds, see COPYHOLD.

A surrender may be made of letters-patent and offices to the king, to the intent that he may make a fresh grant of the same right; and a grant of the second patent for years to the same person, for the same thing, causes a surrender in law of the first. (10 *Rep.*, 66.)

SURROGATE is, according to Cowell's 'Interpreter,' "one that is substituted or appointed in the room of another, most commonly of a bishop or a bishop's chancellor."

The qualifications required in persons appointed as surrogates are defined and enforced by the canons of 1603. The person who undertakes the office without being qualified is subject to certain penalties. (Gibs., *Cod.*, tit. xliii., c. 3.)

The principal duty of ecclesiastical surrogates consists in granting probates to wills, letters of administration to the effects of intestates, and marriage licences. The proper performance of these duties is guarded by particular enactments. (92nd of the Canons of 1603 and 93rd Canon; Gibson, *Cod.*, tit. xxiv., c. 4.)

Surrogates are also persons appointed to execute the offices of judges in the courts of Vice Admiralty in the Colonies, in the place of the regular judges of those courts. The acts of such surrogates have, by the 56 Geo. III. c. 82, the same effect and character as the acts of the regular judges.

SURVIVOR, SURVIVORSHIP. [ESTATE, p. 858.]

SUZERAIN. [FEUDAL SYSTEM, p. 22.]

SWEARING, a profane use of the name of the Deity. By the 109th Canon, churchwardens are to present those who offend their brethren by swearing, and notorious offenders are not to be admitted to communion until they are reformed. Profane cursing and swearing were first made an offence punishable by law by 20 Jas. I. c. 21 (continued by 3 Chas. I. c. 4; 16 Chas. I. c. 4; and 6 and 7 Wm. III. c. 11). The 19 Geo. II. c. 21, enacts, that if any person shall profanely curse or swear, and be convicted thereof on confession, or on the oath of one witness, before any magistrate, he shall forfeit, if a day-labourer, common soldier, sailor, or seaman, 1*s.*; if any other person under the degree of gentleman, 2*s.*; if of or above the degree of a gentleman, 5*s.*; for every second conviction double, and for every third and subsequent conviction treble. The penalties are to go to the poor of the parish. Parties who do not pay the penalties and costs may be imprisoned and kept to hard labour ten days for the penalties, and six other days for the costs. Magistrates and constables are liable to penalties if they wilfully omit to do their duty under the act. No person can be prosecuted except within eight days after he has committed the offence. By 22 Geo. II. c. 33, persons belonging to the navy who are guilty of profane oaths or curses are liable to punishment by court-martial.

(Com., *Dig.*, 'Justices of Peace,' b. 23; Burn's *Justice*, 'Swearing.')

T

TACK is the technical term in Scotland for a lease, whether of lands or edifices; the rent is called the tack-duty, and the tenant the tacksman. The Scottish system of leases having lately attracted some attention, and being intrinsically important, a separate sketch of its more prominent peculiarities seems to be requisite. The Scottish lease, however long its duration, is purely a contract, and does not partake—at least in questions between landlord and tenant—of the peculiarities of the feudal system. In early times it is possible to trace something like an inferior system of vassalage in the nature of the agriculturist's tenure. He held not as party to a contract, but by a unilateral conveyance from the landlord, called assedation. In Scotland, however, there was no permanent inter-

ruption of the legitimate system of sub-feuing; and thus all descriptions of permanent estates could be constituted in the land by the pure adaptation of the feudal usages. There was no temptation to convert the contract for the limited occupation and use of the land into a means of constituting a semi-proprietary right in it —of supplying with a lessee the place of a sub-vassal; and the system of leases, as one of mere letting and hiring, took its principles from the Roman contract of *locatio conductio*. The right of the lessee or tacksman was so purely personal that it was ineffectual against a party acquiring the lands by purchase from the lessor; and so early as 1449 a statute was passed, preserving the rights of "the puir people that labouris the ground" against new owners. Leasehold rights, however, in questions of succession, and in the form of attachment, employable by creditors, have by usage come into the position of real or heritable property. In the times of rapid agricultural improvement, when farms were frequently taken on leases of fifty-seven years at a low rent, a virtual estate was created, the succession to which might for the time be more important than that of the ownership of the land. Unless there be any specification to the contrary in the lease, such successions follow the rules applicable to landed property. It has been matter of much regret, that the system by which feudal rights in land may be subjected to real burdens, has not been extended to this species of property, so as to enable valuable leases to be burdened with a security for borrowed money, or a guarantee fund for provisions for children. The system of granting and recording public feudal titles not being available for this species of property, all attempts to accomplish this object, by the tenant assigning the lease and retaining possession as the assignee's subtenant, have been ineffectual against the rights of creditors. It has been frequently proposed to pass an act creating a system of registration of leases, and of burdens affecting them.

It is unnecessary to state very minutely the title which a person must have to enable him to grant a lease, the parties who may hold leases, or the nature of the titles which constitute an ordinary lease, as these bear a generic resemblance to the corresponding features of English law. Long leases, however, being the prominent feature of the Scottish system, those cases in which there is a restriction on granting them may be noticed. A person who has a life-rent interest is, in the general case, not entitled to grant a lease to last beyond his own life. Persons having the absolute administration of property, as trustees, corporations, &c., are entitled and bound to grant leases for such a period as is deemed necessary to good husbandry; and this period has, by usage, in the ordinary case, been fixed at nineteen years. There have been many questions as to the extent to which persons holding under entails may grant leases, because in many instances attempts have been made in this form to alienate a considerable estate in the property, which have been challenged by successors. In the celebrated Queensberry case, leases granted for ninety-seven years, on a grassum (that is, a sum of money paid by the tenant on entering, like a fine in England), were found to be struck at by the entail as an attempt to alienate part of the property (2 Dow, 90). In later cases, leases of forty and thirty-one years have been found ineffectual. A lease of twenty-one years is the longest that has been sanctioned by the courts where an heir of entail has shown that he has an interest to impugn the contract.

Writing is necessary to constitute a lease, although possession during the part that may remain over of a year begun, may be held as a right from sufferance and acquiescence in its commencement. The proper form of the written agricultural lease has been an object of much attention by conveyancers, and there is a considerable degree of uniformity in the practice throughout the country. There are usually nineteen clauses, as follow:—1. *The Description of Parties.* 2. *The Destination*, in which the extent to which assigning or subletting is permitted or prohibited is set forth, and provision is made for the arrangements in case of the tenant's decease. 3. *Clause of Possession*, describing the subject let. 4.

Duration. 5. *Reservation,* if there be any rights such as that to minerals or game reserved by the landlord. 6. *Landlord's Meliorations,* containing such obligations to improve the subject as the landlord undertakes. 7. *Warrandice* or guarantee of the title given to the tenant. 8. *Rent-clause.* 9. *Tenant's Meliorations,* setting forth such improvements as the tenant undertakes. 10. *Preservation,* containing the tenant's obligation to keep the building, fences, &c., in repair. 11. *Insurance,* in which the tenant becomes bound to insure the buildings, crops, &c., against fire. 12. *Thirlage.* This clause, a remnant of feudal usages, is now comparatively rare—it binds the tenant to grind his corn at the mill of the over-lord. 13. *Management.* 14. *Bankruptcy,* providing in general for the landlord's resumption of the lease if the tenant become bankrupt. 15. *Removal,* by which the tenant engages to evacuate the premises at the prescribed term. 16. *Reference,* providing for arbitration of disputes. 17. *Mutual Performance,* indicating penalties to be paid by the party failing. 18. *Registration* for execution [REGISTRATION]. 19. *Testing clause,* containing the formalities of the execution of the contract. Of these, the clause of management is the most important. It is now much doubted how far it is good policy to bind the tenant to the observance of a particular course of agriculture. In the highly improved districts, where very scientific farming is expected, the tenant is generally more capable than the landlord of estimating the value of improved systems. Agricultural chemistry, and other means of increasing the produce of the soil, are at present the object of much attention among farmers, and where tenants cannot alter a fixed routine without the risk of a law-suit, an embargo is laid on the practical application of improvements. The landlord's chief interest in any routine being followed, is simply the preservation of the land from deterioration towards the conclusion of the lease. On the subject of the usual provisions for management, Mr. Hunter says, "In those districts where agriculture is best understood, the following are the ordinary rules of management during the currency of the lease:—1. White corn crops ripening their seeds shall never be taken from the same land in immediate succession. 2. A certain proportion shall be under turnips or plain fallow every year, and be sown to grass with the first corn crop after turnips or fallow. 3. No farm-yard dung or putrescent manure made from the produce of the farm, nor straw nor hay made from the natural herbage shall ever be carried off the farm. It is sometimes added, that no turnips or rape or hay of any kind shall ever be removed or sold. And upon weak soils, it is sometimes required that no less than half of the turnips shall be eaten by sheep on the ground where they grow. 4. If the soil is not such as to admit of being ploughed and cropped every year, it is stipulated that a certain part or proportion shall be always in grass, and that land laid down to grass shall be, before being broken up again, two or more years in pasture. 5. During the first five or six years of a lease, the conditions are sometimes more special, obliging the tenant to have so much more in fallow or turnips every year, and so much more in grass, and also to leave the farm in a particular shape, so as to admit of the incoming tenant pursuing a correct rotation of cropping from his very entry. Or 6. What is approved of by some agriculturists, it may be agreed that the lessee shall cultivate the lands according to the rules of husbandry, but with the addition of specific regulations applicable to the four or five last years of the lease. 7. Adherence to the course prescribed may be enforced by conditioning for payment of additional rent in the event of contravention, besides damages, and with a power to prevent further contravention, for which purpose power to make a summary judicial application is occasionally taken. Or 8. Liberty may be given to the lessee to deviate from the prescribed course upon payment of an additional rent specified, which may be declared to be pactional and not penal, and not liable to judicial modification. 9. In some districts, though seldom in the most improved, there is occasionally a stipulation that the lessee shall himself reside upon and

manage the farm."—i. 369-370. (*A Treatise on the Law of Landlord and Tenant, with an Appendix, containing Forms of Leases*, by Robert Hunter, Esq., Advocate, 2 vols. 8vo., 1845.)

TAIL, ESTATE. [ESTATE.]

TAILZIE, in the law of Scotland, is the technical term corresponding with the English word Entail, which now generally supersedes it in colloquial use, even in Scotland. The early history of Entail law in Scotland in some respects resembles that of England but in later times they diverged from each other. In Scotland there was no early effort, such as the statute of Westminster the Second (13 Edw. I.) favouring deeds appointing a fixed series of heirs, nor does there appear to have been on the part of the judges that inclination to permit perpetuities to be defeated by fictions which was shown in England. Devices, however, of a very similar character to those of the English statute were adopted to defeat attempts by holders under entail to use their lands as if they were absolute proprietors. The first and simplest restriction laid on the destined heirs of an entail was in the form of a mere prohibition, against contracting debt which might occasion the attachment of the estate by creditors, selling the property, altering the order of succession, and the like. A provision of this character, called the "Prohibitive clause," was, however, quite insufficient to accomplish the end; because if a creditor had really attached the estate for debt, or a person had bonâ fide purchased it, it was no ground for wresting the title out of his hands, that the proprietor was under a prohibition against permitting such occurrences. A second provision was added, called an Irritant clause, by which any right acquired contrary to the provisions of the entail was declared to be null. Still this did not effectually intimidate the holder under the entail from making efforts to break it, and did not give the next in succession a sufficient title to interfere. A third provision was added called the "Resolutive clause," by which the right of the person who contravenes the prohibition "resolves" or becomes forfeited. It was provided by statute (1685, c. 22) that all entails should be effective which contain Irritant and Resolutive clauses, are duly recorded by warrant of the court of session in Registers of Entails, and are followed by recorded saisins containing the Prohibitory, Irritant, and Resolutive clauses. No attempts were made to counteract the Entail system by fictions of law, which are not in accordance with the genius of the law of Scotland, and it became a permanent feature in the institutions of the country. A sort of judicial war has, however, been carried on against Entails individually, which has been productive of a vast amount of litigation and strife, has occupied much judicial time, and has tended to place the titles of property in a precarious and doubtful position. An Entail is excluded from the favourable interpretation of the law. The interpretation of its clauses is to be what is termed *strictissimi juris*. The intention of the framer is never to be contemplated: every blunder is to be given effect to, and nothing is to be explained by reference to the context, if its own meaning as a sentence is doubtful. Thus, in a late case, those who held under an Entail were prohibited among other things from contracting debt to the effect of the estate being attached. The Irritant clause proceeded to say "if the heirs shall contravene the premises, by breaking the Tailzie, contracting of debts," &c. (enumerating other contraventions), it was provided that "then and in any of these cases, the said venditions, alienations, dispositions, infeftments, alterations, infringements, bonds, tacks, obligements, made to the contrair" should be null. It was found that proceedings by creditors to attach the estate for debt were good, because they were not by name enumerated among the things that should be null, though they were prohibited, and mentioned among the things which, if coming to pass should cause a nullity. (*Duffus's Trustees* v. *Dunbar*, 28*th January*, 1842, 4 *D. B. M.* 523.) Some statutory enlargements have been made on the powers of persons holding under entail to provide for widows and younger children: but the system is still productive of great domestic inequality, and it is to be hoped

that in no long time it will be swept away as an impediment to the improvement of the country, and an injustice to the mercantile classes.

TARIFF, a table of duties payable on goods imported into or exported from a country. The principle of a tariff depends upon the commercial policy of the state by which it is framed, and the details are constantly fluctuating with the change of interests and the wants of the community, or in pursuance of commercial treaties with other states. The British tariff underwent six important alterations from 1772 to 1842; namely, in 1787, in 1809, 1819, 1825, 1833, and 1842. The act embodying the tariff of 1833 is the 3 & 4 Wm. IV. c. 56. Its character has been described in the Report of a Committee of the House of Commons in 1840, on the Import Duties, as presenting "neither congruity nor unity of purpose: no general principles seem to have been applied. The tariff often aims at incompatible ends: the duties are sometimes meant to be both productive of revenue and for protective objects, which are frequently inconsistent with each other. Hence they sometimes operate to the complete exclusion of foreign produce, and in so far no revenue can of course be received; and sometimes, when the duty is inordinately high, the amount of revenue becomes in consequence trifling. An attempt is made to protect a great variety of particular interests at the expense of the revenue and of the commercial intercourse with other countries." The schedules to the act 3 & 4 Wm. IV. c. 56, contain a list of 1150 articles, to each of which a specific duty is affixed. The unenumerated articles are admitted at an *ad valorem* duty of 5 and of 20 per cent., the rate having previously been 20 and 50 per cent. In 1838-9, seventeen articles produced 94½ per cent. of the total customs' duties, and the remainder only 5½ per cent., including twenty-nine, which produced 3 9/10 per cent. The following table of the tariff of 1833, showing the duties received in 1838-9, is an analysis of one prepared by the inspector-general of imports for the parliamentary committee to which allusion has been made:—

	No. of Articles.	£
1. Articles producing on an average less than 24*l.*	349	8,050
2. Do. less than 240*l.*	132	31,629
3. Do. less than 713*l.*	45	32,056
4. Do. less than 2,290*l.*	107	244,933
5. Do. less than 22,180*l.*	63	1,397,324
6. Do. less than 183,864*l.*	10	1,838,630
7. Do. less than 2,063,885	9	18,575,071
8. Articles on which no duty has been received	147	Excess of drawback 5,398
	862	22,122,095

Under the head CUSTOMS-DUTIES, mention is made of the tariff of 1842, of the repeal of the duty on wool in 1842, and of the duty on cotton in 1845. In the same year, by an act (8 Vict. c. 7) "to repeal the Duties of Customs due upon the Exportation of certain Goods from the United Kingdom," the duties on the exportation of coals, culm, &c. are wholly repealed.

Caps. 84 to 94 of the 8 & 9 Vict. are all acts relating to Customs, Trade, and Navigation, and they all came into operation on the 4th of August, 1845. Cap. 84 is "An Act to repeal the several Laws relating to Customs," by which 26 acts were repealed. Cap. 85 is "An Act for the Management of Customs," and regulates the appointment and duties of officers, the taking of land for warehouses, &c. Cap. 86 is "An Act for the general Regulation of Customs," and relates to landing, warehousing, and custom-house entries. Cap. 87 is "An Act for the Prevention of Smuggling," and specifies the acts which constitute smuggling, and the penalties. (This Act must be added to those mentioned in SMUGGLING.) Cap. 88 is "An Act for the Encouragement of British Shipping and Navigation," giving, with exceptions which are specified, certain privileges to British ships over foreign ships. Cap. 89 is "An Act for the Registering of British Vessels." Cap. 90 is "An Act for granting Duties of Customs," and imposes duties upon certain articles. (These duties are referred to in the preamble of the Tariff Act (9 & 10 Vict. c. 23) hereafter mentioned.) Cap. 91 is "An Act for the Warehousing of Goods." Cap.

22 is "An Act to grant certain Bounties and Allowances of Customs," which is confined however to refined sugar. Cap. 93 is "An Act to regulate the Trade of British Possessions abroad." Cap. 94 is "An Act for the Regulation of the Trade of the Isle of Man."

On the 26th of June, 1846, the royal assent was given to Sir Robert Peel's last tariff, which carries out still farther the principles of free trade by a total repeal of several important duties, and by a great reduction of numerous others. It is entitled "An Act to alter certain Duties of Customs" (9 & 10 Vict. c. 23.)

On the same day (June 26, 1846) the royal assent was given to the act for repealing the duties on the importation of foreign corn. It is entitled "An Act to amend the laws relating to the Importation of Corn" (9 & 10 Vict. c. 22.) By this act certain reduced "sliding-scale" duties are substituted for those of 1842, and they are to continue till Feb. 1, 1849, when all duties on the importation and entry for home consumption of corn, grain, meal, and flour in the United Kingdom and in the Isle of Man are repealed, with the exception of 1*s.* per quarter on all wheat, barley, bear or bigg, oats, rye, peas, and beans, merely for the purpose of registration of the quantities imported. The duties on all wheat-meal and flour, barley-meal, oat-meal, rye-meal and flour, pea-meal, and bean-meal are to be 4½*d.* for every cwt.

The sliding-scale duties of 1842 (5 & 6 Vict. c. 14) are given under CORN-LAWS, p. 663. The duties of 9 & 10 Vict. c. 22 are as follows:—

	s.	*d.*
Wheat, per quarter, under 48*s.*	10	0
48*s.* and under 49*s.*	9	0
49*s.* and under 50*s.*	8	0
50*s.* and under 51*s.*	7	0
51*s.* and under 52*s.*	6	0
52*s.* and under 53*s.*	5	0
53*s.* and upwards	4	0
Barley, bear, or bigg, per quarter, under 26*s.*	5	0
26*s.* and under 27*s.*	4	6
27*s.* and under 28*s.*	4	0
28*s.* and under 29*s.*	3	6
29*s.* and under 30*s.*	3	0
30*s.* and under 31*s.*	2	6
31*s.* and upwards	2	0
Oats, per quarter, under 18*s.*	4	0
18*s.* and under 19*s.*	3	6
19*s.* and under 20*s.*	3	0
20*s.* and under 21*s.*	2	6
21*s.* and under 22*s.*	2	0
22*s.* and upwards	1	6

On rye, peas, and beans the duty is equal in amount to the duty payable on barley. But there appears to be some blunder here, for the duty on rye, peas, and beans being regulated by the duty on barley, is regulated by the price of barley, and not by the price of rye, peas, and beans. The consequence of this is that when barley is under 26*s.* the quarter, and is paying 5*s.* duty, rye, peas, and beans will pay 5*s.* duty, whatever their respective prices may be; and they will only pay the lowest duty of 2*s.* per quarter when barley is 31*s.* and upwards the quarter. (See 'Economist' Newspaper, June 4th and 11th, 1846.) The duties payable on all flour and meal, as above enumerated, until the 1st February, 1849, are enumerated in the schedule to the act. The average price both weekly and aggregate of all British corn is to continue to be made up according to 5 & 6 Vict. c. 14.

Of the exemptions from duty and reductions of duty made by the last tariff act (9 & 10 Vict. c. 23), it will suffice to mention a few of the most important.

No duties are chargeable on the following living animals:—oxen and bulls, cows, calves, horses, mares, geldings, colts, foals, mules, asses, sheep, lambs, swine and hogs, sucking-pigs, goats, kids.

No duties are chargeable on bacon, beef, fresh or slightly salted, beef salted, not being corned beef, meat fresh or salted, not otherwise described, pork fresh or salted (not hams), potatoes, all vegetables not otherwise enumerated or described, hay, hides, and some other articles slightly wrought, and a few wholly manufactured.

Of the reduced duties the following are the most important:—ale and beer of all sorts, 1*l.* the barrel; arrow-root, 2*s.* 6*d.* the cwt., and if from a British possession 6*d.* the cwt.; pearled barley, 1*s.* the cwt., and if from a British possession 6*d.* the cwt.; buckwheat, 1*s.* the quarter; butter 10*s.* the cwt., and if from a British pos-

session 2*s.* 6*d.* the cwt.; tallow-candles, 5*s.*, the cwt.; cheese, 5*s.* the cwt., and if from a British possession 2*s.* the cwt.; cured fish, 1*s.* the cwt.; hams of all kinds, 7*s.* the cwt., and if from a British possession 1*s.* 6*d.* the cwt.; men's hats, 2*s.* each; men's boots, 14*s.* the dozen pairs; men's shoes, 7*s.* the dozen pairs; women's boots and shoes, from 4*s.* 6*d.* to 7*s.* 6*d.* the dozen pairs, according to kinds, as described; maize or Indian corn, 1*s.* the quarter; potato flour, 1*s.* the cwt.; rice, 1*s.* the cwt., and if from a British possession 6*d.* the cwt.; sago, 1*s.* the cwt.; tallow, 1*s.* 6*d.* the cwt.

The duties on manufactured goods of brass, bronze, china-ware, copper, iron and steel, lead, pewter, tin, woollen, and cotton, are 10*l.* for every 100*l.* value. On silk manufactures the duties are about one-third higher, or 5*s.*, 6*s.*, and 9*s.* the lb., according to kinds, as described, or 15*l.* on every 100*l.* value.

The duty on foreign spirits of proof strength is 15*s.* the gallon.

The duty on foreign solid timber, from and after April 5, 1847, is 1*l.* the load of 50 cubic feet; from and after April 5, 1848, the duty is 15*s.* the load. On deals or boards, the duty, from and after April 5, 1847, is 1*l.* 6*s.* the load; from and after April 5, 1848, it is 1*l.* the load. The Tariff of 1842 is not altered with respect to timber imported from a British possession, which is still 1*s.* the load of solid timber, and 2*s.* the load of sawn timber.

The duties on coffee and tea are not altered by the tariff. The act 8 Vict. c. 5, which fixed the sugar-duties for one year, terminated July 5, 1846, and has been renewed for a month; the subject of those duties is now under the consideration of parliament, and they will probably be altered.

TAX, TAXATION. A tax is a portion of the produce of a country or its value, applied to public purposes by the government. Taxation is the general charging and levying of particular taxes upon the community.

In a free state it is assumed that all taxation is necessary for the public good; and it is justified by necessity alone. The amount of expenditure will, in a great measure, be determined by the magnitude of a state and by the number and importance of its political relations; yet the prudence with which its affairs are administered will affect the demands of the government upon the people nearly as much as its necessities. The expenses of a private person must be regulated by his income; but in a state, the expenditure that is needed is the measure of the public income that must be obtained to meet it. A civilized community requires not only protection from foreign enemies and internal security, but it needs various institutions which are conducive to its welfare. It is the business of a government to provide for these objects in the best manner and at the least expense consistent with their efficiency. Every tax should be viewed as the purchase-money paid for equivalent advantages given in return. This principle assumes the necessity of moderation in levying taxes, and will scarcely be denied by any one when stated in that form; yet it is not uncommon to hear it argued that so long as taxes are *spent in the country*, the amount is not of consequence, as the money is returned through various channels to the people from whom it was derived. The principle we have just laid down exposes the fallacy of this doctrine, by reducing it to a simple question between debtor and creditor. For example, by paying a million of money every year, the people obtain the services of an army. This we will suppose to be an equivalent, and we will further assume that the food and clothing of the force are purchased, and that the entire pay of the men is spent, within the country. The whole of the money will thus be returned: but how? Not as a free gift, not as the repayment of a loan, but in the purchase of articles equal in value to the whole sum. The only benefit obtained by this return of the million is clearly nothing more than the ordinary profits of trade; for the community has already provided the money, and then out of its own capital and industry it produces what is equal to it in value, and this it *sells* to the state, receiving as payment the very sum it had itself contributed as a tax.

No branch of legislation is perhaps so important as the wise application of just principles in the matter of taxation. The

wealth, happiness, and even the morals of the people are dependent upon the financial policy of their government.

Adam Smith lays down four general maxims, which are as follow:—

I. "The subjects of every state ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state."

II. "The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person."

III. "Every tax ought to be levied at the time or in the manner most likely to be convenient for the contributor to pay it."

IV. "Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state."

In discussing the merits of particular taxes we shall have to consider with some minuteness the application of Adam Smith's first maxim. Its justice requires no enforcement or illustration, although the object is most difficult of attainment. The second maxim is of great importance, and the necessity of adhering to it must be universally acknowledged. Uncertainty gives rise to frauds and extortion on the part of the tax-gatherer, and to ill-will and suspicion on that of the contributor, while it offers a most injurious impediment to all the operations of trade. Notwithstanding the many evils of uncertainty, it is by no means an uncommon fault in modern systems of taxation.

Under the constitutional governments of Europe, the people do not indeed suffer from violent exactions, as in the Turkish empire and in Persia; but industry, and commerce are often restrained by irregular and ill-defined taxes. Spain affords many examples of misgovernment, and the injurious character of its taxation is shown in reference to this as well as other principles. To select one instance of uncertainty: "Every landowner is liable to have his property taken in execution for government taxes, if he is not prepared to pay a half-year or more in advance, according to the difficulties of the Exchequer; consequently he is often compelled to make great sacrifices in order to meet such exigencies." (*Madrid in* 1835, vol. ii. p. 107.)

To levy a tax "at the time and in the manner most likely to be convenient for the contributor to pay it" is always a wise policy on the part of the state. The time or manner of payment may often be more vexatious than the amount of the tax itself, and thus have the evil effects of high taxation, while it produces no revenue to the state. Suppose, for example, that a merchant imports goods and is required to pay a duty upon them immediately and before he has found a market for them:—he must either advance the money himself or borrow it from others, and in either case he will be obliged to charge the purchaser of the goods with the interest; or he must sell the goods at once, not on account of any commercial occasion for the sale, but in order to avoid prepayment of the tax. If he pays the tax and holds the goods, the consumer will have to repay not only the tax but the interest; and if he parts with them at a loss or inconvenience, trade is injured, and the general wealth and consequent productiveness of taxation proportionately diminished. To prevent these evils the Bonding or Warehousing system was established in this country, which affords the most liberal convenience to the merchant and a general facility to trade. Certain warehouses are appointed under the charge of officers of the customs, in which goods may be deposited without being chargeable with duty until they are cleared for consumption, and thus the tax is paid when the article is wanted, and when it is least inconvenient to pay it.

Similar accommodation is granted on their own premises to the manufacturers of articles liable to excise duties. At present the customs bonding-warehouses are confined to the ports. An extension of them to inland towns would be sound in principle, very convenient to trade, and unattended by any serious risk to the revenue or difficulty of management.

The evils resulting from inconvenient modes of assessing and collecting taxes have been very seriously felt in this country under the operation of the excise laws. When any manufacture is subject to excise duties, the officers of the revenue have cognizance of every part of the process, inspect and control the premises and machinery of the manufacturer, and often even prescribe the mode of conducting and the times of commencing and completing each process; while the observance of numberless minute regulations is enforced by severe penalties. The manufacturer is put to great inconvenience and expense, and his ingenuity and resources are constantly interfered with in such a manner as to impede inventions and improvements, and to diminish his profits. A London distiller stated to the Commissioners of Excise Inquiry, that assuming that the duties on spirits distilled by him should be fully secured to the revenue, "it would be well worth his while to pay 3000*l.* a-year for the privilege of exemption from excise interference." (*Digest of Reports of Commissioners of Excise Inquiry*, p. 15.)

Any injury done to trade is injurious to the state by diminishing the national wealth and the employment of labour. It has the same effect also upon the revenue as excessive taxation. The high price of the article limits the consumption and consequently the revenue arising from it. The injurious effects of the excise restrictions "must be felt in an accumulated degree by the public who are the consumers, against whom the tax operates by the addition made to the price of the commodity, not only by its direct amount, but by the necessity of compensating the manufacturer for his advance of capital in defraying it, and also by the increased cost of production." (*Ibid.*, p. 15.) In the case of a heavy tax, which also diminishes consumption, the state, at least, derives some benefit; but in the case of onerous restrictions and impediments to trade caused by the mode of collecting a tax, the state gains nothing whatever, and the manufacturer and the consumer are seriously injured, without an equivalent to any party. If the consumer must suffer, it should, at least, be for the benefit of the revenue, for then his contributions may be diminished in some other direction. Great attention has been paid, of late years, to the improvement of the excise regulations, especially by the Commissioners of Inquiry, under the able direction of Sir Henry Parnell. Various restrictions have been removed, especially those affecting the manufacture of glass, and it is to be hoped that the excise revenue may be found capable of being collected without inflicting greater injuries upon trade than other branches of taxation.

The net produce of a tax is all that the state is interested in, and therefore any violation of the fourth maxim of Adam Smith is liable to the same objections as those already stated in reference to the third. Such violation increases the amount of the tax directly, as the former was shown to increase it indirectly, without any advantage to the state. Facility of collection is a great recommendation to any tax; and, on the contrary, a disproportion between the cost of collecting and the amount ultimately secured is a good ground for removing a tax, though founded, in other respects, upon just principles. On this account alone, as well as for the general convenience of trade, it has been a wise policy to reduce, as far as possible, the number of articles upon which customs duties are levied. The cost of collecting the duties upon the larger and more productive articles of import bears only a small proportion to the amount of the tax, while the expense of collecting the duties on the smaller and less productive articles bears a large proportion to the tax, and may in some cases exceed it.

In England there is little variation from year to year on the gross charges of collection, but there is a considerable disproportion in the cost of collecting different branches of the revenue. In 1841 the excise cost 6*l.* 7*s.* 8*d.* per cent. in the collection; the assessed taxes 4*l.* 2*s.* 9*d.*; and the revenue arising from stamps only 2*l.* 3*s.* 4*d.*

The French revenue is collected at a much greater cost. For some years past the average revenue of that country has been 1,020,000,000 francs, or 40,000,000*l.*,

and the expenses of managing and collecting that sum have amounted to 150,000,000 francs, or 6,000,000*l.*, being no less than 15 per cent. (*Commercial Tariffs, Part IV., France*, 1842, p. 11.) It is very probable that many items may be included in the French calculation of the expenses of collection which are not stated in the English accounts; but making liberal allowance on that account, a great disproportion remains between the cost of collecting the revenue in the two countries. It may perhaps be fairly estimated that the revenue of France costs twice as much in the collection as that of England. The expenses of collecting a revenue may be high without any reference to the mode of taxation. An excellent tax may be collected in a bad manner, either by having numerous idle and highly paid officers, or by cumbrous regulations and checks, which may cost the government much and protect the revenue very little. Of these two causes of expense it is difficult to pronounce which is most injurious to a country. The former will generally be found to form part of a general system of ill-regulated expenditure; the latter may arise from unwise precautions for the security of the revenue. In France the prodigious number of official persons is notorious, and in that fact we must seek for the main cause of the enormous cost of collecting the revenue.

Different Kinds of Taxes.—In selecting taxes for raising the revenue of a state, the principles already discussed should be adhered to as far as possible; but these do not point out any particular mode of taxation as preferable to others. Whatever mode of raising the necessary funds may be found to press most equally upon different members of the community, to be least liable to objections of uncertainty, or inconvenience in the mode or times of payment, or to be attended with the least expense, is fairly open to the choice of a statesman; unless objections of some other nature can be proved to outweigh these recommendations.

The two great divisions under which most taxes may be classed are *direct* and *indirect*.

Direct Taxes.—All taxes ought to be paid from the income of the community. To derive revenue from capital is to act the part of a spendthrift; and such a practice, as in private life, must be condemned. If the taxes of any country should become so disproportioned to its income, that in order to pay them continual demands must be made upon its capital, its resources would fail, employment of labour would decrease, and the revenue must necessarily be reduced by the general impoverishment of the taxpayers. Such a system could not long continue as regards all capital, but it may affect particular branches of capital, or all capital in certain conditions. In whatever degree it is permitted to operate it is injurious. A tax upon legacies is a direct deduction from capital; and on that account objectionable, although it is profitable to the treasury and very easily collected. [LEGACY, PROBATE.] The same observations apply to the probate duty, and to duties charged upon succession to the personal property of intestates.

With these exceptions it has been the object of the British legislature to derive all taxes from income, either by direct assessment or by means of the voluntary expenditure of the people upon taxed commodities.

Direct taxes upon the land have been universally resorted to by all nations. In countries without commerce, land is the only source from which a revenue can be derived. In most of the Eastern monarchies the greater part of the revenue has usually been raised by heavy taxes upon the soil; and in Spain, at the present time, the taxes upon the soil are most oppressive and injurious.

In England, under the Saxon kings, there was a land tax. When the invasions of the Danes became frequent, it was customary to purchase their forbearance by large sums of money; and, as the ordinary revenues of the crown were not sufficient, a tax was imposed on every hide of land in the kingdom. This tax seems to have been first imposed A.D. 991, and was called Danegeld, or Danish tax or tribute. (*Saxon Chronicle*, by Ingram, p. 168.) It was originally one shilling for each hide of land, but afterwards rose to seven: it then fell to four

shillings, at which rate it remained till it was abolished, about seventy years after the Norman conquest. (Henry, *Hist.* vol. iii. p. 368.) A revenue still continued to be derived, under different names, from assessments upon all persons holding lands, which, however, became merged in the general subsidies introduced in the reigns of Richard II. and Henry IV. During the troubles in the reign of Charles I. and the Commonwealth, the practice of laying weekly and monthly assessments of specific sums upon the several counties was resorted to, and was found so profitable, that after the Restoration the ancient mode of granting subsidies was renewed on two occasions only. (*Report of House of Commons on Land Tax as affecting Catholics*, 1828.) In 1692, a new valuation of estates was made, and certain payments were apportioned to each county and hundred or other division. For upwards of a century the tax was payable under annual acts, and varied in amount, from one shilling in the pound to four shillings; at which latter sum it was made perpetual by the 38 Geo. III. c. 60; subject, however, to redemption by the landowners upon certain conditions. But no new valuation of the land has been made, and the proportion chargeable to each district has continued the same as it was in the time of King William III., as regulated by the act of 1692. That assessment is said not to have been accurate even at that time, and of course improved cultivation and the application of capital during the last 150 years have completely changed the relative value of different portions of the soil. On account of the generally increased productiveness of land, the tax bears upon the whole a trifling proportion to the rent, yet its inequality is very great. For instance, in Bedfordshire, it amounts to 2*s.* 1*d.* in the pound; in Surrey, to 1*s.* 1*d.*; in Durham, to 3½*d.*; in Lancashire, to 2*d.*; and in Scotland, to 2¼*d.* (*Appendix to Third Report on Agricultural Distress*, 1836, p. 545.) Adam Smith imagined that this tax was borne entirely by the landlords, but this opinion has been proved to be erroneous by modern political economists, who hold that the tax increases the price of the produce of the land, and is therefore paid by the consumers. The tax is also obviously objectionable on the ground of inequality.

A tax upon the gross rent of land would fall upon the landlord, and would be in fact a tax upon his annual income, and as such would fall with undue severity upon him, unless other classes of the community should be liable to a proportionate deduction from their respective incomes for the benefit of the state. This brings us to consider the expediency of a general tax upon all incomes.

In whatever form the tax may be levied, the contribution should be paid from income, and not from capital; and accordingly the simplest and most equitable mode of taxation would appear to be that which, after assessing the annual income of each person arising from all sources, should take from him, directly, a certain proportion of his income as his share of the general contribution. Such a tax, equitably levied, would appear to agree in theory with all the four maxims of Adam Smith; but, practically, every tax upon income must abound in inequalities, in uncertainty, and in great personal hardships and inconvenience.

In order to make such a tax fall equally upon all, in the first place, the assessment must be equal. But this is impossible, because there are many cases in which a man can conceal the sources of his income. Even if we suppose the actual income of each individual to be ascertained, the mere income of persons is a most fallacious test of their ability to bear taxation. One man has a fee-simple estate in land, or money in the funds, producing an income of 1000*l.* a-year, which land or money is his absolute property, and may come to his children after his death: another, by a laborious and uncertain profession, also obtains an annual income of 1000*l.*, dependent not only upon his life, but upon his health and a thousand accidents. The annual incomes of these two men are the same, but their circumstances are most dissimilar. Yet these two men, with means so unequal, would be assessed alike, and charged with equal contributions. The professional man may spend the whole

of his income, and yet he is charged upon it just as if it were the annual produce of realized property. If he saves any part of his income, he is charged upon that part, and thus his *capital* is taxed.

The case of annuitants also may be instanced as one, amongst numerous others, of peculiar inequality. One person invests his money in permanent securities, and retains his capital, but derives a small income, and therefore contributes a proportionally small rate of tax: another purchases an annuity, and parts with his capital; but as his income is much larger than that of the capitalist, he pays a higher tax. At first sight this may appear a just arrangement; but in fact not only the income of the annuitant is taxed, but also his capital; for that which is taxed as his income is derived partly from the interest of his purchase-money, and partly from an annual repayment of a portion of his principal.

There is this essential difference between taxes upon income and taxes upon expenditure: the former are compulsory, the latter are voluntary, and paid or avoided at the option of each individual. If a man be saving money, an income-tax seizes upon his accruing capital: a tax upon expenditure is levied upon that portion of his income only which he thinks it prudent to spend.

To smooth in some degree the inequalities of an income-tax, 1st, the annual premiums on policies of insurance should not be reckoned as income in the assessment, being clearly capital, and the payments being no longer optional, as the insurance could not be discontinued without loss; this provision was made by Mr. Pitt in 1798: 2ndly, incomes arising from realized property should be taxed at a higher rate than the profits of trades and professions: 3rdly, annuitants should be rated on such terms as to avoid the assessment of any portion of their capital as part of their income: 4thly, all persons should be liable to the tax, whatever may be the amount of their incomes.

In addition to the unequal pressure of an income-tax, which cannot be altogether corrected by any expedients, there is much uncertainty in the assessment of certain classes of persons. The vicissitudes of trade, bad debts, or deferred payments, render the incomes of commercial and professional men very uncertain; and nominal income therefore, which afterwards cannot be realized, may be charged with the tax.

But the last and strongest of the objections to an income-tax is the inquisitorial nature of the investigation into the affairs of all men, which is necessary to secure a statement of their incomes. This objection, indeed, is treated lightly by some; but by the mass of the contributors it is considered the most inconvenient and unseasonable quality of an income-tax. Even if the exposure of a man's affairs could do him no possible injury, yet as an offence to his feelings, or even caprice, it is a hardship which is not involved in the payment of other taxes. But apart from matters of feeling, injury of a real character is also inflicted upon individuals by an exposure of their means and sources of income. Mercantile men, from the dread of competition, take pains to conceal from others, especially if in the same business, the application of their capital, the rate of profit realized, their connections, and their credit, all of which must be disclosed, perhaps to their serious injury, when there is an investigation of their profits.

For these reasons, the mode of collecting the income-tax certainly cannot be approved of as being "most likely to be convenient to the contributor." Its general unpopularity when in operation is the best proof of its hardship and inconvenience. Upon the whole, a tax upon income is so difficult to adjust equitably to the means of individuals, and the mode of collection is necessarily liable to such strong objection, that, if resorted to at all, it should be reserved for extraordinary occasions of state necessity or danger, when ordinary sources of revenue cannot safely be relied on.

The English assessed taxes have as few objections in principle as most modes of direct taxation. With an equitable assessment and special exemptions in certain cases, they are capable of being made to bear a tolerably just proportion to the

incomes of the individuals paying them. They share, however, in the general unpopularity of all direct taxes, and it cannot be denied that they often press unequally upon particular persons. The number of windows in a house is a very imperfect criterion of its annual value, and the house-tax which has been removed was far preferable to the window-duty, which is still retained. The inequalities in the assessments were undeniable; but these might have been corrected. Under ordinary circumstances, a tax upon houses will fall upon the occupier, who is intended to pay it; but if a very heavy tax were imposed, it would discourage the occupation of houses, lessen the demand for them, and thereby diminish the rent of the landlord, or, in other words, transfer the actual payment to him. (Adam Smith, book 5, chap. ii.; Ricardo's *Political Economy*, chap. xiv.) Such a tax would be attended with very bad consequences: it would compel many persons to live in inferior houses or in lodgings, and thus diminish their comforts and deteriorate their habits of life; and by reducing the demand for houses it would limit the employment of capital and labour in building. The direct taxes upon horses, carriages, hair-powder, armorial bearings, &c., being paid voluntarily by the rich to gratify their own taste for luxury or display, are not likely to meet with many objectors. The use of such articles generally indicates the scale of income enjoyed by the contributor, and the tax is too light to discourage expenditure or to make any sensible deduction from his means.

For arguments and illustrations concerning the incidence of tithes, of taxes upon profits, upon wages, and other descriptions of direct imposts, we refer to the works of Adam Smith, Ricardo, M'Culloch, and other writers upon political economy.

Indirect Taxes.—In preferring one tax to another, a statesman may be influenced by political considerations, as well as by strict views of financial expediency, and nothing is more likely to determine his choice than the probability of a cheerful acquiescence on the part of the people. All taxes are disliked, and the more directly and distinctly they are required to be paid, the more hateful they become. On this, as well as on other grounds, "indirect taxes," or taxes upon the consumption of various articles of merchandise, have been in favour with most governments. "Taxes upon merchandise," says Montesquieu, "are felt the least by the people, because no formal demand is made upon them. They can be so wisely contrived, that the people shall scarcely know that they pay them. For this end it is of great consequence that the seller shall pay the tax. He knows well that he does not pay it for himself; and the buyer, who pays it in the end, confounds it with the price." (*Esprit des Lois*, livre xiii., chap. vii.) This effect of indirect taxes is apt to be undervalued by writers on political economy; but it is undoubtedly a great merit in any system of taxation (which is but a part of general government) that it should be popular and not give rise to discontent. A tax that is positively injurious to the very parties who pay it without thought, is certainly not to be defended merely on the ground that no complaints are made of it; but it may be safely admitted as a principle, that of two taxes equally good in other respects, that is the best which is most acceptable to the people. The very facility, however, with which indirect taxes may be levied, makes it necessary to consider the incidents and effects of them with peculiar caution. The statesman has no warning, as in the cases of direct taxes, that evils are caused by an impost which is productive and which every one seems willing to pay. When any branch of industry is visibly declining, and its failure can be traced to no other cause than the discouraging pressure of a tax, the necessity of relief is felt at once; but if trade and manufactures are flourishing, and the country advancing in prosperity, it is difficult to detect the latent influence of taxes in restraining that progress, which but for them would have been greater; and still more difficult to imagine the new sources of wealth which might have been laid open if such taxes had not existed, or had been less heavy, or had been collected at different times or in different ways.

The government is directly interested in the increase of national wealth, and taxes upon commodities should be allowed to interfere with it as little as possible. On this account duties upon raw materials are objectionable. They increase the price of such materials, and thus limit the power of the manufacturer to purchase them, and to employ labour in increasing their value, and in adding to the production and capital of the country. They discourage foreign commerce and the employment of shipping; for as the power of buying is restrained, so also is that of selling, and the interchange of merchandize between different countries is checked. Moreover, by increasing the price of the exported manufactures, they limit the demand for them abroad and subject them to dangerous competition.

Similar objections may be urged against taxes upon domestic manufactures, since by increasing the price they diminish consumption, and consequently discourage the manufactures, which if left to themselves would have given employment to more capital and labour, and would have added greatly to the amount of national wealth and prosperity. The object of a government should always be to collect its revenue from the results of successful employment of capital and industry, and not to press upon any intermediate stage of production.

The British legislature has of late years very wisely repealed or reduced various duties upon raw materials and upon manufactures. Of the former we may instance the customs' duties on barilla; on raw, waste, or thrown silk; on cotton-wool and sheep's wool, unwrought-iron, hemp, and flax; and, above all, upon timber; which have been from time to time very much reduced or repealed. Of the latter, the taxes on printed goods, on candles, and on tiles, have been altogether removed; and those on malt and on soap, have been partially remitted. As to some of the most important recent alterations see TARIFF. There are still many similar taxes which need revision.

One of the chief recommendations of indirect taxes is, that, when placed upon the proper description of articles, the payment of them by the consumer is optional. If charged upon what may be strictly called the necessaries of life, their payment becomes compulsory, and falls with unequal weight upon labour. Competition generally reduces a large proportion of the working classes to a state which allows them little if anything beyond necessaries; consequently a duty upon these, as it will have no effect in diminishing the competition of labour and in raising wages, must reduce the comforts and stint the subsistence of labouring men.

That class of articles commonly called luxuries, of which the consumption is optional, is a fair subject of taxation. In principle there is no objection to such taxes: they do not interfere with industry or production, but are paid out of the incomes of the contributors, and paid willingly, and for the most part without undue pressure upon their means. But in laying on taxes upon particular articles of this description care must be taken to proportion the charge to the value of the article. Excessive duties fail in the very object they have in view, by rendering the revenue less productive than moderate duties; while the causes of their failure are injurious to the wealth of the country by discouraging consumption, and to its morals by offering an inducement to smuggling. [SMUGGLING.]

High duties upon foreign articles imported into a country are liable to all the objections which apply to immoderate taxes upon articles of consumption, and they are chargeable with another—they diminish importation, and thereby restrict commercial intercourse and the demand for and exportation of domestic produce and manufactures.

The success of moderate duties upon articles of consumption, in encouraging the use of them, placing them within the reach of a larger number of persons, and at the same time augmenting the revenue, was never better shown than in the article of coffee. In 1824 the duty on British plantation coffee was 1*s.*, upon East India 1*s.* 6*d.*, and upon foreign coffee 2*s.* 6*d.* per lb. In 1825 those duties were reduced one-half, and the consequence was considerably more than a threefold increase in the consumption, while the

revenue in 1841 had been more than doubled.

In 1835 coffee, the produce of British possessions in India, was admitted at the same duty as plantation coffee, viz. 6*d.* per lb., and the effect of the reduction, in encouraging the growth of the plant in India and the consumption of the berry in this country, has already been very great, and perhaps the coffee-trade of the East may as yet be considered in its infancy. In 1834, the year before the reduction, 8,875,961 lbs. were imported from the East India Company's territories and Ceylon; and in 1840, 16,885.698 lbs., or nearly double. In 1842 the duty on foreign coffee was reduced to 8*d.* a lb., and on coffee the produce of British possessions, to 4*d.*; and notwithstanding so extensive a reduction the revenue has not very materially suffered.

Thus reductions of existing duties are proved by these examples to increase the revenue; but whether the effect of them be immediate or deferred must depend upon a variety of circumstances. If the reduction puts an end to extensive smuggling, the revenue will derive immediate benefit, as both the demand and the supply of the article already exist; and the reduced tax, without affecting production or consumption, acts as a police regulation, and at once protects the revenue from fraud. But where there is little or no smuggling, and the revenue can only be increased by means of additional consumption, the effect of reduced duties may be deferred and even remote. The article may have to be produced; capital, skill, labour, and time may be required to provide it in sufficient quantities to meet the growing demands of the consumer; and even should the supply become abundant, the habits and tastes of a people cannot be changed on a sudden. The high price of an article may have placed it out of their reach, and in the meanwhile they may have become attached to a favourite substitute, or may be slow to spend their money upon a commodity which they have learned to do without. These and other causes may defer for a considerable time such an increase of consumption as would make up for the reduced rate of tax, especially when the reduction has been so great as to require an extraordinary addition to the previous amount of consumption, before the sacrifice made in the revenue can be redeemed. But where the article on which it is proposed to reduce a tax is already in universal request, and the supply immediate and abundant, and where the tax is so heavy as to restrain consumption, no present loss need be apprehended from a remission of part of the tax, and a very speedy increase of revenue may be expected. Sugar is an article of this description. It has become a necessary of life as well as a favourite luxury. There are scarcely any limits to the supply that could be raised, and the present duties add materially to the price and check consumption. As a proof of the suddenness with which the consumption of foreign sugar might be expected to increase if the excessive duty were reduced, we may refer to the effects of equalizing the duties on East and West India sugars in 1836. In that year the duty on East India sugar was reduced from 32*s.* the cwt. to 24*s.* In 1835 the quantity imported had been 147,976 cwts.; and in 1837, one year only after the change, the import had increased to 302,945 cwts.; in 1838, to 474,100 cwts.; and in 1839, to 587,142 cwts. As the tax was diminished only by one-fourth, and the consumption was immediately more than doubled, the revenue at once gained considerably by the reduction of duty.

A recent financial experiment will serve to show how little an increased revenue can be depended upon as the result of an augmentation of taxes upon articles of consumption. In 1840 an addition of 5 per cent. was made to all the duties of customs and excise, and a proportionate increase of revenue was anticipated, but not realized. The net produce of the customs and excise in the year ending January 5th, 1840, amounted to 37,911,506*l.* The estimated produce for the year ending January 5th, 1842, was 39,807,081*l.*, 1,895,575*l.* being expected from the additional 5 per cent. The actual increase, however, was only

206,715*l.*, or little more than one-half per cent., instead of the 5 per cent. which had been expected. This result was undoubtedly in part caused by a general stagnation of trade, and by the consequent distress which prevailed in that year, but we notice it because the principle of an indiscriminate augmentation of existing taxes, without reference to their present amount, character, and circumstances, is very unwise. We have said that experience alone can show the precise rate of a particular tax which will not affect consumption and will at the same time discourage smuggling. It must be presumed that existing rates have been fixed in order to secure these results, and that they are justified by experience. To add to them therefore, not because they are insufficient for their immediate object, but because a general addition to the revenue is needed, is to neglect experience and to disturb the proper relations between the amount of tax and the value of particular articles. During the last century it was a common financial course to add a general per centage of increase upon all the customs' duties whenever the revenue was found to be insufficient for immediate purposes. To this unwise policy must be attributed many of the strange anomalies which have existed in the British tariff. Any recurrence to so clumsy a mode of taxation should be avoided. The tax upon each article ought to be adjusted by itself upon sound principles, and then should not be changed merely to save the trouble or to avoid the unpopularity of selecting particular articles for increased taxation or of inventing new burthens.

Protective, Discriminating, and Prohibitory Duties.—The legitimate object of taxation is that of obtaining a revenue in the least injurious manner for the benefit of the community; but this object has constantly been overlooked for the sake of ends not fairly to be accomplished by taxation. Legislature should endeavour to encourage agriculture, trade, and manufactures; and it would be culpable to neglect any proper means of encouragement, which are not only beneficial to particular interests, but add to the general prosperity. Unfortunately, however, the zeal of most legislatures upon this point has been misdirected. They have seized upon taxation as the instrument of protection and encouragement; and, using it as such, have injured the great mass of their own countrymen, and ultimately have failed in promoting the very interests they had intended to serve. When the system of protection has existed, severe injuries and even injustice are inflicted whenever an attempt is made to undo the mischief which has been done. Reason and experience unite in teaching the impolicy of protective taxes; and, in our own country, it is now acknowledged by the acts of the present year (1846) which regulate the trade in grain, meal, and flour, and other articles. [TARIFF.]

The object of a protective duty is to raise artificially the price of the produce of manufactures of one country as compared with the produce or manufactures of another. A heavy tax easily effects this object, and thus prevents competition on the part of that country whose commodities are taxed, and establishes a monopoly in the supply of those commodities in favour of the parties for whose benefit the tax was improved. The revenue, the avowed object of a tax, so far from being improved, is here actually sacrificed by the exclusion of merchandise, which at moderate duties would fill the coffers of the state. The state clearly is a loser; the foreigner, whose goods are denied a market, is a loser. Who then gains by these losses? Not the consumer; for the more abundant the supply, the better and cheaper will he find the market; but the seller, who is enabled to obtain a high price for his wares because he has a monopoly in the sale of them, is the only party who gains. The community at large suffer doubly: first, by having to buy dear instead of cheap goods, or by being denied the use of them altogether; and, secondly, by being obliged to pay other taxes which would not have been required if the very articles which would have made their purchases cheaper had been charged with a moderate impost. Even the sellers, for whom all these sacrifices are made, do

not derive the benefit which might be expected. In the goods which they sell themselves, indeed, they are gainers; but in purchasing of other monopolists they lose by an artificially high price, like the rest of the community. It constantly happens too, that although the prices at which they sell are high, their profits are reduced, by the competition of others selling the same articles, to the general level of profits throughout the country. When this is the case, all parties, without exception, are losers—the state, the community, and the monopolists. The general injury done to trade by the protective system is too extensive a question to enter upon, but it is well illustrated in the 'Report of the Committee of the House of Commons upon Import Duties' in 1840; and the best refutation of the fallacies on which it is rested is in the debates in Parliament within the last few years, and especially during the present year, 1846, which has been rendered memorable by the acts above referred to.

Protection may be accomplished by actual prohibition of the import of particular articles, by exorbitant duties which amount to prohibition, or by such duties only as give the home producer an advantage. Duties may also discriminate between the produce of different countries, and give the preference to some, to the injury and exclusion of others. In this country all these modes of protection have been resorted to: but their impolicy has been recognised by the legislature, which, within the last few years, has advanced rapidly in the adoption of a more sound system of taxation. [TARIFF.]

Duties are called discriminating or differential when they are not levied equally upon the produce or manufactures of different countries. The object of them is to give an advantage to the country on whose commodities the tax is lightest, as compared with others. To obtain such a preference has been the object of various negociations and commercial treaties between different states, as it opens extensive markets to the industry of the favoured nation. By the present commercial policy of England, the principle of discrimination may be said to be confined to the protection of our colonies against the competition of foreign countries. As regards each other, all foreign countries enjoy equal commercial advantages in their intercourse with England. It may be contended that colonies form an integral part of the mother-country, and that the commercial intercourse between the several parts of the British empire ought to be viewed as a vast coasting-trade. If this principle were acted upon, it would certainly present a grand fiscal union worthy of admiration; but the existing system does not partake in any degree of the character of a coasting-trade. To put it upon such a footing, the duties on colonial produce imported into the United Kingdom should be little more than nominal, and we should rely upon productive imposts upon foreign produce for our revenue. Our practice is the reverse of this. Where our taxes discriminate, we derive our revenue from the colonial produce; and we either exclude foreign produce altogether, or limit its introduction so much as to prevent it from contributing materially to the revenue. The object of the duties upon the foreign produce, which would enter into competition with the colonies, is not revenue, but exclusion, for the sake of creating a monopoly in favour of the latter. There are two great articles of consumption, sugar and timber, upon which the discriminating duties have been most mischievous in their results. The question of sugar is now (July, 1846) under consideration, and will doubtless be satisfactorily settled. Though the population of the country has rapidly increased, and with it the demand for most articles of consumption, the supply of sugar is so restrained by our commercial policy that, in 1831, 3,781,011 cwts. were retained for home consumption, and in 1840 only 3,594,832 cwts. So inadequate have the colonies alone been to supply our wants, that their exports have actually been diminishing. In 1831 the West Indies exported to the United Kingdom 4,103,800 cwts. In no succeeding year has their export been so great; and in 1840 it had sunk so low.

as 2,214,764 cwts. During this period the consumption of coffee, cocoa, and tea had considerably increased, and the people must therefore have suffered a serious privation on account of the limited supply of sugar. The community is a loser by the colonial monopoly; and the falling off of the produce of the West Indies, in spite of an increasing demand for it, is not the only proof that they have not gained much by their protection: meanwhile the revenue has lost incalculable sums by the exclusion of foreign sugar, which, with moderate duties, might be imported at a low price in unlimited quantities.

The discriminating duties upon timber have been very considerably modified. On the 5th April, 1847, the duty upon foreign timber will be reduced to 20*s.* the load, and on the 5th April, 1848, to 15*s.* The duty upon colonial timber is 1*s.* a load. The effect of these alterations will be to reduce the bounty upon colonial timber from 45*s.* the load to 14*s.*

Export Duties.—Duties levied upon goods exported to foreign countries are ultimately paid by the foreign consumer, and thus have the effect of making the subject of one state bear the burthens of another. However desirable this may appear to the state, whose treasury is enriched at the expense of foreigners, the expediency of such duties will depend upon peculiar circumstances, and great nicety is required in the regulation of them. If a country possesses within itself some produce or manufacture much in request abroad, and for the production of which it has peculiar advantages, a moderate export duty may be very desirable. In this manner Russia, which almost alone supplies tallow to the rest of Europe, derives a considerable revenue from an export duty upon that article. Upon the same principle a duty upon machinery exported from Great Britain would have been politic. British machinists far excelled all others in skill and ingenuity, and foreign manufacturers were willing to pay almost any price for their machinery. Notwithstanding the prohibition, large quantities have been smuggled abroad at an enormous cost, but the difficulty and expense of evasion have been so great that foreigners have latterly almost confined their purchases, in this country, to models and drawings, and have made the machinery themselves, with the assistance of British artizans, whom they have enticed abroad by extravagant wages. (*Reports of Committees of the House of Commons on Artizans and Machinery*, in 1824 and 1825, and *On the Exportation of Machinery*, 1841.) If, instead of prohibiting the export, a duty of 7½ or 10 per cent. *ad valorem* had been imposed, foreign manufacturers would have paid much less for the machinery purchased by them in England than they could have had it made for abroad; there would have been a large export trade from this country, and a considerable revenue. The partial relaxation of the prohibitory law in 1825, by granting licences to export certain kinds of machinery, has shown the extent to which the trade might have been carried under a more liberal policy. The official value of machinery exported under licence in 1840 was 593,064*l.*, in addition to various tools allowed by law to be exported, of which no account was taken. (*Sess. Paper*, 1841, No. 201, p. 257.)

Though moderate export duties upon articles of which a country has almost the exclusive supply may be advisable, heavy duties will check the demand abroad in the same manner as they affect the consumption of commodities at home. In the same manner also they are injurious to trade and unprofitable to the revenue.

All duties whatever should be avoided upon the export of produce or manufactures which may be also sent from other countries to the same markets. They would discourage trade and offer a premium to foreign competition.

Although the temptation is great to shift taxes from one country to another by means of export duties, this temptation is equally great in all countries; and if their several governments should be actuated by the desire to make foreigners contribute to their revenue, their opportunities for carrying out such a system would probably be equal, and thus retaliations might be made upon each other,

which, after all, would neutralize their efforts to tax foreigners, and leave them in the same position as if they had been contented to tax none but their own subjects. In this power of retaliation lies the antidote to the evil of one state being forced to bear the burthens of another as well as its own. Every state would naturally resist such an imposition upon its subjects, and export duties can therefore only be safely resorted to in such peculiar cases as we have noticed, where foreigners are willing to pay an increased price for commodities which they must have, and which they cannot obtain so good or so cheap from any other place.

Roman Land Tax.—Under LAND TAX, ROMAN, a reference was made to this article.

The old Roman Tributum was in effect chiefly a land tax. It is described by Niebuhr (i. 459, Engl. tr.) "as a direct tax upon objects, without any regard to their produce, like a land and house tax: indeed, this formed the main part of it; included however in the general return of the census." He states that it was by the plebs that this regular tax according to the census was paid, and its name Tributum was deduced from the tribes (tribus) of this order. All this, however, is vaguely stated and ill supported by proof. There seems no reason to doubt that the nobles (patres) also paid tributum. Livy (ii. 9) states that the plebs were released from portoria (port duties and tolls) and the tributum, in order that the rich alone might pay it. But neither is this statement satisfactory. The tributum is often mentioned by Livy (iv. 60; v. 10, 12; vi. 32; xxiv. 15; xxxix. 7, 44), but nothing precise can be stated about it, except that it was a tax on property, was paid in money, and applied to maintain the army after a certain date (Livy, ii. 59), and for other public purposes. The tributum was paid until the close of the Macedonian war, B.C. 147, when the Roman treasury was replenished by the conquest of Macedonia. It was not restored near the close of the Republican period, as is sometimes erroneously stated.

From the end of the Macedonian war the revenue of the state chiefly arose from the taxes levied in the provinces, a great part of which were paid in kind. [CORN TRADE, ROMAN.] Italy continued free from direct taxes, though the provinces paid them, until the time of the Emperor Maximian, who established the provincial taxation in Italy. The freedom of land in Italy from all tax made a marked distinction between Italian and provincial land, and this was one of the peculiar privileges comprehended in the term Jus Italicum. When a provincial city received a grant of the Jus Italicum, it received with other privileges that of exemption from land tax: the land was then considered to be Italian land. The provincial taxes consisted of money payments and of contributions in kind, as already stated. Under Augustus a commencement was made of a general registration of property (cadastre), the object of which was to change all the taxes into a money payment. We may trace the progress of this change: in Cicero's time the tenths of the province of Asia were leased to the Publicani; in the time of Trajan a fixed sum was paid. It appears that before the time of Ulpian, who lived under the Emperor Alexander Severus, the new system was completed; and it is collected from Gaius (ii. 21), who says that provincial lands were subject either to stipendium or tributum, that this system must have been partially established even when he wrote, which was in the age of the Antonines. It is worthy of note that Cicero (*In Verem*, iii. 6) contrasts the "vectigal certum," or "stipendiarium," a fixed payment, which at that time obtained in some cases, with the "censoria locatio," the leasing of the tenths. Under the Christian emperors, the country was divided into equal portions of land called capita (heads), each of which capita paid a certain sum of money; and the amount of tax required for each year was distributed (indictum) over these several capita. The cadastre was renewed every fifteen years, and on this was founded the use of the cycle of indictions, a term which survived the system of taxation to which it owed its origin. The change of payment of taxes in kind into a money payment was an

improved financial measure, and it must have been beneficial to agriculture. It is true that it also offered facilities for imposing a heavier taxation whenever the government had or pretended to have a necessity for it.

The subject is discussed by Savigny, *Zeitschrift für Geschichtliche Rechtswiss*, vi. xi., *Ueber die Röm. Steuerverfassung;* and by Dureau de la Malle, *Economie Politique des Romains*, ii. 402—437, who dissents from some of Savigny's opinions, but the opinion of Savigny has been followed here.

TAXES. The general objects, character, and principles of taxation, and of different classes of taxes, are treated of under the head of TAXATION. In this place it is proposed to give a short summary of the amount and description of taxes paid in Great Britain and Ireland, whether assessed directly upon property, or collected indirectly upon articles of consumption; including not only such taxes as are paid to the general government, but also all municipal and local assessments or contributions.

United Kingdom.

The chief sources of revenue are from indirect taxes, as will be seen by the following statement, made up to 5th January, 1842 :—

	Gross Receipt. £	Rate per cent. at which collected. £	s.	d.
Customs . .	23,821,486	5	6	4
Excise . .	15,477,674	6	7	8¼
Stamps . .	7,494,239	2	3	4
Taxes (Assessed, &c.). . .	4,720,457	4	2	9½
Post-Office .	1,539,274	60	9	6¾
Duties on Pensions and Salaries . .	5,752	1	17	6½
Crown Lands .	438,297	8	18	3½
Small branches of hereditary revenue . .	5,562			
Surplus fees of public offices	93,504			
Total ordinary revenues .	53,596,250	6	13	8¼

The assessed taxes are the window-tax, tax on male servants, taxes on carriages, on horses, on dogs, armorial bearings, horse-dealers' duty, game duties, stage-coach duties, and duties on passengers conveyed for hire by carriages travelling on railways. In 1840 (3 & 4 Vict. c. 17) 10 per cent. additional was imposed on all the assessed taxes.

Farm-houses belonging to farms under 200*l.* a year are exempt from window duty. Bachelors, except Roman Catholic clergymen, pay an additional duty of 1*l.* on male servants. [BACHELOR.] The charges for game duties are stated under GAME LAWS. The duty on passengers conveyed for hire by carriages travelling on railways is 5 per cent. on the gross amount of the fares. As to the duties on stage-coaches, see STAGE-CARRIAGE.

To these parliamentary taxes may be added the following local assessments :—

Poor-rates	£6,351,828 (which includes county rates, 700,000*l.*)
Church-rates	600,000 (in round numbers.)
Highway-rates	1,312,812
Turnpike-tolls (England and Wales)	1,577,764
Grand-jury presentments (Ireland) .	1,265,866
Total of local taxes . .	11,108,270

(*Parliamentary Papers*, 1839 (562), 1841 (344) (421), 1842 (135) (235).

Since the year 1842 considerable changes have been made in the Customs, some of which changes are mentioned under TARIFF. In the Excise also changes have been made. The excise-duty on glass has been taken off. But, on the other hand, since 5th April, 1842, the income-tax has been in operation. The income-tax was imposed April 5th, 1842, for three years, and has been renewed for another three years. In consequence of all these changes some years will elapse before it will be possible to say how far the increased consumption will make up for the direct reduction in the revenue by the diminution and repeal

of taxes, and whether it will be necessary to keep the income-tax. The produce of the income-tax for 1845 and 1846, respectively, was 5,261,954*l.* and 5,183,912*l.* So far however as we can judge, the experiment of reducing taxation has been successful, even if we look only to the revenue. The net produce of the revenue for the year ending July 5th, 1845, was 51,067,856*l.*, and for the year ending July 5th, 1846, it was 50,056,083*l.*; and this result has been obtained notwithstanding the total removal of some duties and of the excise on glass and the great reduction made in other duties. If the quarters ending July 5th in the years 1845, 1846, respectively, are compared, there is an increase on the quarter for 1846, compared with that of 1845, of 575,599*l.*, and this is the first quarter in 1845 in which many reductions took effect, while business has been materially injured in the corresponding quarter of 1846 by the delay in passing the Corn Repeal Bill and the Customs' Bill. [TARIFF.] Under these circumstances the prospect of at least an equal revenue with a reduced taxation seems to be assured, and at the same time the consumer and all classes of industrious persons are benefited by the reduction in taxation.

The tithes of Great Britain and Ireland are said to amount to 4,000,000*l.*

It is instructive to compare the present amount of taxes with that rendered necessary by a war expenditure. From 1805 to 1818 the payments into the British exchequer from taxes and loans in no one year amounted to less than 100,000,000*l.*, and in 1813 arose to the enormous sum of 176,346,023*l.*

There was published under the direction of the Poor-Law Commissioners in 1846, a valuable work entitled 'The Local Taxes of the United Kingdom, containing a Digest of the Law with a Summary of statistical Information concerning the several Local Taxes in England, Scotland, and Ireland.' England includes England and Wales. It is remarked in the Introduction that "these Local Taxes are of two kinds: the rates raised in defined districts; and the tolls, dues, and fees paid for particular services or on certain occasions. But those rates only will be here noticed, which are authorised by general statutes or the common law; excluding such as derive their origin from special or local Acts." The rates are divided into three classes. I. Rates of independent districts, on the basis of the poor-rate. II. Rates of independent districts, not on the basis of the poor-rate. III. Rates of aggregate districts on the basis of the poor-rate. No. I. comprehends—1, The Poor Rate. 2, The Workhouse Building Rate. 3, The Survey and Valuation Rate. 4, The Jail Fees' Rate. 5, The Constables' Rate. 6, The Highway Rates (three). 7, The Lighting and Watching Rate. 8, The Militia Rate. No. II. comprehends—1, The Church Rates (three). 2, The Sewer* Rate. 3, The General Sewers' Tax. 4, The Drainage and Inclosure Rates. 5, The Inclosure Rate. 6, The Regulated Pasture Rate. No. III. comprehends—*Counties.* 1, The County Rate. 2, The Police Rate. 3, The Shire Hall Rate. 4, The Lunatic Asylum Rate. 5, The Burial Rate.—*Hundreds.* 6, The Hundred Rate.—*Boroughs.* 7, The Borough Rate. 8, The Watch Rate. 9, The Jail Rate. 10, The Prisoners' Rates. 11, The Lunatic Asylum Rate. 12, The Museum Rate.—*Counties and Boroughs.* 13, The District Prison Rates.

The nature of many of these several rates may be collected from the article RATES and the articles referred to in that article. The nature of those rates which are not particularly mentioned in this Dictionary, is fully explained in the work published under the direction of the Poor-Law Commissioners.

The head of Tolls, Dues, and Fees comprehends—1, Turnpike Tolls. 2, Borough Tolls and Dues. 3, Light Dues. 4, Post Dues. 5, Church Dues and Fees. 6, Marriage Fees. 7, Registration Fees. 8, Justiciary Fees.

The following statement is given in the work published under the direction of the Commissioners, as an approximate summary of the present annual amount of the Local Rates in England and Wales (p. 178).

* The 3 & 4 Wm. IV. c. 22, the chief provisions of which act have been stated under SEWERS, was amended by 4 & 5 Vict. c. 45.

	£
The Parish Rates:—	
Poor-rate, including the Workhouse Building Rate, and the Survey and Valuation Rate . . .	
Relief of the Poor . .	4,976,093
Other objects . . .	567,567
Contributions to County and Borough Rates . .	See below
The Jail Fees' Rate . .	Unknown
The Constables' Rate .	do.
The Highway Rates . .	1,312,812
The Lighting and Watching Rate	Unknown
The Militia Rate .	Not needed
The Church Rates . .	506,812
The Sewer Rate, and the General Sewers' Tax—	
In the Metropolis . .	82,097
In the rest of the country .	Unknown
Drainage and Inclosure Rates, The Inclosure Rate, The Regulated Pasture Rate .	Unknown
The County Rates, The Hundred Rate, The Borough Rate } Contributed from the Poor-Rate	1,356,457
	£8,801,838
Tolls, Dues, and Fees . .	2,607,241
	£11,409,079

Some of the taxes are regularly increasing, and the produce of some, as appears from this table, is not known. It is assumed that the Local Taxation of England and Wales may be in round numbers twelve millions; but this estimate, as already shown, does not include the sums raised under special or local acts, of the amount of which sums no estimate can be formed.

A century ago the Poor-Rate was about 700,000*l.*; it is now about 7,000,000*l.* In 1818 it was 9,320,000*l.* But the sums levied under the name of the Poor-Rate are expended on various purposes besides the relief of the poor.

The work published under the direction of the Poor-Law Commissioners contains a chapter on the Local Taxes of Scotland written at the request of the Poor-Law Commissioners by J. Hill Burton, Advocate, Edinburgh.

The Local Taxes in Scotland are distributed by Mr. Burton under the following heads:—

I. Administration of Justice, which includes Criminal Prosecutions, Court Rooms and County Buildings, Rural Police, Town Police, Prisons. II. Internal Transit, which includes Commutation Roads, Turnpike Roads, Highland Roads and Bridges. III. Navigation. IV. Civic Economy, which includes, Direct Municipal Taxes, Petty Customs, Miscellaneous Burdens. V. Relief of the Poor. VI. The Church and Education, which includes The Church of Scotland Education. VII. Miscellaneous Taxes.

Mr. Burton observes "that the money expended on the ecclesiastical establishment and on education, partakes, in some respects, of the nature of a tax." The amount of money annually levied by local taxation in Scotland is not accurately known. The sum of 956,678*l.* is the approximate amount given by Mr. Burton.

The Local Rates levied in Ireland are distributed under the following heads in the work published under the direction of the Poor-Law Commissioners.

I. Grand Jury Cess (in all the counties, including counties of cities and towns).

II. Poor-Rates (in 130 Unions, comprising every townland and denomination of land in Ireland).

III. Lighting, Cleansing, and Watching Rates (in all cities, towns, and boroughs which may adopt the provisions of the statute).

IV. Borough Rates (in certain Boroughs).

V. Pipe Water Rates (in every city and town, except Dublin, Cork, and Limerick, which gives title to a bishop or archbishop).

VI. Parish Cess (in all parishes, unions of parishes, or chapelries in Ireland).

VII. Rates for deserted children (in all parishes in Ireland, except those in the city of Cork).

VIII. Ministers' Money (in cities and towns corporate in Ireland).

IX. Board of Health Rates (in parishes in which the lord lieutenant shall direct officers of health to be appointed).

"Besides the above rates leviable under general acts of parliament, there are rates leviable under special acts in many places, as Dublin, Cork," &c. No account is given in the work here referred to of the provisions of these special acts, but the amount of the sums levied under them, which is considerable in some places, is given so far as it has been obtained.

	£
The rates for Ireland are given at	1,631,818
Tolls, Dues, and Fees . .	199,469
	£1,831,287

The amount of annual local taxation of Great Britain and Ireland accordingly amounts to 14,197,044*l.* But it is observed that if the deficient information were supplied, it would appear to be at least 15,000,000*l.* a year; and this, as already observed, does not include the local taxes raised in particular places under special acts of parliament. The sum raised by general taxation in the United Kingdom for the year ended 5th January, 1846, was 51,719,118*l.* The amount of the local and general taxation is accordingly about 67,000,000*l.* a year. The public expenditure for the year ending 5th January, 1846, was 49,061,411*l.*, of which sum 28,253,872*l.* was paid on account of the Funded and Unfunded Debt. This leaves somewhat under 21,000,000*l.* for the rest of the general public expenditure. Accordingly the present amount of the local taxation, 15,000,000*l.*, is nearly equal to three-fourths of the public expenditure after deducting the payments on account of the Funded and Unfunded Debt. It is well remarked in the work from which these facts are derived (p. 190), "when the Local Taxes are brought under review in this collective amount, it then at once becomes manifest how really deserving of serious consideration are the modes of raising and expending them, so as to secure the most efficient and economical management of a revenue so large and important: a revenue, indeed, which derives its importance not only from the largeness of its aggregate sum, but from the extent of the property and the number of persons affected by it, and from the numerous and diversified public objects to which it is applied."

Information about the several taxes of European States will be found in the Parliamentary Paper, No. 227, of 1842, ordered by the House of Commons to be printed, 3rd May, 1842.

TEA. The first importation by the English East India Company took place in 1669 from the Company's factory at Bantam. The directors ordered their servants to "send home by their ships one hundred pounds weight of the best *tey* they could get." In 1678, 4713 lbs. were imported, but in the six following years the entire imports amounted to no more than 410 lbs. The continuous official accounts of the trade do not commence before 1725; but, according to Milburn (*Oriental Commerce*), the consumption in 1711 was 141,995 lbs.; 120,695 lbs. in 1715; and 237,904 lbs. in 1720. In 1725 the quantity of tea retained for consumption was 370,323 lbs. at which time the customs' duty was 13*l.* 18*s.* 7½*d.* per cent., and the excise was 4*s.* per lb. In 1745 the amount was 730,729 lbs., and in that year the excise was made 1*s.* per lb. and 25 per cent. on the price. In 1747 the customs' duty was 18*l.* 18*s.* 7½*d.* per cent. and the quantity in the year was 2,382,775 lbs. In 1759 the customs' duty was 23*l.* 18*s.* 7½*d.* per cent. and the quantity was 3,957,744 lbs. In 1782 the duty per cent. was 27*l.* 0*s.* 10*d.*, the highest amount that the duty ever reached, and there was an increase in the excise also; the quantity in the year was 4,691,060 lbs. In 1784 the quantity was 4,948,983. In 1785 the customs' duty was 12½ per cent. and the excise duty was repealed: the quantity in that year was 10,856,578 lbs. In 1786 the customs' duty was 5 per cent. on the gross price, and an excise duty of 7½ per cent. on the gross price was laid on. The quantity in that year was 12,539,389 lbs. The quantity went on increasing up to 1834, and in the meantime the customs' duty was very little raised, and in 1819 it was repealed. The excise duties were

changed very often. When the customs' duty was repealed in 1819, the excise duty was made 96 per cent. on the gross price when it was under 2*s.* a lb., and 100 per cent. when it was above 2*s.* per lb. From 1834 included, in which year the excise duty was repealed, the quantities in each year to 1841 and the customs' duties were as follows:—

Years.	lbs.		
1834	34,969,651	Bohea, 1*s.* 6*d.*; Congou, Twankay, &c. 2*s.* 6*d.*; Hyson, &c., 3*s.* per lb.	Excise duty repealed.
1835	36,574,004	"	"
1836	49,142,236	After 1st July all sorts 2*s.* 1*d.* per lb.	"
1837	30,625,206	"	"
1838	32,351,593	"	"
1839	35,127,287	"	"
1840	32,252,628	2*s.* 2¼*d.*	"
1841	36,675,667	"	"
1842	37,355,211	"	"
1843	40,293,393	"	"
1844	41,363,770	"	"

For above a century and a half the sole object of the East India Company's trade with China was to provide tea for the consumption of the United Kingdom. The Company had an exclusive trade, and were bound to send orders for tea, and to provide ships to import the same, and always to have a year's consumption in their warehouses. The teas were disposed of in London, where only they could be imported, at quarterly sales; and the Company was bound to sell them to the highest bidder, provided an advance of one penny per lb. was made on the price at which each lot was put up, which price was determined by adding together the prime cost at Canton and the bare charges of freight, insurance, interest on capital, and certain charges on importation; but by the mode of calculating these items, and the heavier expenses which always attend every department of a trade monopoly, the upset prices were greatly enhanced. The prices realised at the Company's sales were, however, in still greater proportion beyond the upset prices, a result easily produced by a body who monopolized the sole supply, as it was only necessary that the quantity offered for sale should not be augmented in proportion to the growing demand of a rapidly increasing population. The 18 Geo. II. c. 26, passed immediately after a large reduction of the duty had taken place, provided for such a contingency as this, by enacting that if the East India Company failed to import a quantity sufficient to render the prices as low as in other parts of Europe, it should be lawful to grant licences to other persons to import tea. This would have constituted a very efficient check if it had been acted upon; but eventually the mode of levying the duty gave the government almost the same interest in a restricted supply as the East India Company, the duties being collected *ad valorem* on the amount realised at the Company's sales; and thus the very circumstance which enhanced the price raised the total amount of duty. The duty was nominally 90 and 100 per cent. *ad valorem*, but being charged on a monopoly price, the difference on the cheaper teas consumed by the working and middle classes amounted to above 300 per cent. on the cost price of the same teas at Hamburg; and in 1830 the difference between the prices realised at the Company's sales and the Hamburg prices amounted to a sum of 1,889,975*l.*

The Company's sales were in March, June, September, and December, the last being the largest. About 2,000,000 lbs. were offered belonging to the officers of the Company, who were allowed to import a certain quantity of tea on their own account. In 1839 there were only 122,312 lbs. offered for sale by the East India Company. The 3 & 4 Wm. IV. c. 93, on the 22nd of April, 1834, opened the trade to China. The importation of tea is no longer confined to the port of London. In 1839 eighteen ships arrived inwards from China at different outports, ten of which were entered at Liverpool. In the four years ending 1834 the average annual number of ships entered inwards from China at the ports of the United Kingdom was 23, in the four following years the average was 66, and other commodities besides tea have been extensively

imported, and a corresponding increase in the quantity and variety of the exports to China has taken place. The exports of tea from the United Kingdom, which formerly did not exceed a quarter of a million lbs. annually, amounted to 4,347,432 lbs. in 1841, and have averaged above three million lbs. a-year since the opening of the trade, a fact which shows that prices here are no longer so much above those of the principal continental ports. The quantity retained for consumption has also considerably increased, although accompanied by an extraordinary increase in the use of coffee.

The tea-duty produces about one-twelfth of the total revenue. The tariff of 1842 made no alteration in the tea-duty. As it was foreseen that on the opening of the tea-trade there would be a considerable reduction of price, and that an *ad valorem* duty would not, even with the increased consumption, be so productive as formerly, a fixed duty of 2*s.* 1*d.* per lb. was imposed in 1836. Up to March, 1836, each of the hundred thousand tea-dealers in the United Kingdom was visited once a month by the officers of excise, who took an account of his stock; and no quantity exceeding six pounds could be sent from his premises without a permit, of which above 800,000 were required in a year. The number of tea-dealers in 1839 was 82,794 in England; 13,611 in Scotland; 12,774 in Ireland: total 109,179. Tea is now sold by the importing merchants by public auction and private sales.

The following table shows the net amount which the tea-duty has yielded in the United Kingdom in each of the following years during the present century, and, to some extent, it is an index of the prices in each year.

	£		£
1801	1,423,660	1841	3,973,668
1810	3,647,737	1842	4,088,957
1820	3,484,226	1843	4,407,642
1830	3,387,097	1844	4,524,193
1840	3,472,864		

Between 1831 and 1841 the population increased 14 per cent., and the increase in the consumption of tea was 16⅓ per cent. The low prices of 1836, and the general prosperous condition of the country, raised the quantity which paid duty for consumption to nearly 50,000,000 lbs. In 1840 prices were about 25 per cent. higher, large classes of consumers were in a distressed state, and the consumption fell to 32,000,000 lbs. In 1841 the distress still continued, but prices were lower, and the consumption rose to above 36,000,000 lbs. On the 5th of Jan., 1840, the stock of tea in London, Liverpool, Bristol, Glasgow, and Leith was 35,478,490 lbs.; and at the corresponding period in 1841 the quantity was 46,545,610 lbs. The proportion of black to green teas consumed in England is about as 5 to 1; but in the United States the use of green tea is greatest.

The duty on tea is still too high, and it is certain that an increased consumption would follow a diminution of the duty.

(*Papers issued by the Chinese and East India Association; Parl. Papers*, &c.)

The total export of tea from Canton to Europe and America exceeds 50,000,000 lbs. Russia is supplied with 6,500,000 lbs. *via* Kiakhta; the United States of America require about 8,000,000 lbs.; France about 2,000,000 lbs.; and Holland imports about 2,800,000 lbs.

TELLERS OF THE EXCHEQUER were the holders of an ancient office in the Exchequer. They were four in number: their duties were to receive money payable into the Exchequer on behalf of the king, to give the clerk of the pells (skins or rolls of parchment) a bill of receipt for the money, to pay all money according to the warrant of the auditor of receipts, and to make weekly and yearly books of receipts and payments for the lord treasurer. (4 *Inst.*, 108; *Com. Dig.*, tit. 'Court,' D. 4, 14, 15.) The office was abolished by act of parliament (4 & 5 Wm. IV. c. 15), together with that of the clerk of the pells and the several offices subordinate thereto, and a comptroller-general of the receipt and issue of his Majesty's Exchequer was appointed to perform the duties of the four tellers. (4 & 5 Wm. IV. c. 15.)

TENANCY. [TENANT.]

TENANCY, JOINT. [ESTATE.]

TENANCY IN COMMON. [ESTATE.]

TENANCY IN COPARCENARY. [ESTATE.]

TENANT. Tenants, in the more extended legal sense of the word, are of various kinds, distinguished from each other by the nature of their estates; such as tenants in fee simple, in fee tail, for life, for years, at will, and at sufferance. [ESTATE; TENURE.]

TENANT AND LANDLORD. The word tenant, in the more limited legal sense, which is also the popular sense, is one who holds land under another, to whom he is bound to pay rent, and who is called his landlord. The word Land means not only land itself, but also all things, such as buildings, houses, woods, and water, which may be upon it. Any one who has an estate in land, provided he is also in possession, may let the land to another. Where the letting takes place by an express contract between the parties, the contract is called a Lease, the nature of which is explained generally under LEASE. The loss of a lease will not destroy the tenancy, provided the previous existence and the terms of it can be proved.

But the relation of landlord and tenant may be created otherwise than by a formal lease. If one man with the consent of another occupies his land, a contract of letting is assumed to have been made between them, and the occupier becomes tenant to the owner. Such tenants are considered to be upon the same footing as if the lands had been let to them for a year dating from the commencement of their occupation. At the end of the first year, a second year's tenancy begins, unless six months' notice of the intention to determine the contract has been given by either party to the other, and so on from year to year. The same rule of law applies to cases where a tenant continues to occupy land after the expiration of a lease made by deed; but in this case all the covenants of the expired lease as to payment of rent, repairs, insurance, and the like, are in force unless the lease is cancelled by destroying the seal; and even if there should be a verbal agreement for a different rent, still the old covenants subsist, unless the lease is cancelled. [DEED.]

Besides tenancies for fixed periods, a tenancy may exist at Will and by Sufferance. [ESTATE.] The law as to landlord and tenant generally applies, so far as it is not restricted or varied by the particular circumstances of a contract between the parties, and so far as the circumstances render it applicable, to the case of the letters and occupiers of lodgings.

In every case where the relation of landlord and tenant exists, either by express or by implied contract, certain terms are implied by law to have been agreed upon by the parties as forming part of the contract. It is of course in the power of the parties, where the contract is express, to qualify these terms so implied by the language of the contract itself. But it may be observed that as these terms are comprehensive in their nature, and distinctly understood in law, the interests of parties are often better consulted by leaving them to the general protection afforded by these implied terms than by attempts to define by enumeration in detail the respective rights and duties of the landlord and tenant. The terms implied on the part of the landlord are, that the tenant shall quietly enjoy the premises without let or hindrance from the landlord; on the part of the tenant, that he will pay rent, keep the premises in repair to a certain extent, as hereafter mentioned, and use the land, &c. in a fair and husbandlike manner.

When the landlord is himself tenant of the premises to a superior landlord, and neglects to pay his rent, and the occupying tenant is called upon to pay it to the superior landlord, he may do so, and set it off against the rent due from him to his own landlord. If a tenant has covenanted without exception or reservation to pay rent during the term for which the lease has been granted to him, he will be bound to pay it even if the premises should be destroyed by fire or other casualty. If he should have assigned his lease to another and ceased to be in possession, he will still remain liable under his covenant to pay rent.

The rules of law as to the repairs of premises may be determined by the terms of the lease. If they are not determined

by the terms of the lease, they are somewhat uncertain and depend on a variety of circumstances, which are laid down in law treatises.

No tenant, in the absence of an agreement to that effect, is bound to rebuild after accidental destruction of the premises by fire. But under a general covenant to repair, and *leave repaired*, the tenant is bound to rebuild even in the case of destruction by fire.

In agricultural tenancies the lease generally determines the mode in which the farm is to be treated. [LEASE.] Unless also the lease expressly or impliedly excludes the operation of the custom of the country, the tenant is bound to conform to it. The custom of the country means the general practice employed in neighbouring farms of a similar description, with reference to rotation of crops, keeping up fences, and other like matters. In leases of farms it is often the practice to protect the landlord against certain acts of the tenant, such as ploughing up meadow land, &c., by introducing certain provisions into the lease. These provisions may operate according to the phraseology used, either to assign a penalty or to determine the liquidated damages agreed to be paid for the act done. It is often a matter of great importance and of some nicety to determine under which class the provisions fall. If under the first, the landlord is not entitled to the whole penalty upon the act being done, but he can only recover in an action the amount of the actual damage which has accrued. If under the second, he is entitled to the whole amount of the damages agreed on. A covenant by a tenant not to plough up meadow under a penalty of 5*l.* for every acre ploughed, is an instance of the first class: a covenant to pay 5*l.* rent for every acre of meadow ploughed up, is of the second class. The right to timber and timber-like trees belongs to the landlord; loppings of pollards and bushes, to the tenant. Different definitions prevail in different counties of timber and timber-like trees, and various customs prevail as to what amount of wood the tenant may be allowed to employ (after the landlord has been called on to select it) for the purposes of the farm. No tenant, unless he employs the land as a nurseryman or gardener, can remove any kind of shrub from the soil. Neither can a tenant remove fixtures, though put down by himself. A fixture is a chattel which is let into the soil, or united to some other which is let in. There are some exceptions to this rule in favour of fixtures used for the purpose of trade or agriculture, or merely ornamental purposes, where the removal will cause little or no damage. (Amos and Ferard, *On Fixtures.*)

The tenant in occupation of the premises is, in the first instance, liable for all taxes and rates of every description due in respect of the premises. The party therefore who is authorised to collect them may proceed against the tenant in occupation to recover them. It is generally a matter of agreement between the landlord and tenant that the tenant shall pay all rates and taxes except the land tax; and sometimes it is agreed that the landlord shall pay the sewer rate also. If, however, the landlord has undertaken to pay the tenant the rates and taxes, and fails to do so, the tenant may deduct the amount from his rent, or bring an action to recover it; but this should be done during the current year, and if the tenant allows a considerable time to elapse without claiming a deduction or bringing an action, he will be held to have waived his claim to recover them from the landlord.

Where a fixed rent has been agreed upon, has become due, and is neither paid nor tendered, the landlord, with certain exceptions, can seize growing crops, any kind of stock, goods, or chattels, upon the premises, or pasturing any common enjoyed in right of the premises, whether such things are the actual property of the tenant or not; and if the rent remains unpaid, he may sell them. It follows from this general rule that a landlord can distrain on the goods of a lodger who occupies under his tenant. [DISTRESS; RENT.]

As to a surrender of a lease, see STATUTE OF FRAUDS.

A forfeiture of a lease may arise either by a breach by the tenant of one of those conditions which are implied by or at-

tached to the relation of landlord and tenant, as where a tenant disclaims or impugns the title of his landlord by acknowledging, for instance, the right of property to be vested in a stranger, or asserts a claim to it himself, or by a breach of a condition which is expressly introduced into the lease, the breach of which is to be attended with a forfeiture of the tenancy, as a condition to pay rent on a particular day, to cultivate in a particular manner, &c. To this head may be referred provisoes in a lease for re-entry by the landlord on the doing or failure in doing of certain acts by the tenant, such as the commission of waste, the failure to repair, &c. The courts are said to be unfavourable to forfeitures; therefore, when the landlord has notice of an act of forfeiture, or an act which entitles him to re-enter, he must immediately proceed in such a way as to show that he intends to avail himself of his strict legal right. If after the commission of the act he does anything which amounts to a recognition of the tenancy, as by the acceptance of rent subsequently due, he will have waived his right to insist upon the forfeiture.

A yearly tenancy, where no period of notice is agreed on, must be determined by a notice to quit at the expiration of the current year, given six months previously. In the case of lodgings, the time, when less than a year, for which they are taken, will be the time for which a notice is necessary. Thus lodgings taken by the month or week require a month's or week's notice.

The notice to quit need not be in writing, though, from the greater facility of proving it, a written notice is always better. It should distinctly describe the premises, be positive in its announcement of an intention to quit or require possession, be signed by the party giving it, and served personally upon the party to be affected by it.

If a tenant, after having given notice to quit, continues to occupy, he is liable to pay double rent. If he does so, no fresh notice is necessary. If he continues to occupy after the landlord has given him notice, he is liable to pay double value for the premises.

At the expiration of the lease, the tenant is bound to deliver up possession of the premises; but if either by special agreement or by the custom of the country the tenant is entitled to the crops still standing on the land, and which are called away-going crops, he may enter for the purpose of gathering them, and also use the barns and stables for the purpose of threshing them. The in-coming tenant may also enter during the tenancy of the preceding tenant to plough and prepare the land.

As to the recovery of rent by action see RENT.

If the tenant refuses to deliver the possession of the land, the landlord may bring an action of ejectment to recover it, and the process is simplified by 4 Geo. II. c. 28. [RENT, p. 637.]

By the 11 Geo. II. c. 19, and 57 Geo. III. c. 52, if a tenant, under any lease or agreement, written or verbal, though without a clause of re-entry, of lands at a rack-rent, or rent of three-fourths the yearly value, shall be in arrear for half a year's rent, and shall leave the premises deserted and without sufficient distress, any two justices of the county, at the request of the landlord, may go and visit the premises, and fix on the most conspicuous part of them notice in writing on what day, distant fourteen days at least, they will return again to view the premises; and if on the second day no one appears to pay the rent, and there is no sufficient distress on the premises, the justices may put the landlord into possession, and the lease shall become void. These proceedings are subject to appeal before the judges of assize for the same county at the ensuing assizes.

By 1 & 2 Vict. c. 74, where the interest of any tenant of land, &c., at will, or for a time less than seven years, liable to the payment either of no rent or a rent of less than 20*l.* a year, shall have ended or been duly determined, and the tenant shall refuse to quit, the landlord may serve him with a notice, a form for which is given in the act, to appear before a justice for the county; and if he fails to show satisfactory cause why he should not give up possession, the justices, on proof of the tenancy and of the expiration

of it, may give possession to the landlord. If the landlord was not at the time of the proceedings lawfully entitled to possession, he will be liable to an action of trespass at the suit of the tenant, notwithstanding the act of parliament.

(Woodfall's *Landlord and Tenant;* Coote's *Landlord and Tenant.*)

TENANT AT SUFFERANCE. [ESTATE.]

TENANT AT WILL. [ESTATE.]

TENANT FOR LIFE. [ESTATE.]

TENANT FOR YEARS. [ESTATE; LEASE.]

TENANT IN FEE SIMPLE. [ESTATE.]

TENANT IN TAIL. [ESTATE.]

TENANT-RIGHT is the name for a species of customary estates peculiar to the northern parts of England, in which border services against Scotland were antiently performed before the political union of the countries. Tenant-right estates were holden of the lord of the manor by payment of certain customary rents and the render of the services above mentioned, are descendible from ancestor to heir according to a customary mode differing in some respects from the rule of descent at common-law, and were not devisable by will either directly or by means of a will and surrender to the use of the same, though they are now made devisable by 1 Vict. c. 26, s. 3. Although these estates appear to have many incidents which do not properly belong to villeinage tenure or copyhold, not being holden at the will of the lord, or by copy of court roll, and being alienable by deed and admittance thereon, it has been determined that they are not freehold, but that they fall under the same general rules as copyhold estates. (Doe *d.* Reay *v.* Huntingdon, 4 East, 271.)

TENDER. A tender is the offer to perform some act. In practice it generally consists in an offer to pay money on behalf of a party indebted, or who has done some injury, to the creditor, or to the party injured.

A tender to the amount of 40*s.* may be in silver; but beyond that amount it must be in gold, or in Bank of England notes payable to bearer on demand for any sum above 5*l.* (3 & 4 Wm. IV. c. 6.) If a tender be made of a larger amount in silver, or in country bank-notes, and no objection be taken at the time to the silver or notes, the objection to the tender on that ground is waived, and the tender is good to the amount to which it is made. The money must be produced and shown, or the bag or other thing which contains it shown to the party to whom it is intended to be given, unless this is dispensed with by some declaration or act of the creditor. This is insisted upon with such strictness, that even though a party tell his creditor that he is about to pay him so much, and put his hand into his pocket to produce the money, yet if the creditor leave the presence of the debtor before the money is actually produced, no tender will have been made: but if the creditor refuse to receive the money mentioned on the ground that it is insufficient in amount, the actual production of it is not necessary to constitute a valid tender. The offer must be absolute and without conditions. An offer of a larger amount with a request of change; an offer with a request of a receipt, or on condition that something shall be done on the part of the creditor, are not valid tenders; but an offer of a larger sum absolutely without a demand of change is good. A tender may be made either to the party actually entitled to receive it, or to an agent or servant authorised to receive it, or to a managing clerk; and a tender will not be invalidated even though before it is made the creditor has put the matter into the hands of his attorney and the managing clerk of the creditor refuses to receive it, and assigns that circumstance as his reason for doing so. If the attorney write to the debtor demanding the money, a tender afterwards made to him or to his managing clerk is good, unless at the time when it is made they disclaim authority to receive the money. A tender ought to be made on behalf of the party from whom the money is due; if the agent appointed by him to make the tender offer a larger sum than he is authorised to do, the tender will nevertheless be good for the full amount to which the tender is made.

If the defendant in an action plead a

tender, he must state that he has always been ready to pay the money, and he must also pay it into court. The effect of the plea is to admit the existence of the contract or other facts stated in the declaration which form the cause of action in the plaintiff. The plea goes only in bar of damages. The plaintiff therefore in such case can never be nonsuited: but if issue is taken on the mere fact whether or not the tender has been made, and that fact is found for the defendant, it is a good defence to the action.

By various statutes, magistrates, officers of excise, &c., are empowered, after notice of action to be brought against them, to tender amends; and if the amount tendered is sufficient, the tender is a defence to the action.

TENEMENT, in its usual and popular acceptation, is applied only to houses and other buildings; but in its original, proper, and legal meaning it includes everything of a permanent nature that may be an object of tenure, or may be held in the legal sense, whether corporeal or incorporeal. It is sometimes applied in a more confined sense to objects of feudal tenure; in general, however, it includes not only land, but every modification of right concerning it. Thus the word "Liberum tenementum," frank-tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, and the like. [ESTATE, TENURE.] (Harg., Co. Litt., 154, a. n. 7.)

TENTHS are the tenth part of the yearly value of all ecclesiastical livings. They were formerly claimed by the pope; and his claim was sanctioned, in this country, by an ordinance in the 20th year of Edward I., when a valuation of all livings was made, in order that the pope might know the amount of his revenue from this source. The possessions afterwards acquired by the church were not liable to the payment of tenths to the pope, as all livings continued to be charged according to that valuation. (Coke, 2 *Inst.*, 627.) When the authority of the pope was extinguished at the Reformation, Henry VIII. transferred the revenue arising from tenths to the crown, and had a new valuation of all the livings, so as to obtain the tenth of their true yearly value at that time. (36 Hen. VIII. c. 3, s. 9-11.) By royal grants under 1 Eliz. c. 19, s. 2, the Archbishop of Canterbury and the Bishop of London were exempted from tenths, and were also authorised to receive the tenths of several benefices as a compensation for certain estates which were alienated from their sees. By the 6 Anne, c. 24, all benefices were discharged from the payment of tenths which, at that time, were under the annual value of 50*l.*, except those of which the tenths had previously been granted by the crown to other parties. There are also some other special exemptions. At the present time, out of 10,498 benefices, with and without cure of souls, there are 4898 which remain liable to tenths. (*Parl. Rep. First-Fruits and Tenths*, 1837, No. 384.) Queen Anne gave up the revenue arising from tenths, as well as from first-fruits, which had been enjoyed by her predecessors since the Reformation, and by act 2 and 3 of her reign, c. 11, assigned it to the augmentation of poor livings; for which purpose she erected a corporation by letters patent in 1704 to administer the funds, called the Governors of Queen Anne's Bounty. This act declared that episcopal sees and livings not exempted should continue to pay in such rates and proportions only as heretofore, or according to the valuation of Henry VIII., commonly known as the "King's Books." Tenths under the act 1 Vict. c. 20, are collected by the Treasurer of the Governors of Queen Anne's Bounty. Payment is enforced by Exchequer process, when not duly made, and the treasurer is required to give notice of arrears within one month after the proper time of payment. In case of a living being vacated, the Exchequer is empowered by act 26 Hen. VIII. c. 3, s. 18, to recover arrears of tenths, not only from the executors and administrators, but also from the successor of the last incumbent. (2 Burn's *Ecclesiastical Law*, 9th ed., pp. 273-295.) [BENEFICE; FIRST-FRUITS.]

TENURE. The general nature of tenure and its origin and history in England are explained in the article FEUDAL LAW. A few remarks may be made here on tenure as at present existing by

the law of England, for which purpose a short recapitulation is necessary.

All land was and is held of the king either mediately or immediately. All tenures were distributable under two general heads, according as the services were free or base; and consequently there was the general division of tenures into Frank-tenement or free-holding, and Villeinage. The act of Charles II. (12 Car. II. c. 24) abolished military tenures, which were one kind of free services, and changed them into the other species of free services, namely free and common socage. Thus one tenure in socage was established for all lands held by a free tenure, which comprehended all lands held of the king or others, and all tenures except tenures in frankalmoigne, copyhold, and the honorary services of grand-serjeanty; and it was enacted by the same act that all tenures which should be created by the king in future, should be in free and common socage. It is particularly provided in the act which abolishes military tenures, that it shall not alter or change any tenure by copy of court-roll, or any services incident thereto, nor take away the honorary services of grand-serjeanty, other than charges incident to tenure by knights' service.

Thus it appears that tenure is still a fundamental principle of the law relating to land in England.

All land in England which is in the hands of any layman is held of some lord, to whom the holder or tenant owes some service. It is by doing this service that the tenant is entitled to hold the land: his duty is a service, and the right of the lord is a Seignory. The word tenure comprehends the notion of this duty and of this right, and also the land in respect of which the duty is due: the land is a Tenement. As already observed, all land is held either mediately or immediately of the king; and ultimately all land is held of the king. He who is the owner of land in fee simple, which is the largest estate that a man can have in land, is not absolute owner: he owes services in respect of his fee (or fief), and the seignory of the lord always subsists. This seignory is now of less value than it was, but still it subsists. The nature of the old feud was this: the tenant had the use of the land, but the ownership remained in the lord; and this is still the case. The owner of a fee has in fact a more profitable estate than he once had; but he still owes services, fealty at least, and the ownership of the land is really in the lord and ultimately in the king. For all practical purposes the owner's power of enjoyment is as complete as if his land were allodial; but the circumstance of its not being allodial has several important practical consequences.

No land in England can be without an owner. If the last owner of the fee has died without heirs, and without disposing of his fee by will, the lord takes the land by virtue of his seignory. If land is aliened to a person who has a capacity to acquire but not to hold land in England, the king takes the land; this happens in the case of lands being sold to an alien. If a man commits treason, his freehold lands are liable to be forfeited to the king, and his copyhold estates to the lord of the manor, in the form and under the limitations and conditions explained in LAW, CRIMINAL, p. 183. If a man commits a felony, his freehold and copyhold lands are subject to forfeiture in the manner stated in LAW, CRIMINAL, p. 185. These forfeitures are consequences of tenure.

The case of church lands seems something peculiar. They are held by tenure though no temporal services are due. This is the tenure in frankalmoigne, which is explained under FRANKALMOIGNE.

Tenure in frankalmoigne is now exactly what it was before the 12th of Charles II. was passed. Church lands then, which are held in frankalmoigne, owe no temporal services, but they owe spiritual services, and the lord of whom they are held must be considered the owner. And this conclusion is consistent with and part of the law of tenure, by which no land in England is ever without an owner. Church land differs from land held by laymen in this, that the beneficial ownership can never revert to the lord, for all spiritual persons are of the nature of corporations, and when a

parson dies, the corporation sole (as he is termed by an odd contradiction in terms) is not extinct, and it is the duty and right of some definite person to name a successor. It is stated by Blackstone (i. 470) that "the law has wisely ordained that the parson, *quatenus* parson, shall never die any more than the king, by making him and his successors a corporation; by which means all the original rights of the parsonage are preserved entire to the successor: for the present incumbent and his predecessors who lived seven centuries ago, are in law one and the same person." But notwithstanding this ingenious attempt to make one man, together with others not ascertained, a corporation, which term means one juristical person composed of more than one natural person, the difficulty really is, that when a parson dies, there is no person who has a legal ownership of the land until a successor is appointed, if Blackstone's theory is true. The comparison of the case of a parson with that of the king is unapt, for the successor to a deceased king is ascertained by the death of his predecessor; but the successor of a parson is generally ascertained by the will of some other person being exercised, and till the person entitled to appoint a parson has named one, and he has been duly instituted, the lands of the church have no legal owner, unless the lord is the owner. This seignory may be worth nothing, but it still exists. The difficulty may indeed be solved without the supposition of a seignory still existing, and in the following manner. There is succession in the case of one parson succeeding another, for which the notion of a corporation is not necessary. The notion of succession is this: the right which is the object of the succession, continues the same; the subject, that is the person, changes. In order to constitute strict succession, the new ownership or right must begin at the moment when the former ceases, and the new ownership or right is derived from and founded on a former ownership or right. This is the case of succession to the crown, and also of the heir-at-law succeeding to real property. In the case of a parson, when a new one is appointed, his right by a fiction at law commences at the time when his predecessor's right ceased, though an interval has elapsed between the time of his predecessor's death and his own appointment; and this was the doctrine which the Romans applied to the case of a heres who did not take possession of the hereditas till some time after the death of the testator or intestate. This subject is discussed by Savigny, *System des Römischen Rechts*, &c., vol. iii. When then the parson dies, the freehold may, according to this doctrine, be considered to be in abeyance till the appointment of his successor, one of the few instances in the English law in which it is said that a freehold estate can be in abeyance.

No seignory, in the sense above explained, can now be created except by the king. It was enacted by the statute Quia Emptores (18 Edw. I. c. 1), that all feoffments of land in fee simple must be so made that the feoffee must hold of the chief, that is, the immediate lord of the aliening tenant, by the same services by which the tenant held. All seignories exist now which existed at the time when the statute of Quia Emptores was passed. A lord may release the services to a tenant; but it would be consistent that the king could not release the services due to him, for if that were the case land might become allodial, and on the death of a person without heirs there might be land without an owner, which is inconsistent with the fundamental principles of law relating to English land. Still it is said that the king can release to his tenant all services, and yet that the tenant holds of him. By this assumption of a still subsisting tenure the consequence above mentioned is avoided.

Tenure of an imperfect kind may be created at present. Wherever a particular estate is created, it is held of the reversioner by an imperfect tenure: this is the common case of landlord and tenant. If no rent or other services are reserved from the tenant of the particular estate for life or years, the tenure is by fealty only, and he may be required to take the oath of fealty. But the right of the reversioner to whom services are due is solely incident to the reversion, and is created at the same time with it.

The perfect tenure originated in the pure feudal system, in which the seignory of the lord was the legal ownership of the land, and the tenant owed his services for the enjoyment of it. The only perfect tenure now existing is Socage tenure, the services of which are certain. and consist, besides fealty, of some certain annual rent. [SOCAGE.]

The right of wardship was one of the incidents to military tenures. The lord had a right to the wardship of his infant tenant until he was twenty-one years of age; and this right was in many respects prejudicial to the interests of the heir. This right was abolished with the abolition of military tenures. The right of guardianship to an infant tenant in socage only continues to the age of fourteen; but the act of Charles II. (12, c. 24) gave a father power by deed or will, executed as the statute prescribes, to appoint a guardian to any of his children till their full age of twenty-one, or for any less time. (See 1 Vict. c. 26.) The guardian in socage was the next of kin to the heir, and he was chosen from that line, whether paternal or maternal, from which the lands had not descended to the heir, and consequently such guardian could never be the heir of the infant. This wardship then had no relation to tenure.

If the services due in respect of a perfect tenure are not rendered by the tenant to the lord, he may distrain, that is, take any chattels that are on the land in respect of which the services are due; and an imperfect tenure so far resembles a perfect one, that a reversioner can distrain for the services due from the tenant of the particular estate.

A right still incident to a seignory such as a subject may have is that of escheat, which happens when the tenant in fee simple dies without leaving any heir to the land, and without having incurred any forfeiture to the crown, as for treason. Such a right exists by virtue of a seignory created before the statute of Quia Emptores. It has been observed that the acquisition by escheat is not a purchase, because the escheated land descends as the seignory would have descended. Forfeiture is another right incident to a seignory, and it may happen in consequence of any act by which the tenant breaks his fidelity (fealty) to his lord of whom he holds. It therefore extends to other cases than treason and felony. This subject is explained under FORFEITURE, and TENANT AND LANDLORD. When lands are forfeited to the king for treason, or to the lord for felony, the tenure is extinguished; and generally, in whatever way lands come to the king or lord, the tenure is of necessity extinguished. If lands escheat to the king, he may grant them again in fee simple.

The nature of tenure will be better understood by consulting the following articles: COPYHOLD; FEUDAL SYSTEM; MANOR; RENT.

TERM. The law Terms are those portions of the year during which the courts of common law sit for the despatch of business. They are four in number, and are called Hilary Term, Easter Term, Trinity Term, and Michaelmas Term: they take their names from those festivals of the Church which immediately precede the commencement of each. Various acts of parliament have been passed relative to the regulation of the Terms. The statute which now determines them is the 11 Geo. IV. & 1 Wm. IV. c. 70, amended by 1 Wm. IV. c. 3, which enacts that Hilary Term shall begin on the 11th and end on the 31st of January; Easter begin on the 15th of April and end on the 8th of May; Trinity begin on the 22nd of May and end on the 12th of June; Michaelmas begin on the 2nd and end on the 25th of November. Monday is in all cases substituted for Sunday when the first day of Term falls on Sunday. During Term four judges sit in each court, and are occupied in deciding pure matters of law only, without the intervention of a jury. The fifth judge in each court sometimes sits alone to determine matters of smaller importance or to try causes at Nisi Prius. By the statute 1 & 2 Vict. c. 32, the courts of common law are empowered, upon giving notice, to hold sittings out of Term for the purpose of disposing of the business then pending and undecided before them. These sittings are conducted

in the same manner as those during the Term, except that no new business is introduced. The period during which they have the power to do this is restricted to "such times as are now by law appointed for holding sittings at Nisi Prius in London and Westminster." These times are appointed by 1 Wm. IV. c. 70, s. 7, and consist of "not more than twenty-four days, exclusive of Sundays, after any Hilary, Trinity, and Michaelmas Term, not more than six days, exclusive of Sundays, after any Easter Term, to be reckoned consecutively after such Terms." The judges are also empowered by the same section to appoint such day or days as they shall think fit for any trial at bar (that is, a trial before four judges of the court), and the time so appointed, if in vacation, is for the purposes of the trial to be deemed a part of the preceding Term.

There is also a provision which enables the judges, with the consent of the parties, to appoint any time not within the twenty-four days for the trial of any cause at Nisi Prius. The sittings during these twenty-four and six days are called the sittings after Term, and are held for the trials of causes at Nisi Prius for London and Westminster, which places do not form part of any of the circuits. Sittings at Nisi Prius are also held for the same purpose before single judges during Term time, but no special jury cases are taken within the Term. (Spelman, *Of the Terms;* 3 Blackstone's *Com.*, 275.)

TERM OF YEARS signifies the estate and interest which pass to the person to whom an estate for years is granted by the owner of the fee. [ESTATE.]

TERRIER, from the French word *terrier*, a land-book, a register or survey of lands. Those best known in this country are the ecclesiastical terriers made under the provisions of the 87th canon. They consist of a detail of the temporal possessions of the church in the parish. They ought to be signed by the parson, and are sometimes also signed by the churchwardens and some of the substantial inhabitants of the parish. Their proper place of custody is the bishop's or archdeacon's registry: a copy also is frequently placed in the parish chest. If a terrier is proved to be produced from the proper custody, and therefore may be presumed to be genuine, it is in all instances evidence against the parson. In those instances where it has been signed by churchwardens elected by the parish or by the inhabitants, it is also evidence against the inhabitants generally; even against those occupying lands other than the lands occupied by the inhabitants who signed it. The questions in respect of which a terrier is generally employed as evidence are those relating to the glebe, tithes, a modus, &c. (Starkie, *On Evidence.*)

TEST ACT. [ESTABLISHED CHURCH; NONCONFORMITY.]

TESTAMENT. [WILL.]

TESTE OF A WRIT. [WRIT.]

TESTIMONY. [EVIDENCE.]

THEATRE. Before the reign of Elizabeth theatrical representations appear to have been subject to no legal restraint beyond the liability of those who conducted them to the vagrant laws.

But, although players, as such, were subject to no general legal restrictions, it is probable that the practice of granting licences from the crown to such persons prevailed as early as the reign of Henry VIII. The earliest theatrical licence from the crown now extant is that granted by Queen Elizabeth, in 1574, to James Burbage and four other persons, "servants to the Earl of Leicester," which contains a proviso that the performances thereby authorized, before they are publicly represented, shall be seen and allowed by the queen's master of the revels; a stipulation analogous to the licence of the lord chamberlain under the Licensing Act at the present day. These licences from the crown were originally nothing more than authorities to itinerate, which exempted strolling players from being molested by proceedings taken under the laws or proclamations against vagrants, and also superseded the necessity of licences from local magistrates.

Although theatrical representations became much more general in the reigns of James I. and Charles I., no laws were enacted for their regulation, with the exception of the stat. 1 Car. I. c. 1, which

suppressed the performance of "interludes and common plays" upon the Lord's Day. An ordinance of the Long Parliament, in 1648, was directed to the suppression of all stage-plays and interludes, but though occasionally enforced with much rigour, it failed to abolish these entertainments. The stat. 12 Ann. stat. 2, c. 23, in general terms, classed players of interludes as rogues and vagabonds; but the stat. 10 Geo. II., c. 28, s. 1, expounded the former statute, by enacting that "every person, who should for hire, gain, or reward, act, represent, or perform any play or other entertainment of the stage, or any part tkerein, if he shall not have any legal settlement where the offence should be committed, without authority by patent from the king, or licence from the lord chamberlain, should be deemed a rogue and vagabond within the stat. 12 Ann." This provision is now repealed by the stat. 5 Geo. IV. c. 83, and players as such, whether stationary or itinerant, are, at the present day, not amenable to the law as rogues and vagabonds. By the 2nd section of the above statute, 10 Geo. II. c. 28, which, with the exceptions just mentioned, is still in full operation, and forms the law of the metropolitan theatres, it is enacted generally, that "every person who shall, without a patent or licence, act or perform any entertainment of the stage for hire, gain, or reward, shall forfeit the sum of 50*l.*" By the 3rd section it is declared, that "no person shall for hire, gain, or reward act, perform, or represent any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any parts therein; or any new act, scene, or other part added to any old interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain of the king's household for the time being, fourteen days at the least before the acting, representing, or performing thereof, together with an account of the play-house or place where the same shall be, and the time when the same is first intended to be first acted, represented, or performed, signed by the master or manager." The 4th section authorizes the lord chamberlain to prohibit the performance of any theatrical entertainment, and subjects the persons infringing this prohibition to a penalty of 50*l.*, and the forfeiture of their patent or licence. The 5th section provides that "no person shall be authorized by patent from the crown, or licence from the lord chamberlain, to act, represent, or perform for hire or reward, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, in any part of Great Britain, except in the city of Westminster and within the liberties thereof, and in such places where the king shall personally reside, and during such residence only." The 7th section enacts, that "if any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, shall be acted, represented, or performed in any house or place where wine. ale, beer, or other liquors shall be sold or retailed, the same shall be deemed to be acted, represented, and performed for gain, hire, and reward." Within a few years after the passing of this act of parliament, the clause which restricted the power of granting patents by the crown to theatres within the city of Westminster and places of royal residence, was found to be productive of inconvenience; and special acts of parliament were passed, which exempted several large towns, in which such entertainments were desired, from the operation of that clause, and authorized the king to grant letters for establishing theatres in such places. Instances of statutes of this kind occur with respect to Bath, in stat. 8 Geo. III. c. 10; with respect to Liverpool, in the stat. 11 Geo. III. c. 16; and with respect to Bristol, in the stat. 18 Geo. III. c. 8.

A further relaxation of the rule established by the stat. 10 Geo. II. c. 28, for the regulation of theatrical performances, was effected by the statute 28 Geo. III. c. 30, in favour of places which could not be expected to bear the expense of a special act of parliament. By this latter statute, the justices of the peace at general or quarter sessions are authorized to license the performance of any such tragedies, comedies, interludes, operas, plays, or farces as are represented at the patent

or licensed theatres in Westminster, or as have been submitted to the Lord Chamberlain, at any place within their jurisdiction not within 20 miles of London, Westminster, or Edinburgh, or 8 miles of any patent or licensed theatre, or 10 miles of the king's residence, or 14 miles of either of the universities of Oxford or Cambridge, or 2 miles of the outward limits of any place having peculiar jurisdiction.

The penalties imposed by the stat. 10 Geo. II. c. 28, being found in practice insufficient to prevent the performance of theatrical entertainments without licence, and great evils being alleged to follow from the resort of the lower orders in London to such entertainments, the legislature, in the year 1839, gave additional powers to the metropolitan police for their prevention. By the 46th section of the stat. 2 & 3 Vict. c. 47, "the commissioners of police are empowered to authorize a superintendent, with such constables as he may think necessary, to enter into any house or room, kept or used within the metropolitan police district for stage plays or dramatic entertainments, into which admission is obtained by payment of money, and which is not a licensed theatre, and to take into custody all persons who shall be found therein without lawful excuse." The same clause enacts that "every person keeping, using, or knowingly letting any house or other tenement for the purpose of being used as an unlicensed theatre, shall be liable to a penalty of 20*l.*, or, in the discretion of the magistrate, may be committed to the House of Correction, with or without hard labour, for two calendar months; and every person performing or being therein without lawful excuse shall be liable to a penalty of forty shillings."

The 3 & 4 Wm. IV. c. 15, and subsequent acts, regulate property in dramatic compositions. [COPYRIGHT, p. 642.]

THEFT. [LAW, CRIMINAL.]

THEODOSIAN CODE. [CONSTITUTIONS, ROMAN, p. 621.]

THIRTY-NINE ARTICLES. [ESTABLISHED CHURCH.]

THREATENING LETTERS. [LAW, CRIMINAL, p. 194.]

TIMBER TRADE. [TAX, TAXATION.]

TIN TRADE. [MINES.]

TITHES are the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants, and are offerings payable to the church, by law. Under the Jewish system, the tenth part of the yearly increase of their goods was due to the priests. (*Numbers* xviii. 21; *Deut.* xiv. 22; *Levit.* xxvii. 30, 32.)

In the earliest ages of the Christian church, offerings were made by its members at the altar, at collections, and in other ways; and such payments were enjoined by decrees of the church, and sanctioned by general usage. For many centuries, however, they were voluntary. But when the church had increased in power, and began to number amongst its members many who adhered to it because it was the prevailing religion, it was found necessary to enforce certain fixed contributions for the support of the ministers of religion. The church relied upon the example of the Jews, and claimed a tenth. Meanwhile, the conversion of temporal princes to Christianity, and their zeal in favour of their new faith, enabled the church to obtain the enactment of laws to compel the payment of tithes. In England, the first instance of a law for the offering of tithes was that of Offa, king of Mercia, towards the end of the eighth century. He first gave the church a civil right in tithes, and enabled the clergy to recover them as their legal due. The law of Offa was at a later period extended to the whole of England by King Ethelwulph. (Prideaux, *On Tithes*, 167.)

At first, though every man was obliged to pay tithes, the particular church or monastery to which they should be paid appears to have been left to his own option. In the year 1200, however, Pope Innocent III. directed a decretal epistle to the archbishop of Canterbury, in which he enjoined the payment of tithes to the parsons of the respective parishes. This parochial appropriation of tithes has ever since been the law of England. (Coke, 2 *Inst.*, 641.)

The tithes thus payable were of three kinds—*prædial*, *mixed*, and *personal*. *Prædial* tithes are such as arise immediately from the ground, as grain of all sorts, fruits, and herbs. *Mixed* tithes arise from things nourished by the earth, as colts, calves, pigs, lambs, chickens, milk, cheese, and eggs. *Personal* tithes are paid from the profits arising from the labour and industry of men engaged in trades or other occupations; being the tenth part of the clear gain, after deducting all charges. (Watson, *On Tithes*, c. 49.) It is sometimes stated that personal tithes seem to have been generally commuted for the more moderate tribute of Easter Offerings; unless in fishing-towns, or other places where peculiar circumstances have caused a continuance of the primitive usages. (Burton, *Compend. of the Law of Real Property*, § 1173.)

Tithes are further divided into *great* and *small*. The great tithes consist of corn, hay, wood, &c.; the small tithes consist of the prædial tithes of other kinds, together with mixed and personal tithes. This distinction is arbitrary, and not dependent upon the relative value of the different kinds of tithe within a particular parish. Potatoes, for instance, grown in fields, have been adjudged to be small tithes, in whatever quantities planted (Smith *v.* Wyatt, 2 Atk., 364), while corn and hay in the smallest portions still continue to be treated as great tithes. The distinction is of material consequence, as great tithes belong, of right, to the rector of the parish, and small tithes to the vicar.

No tithes are paid for quarries or mines, because their products are not the increase, but are part of the substance of the earth. There may, however, be tithes of minerals by custom. Neither are houses, considered separately from the soil, chargeable, as having no annual increase. By the common law of England no tithe is due for wild animals such as fish, game, &c.; but there are local customs by which tithe has been paid from such things from time immemorial, and in those places such customary tithes may be exacted. Tame animals, kept for pleasure or curiosity, are also exempt from tithes.

Tithes were originally paid in kind, that is, the tenth wheat-sheaf, the tenth lamb or pig, as the case might be, belonged to the parson of the parish as his tithe. The inconvenience and vexation of such a mode of payment are obvious, but no attempt had been made in this country, till very recently, to introduce a general improvement in the mode of collection. The inconvenience of paying tithes in kind must long since have been felt, and certain modes of obviating it were occasionally practised. Sometimes the owner of land would enter into a composition with the parson or vicar, with the consent of the ordinary and the patron of the living, by which certain land should be altogether discharged from tithes, on conveying other land for the use of the church, or making compensation. In other words, the owner of the land purchased an exemption from tithes. Such arrangements between landowners and the church were recognised by law; but it was found that they were often injurious to the church by reason of an insufficient value being given for the tithes. The acts 1 Elizabeth, c. 19, and 13 Elizabeth, c. 10, were accordingly passed, which disabled archbishops, bishops, colleges, deans, chapters, hospitals, parsons, and vicars, from making any alienation of their property for a longer term than twenty-one years or three lives. In order to establish an exemption from tithes on the ground of a real composition, it is therefore necessary to show that such composition had been entered into before the statutes of Elizabeth. Since that time compositions have rarely been made, except under the authority of private acts of parliament.

Another method of avoiding the payment of tithes in kind was by a *modus decimandi*, commonly called a *modus*. This consists of any custom in a particular place, by which the ordinary mode of collecting tithes has been superseded by some special manner of tithing. In some parishes the custom has prevailed, time out of mind, of paying a certain sum of money annually for every acre of land, in lieu of tithes. In others, a smaller quantity of produce is given, and the residue is made up in labour, as every 12th sheaf of wheat instead of the 10th,

but to be housed or threshed by the tithe-payer.

A large portion of the land of England and Wales is tithe-free from various causes. Some has been exempted under real composition, as already explained, and some by prescription, which supposes a composition to have been formerly made. The most frequent ground of exemption is that the land once belonged to a religious house, and was therefore discharged in following manner:—All abbots, priors, and other heads of religious houses, originally paid tithes from the lands belonging to them, until Pope Paschal II. exempted all spiritual persons from paying tithes of lands which were in their own hands. This general discharge continued till the time of King Henry II., when Pope Adrian IV. restrained it to the three religious orders of Cistercians, Templars, and Hospitalers, to whom Pope Innocent III. added the Præmonstratenses. These four orders, on account of their exemption, were commonly called the privileged orders. The Council of Lateran, in 1215, further restrained this exemption to lands in the occupation of those religious orders of which they were in possession before that council. Bulls were, however, obtained for discharging particular monasteries from the payment of tithes, which would not otherwise have been exempt; by which means much land has been ever since tithe-free. Another mode by which lands belonging to religious houses became not liable to the payment of tithes was that of *unity of possession;* as where the lands and the rectory belonged to the same establishment, which would not, of course, pay tithes to itself. Yet the lands were not absolutely discharged by this unity of possession, for, upon any disunion, the payment of tithes was revived; so that the union only suspended the payment. The act 31 Hen. VIII. c. 13, which dissolved several of the religious houses, continued the discharge of their lands from tithes, though in the possession of the king or any other person by grant from the crown; and, in consequence of this, the lands of many laymen which were granted by the crown are tithe-free, and the right to tithe and the property in many rectories are vested in laymen. Many monasteries had previously been dissolved by act of parliament, but as no such clause as that contained in the 31 Hen. VIII. had been introduced into other acts, the lands of the monasteries dissolved by them became chargeable with tithes.

We have stated enough concerning the nature of tithes and the various circumstances affecting them, to show how complicated must be the laws, and how entangled the interests of different parties who had to pay or to receive them. The payment of tithes in kind has been a cause of constant dispute between clergymen and their parishioners. With the best intentions on both sides, the very nature of tithes is such, that doubts and difficulties must arise between them; and even where there is no doubt, the form and principle of payment are odious and discouraging. The hardships and injustice of tithes upon the agriculturist are well described by Dr. Paley:—"Agriculture is discouraged by every constitution of landed property which lets in those who have no concern in the improvement to a participation of the profit; of all institutions which are in this way adverse to cultivation and improvement, none is so noxious as that of tithes. A claimant here enters into the produce who contributed no assistance whatever to the production. When years perhaps of care and toil have matured an improvement; when the husbandman sees new crops ripening to his skill and industry; the moment he is ready to put his sickle to the grain, he finds himself compelled to divide his harvest with a stranger." (*Moral and Political Philosophy*, chapter xii.)

If tithes then be in principle an injurious and restrictive tax upon agriculture, and if the mode of collection be vexatious, it became the duty of a legislature to provide a remedy for these evils. But tithes are unlike any other tax, which being found injurious to the state, may be removed on providing others. They are not the property of the state: they are payable not only to spiritual persons, but to lay impropriators; they have been the subject of innumerable private bargains;

land has been sold at a higher price on account of its exemption from tithe; the value of the patronage of the greater portion of the livings of this country is dependent upon the existing liability of land to tithes; in short, the various relations of society have been for centuries so closely connected with the receipt and payment of tithes, that to have abolished them would have been injustice to many, and no advantage to the community; for the whole profit would immediately have been enjoyed by those whose lands were discharged from payments to which they had always been liable, and subject to which they had most probably been purchased.

As for these reasons the extinction of tithes was impracticable, a commutation of them has been attempted and has been found most successful. Dr. Paley, who saw so clearly the evils of tithes, himself suggested this improvement. "No measure of such extensive concern appears to me so practicable, nor any single alteration so beneficial, as the conversion of tithes into *corn-rents*. This commutation, I am convinced, might be so adjusted as to secure to the tithe-holder a complete and perpetual equivalent for his interest, and to leave to industry its full operation and entire reward." (*Moral and Political Philosophy*, chapter xii.) This principle of commutation was first proposed to be applied by the legislature to Ireland. In addition to the common evils of a tithe system, that country was labouring under another. The mass of the people, who are Roman Catholics, were paying tithes to a Protestant clergy. Resistance to the payment of tithes had become so general that a commutation was deemed absolutely necessary for the safety of the church of Ireland. It was recommended by committees of both houses of parliament in 1832, but not finally carried into effect until 1838.

The statutes for the general commutation of tithes in England are the 6 & 7 Will. IV. c. 71, the 7 Will. IV. and 1 Vict. c. 69, the 1 & 2 Vict. c. 64, the 2 & 3 Vict. c. 32, and the 5 & 6 Vict. c. 54. Their object is to substitute a rent-charge, payable in money, but in amount varying according to the average price of corn for seven preceding years, for all tithes, whether payable under a *modus* or composition, or not. A voluntary agreement between the owners of the land and of the tithes was first promoted, and in case of no such agreement, a compulsory commutation was to be effected by commissioners. In case of dispute, provision was made for the valuation and apportionment of tithe in every parish. The rent-charge was to be thus calculated: the comptroller of corn returns is required to publish in January the average price of an imperial bushel of British wheat, barley, and oats, computed from the weekly averages of the corn returns during seven preceding years. Every rent-charge is to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley, and oats, as the same would have purchased at the prices so ascertained and published, in case one-third of such rent-charge had been invested in the purchase of wheat, one-third in barley, and the remainder in oats. For example, suppose the value of the tithe of a parish to have been settled by agreement or by award at 300*l.*, and that the average price of wheat for the seven preceding years had been 10*s.* a bushel, of barley 5*s.*, and of oats 2*s.* 6*d.*; the 300*l.* would then represent 200 bushels of wheat, 400 bushels of barley, and 800 bushels of oats. However much the average prices of corn may fluctuate in future years, a sum equal in value to the same number of bushels of each description of corn, according to such average prices, will be payable to the tithe-owner, and not an unvarying sum of 300*l.* The quantity of corn is fixed, but the money payment to the tithe-owner varies with the septennial average price of corn. Land not exceeding 20 acres may also be given by a parish, on account of any spiritual benefice or dignity, as a commutation for tithes to ecclesiastical persons, but not to lay impropriators. (6 & 7 Will. IV. c. 71, s. 26-28.)

By the last Report (1845) of the tithe commissioners, it appears that already voluntary proceedings have commenced in 9594 tithe districts; 6964 agreements have been received, of which 6616 have been confirmed; 4545 notices for making

awards have been issued; 3324 drafts of compulsory awards have been received, of which 2821 have been confirmed; 8338 apportionments have been received, of which 7919 have been confirmed. Of the whole business of assigning rent-charges and apportioning them, about half is completed.

The complete and final commutation of tithes must be regarded as a most valuable measure. It is perfectly fair to all parties, and is calculated to add security and permanence to the property of the church, and to remove all grounds of discord and jealousy between the clergy and their parishioners. Nor must we omit to mention an improvement in the mode of recovering tithes, consequent upon the commutation. There were formerly various modes of recovery, in the ecclesiastical as well as in the civil courts, and before justices of the peace, all more or less leading to unseemly litigation. The present mode of recovering the rent-charge, if in arrear, is by distraining for it upon the tenant or occupier, in the same manner as a landlord recovers his rent; and if the rent-charge shall have been forty days in arrear, possession of the land may be given to the owner of the rent-charge until the arrears and costs are satisfied. Indeed, the whole principle of the Tithe Commutation Acts is to strip tithes of the character of a tax, and to assimilate them as much as possible to a rent-charge upon the land.

TITHING. [SHIRE.]

TITLES OF HONOUR are designations which certain persons are entitled to claim in consequence of possessing certain dignities or stations. They vary in a manner corresponding to the variety of the dignities. Thus Emperor, King, Czar, Prince, are titles of honour, and the possessors of these dignities are, by common consent, entitled to be so denominated, and to be addressed by such terms as Your Majesty and Your Royal Highness. These are the terms used in England, and the phrases in use in other countries of Europe do not much differ from them.

The five orders of nobility in England are distinguished by the respective titles of Duke, Marquis, Earl, Viscount, and Baron: and the persons in whom the dignity of the peerage inheres are entitled to be designated by these words; and if in any legal proceedings they should be otherwise designated, there would be a misnomer by which the proceedings would be vitiated, just as when a private person is wrongly described in an indictment; that is, the law or the custom of the realm guarantees to them the possession of these terms of honour, as it does of the dignities to which they correspond.

The orders of nobility in other European countries differ little from our own. They have their Dukes, Marquises, Counts, Viscounts, and Barons.

Another dignity which brings with it the right to a title of honour is that of knighthood. [KNIGHT.] The Baronet, which is a new dignity, originated in the reign of James I. [BARONET.]

Besides these, there are the ecclesiastical dignities of Bishop and Archbishop, which bring with them the right to certain titles of honour besides the phrases by which the dignity itself is designated. And custom seems to have sanctioned the claim of the persons who possess inferior dignities in the church to certain honourable titles, and it is usual to bestow on all persons who are admitted into the clerical order the title of Reverend, a title which was formerly given to others quite as appropriately, to judges for instance.

There are also academical distinctions which are of the nature of titles of honour, although they are not usually considered to fall under the denomination. Municipal offices have also titles accompanying them; and in the law there are eminent offices the names of which become titles of honour to the possessors of them, and which bring with them the right to certain terms of distinction.

All titles of honour appear to have been originally names of office. The earl in England had in former ages substantial duties to perform in his county, as the sheriff (the Vice-Comes or Vice-Earl) has now; but the name has remained now that the peculiar duties are gone, and so it is with respect to other dignities.

Some of these dignities and the titles correspondent to them are hereditary. So were the eminent offices which they

designate in the remote ages, when there were duties to be performed. Hence hereditary titles.

The distinction which the possession of titles of honour gives in society has always made them objects of ambition. Such titles exist even in democratical states, as in the United States of North America; but they are only temporary and annexed to certain offices, as that of President. The hereditary nature of most of the chief titles of honour in European states gives them a different character.

Whoever wishes to study this subject will do well to resort to two great works: one, the late 'Reports of the Lords' Committees on the dignity of the Peerage;' the other, the large treatise on 'Titles of Honour,' by the learned Selden. The latter was first printed in 4to., 1614; again, with large additions, folio, 1631.

TOBACCO. The tobacco duty yields a gross revenue of above 3,500,000*l.* a year; only two articles of foreign production, sugar and tea, bring in a larger sum. Since 1842 the duty has been 3*s.* per lb. The value of the article in bond varies from 2½*d.* to 6*d.* From 1815 to 1825 the duty was 4*s.* the lb. In 1825 it was reduced to 3*s.* the lb. and 2*s.* 9*d.* if it was the produce of the British possessions in America. In 1842 the duty was made 3*s.* also on tobacco produced in the British possessions in America. In 1786 the duty in Great Britain was only 10*d.* per lb.; but in the following year it was increased to 1*s.* 3*d.*; in 1796 to 1*s.* 7*d.*; and it was successively increased at different times until it amounted to 4*s.* in 1815.

For the following years the consumption of tobacco and the population for each decennial were:—

	Population.	Consumption.	Duty per lb.
1801	10,942,646	16,514,998 lbs.	1*s.* 7*d.*
1811	12,609,864	14,923,243	2*s.* 2*d.*
1821	14,391,631	12,983,198	4*s.*
1831	16,539,318	15,350,018	3*s.*
1841	18,535,786	16,000,000	3*s.*

It appears that the consumption in 1841 was considerably less than one lb. per head: in Prussia it is three lbs. It is impossible to believe that the use of tobacco has declined, or even been stationary, within the last few years: there is little doubt indeed of its having increased, though the returns give a different result. In 1828 only 8600 lbs. of cigars paid duty at 18*s.* the lb.; in 1831, the duty having been reduced one-half, 66,000 lbs. were entered for consumption; and in 1841 there were entered 213,613 lbs. The following account shows the quantities of unmanufactured tobacco on which duty was paid in the United Kingdom in the three years and a half ending July, 1842:—

England, 1839, 15,686,245 lbs.; 1840, 15,475,431 lbs.; 1841, 14,590,129 lbs.; half-year ending 5th July, 1842, 7,189,166 lbs. Scotland, 1839, 2,082,469 lbs.; 1840, 2,071,350 lbs.; 1841, 2,031,982 lbs.; half-year ending 5th July, 1842, 2,575,022 lbs. Ireland, 1839, 692,702 lbs.; 1840, 5,355,617 lbs.; 1841, 5,473,479 lbs.; half-year ending 5th July, 1842, 2,663,522 lbs. United Kingdom, 1839, 22,971,406 lbs.; 1840, 22,902,398 lbs.; 1841, 22,095,588 lbs.; half-year ending 5th July, 1842, 10,827,710 lbs.

The following are the quantities retained for home consumption and the net amount of duty received in 1843 and 1844:—

	1843.	1844.
Unmanufactured tobacco	22,361,330 lbs.	23,547,934 lbs.
Manufactured, or cigars . .	248,514	256,078
Net amount of duty received	£3,525,265	£3,710,641

There is both smuggling and extensive adulteration of tobacco; an act was passed (5 & 6 Victoria, c. 93) intended to remedy one of the sources of loss to the revenue, by again subjecting the manufacturers and dealers to the supervision of the excise. Up to 1825 both a customs and excise duty was collected on tobacco; but since that year the duty has been wholly collected by the officers of the customs at the ports of importation. A strict survey of the manufacturers' premises, and a registry of their operations and the sales of the retail dealers, were still kept up by the excise, though they no longer collected any duty. This survey was at length abolished in 1840 by the 3 & 4 Vict. c. 18: it is now partially re-esta-

blished. The nature of the adulterations practised may be gathered from one of the clauses of the Act 5 & 6 Vict., which prohibits, under a penalty of 200*l.*, manufacturers having in their possession "any sugar, treacle, molasses, or honey, or any commings or roots of malt, or any ground or unground roasted grain, ground or unground chicory, lime, sand (not being tobacco sand), 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, nor 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."

TOLERATION ACT. [NONCONFORMITY.]

TOLL, from the Saxon "tolne;" in German, "zoll" (called in Law Latin "telonium," "theolonium," and "tolnetum," with many other variations, which may be seen in Ducange, all which Latin terms are derived apparently from τελώνιον, "collection of tribute or revenue"), is a payment in money or in kind, fixed in amount, made either under a royal grant, or under a prescriptive usage from which the existence of such a grant is implied, in consideration of some service rendered, benefit conferred, or right forborne to be exercised by the party who is entitled to such payment.

The owner of land may in general prevent others from crossing it either personally or with their cattle or goods, by bringing actions against trespassers, or distraining their cattle or goods. These remedies cannot be resorted to where the owner of the land has acquiesced in its being used as a public way; but in such case there may have been a royal grant, enabling the party to demand a reasonable compensation for the accommodation: this is toll-*traverse*.

Where a corporation, or the owner of particular lands, has immemorially repaired the streets or walls of a town, or a bridge, &c., and, in consideration of the obligation to repair, has immemorially received certain reasonable sums in respect of persons, cattle, or goods passing through the town, such sums are recoverable at law by the name of toll-*thorough*.

An ancient toll may be claimed by the owner of a port in respect of goods shipped or landed there. Such tolls are port-tolls, more commonly called port-dues. The place at which these tolls were set or assessed was antiently called the Tolsey, where, as at the modern Exchange, the merchants usually assembled, and where commercial courts were held.

Another species of toll is a reasonable fixed sum payable by royal grant or prescription to the owner of a fair or market, from the buyer of tollable articles sold there. The benefit which forms the consideration of this toll is said to be the security afforded by the attestation of the sale by the owner of the fair or market, or his officers. It is not due unless the article be brought in bulk into the fair or market. Where, however, the proper and usual course has been to bring the bulk into the fair or market, the owner of the fair or market may maintain an action against a party who sells by sample, in order to deprive him of his toll. In some cases, by antient custom, a payment, called turn-toll, is demandable for beasts which are driven to the market and return unsold. The term toll is sometimes extended to the compensation paid for the use of the soil by those who erect stalls in the fair or market, or for the liberty of picking holes for the purpose of temporary erections; but the former payment is more properly called stallage, and the latter picage; and if the franchise of the fair or market, and the ownership of the soil on which it is held, come into different hands, the stallage and picage go to the owner of the soil, while the tolls, properly so called, are annexed to the franchise.

If tolls are wrongfully withheld, the party entitled may recover the amount by action as for debt, or upon an implied promise of payment; or he may seize and detain the whole or any part of the property in respect of which the toll is payable, by way of distress for such toll. If excessive toll be taken by the lord, or with his knowledge and consent, the franchise shall be seized; if without such consent, the officers shall pay double

damages and suffer imprisonment. (Stat. 3 Edw. I. c. 31.)

Grants of tolls were formerly of very ordinary occurrence. But it seems to be very probable that many antient payments of this description, though presumed, from their being so long acquiesced in, to have a lawful origin under a royal grant, were in fact mere encroachments. The evil was, however, practically lessened by the exertion of the royal prerogative of granting immunities and exemptions from liability to the payment of tolls, either in particular districts or throughout the realm; a prerogative exercised also by inferior lords who possessed jura regalia.

The term "toll" is used in modern acts of parliament to designate the payment directed to be made to the proprietors of canals and railways, the trustees of turnpike-roads or bridges, &c., in respect of the passage of passengers or the conveyance of cattle or goods.

The term toll is applied to the portion which an artificer is, by custom or agreement, allowed to retain out of the bulk in respect of services performed by him upon the article; as corn retained by a miller in payment of the multure; also to the portion of mineral which the owner of the soil is entitled, by custom or by agreement, to take, without payment, out of the quantity brought to the surface, or, as it is technically called, *to grass*, and made merchantable, by the mining adventurer. To collect these dues the duke of Cornwall, and other great landholders in the mining districts of the west, have their officers, called "tollers."

TOLSEY. [TOLL.]

TONTINE, a species of life annuity, so called from Lorenzo Tonti, a Neapolitan, with whom the scheme originated, and who introduced it into France, where the first tontine was opened in 1653. The subscribers were divided into ten classes, according to their ages, or were allowed to appoint nominees, who were so divided. and a proportionate annuity being assigned to each class, those who lived longest had the benefit of their survivorship, by the whole annuity being divided amongst the diminished number. The terms of this tontine may be seen in the French 'Encyclopédie' ('Finance' division, vol. iii., p. 704). In 1689 a second tontine was opened in France. The last survivor was a widow, who, at the period of her death, at the age of 96, enjoyed an income of 73,500 livres for her original subscription of 300 livres. The last French tontine was opened in 1759. They had been found very onerous, and in 1763 the Council of State determined that this sort of financial operation should not be again adopted. Tontines have seldom been resorted to in England as a measure of finance. The last for which the government opened subscriptions was in 1789. The terms may be seen in Hamilton's 'Hist. Public Revenue, p. 210. There have been numerous private tontines in this country.

TORTURE, in a legal sense, means the application of bodily pain in order to force discoveries from witnesses, or confessions from persons accused of crimes. Torture was applied to slaves at Athens (Demosthen., *Orat. adv. Pantænet.*); and Cicero states that the Athenian and Rhodian laws allowed it to be applied even to citizens and freemen (*Oratoriæ Partit.*, 34); but there is some doubt as to the accuracy of this statement with respect to Athenian freemen. Cicero speaks of torture as an ancient Roman practice, and attributes it to the customs of an earlier age ("moribus majorum"). (*Oratio pro Rege Deiotaro*, c. 1; *Pro Milone*, c. 22; *Orat. Partit.*, 34.) However this may have been, the use of torture in judicial inquiries had become fully established in the time of the early emperors. The Roman law allowed the torture as a general rule only in the case of slaves when examined either as witnesses or offenders. Rules for regulating the mode of applying torture, and limiting the occasions of its application, were early established. One of the most important of these is that which Cicero in the passages above cited refers to ancient usage, that a slave should not be tortured to give evidence against his master, except in the cases of incest (in the Roman sense) and conspiracy. Tacitus (*Annal.* ii. 30) says that in order to evade an old senatus consultum which prohibited the torture of a slave in order to get evidence which might affect the life or status of his

master, Tiberius invented the device of making over the slave from the accused to a public functionary, and then putting him to the torture against his former master. This device is however ascribed to Augustus. (Dion, lib. lv. 5.) In judicial inquiries, or trials for crimes, the "quæstio" was applied at the instance of the accuser in the presence of the prætor and judices, and the statements made under torture were reduced into writing (in tabulas relata), and signed by the prætor (Heineccius, *Ant. Rom.*, lib. iv. c. 18, sect. 25); but private persons also were permitted to extract evidence from their slaves by torture. (Cicero, *Orat. pro Cluentio*, cc. 63, 66; Quintilian, *Declam.*, 328, 338, 353.) At a later period of the Roman empire many new regulations were made, and the earlier restrictions upon this practice were removed or greatly modified. Several exceptions to the rule, which prohibited slaves from being tortured to give evidence that might affect the life or status of their master, were introduced, and even freemen were subjected to torture, when there was positive evidence of a crime, and probable or presumptive evidence that the accused was the guilty person. Moreover when the offence was of a grave character, and affected the Emperor immediately, personal exemptions from torture were not admitted. (Dig. 48, tit. 18, s. 10, *De Quæstionibus.*)

In Germany judicial torture was introduced as the Roman law became more established, and displaced the ancient Teutonic and feudal proceedings by ordeal and battle. Indeed while these Judicia dei, as they were called, continued in use, there is no notice of the existence of torture. In most German cities judicial torture was unknown until the end of the fourteenth century; although it appears in the statutes of the Italian municipalities at a much earlier period. (Mittermaier's *Deutsche Strafverfahren*, theil i. pp. 73, 394.) The regular torture, as derived from the Roman law, continued in many European states until the middle of the last century, when more enlightened views led to a general conviction of the inefficacy and injustice of this mode of ascertaining truth. In France the "question préparatoire" was discontinued in 1780 by a remarkable decree, which is in Merlin's "Répertoire," vol. x. p. 502; and torture in general was abolished throughout the French dominions at the Revolution in 1789. In Russia its abolition, though recommended by the empress Catherine in 1763, was not effected until 1801. In Austria, Prussia, and Saxony it was suspended soon after the middle of the last century; but although so seldom used as to be practically extinct, torture was allowed by the law of Bavaria, Hanover, and some of the smaller states of Germany, within the last forty years. (Mittermaier's *Deutsche Strafverfahren*, theil i. p. 396, note.) In Scotland, the use of torture prevailed until the reign of Queen Anne, when it was declared by the act for improving the union of the two kingdoms (7 Anne, c. 21, s. 5), that in future "no person accused of any crime in Scotland shall be subject or liable to any torture."

It may be inferred from the case of the Templars in the reign of Edward II. (1310), as well as from the statement of Walter de Hemingford (p. 256), that torture was then unknown in England. Nevertheless, from the year 1468 until the Commonwealth, the practice of torture was frequent, and the particular instances are recorded in the council-books, and the torture-warrants in many cases are still in existence. The last instance on record occurred in 1640, when one Archer, a glover, who was supposed to have been concerned in the riotous attack upon Archbishop Laud's palace at Lambeth, "was racked in the Tower," as a contemporary letter states, "to make him confess his companions." A copy of the warrant under the privy seal, authorizing the torture in this case, is in the State Paper Office. With this instance the practice of torture in England ceased, no trace of its continuance being discernible during the Commonwealth or after the Restoration. But although the practice continued during the two centuries immediately before the Commonwealth, it was condemned as contrary to the law of England by judges and legal writers of the highest character who lived within that period, such as Fortescue, who con-

demns the practice in the strongest terms, though he does not expressly deny its existence in England (Fortescue, cap. 22); by Sir Thomas Smith, who wrote in the early part of Elizabeth's reign, and says that "torment or question, which is used by the order of the civil law and custom of other countries, is not used in England" (Smith, *Commonwealth of England*, book ii. cap. 27); and by Sir Edward Coke, who wrote in the reign of James I. (3 *Inst.* 35). Notwithstanding this denunciation of the practice as against law, both Smith and Coke repeatedly acted as commissioners for interrogating prisoners by torture (Jardine's *Reading on the Use of Torture in England*); and the latter, in a passage which occurs in the same book, and only a few pages before the words just cited (p. 25), impliedly admits that torture was used at examinations taken before trial, though it was not applied at the arraignment or before the judge. There is also a direct judicial opinion against the lawfulness of torture in England. In 1628 the judges unanimously resolved, in answer to a question propounded to them by the king in the case of Felton, who had stabbed the Duke of Buckingham, "that he ought not to be tortured by the rack, for no such punishment is known or allowed by our law." (Rushworth's *Collections*, vol. i. p. 638.) And yet several of the judges who joined in this resolution had themselves executed the warrants for torture when they held ministerial offices under the crown. Possibly the explanation of this inconsistency between the opinions of lawyers and the practice may be found in a distinction between prerogative and law, which was better understood two centuries ago than it is at the present day. It was true, as the above authorities declared, that torture was not part of the common law; in England no judge could direct the torture to be applied, and no party or prosecutor could demand it as a right. But that which was not lawful in the ordinary course of justice, was done under the prerogative of the crown, which authorized this mode of discovering crimes that affected the state, such as reason or sedition, and sometimes of offences of a grave character not political,—acting in this respect independently of and even paramount to the common law. (*Rolls of Parliament*, 20 Edw. I., A.D. 1292.) This view of the subject is confirmed by the circumstance that in all instances of the application of torture in England, the warrants were issued immediately by the king, or by the privy council. The consequence was that in no country was torture so dangerous an instrument of power as in England. In other countries, where it was part of the system of trial, it was subject to rules and restrictions, fixed and determined by the same law which authorized the use of such an instrument, and those who transgressed them were liable to severe punishment. But in England there were no rules, no law beyond the will of the king. "The rack," says Selden, "is nowhere used as in England. In other countries it is used in judicature when there is a *semiplena probatio*, a half-proof against a man; then, to see if they can make it full, they rack him if he will not confess. But here in England they take a man and rack him,—I do not know why nor when,—not in time of judicature, but when somebody bids." (*Table-Talk*, "Trial.")

The particular modes of torture, by the rack or otherwise, are now mere objects of literary curiosity.

Although torture was to some extent practised under the Roman Law, Ulpian (48 tit. 18, s. 1, § 24) remarks that it is declared by the Imperial constitutions that we must not always give credit to it, nor yet always refuse credit to it, for it is a thing uncertain, dangerous, calculated to mislead. The opinions of eminent lawyers in England have been already cited; and the juridical writers of the Continent, in more recent times, have unanimously taken the same view of the subject. (Mittermaier's *Deutsche Strafverfahren*, theil i. p. 396.) There is a curious defence of torture in Wiseman's 'Law of Laws, or the excellence of the Civil Law,' p. 72.

TORY. This name has now, for about two hundred years, served to designate one of two principal political parties in this country. The name Tory, as well as the name Whig, and the existence of two parties in the state corresponding to

those which have now been known for a long time as Whig and Tory parties, date from the reign of Charles II. and from the year 1679.

The first Tories opposed the Exclusion Bill and supported Charles II. in his endeavour to prevent a renewal of the attack upon his brother, by successive prorogations of the parliament. The origin of the name is referred by Roger North, a very hot Tory, in a curious passage, to the connexion of the party with the Duke of York and his popish allies. (*Examen.* p. 321.) The origin of the word Whig, which is a little younger than Tory, is explained under WHIG.

Dr. Johnson gives an explanation of the word *Tory*, which is perhaps as good a short general description of the principles of Toryism as is to be given:—"One who adheres to the antient constitution of the state, and the apostolical hierarchy of the Church of England." Things as they have been, or, when some great change has taken place against the will of this party, things as they are,—the king before the aristocracy, and the aristocracy before the popular element in the constitution, which led the first Tories to argue from the divine right of kings for their exemption from parliamentary control, and for passive obedience, and which has afterwards directed their endeavours to contracting the suffrage so as to make the popular element as little popular as possible,—the freedom of the church from state control,—and the fullest possible amount of political privilege and honour for the church, as distinguished from every other religious denomination,—these have been the cardinal characteristics of Toryism, from the beginning to the present time.

During the reigns of Charles II. and James II. the support of the king brought the Tories into a connexion with the Roman Catholics, which was inconsistent with their High Church views; and they were involved in a continual difficulty of reconciling their persecution of Protestant dissenters, with the favour they desired to show the Roman Catholics, as political partisans. Lord Bolingbroke has given the following description of Toryism at this period:—"Divine, hereditary, indefeasible right, lineal succession, passive obedience, prerogative, nonresistance, slavery, nay, and sometimes popery too, were associated in many minds to the idea of a Tory, and deemed incommunicable and inconsistent in the same manner with the idea of a Whig." ('Dissertation on Parties,' *Miscellaneous Works*, vol. iii. p. 38, Edinburgh, 1773.) But popery was an accident to the creed of the party. The lengths to which James went for the Roman Catholic religion opened the eyes of the Tories; and the bulk of the party united with the Whigs in bringing about the revolution of 1688. The doctrines of divine right and passive obedience were then abandoned by the Tories in practice. During the reign of Anne they again raised their heads in argument, and the impolitic prosecution of Sacheverel gave force to their re-appearance. But from the Revolution down to the present time the struggle between the two parties, so far as it has been one of principle, has been a struggle by the Tories in behalf of the church, to invest it with political power and privileges, and against the increase of the power of the people in the state, through the House of Commons; and a struggle by the Whigs for the toleration of dissenters from the established religion, and for the strengthening of the popular element of the constitution.

TOURN. [LEET.]

TOWN, in its popular sense, is a large assemblage of adjoining or nearly adjoining houses, to which a market is usually incident. Formerly a wall seems to have been considered necessary to constitute a town; and the derivation of the word, in its Anglo-Saxon form 'tun,' is usually referred to the verb 'tinan,' to shut or enclose; in its Dutch form 'tuyn,' it signifies a garden; and in its German form 'zaun,' it means a hedge. In legal language 'town' corresponds with the Norman 'vill,' by which latter term it is frequently spoken of in order to distinguish it from the word town in its popular sense. A vill or town is a subdivision of a county, as a parish is part or subdivision of a diocese; the vill, the civil district, being usually co-extensive with the parish, the ecclesiastical district

and, *primâ facie*, every parish is a vill, and every vill a parish. Many towns, however, not only in the popular, but in the legal sense of the term, contain several parishes; and many parishes, particularly in the north of England, where the parishes are exceedingly large, contain several vills, which vills are usually called tithings or townships. As until the contrary is shown the law presumes towns (or vills) and parishes to be co-extensive, Lord Coke goes so far as to say that it cannot be in law a vill unless it hath, or in times past hath had, a church, and celebration of divine service, sacraments, and burials. But this, for which no authority is given, appears to confound parish and vill, and to be inconsistent with the cases in which it has been held that a parish may consist of several vills. (1 Lord Raymond, 22.) The test proposed by Lord Holt is, that a vill must have a constable, and that otherwise the place is only a hamlet, an assemblage of houses having no specific legal character. Hence a vill is sometimes called a *constablewick*. Towns are divided into cities, boroughs, and upland towns, or (as we should now call them) country towns. Towns belonging to the last of these classes have been described as places which, though enclosed, are not governed, as cities and boroughs are, by their own elected officers. The Anglo-Saxon 'tun' terminates the names of a great number of places in England; and in the southern counties the farm *enclosure* in which the homestead stands is usually called the barton (barn-*town*), in Law Latin, bertona.

TOWN CLERK. [MUNICIPAL CORPORATIONS, p. 391.]

TOWNS, HEALTH OF. On the 14th of May, 1838, the Poor Law Commissioners presented to Lord John Russell, then Secretary of State for Home Affairs, a Report by Dr. Arnott and Dr. Kay, and two Reports by Dr. Southwood Smith, relative to the prevalence of disease among the labouring classes in certain districts of the metropolis. The House of Lords having on the 19th of August, 1839, presented an address to her Majesty requesting her to direct an inquiry to be made as to the extent of the causes of disease stated in those Reports to prevail, the Poor Law Commissioners received a letter from Lord John Russell, in which he stated that her Majesty required them to make such inquiry, not only as to the metropolis, but as to other parts of England and Wales, and to prepare a Report stating the results of such inquiry.

In 1840 the subject was investigated by a Committee of the House of Commons, the result of which was a Report 'on the Health of Large Towns and Populous Districts.'

In July, 1842, the Report of the Poor Law Commissioners was presented to both Houses of Parliament, entitled a 'Report on the Sanitary Condition of the Labouring Population of Great Britain, with Appendices.' 'Local Reports on the Sanitary Condition of the Labouring Population of England,' were presented at the same time. Of these local Reports there are twenty-six, some of which relate to certain counties and others to particular towns. At the same time were presented 'Reports on the Sanitary Condition of the Labouring Population of Scotland.' In 1843 'a Supplementary Report on the results of a Special Inquiry into the practice of Interment in Towns,' was presented. On this subject see some remarks under INTERMENT.

On the 9th of May, 1843, Commissioners were appointed by the Queen for the purpose of "inquiring into the present state of large towns and populous districts in England and Wales, with reference to the causes of disease among the inhabitants, and into the best means of promoting and securing the public health, under the operation of the laws and regulations now in force, and the usages at present prevailing with regard to the drainage of lands, the erection, drainage, and ventilation of buildings, and the supply of water, in such towns and districts, whether for purposes of health, or for the better protection of property from fire; and how far the public health and the condition of the poorer classes of the people of this realm, and the salubrity and safety of their dwellings, may be promoted by the amendment of such laws, regulations, and usages."

The First Report of the Commissioners

was presented to both Houses of Parliament at the end of June, 1844. The Report is accompanied by 437 folio pages of evidence on which the Report is founded, an Appendix of Special Reports on the Sanitary Condition of several Towns, among the most important of which are Liverpool, by W. H. Duncan, M.D.; Ashton-under-Lyne, by John Ross Coulthart, Esq.; the City of York, by Thomas Laycock, M.D.; and Nottingham, by Thomas Hawksley, Esq.; besides other information on the Supply and Filtration of Water, on the Obstacles to Improvement in the Structure of Buildings, on the Cleansing of Streets and Houses, and on the application of Refuse.

The Second Report of the Commissioners was presented to Parliament in February, 1845. It treats briefly of the Causes of Disease, and at considerable length of Remedial Measures. It is followed by a Report on the State of Birmingham and other Towns, by R. A. Slaney, Esq.; a Report on the State of Bristol and other Towns, by Sir Henry T. De la Beche; a Report on the State of large Towns in Lancashire, by Dr. Lyon Playfair; and a Supplement containing information on sewers, lodging-houses, and other matters connected with inquiries of the Commissioners.

We have thus briefly stated the origin and progress of this important investigation into the sanitary condition of the population of Great Britain, chiefly indeed of the labouring and poorer inhabitants, but extending indirectly to all classes.

Other agencies for improving the physical condition of the labouring classes and of the poor are also at work. Among these is the "Health of Towns' Association," of which the Committee includes noblemen, dignitaries of the church, members of parliament, and other gentlemen. They have published a 'Lecture on the Unhealthiness of Towns, its Causes and Remedies, delivered at Crosby-Hall, London, by William Augustus Guy, M.B., Physician to King's College Hospital;' a 'Lecture on the Unhealthiness of Towns, its Causes and Remedies, delivered Dec. 10, 1845, at the Mechanics' Institute at Plymouth, by Viscount Ebrington, M. P.;' and a 'Report of the Committee to the Members of the Association, on Lord Lincoln's Bill,' which was introduced into Parliament at the close of the session of 1845.

These important inquiries have proved by undeniable evidence, that the districts inhabited by the labouring classes, and often by tradesmen, in large towns, in many small towns, and in several parts of the country, are in a very noxious state from want of drainage, want of cleanliness, imperfect ventilation, deficiency of water, and density of population; the consequences of which are great frequency of sickness, and excessive destruction of human life. Typhus fever, cholera, consumption, scrofulous and other chronic complaints, mostly arising from causes which might have been prevented, are found to exist to an extent which it is painful to contemplate. The causes of sickness are generally most numerous and most intense in the crowded districts, and the mortality is found to be, with few exceptions, in proportion to the density of population. In the metropolis, for instance, the annual mortality is 3 per cent. in Whitechapel, but only 2 per cent. in St. George's, Hanover-Square. In the district of Bethnal-Green, 57 houses, on an average, contain 580 persons; and in some cases there are 30 persons in a single house.

Of fifty towns which were visited by direction of the Commissioners, only eight were found to be in a tolerable state as to drainage and cleansing; and as to the supply of water the reports were still more unfavourable.

The annual average mortality in England is 2·207 per cent., or 1 in 45. In healthy districts it is 2 per cent., or 1 in 50. In the metropolis the deaths are 1 in 39; in Birmingham and Leeds 1 in 37; in Sheffield, 1 in 33; in Bristol, 1 in 32; in Manchester, 1 in 30; in Liverpool, 1 in 29. In Brussels they have been found to be 1 in 24. The mortality is greater in Liverpool than in any other town in England. By the return made to the Town Council of Liverpool in 1841, by their surveyors, it appears that there were then 2398 courts, which contained a population of 68,345 persons. In these courts

1272 cellars were occupied by 6290 persons; of the number of cellars occupied in streets, 2848 were described as damp, and 240 as wet. The gentry in Liverpool live 35 years; the tradesmen 22; the working-class 15. The average of the whole town is only 17 years. By extracting from the mortuary registers of the metropolis for 1834, the ages at death of the gentry, the tradesmen, and the working classes, who died at the age of 15 and upwards, Mr. Guy ascertained that the gentry lived 59 years, the tradesmen 49, and the working-classes 48. In 1844 the deaths in the metropolis were 50,423. If the rate of mortality had been 1 in 50 instead of 1 in 39, the deaths would have been only 40,145, thus giving a saving of 10,278 lives in one year. From a Report of the Registrar-General it appears that out of every million of inhabitants 27,000 die every year in the large towns, and only 19,300 in the rural districts.

The large towns have already begun to make improvements. The improved drainage in twenty streets of Manchester has been found to diminish the annual number of deaths by more than 20 in every 110; and similar results of structural improvement have followed in other instances.

The loss of life, and the pecuniary charges consequent upon it to individuals and the community, are not the only considerations to be attended to. Not only the sickness which precedes death, but the sickness which is cured, render the sufferers incapable of following their usual occupations, and oblige them and their families to seek relief from the parish, and from public and private charity. It has been shown that pecuniary saving would result from sanitary improvements to such an amount as to justify the interference of the legislature, if it were only from motives of public economy.

The power vested in courts-leet by ancient usage is resorted to in a few towns for the abatement of minor nuisances. Mr. Coulthart gives a detailed description of the various matters which have been taken cognizance of by the leet-juries at Ashton-under-Lyne with beneficial effect. In most places, however, the exercise of these powers has fallen into desuetude, even where the courts still continue to be held.

The measures necessary to be adopted in order to improve the sanitary condition of large towns and populous districts are comprised under the following heads:—

1. Drainage, including house and street drainage, and the drainage of any place not covered with houses, yet influencing the health of the inhabitants.

2. The paving of streets, courts, and alleys.

3. Cleansing, comprising the removal of all refuse matter not carried off by drainage, and the removal of nuisances.

4. A sufficient supply of water for public purposes and domestic use.

5. The construction and ventilation of buildings in such a manner as to promote rather than injure the health of the inhabitants.

The Second Report of the Commissioners gives Thirty Recommendations to the legislature, each of which is preceded by the reasons on which the recommendation is founded. We can only afford space for a summary of these recommendations.

No. 1 recommends that in all cases the local administrative body shall have the special charge and direction of all works required for sanitary purposes, but that the crown shall possess a general power of supervision.

Nos. 2 to 11 relate to *Drainage*; surveys and plans; definition of area for drainage by the crown; appointment of surveyors; investigations by authority of the crown, on representations duly made; management of the drainage of the entire area by one body; purchase of rights of mill-owners and others; construction of sewers, branch sewers, and house-drains; rating of landlords when house is let in separate apartments, or when the rent is collected more frequently than once a quarter, or when the yearly rent is less than 10*l.*; providing of funds by the local administrative body, distribution of cost among the owners of the properties benefited, and charge of house-drains on owners of houses to which they belong; power to raise money, and provision

for gradual liquidation of debt incurred.

No. 12 recommends that the *Paving* be under the same management as the draining; but that it be performed by the local public officers.

Nos. 13, 14, and 15, relate to the *Cleansing* of all privies and cess-pools at proper times and on due notice; removal of large collections of dung; and abatement of nuisances arising from noxious exhalations from factories.

Nos. 17 to 21 relate to the supply of *Water*, in sufficient quantities not only for the domestic wants of the inhabitants, but also for cleansing the streets, scouring the sewers and drains, and the extinction of fires; purchase of the interests of water-companies, and placing the management of the supply of water under the local adminstrative body; the establishment of *public baths* and *wash-houses* for the poorer classes; and especially recommending that the supply of water in the mains be not only constant, but at as high a pressure as circumstances will permit.

Nos. 22 to 26 are regulations for *Buildings*, including power to raise money for the purchase of property, for the purpose of opening thoroughfares, and widening streets, courts, and alleys; prohibition of use of cellars as dwellings, except when they are of certain dimensions and properly ventilated; provision for building all new houses with proper privies, and for a good system of ventilation in all edifices for public assemblage and resort, especially school-houses.

Nos. 27 and 28 recommend that power be given to the local administrative body to compel landlords to cleanse houses, duly reported to be in a noxious state from filthiness—and that power be given to magistrates to license and issue rules for regulation of lodging-houses for the reception of vagrants, trampers, and persons of similar wayfaring habits.

No. 29 recommends the appointment of a medical officer in each town or district, who shall report periodically on the sanitary condition of such town or district.

No. 30 recommends the establishment of *Public Walks*, and that the local administrative body be empowered to raise the necessary funds for the management and care of the walks when established.

A large portion of the 'Report of the Committee on Lord Lincoln's Bill,' before mentioned, is occupied with showing that the supply of water, wherever practicable, should be constant, not only in the main-pipes, but in the branch-pipes, thus doing away entirely with the use of water-butts; and contending that in most cases such a constant supply is not only practicable but economical, and that it would contribute in the highest degree to the cleanliness of houses in crowded districts, and consequently to the health of the inhabitants.

TOWNSHIP. This term is sometimes used to denote the inhabitants of a town in their collective capacity. In legal signification it is a vill forming part of a parish in cases where a parish has been divided for secular purposes into several vills or townships.

TRADER. [BANKRUPT.]

TRANSLATION. [BISHOP.]

TRANSPORTATION (*trans* and *porto*), removal, banishment to some fixed place. Under PUNISHMENT, the general nature of punishment has been considered, and particularly of the punishment of death. Other punishments, such as transportation and imprisonment, will be briefly considered here. The object of this article is not to discuss fully so extensive a subject, but to indicate the various departments into which it may be distributed, which division will show the complicated character of that class of punishments commonly called Secondary Punishments, which comprise Transportation and Imprisonment, with all the particular punishments which are employed in connection with Transportation and Imprisonment.

A complete discussion of *Transportation* would include its origin as a mode of punishment: acts of parliament relating to it; the system under which it was carried into execution in the American colonies; system under which it was conducted in the early history of the Australian colonies; system on which it was recently executed in New South Wales and Van Diemen's Land—assignment; ticket of leave; chain-gangs and

road-parties; penal settlements; expense of the transportation system as hitherto enforced; contemplated changes in the convict discipline of the Australian penal colonies; system of transportation as enforced at Bermuda; theory of transportation.

Connected with this is the subject of *Hulks*—their origin, design, and history; description of a hulk; discipline of convicts in the hulks; employments; expense of the system.

Thirdly, *Prisons*—their state at the end of the last century, and the history of improvements in them since: the system of classification; the silent system—its theory and practical working; regulations of the prisons in which this system is in force; the labour imposed on the prisoners—the treadwheel, crank machine—expense of the silent system; the separate system—its theory and objections to it; its origin and history in England—principles of prison construction—employments of prisoners—expense of the system; prisons of England generally; treatment of untried prisoners; disposal of prisoners after their discharge; prisons for juvenile offenders—Parkhurst Reformatory.

Fourthly, Institutions in England auxiliary to those for punishment, or Houses of Reformation; Refuge for the Destitute, Philanthropic Institution.

Fifthly, Prisons in Scotland and Ireland, and in the British dependencies.

Sixthly, Capital Punishment; the various arguments for and against maintaining this punishment. [PUNISHMENT.]

Lastly, Progress of penal reform in foreign countries.

The statute of 39 Elizabeth, c. 4, for the banishment of dangerous rogues and vagabonds, was virtually converted by James I. into an act for transportation to America by a letter to the treasurer and council of the colony of Virginia, in the year 1619, commanding them "to send a hundred dissolute persons to Virginia, which the knight-marshal would deliver to them for that purpose." Transportation is not distinctly mentioned in any English statute prior to the stat. 18 Car. II. c. 3, which gives a power to the judges at their discretion either "to execute or transport to America for life the moss-troopers of Cumberland and Northumberland." Until after the passing of the stat. 4 Geo. I. c. 2, continued by stat. 6 Geo. I. c. 23, this mode of punishment was not brought into common operation. By these statutes the courts were allowed a discretionary power to order felons who were by law entitled to their clergy to be transported to the American plantations. Transportation to America under the statutes of George I. lasted from 1718 till the commencement of the War of Independence in 1775.

A plan for the establishment of penitentiaries, which was strongly recommended by Judge Blackstone, Mr. Eden, (afterwards Lord Auckland), and Mr. Howard, was taken into consideration by parliament, and the act 19 Geo. III c.. 74, for the erection of penitentaries passed. The government failed, however, to adopt the necessary measures for its execution; and transportation was resumed by an act passed in the 24th year of George III., which empowered his majesty in council to appoint to what place beyond the seas, either within or without his majesty's dominions, offenders should be transported; and by two orders in council, dated 6th December, 1786, the eastern coast of Australia and the adjacent islands were fixed upon. In the month of May, 1787, the first band of convicts left England, which in the succeeding year founded the colony of New South Wales.

The present condition of a transported felon is mainly determined by the 5 Geo. IV. c. 84, the Transportation Act, which authorizes the king in council "to appoint any place or places beyond the seas, either within or without the British dominions," to which offenders shall be conveyed, the order for their removal being left to one of the principal secretaries of state. The places so appointed are the two Australian colonies of New South Wales and Van Diemen's Land; the small volcanic island called Norfolk Island, situated about 900 miles from the eastern shores of Australia; and Bermuda. The 5 Geo. IV. c. 84, gives to the governor of a penal colony a property in the services of a transported offender

for the period of his sentence, and authorizes him to assign over such offender to any other person. The 9 Geo. IV. c. 83, empowers the governor to grant a temporary or partial remission of sentence; and the 2 & 3 Wm. IV. c. 62, limits his power in this respect. In New South Wales and Van Diemen's Land convicts are subject to a variety of colonial laws, framed by the local legislatures established under the act 9 Geo. IV. c. 83. (Lang's *History of Transportation; Report of the Select Committee of the House of Commons on Transportation*, 1838.)

The various offences for which transportation is the penalty are mentioned in LAW, CRIMINAL.

Penal settlements are designed for the punishment of criminals convicted of very grave offences in the penal colonies, and of criminals who are specified in the instructions of the secretary of state forwarded to the governors of the colonies with every transport vessel. In connection with New South Wales, the penal settlement is Norfolk Island: in connection with Van Diemen's Land, there was formerly Macquarrie Harbour; at present there is Port Arthur.

Up to the year 1836, 100,000 convicts had been transported from this country to the Australian penal colonies, of whom 13,000 were women. The following estimate of the sums expended on account of those colonies falls short of the true amount:—

	£
Cost of the transport of convicts	2,729,790
Disbursements for general, convict, and colonial services .	4,091,581
Military expenditure . . .	1,632,302
Ordnance	29,846
Total from 1786 to 31st March, 1837	8,483,519
Deduct for premium on bills, coins, &c.	507,195
	7,976,324

The conveyance of each convict has thus cost about 28*l.*, and the various expenses of residence and punishment have been at least 54*l.* a head, making in all more than 82*l.* a head. The expense entailed upon this country by the penal colonies has been, on the average since their commencement, 156,398*l.* a year; but a few years ago the annual expenditure was more than treble that amount.

The following was the expenditure of this country on account of New South Wales and Van Diemen's Land in the year 1836-7:—

New South Wales.	£
Ordinances of the army .	46,801
Commissariat . . .	3,450
Ordnance	12,014
Navy	4,641
Extraordinaries of the army .	55,625
Special disbursements on account of convicts . .	127,949
	250,480

Van Diemen's Land.	£
Ordinances of the army . .	16,354
Commissariat . . .	2,059
Ordnance	11,625
Navy	515
Extraordinaries of the army .	20,867
Special disbursements on account of convicts . .	113,083
	164,503
Transport of convicts . .	73,030
Total expenditure for the year 1836-7	488,013

(*Transportation Report.*)

In addition to this sum, the colonial expenditure on account of the administration of justice, gaols, and police was 90,000*l.*, an amount nine times as great in proportion to the population as that of the United Kingdom for similar purposes.

In 1837 a committee of the House of Commons was appointed to inquire into the subject of Transportation, and to suggest improvements. The labours of that committee have been followed by some changes, and there is a prospect of still greater.

All convicts sent to Bermuda are employed by the government on public works in the dockyards. The system of punishment pursued is essentially different from that which has been in force

in the Australian penal colonies, and closely resembles that adopted in the hulks in this country. The convicts sent to Bermuda are selected as being the best behaved; they are kept apart from the free population; they are shut up in hulks by night, and are worked in gangs by day under the superintendence of free overseers. A small amount of wages is paid to them for their labour, a portion of which they are allowed to spend, and the remainder forms a fund, which they receive on becoming free. At the expiration of their sentences they do not remain in Bermuda, but are sent back at the expense of the government of this country. Transportation to Bermuda, with some points of recommendation compared with transportation to the Australian colonies, is thus, on the other hand, without the argument in its favour, that it rids England of the criminals sent to it. (Capper's *Reports.*)

Mr. Bentham, Dr. Whately, the present archbishop of Dublin, and other writers on the theory of punishment, have condemned the general principle of transportation; and comparatively little has been urged in opposition to their arguments. Mr. Bentham's objections will be found in a chapter on Transportation, in his 'Theory of Punishments;' the archbishop of Dublin's, in his two 'Letters to Earl Grey.' Their arguments may be summarily stated as follows:—1st, Transportation has failed in all experiments which have yet been made upon the principle. 2nd, That transportation necessarily involves, in reference to the country from which the criminals are sent, want of exemplarity. 3rd, That it lays a pernicious foundation for future communities. 4th, That efficient inspection is sacrificed by it. 5th, That it is more expensive than a home prison system. To these objections it is replied—1st, That transportation has not failed, but only a particular system of carrying that punishment into execution—a system which is not necessarily connected with transportation; a system which was instituted in the colonies at a time when prisons in the parent country were in the worst state possible; a system never amended in principle according to the progress of improvements in penal arrangement generally. 2nd, That in reference to the end contemplated by the word example or exemplarity, transportation is not deficient excepting in the supposition that exemplarity is an effect only of the *spectacle* of criminals enduring punishment; but in that sense, that all experience proves that, instead of preventing crimes, exemplary punishments have frightfully increased them;* that in so far as there is any real value in the principle (exemplarity) in question, it is as an indefinite, obscure source or cause of apprehension; but, that overlooking objections to the principle, in point of fact, in the sense of exemplarity as connected with the *spectacle* of punishment, that transportation is in the same situation as any home system of convict discipline, the public at large being as little the spectators of the process of the *silent* or the *separate* prison as they are of that under which transportation is carried into effect; that in the sense of general tendency to produce apprehension independently of *exhibited* punishment, it has superior recommendations to any home system. 3rd, That the objection, that transportation lays a pernicious social foundation, is made on a presumption involving the primary question which penal institutions are designed to solve, viz., that the convicts sentenced to that punishment are

* Exposure in a state of punishment was introduced into Pennsylvania in 1786. In the year 1790, four years after its commencement, this practice was abolished, and the effect was astonishing: for at the end of another period of four years, that is to say, 1794, the population having in the meanwhile increased at the rate of four and a half per cent. per annum, and the penal law in other respects having remained unaltered, crimes had decreased by two-thirds. The increase of recorded crimes after the introduction of exposure was too great and too continuous to be accounted for to any great extent by an increase of prosecutions otherwise than by reason of an increase of crimes. And no part of the subsequent decrease of recorded crimes can be so accounted for. We have remarked in this instance one fact, which seems to speak for itself enough to settle this question. The decrease of crime in the town of Philadelphia, where, doubtless, most of the exposures were made, was much greater than the decrease of crime in the county, great though that was, pp. 87-8. (*Report of the Committee on Prison Discipline to the Governor-General of India*, Calcutta, 1838.)

always to be criminal in character and habit; but that, on the contrary, the circumstances of society in a new country are economically, in the respects of high wages, abundant labour, and good prospects, much more calculated to establish and confirm the moral benefit to the character of a former criminal wrought by a good system of secondary punishment, than the circumstances of an old society in which employment is uncertain, wages low, &c.; that, besides, prejudice is always stronger against the man once fallen, and consequently more opposed to his permanent reformation, in an old and established community, than in a young, unorganized, and, so to speak, chaotic one. 4th, That experience has not proved the existence of greater abuses in the management of convicts abroad than in their management at home; and that the same provision can easily be made against abuse in connection with penal colonies which has been made in connection with prisons in the mother country (in the appointment of inspectors) within the last few years. 5th, That the question of expense, unless where the difference supposed between that of two systems is very great, is prematurely discussed, when discussed without respect to any satisfactory evidence of the greater efficiency of one than of another system. (Captain Maconochie's *Australiana;* Colonel Arthur's *Letters to the Archbishop of Dublin; The Merits of a Home and of a Colonial Process, of a Social and a Separate System of Convict Management, discussed,* by F. M. Innes, 1842.)

Hulks (*hulk*, Dutch; *hulc*, Saxon, the body of a ship), used as places of confinement and punishment for offences; corresponds with the *galea* of the Italians, the *galère* of the French, and our own English word *galley*.

Hulks.—The plan of confining offenders on board hulks was adopted in England in 1766, when the disturbances in America interrupted the transportation system. The first statute authorising such confinement was the 16 George III. c. 44, passed in 1776, for two years only, but afterwards continued by two other acts of parliament till it was repealed by the 19 George III. c. 74, which was, however, founded upon the same principles with the 16th, and may be considered in part as an improved edition of that act.

The notice of parliament does not appear to have been called to the hulks between the passing of the 19 George III. c. 74, and the year 1783, when an act was passed, the 24 George III. sess. 1, c. 12, converting the hulks from prisons, in which criminals were to be punished by hard labour, into places of temporary confinement for convicts, between the period of their sentence to transportation and the completion of the necessary arrangements for carrying that sentence into execution. The management of the convicts was given to officers called overseers, whose powers corresponded with those of the superintendents under the former act. They were to feed and clothe the offender, and keep him in such manner, and to permit him, where the same could be safely done, to labour at such places, and under such directions, limitations, and restrictions, as his majesty or certain justices of the peace should appoint. In case the convict should receive employment, he was to be allowed half the return arising from his labour for his own use; but it was provided that no convict should be obliged to work.

The time of the offender's confinement was to be reckoned in discharge or satisfaction of the term of his transportation, as far as it might extend. Similar returns to parliament or the King's Bench were required under this as under the former act. The 24 George III. sess. 1, c. 12, was repealed by the 24 George III. sess. 2, c. 56, but its provisions were incorporated in this act, with the exception of those concerning the labour of the convicts, which it was provided should be compulsory. This last act was continued by various other acts till the year 1815, without any alteration in its purpose, excepting in the 28 George III. c. 24, and the 42 George III. By the former of these it was provided that the convicts should be visited and treated as offenders sentenced to hard labour, and that the expenses occasioned by their maintenance or death should be defrayed by the overseers. By the latter the inter-

est of the contractors was limited to that of supplying provisions, clothing, and other necessaries to be consumed in the hulks. The 55 George III. c. 156, repealed and re-enacted by the 56 George III. c. 27, empowers the king to appoint a person to the office of superintendent, and the persons to be deputy or assistant superintendents, also resident overseers. The latter of these acts was continued by the 1 and 2 George IV. for two years, and its provisions were then re-enacted with some variations, in the 5 George IV. c. 34. (*Statements and Observations concerning the Hulks*, by George Holford, Esq., M.P.)

From the evidence taken before a Committee of the House of Commons appointed in 1832 to inquire into the subject of secondary punishments, and before a Committee of the House of Lords in 1835, we are led to conclude that no material changes had then been effected in the discipline pursued on board the hulks.

The stations at which hulks are maintained in England are Portsmouth, Gosport, Devonport, Chatham, Woolwich, Deptford; besides Bermuda, Gibraltar is designed to be a foreign station.

The following returns relating to the hulks are taken from the reports which were made by the superintendent to the government:—On the 1st January, 1841, there were 3552 convicts on board the various hulks in England; and during the year, 3625 more were received into custody, besides 63 transferred from the hulks at Bermuda. Of the convicts in custody, and those received in the course of the year, in all 7240, 2374 were transported to Van Diemen's Land, 180 of whom were boys under sixteen years of age; 80 were sent to Bermuda; 66 were transferred to the Penitentiary (Millbank); and 7 to Parkhurst prison: 262 were discharged; 196 died (being 2½ per cent. upon the gross number); 1 escaped; leaving 4254 convicts on board the hulks in England on the 31st December, 1841. Of the total number received, 52 were known to have been transported* before; 10 had been in the Penitentiary; 1625 had been convicted previously of various offences; 487 had been before in custody; and the remaining 1451 were not *known* to have been in prison before. Three prisoners were received during the year under 10 years of age; 213 between the ages of 10 and 15; 958 between 15 years and 20; 1612 between the ages of 20 and 30 years; and 839 who were above 30 years of age. The total expense of the hulks is represented for the year as 64,527*l.* 10*s.* 7¾*d.*, and the total value of the labour performed as 72,386*l.* 16*s.* 6*d.* (*Two Reports of John Henry Capper, Esq., Superintendent of Ships and Vessels employed for the Confinement of Offenders under Sentence of Transportation, ordered to be printed* 21*st March*, 1842.) The total expense per man in the hulks in England is 18*l.* 12*s.* 11*d.* The average value of labour per man is estimated at 10*l.* 18*s.* 9*d.*, making the average annual expense per man 7*l.* 14*s.* 2*d.* The total cost per boy in the hulks is 13*l.* 5*s.* 6½*d.* The value of the labour performed by the prisoners in the hulks at Bermuda leaves an estimated annual profit for each of 13*l.* 3*s.* 6*d.* (*Lord John Russell's Note on Transportation and Secondary Punishment*, 8*th January*, 1839.)

The hulks in England are viewed merely as an intermediate establishment between the common gaols and the penal colonies, for prisoners sentenced to transportation; but, in fact, in many cases they prove a substitute for that punishment. They are considered to be the worst branch of secondary punishment in England, and their discontinuance has been urged.

Prisons (*Prison*, French), places of safe custody, of punishment, and reform.

The history of modern improvements in the prisons of this country begins with the labours of Mr. Howard in the last century. In the first section of Mr. Howard's book on 'The State of the Prisons in England and Wales,' which he entitles 'A General View of the Distress in Prisons,' published in 1775, he presents a summary of the abuses which existed in the management of criminals at that time. These abuses related to food, ventilation, drainage, want of classification of prisoners; and the effects were disease

* This means had been in the hulks before.

and the further corruption of all persons who were confined in prisons.

The labours of Howard and of others were but slowly attended with success. Nearly fifty years after the date of the above details the Prison Discipline Society remark, that there yet exist many prisons in the same condition as that in which Howard left them—monuments of the justice of his statements, and of the indifference with which his recommendations had been regarded. (*Fifth Report*, p. 16.) In 1818 it appears by parliamentary returns, that out of 518 prisons in the United Kingdom, to which upwards of 107,000 persons were committed in that year, 23 prisons only were classed or divided according to law; 59 prisons had no division whatever to separate males from females; 136 had only one division for that purpose; 68 had only two divisions, and so on; 23 only were divided according to the regulations of the statute (24 George III. c. 54, sect. 4) which provides for eleven. In 445 prisons no work of any description had been introduced; in 73 prisons, though some work was performed, yet the number was exceedingly small in which employment to any extent had been carried on. In 100 gaols built to contain only 8545 prisoners, there were at a time 13,057 persons confined.

Classification of Offenders.—The argument of those who wished to make the experiment of classifying prisoners is thus succinctly stated by a distinguished American writer on penal jurisprudence: —"That, as a place of punishment, a prison would soon lose its terrors if its depraved inmates were suffered to enjoy the society within, which they had always preferred when at large; and that, instead of a place of reformation, the prison would become the best institution that could be devised for instruction in all the mysteries of vice and crime, if the professors of guilt were suffered to make disciples of those who may be comparatively ignorant. To remedy this evil therefore we must resort to classification; first, the young must be separated from the old; then we must make a division between the novice and the practised offenders. Further subdivisions however were found indispensable, in proportion as it was discovered that in each of these classes there would be found individuals of different degrees of depravity, and of course not only corrupters, but those who were ready to receive their lessons. Accordingly, classes were multiplied, until in some prisons in England we find them amounting to fifteen or more." The same writer exposes the fallacy of this argument in what follows:—"But in the consideration of this question these evident truths seem not to have had their proper force: first, that moral guilt is not the immediate subject of human observation; nor, if discovered, is it capable of being so nicely appreciated as to enable us to assign to each individual who may be infected with it his comparative place in the scale; and if it could be discovered, it would appear that no two individuals could be found contaminated in the same degree: secondly, that if these difficulties could be surmounted, and a class formed of individuals who had advanced exactly to the same point, not only of offence, but of moral depravity, still their association would produce a further progress in both." (Livingston's *Penal Code for the State of Louisiana; Introductory Report to the Code of Reform and Prison Discipline*, p. 309; see also q. 1784, *Evidence of Samuel Hoare, Esq.; Select Committee of the House of Commons.* 1832.) Classification continues to be the leading principle of arrangement in many prisons; in others the object contemplated by it, namely, the prevention of contamination, is further sought by the prohibition of oral communication between the prisoners.

Of the prisons which have been subjected to any fundamental changes during the last twenty years, the greater number are conducted on the *silent* system. The advocates of this system supposed that contamination would be prevented by the intercourse of the tongue being prohibited. The first objection incurred in carrying out this plan was the great expense of employing a requisite number of officers to enforce silence. To mitigate or get rid of this objection, another evil was produced by the introduction of the practice of giving to pri-

soners a control over other prisoners. In Coldbath Fields prison, containing on an average 900 prisoners, no less than 218 were, in 1837, removed from the operation of the law and the endurance of their punishment by being appointed to offices of trust or control. Besides these 218 there were 54 regular officers; so that 272 persons were appointed to superintend 682 prisoners (*i. e.* 900 minus 218, who had appointments), being in the ratio of one officer to 2½ prisoners. With all this wasteful superintendence, involving so entire a sacrifice of discipline, the great object of prisons on the principle of Coldbath Fields was not attained. "The minds of the prisoners (say the Inspectors of Prisons in their Report for that year) are kept under perpetual irritation by the prohibition of speech, their ingenuity at work to find means of evading it, and they are still further depraved by frequent subjection to punishment for an offence of a merely arbitrary character."

Under any arrangements the principle on which such prisons are conducted almost necessarily involves great and numerous vices.

The power of establishing rules for prisons is vested by 5 & 6 Wm. IV. c. 38 in the secretary of state for the home department. Distinct divisions of each prison are appropriated to male and female prisoners. The several wards, cells, yards, &c., are devoted to distinct classes of prisoners. There are baths for the cleansing and bathing of prisoners; a fumigating oven for the cleansing and disinfecting of their clothes, linen, or bedding. A competent number of cells adapted to solitary confinement for the punishment of refractory prisoners, and for the reception of such as may by law be sentenced to confinement therein, is provided. Separate rooms are provided as infirmaries or sick wards for the two sexes, and as far as possible for the different descriptions of prisoners. Every prisoner is provided with suitable bedding, and every male prisoner with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners. Convenient places are set apart for washing, combing, &c., and yards for exercise. It is provided by law that the visiting justices appointed at each quarter-session shall meet periodically at the prison and inspect the several journals, registers, and books, and give such directions as may to them seem necessary; that they shall regulate a scale of fines to be levied by the governor upon the subordinate officers for negligence in the performance of their duties; that they may suspend any officer; examine from time to time the state of the buildings, the classification, separation, inspection, hard labour, employment, health, diet, instruction, &c. of the prisoners; also into the amount and disposal of their earnings, the expenses attending the prison, and any improvement which may be practicable; they are required to direct such books as they think proper to be distributed for the use of prisoners who do not belong to the established church; they may enter into contracts for the employment of prisoners in any work or trade within the prison, subject to the sanction of the general or quarter session; they may authorize any prisoner to be employed in the service of the prison, but not in the service of any officer in control or instruction of any other prisoner; they may order necessary clothing or tools to be given to any prisoner on his discharge, or may pay his passage home, or present him with such a moderate sum of money as they may think fit: they are required to make a report respecting the state of the prison at every quarter-sessions: in case of contagious disease, or any other emergency, they are empowered to issue an order under their hands and seals, to remove the prisoners to some other prison or place of confinement within their jurisdiction; in case of any criminal prisoner being guilty of repeated offence against the rules of the prison, or of any greater offence than the governor is authorized to punish, a visiting justice may order the offender to be punished by solitary confinement; and in case of absolute necessity, by confinement in irons; a visiting justice may receive the complaint of any prisoner. Spirits, wine, beer, and tobacco are prohibited to any prisoner excepting in cases

approved of by the surgeon. For every prison it is provided that there shall be a governor, chaplain, and surgeon; and for the female branch of the prison a matron; and a sufficient number of schoolmasters and mistresses, male and female turnkeys, and subordinate officers; none of whom, excepting the chaplain and surgeon, are allowed to hold any office or have any occupation except what refers to the prison. For the various rules as to the governor, and his administration, the chaplain, surgeon, and so forth, the reader may consult the Act.

A different dress is worn by a prisoner convicted of felony from one convicted of a misdemeanor: he is employed, unless prevented by sickness, at such hard labour as can be provided, and for so many hours (not exceeding ten) daily, except on Sundays, Christmas, Good-Friday, or any public fast or thanksgiving day. Some descriptions of misdemeanants are allowed to wear their own clothing if deemed sufficient and proper; and they have various other privileges. Prisoners convicted of felony, but not sentenced to hard labour; prisoners convicted of misdemeanour, who do not come under the description contemplated in the above detail; and other convicted prisoners not sentenced to hard labour—must be clothed in a particular dress, and employed in some work or labour which is not severe; and they are restricted to a prison diet. They are required, like all other prisoners, excepting misdemeanants of the first division, to preserve silence. (*Rules and Regulations for the Government of Westminster Bridewell, as certified by the Secretary of State for the Home Department, 17th June*, 1841; *Regulations for Prisons in England and Wales*, 1840.)

The labour which is most generally imposed in prisons conducted on the silent system is that of picking oakum, and of the tread-wheel. The labour of the tread-wheel is at present chiefly applied to the grinding of corn and pumping water for prison consumption. (See *Description of the Tread-mill for the Employment of Prisoners, with Observations on its Management, published by the Committee of the Society for the Improvement of Prison Discipline, &c.*)

In some prisons females as well as males are employed on the tread-wheel, the application of this mode of punishment to either or both of the sexes being determined by the discretion of the justices of the peace in connection with each prison. The application of tread-wheel labour to women is liable to occasion miscarriage in cases of pregnancy, and in various ailments of the sex it is apt to produce serious disease; it is injurious also to males when applied for a prolonged period. As a punishment it is very unequal, its severity depending upon the physical strength of those subjected to it; and it has been administered with great want of uniformity in different prisons.

Another mode of employing prisoners, but one which is not so much in use as the tread-wheel, is with the crank machine, which is constructed of different sizes. Plans will be found in the work to which we refer. (*Description of the Tread-Mill, and of the Portable Crank-Machine by Wm. Hase.*)

The average expense of each convict kept in a House of Correction, on the silent system, is about 55*l.* or 56*l.* for four years. (Lord John Russell's *Note on Transportation and Secondary Punishments*, January 2, 1839.)

Separate imprisonment differs from what is ordinarily understood by solitary imprisonment in the following particulars:—"In providing the prisoner with a large, well-ventilated, and lighted apartment, instead of immuring him in a confined, ill-ventilated, and dark cell; in providing him with everything that is necessary to his cleanliness, health, and comfort during the day, and for his repose at night, instead of denying him those advantages; in supplying him with sufficient food of wholesome quality, instead of confining him to bread and water; in alleviating his mental discomfort by giving him employment, by the regular visits of the officers of the prison, of the governor, surgeon, turnkeys, or trades' instructors, and particularly of the chaplain, instead of consigning him to the torpor and other bad consequences of idleness, and the

misery of unmitigated remorse; in separating him from none of the inmates of the prison except his fellow-prisoners, instead of cutting him off as far as may be from the sight and solace of human society; in allowing him the privilege of attending both chapel and school, for the purposes of public worship and education in class (securing on these occasions his complete separation from the sight and hearing of his fellows), instead of excluding him from divine service and instruction; in providing him with the means of taking exercise in the open air, whenever it is necessary and proper, instead of confining him to the unbroken seclusion of his cell." (*Inspectors' Report*, 1838.) Arguments both for and against this system have been urged with considerable force. (*Australiana, or Thoughts on Convict Management;* and *A General View of The Social System of Convict Management, &c.*, by Captain Maconochie; *The Merits of a Home and of a Colonial Process; of a Social and of a Separate System of Convict Management*, by F. M. Innes; *Reports of the Inspectors of Prisons.*)

The separate system originated in this country in the year 1790, and was first tried in the county gaol, Gloucester. This building was provided with cells in which prisoners were confined apart, day and night, from the hour of admission to that of discharge. Those confined under short sentences were denied, those under long sentences were provided with, employment. Moral and religious instruction was given in the cells and in the chapel. This discipline was enforced during seventeen years, in which period there were very few re-commitments. But the increase of population demanding increased prison accommodation, the system was abandoned to make room for additional prisoners. In 1811 the favourable opinion conceived of separation in prisons by a committee of the House of Commons led to a recommendation "that a separate prison should be erected in the first instance, for the counties of London and Middlesex, and that measures should be taken for carrying on the penitentiary system, as soon as might be practicable, in different parts of the country." In the following year (1812) the act 52 Geo. III. c. 44, was framed in conformity with the committee's recommendation, by which act the Penitentiary at Millbank was commenced in 1813—subsequent acts granting leave to increase its accommodations. In 1821 this great prison was completed for the reception of 1200 convicts, for England, Scotland, and Wales. The separate system did not begin to be carried out for some years after the establishment of Millbank Penitentiary, and after having been for some time in operation it was abandoned, owing to the great mortality which prevailed there. This mortality, it is alleged, resulted from the unhealthiness of the situation in which the Penitentiary is built, and all connection of it with the separate system, in the nature of a consequence, is denied. (*Inspectors' Reports.*)

A model prison on the separate system at Pentonville, London, has been completed, and others have been built or projected in different parts of England; the success or failure of which will determine whether the system shall or shall not become general. The Fourth Report of the Inspectors of Prisons explains the general principles followed in the construction of the Model or Pentonville prison.

Any estimate of the expense per prisoner of the *separate* system must, until that system has been for some time in operation, be liable to dispute. At Millbank Penitentiary (which is allowed to be an imperfect criterion) the net annual expense of each prisoner, deducting his earnings, is said to be 24*l.* 6*s.* 6*d.* (Lord John Russell's *Note on Transportation and Secondary Punishments.*) It is urged by the advocates of the system that the sentence of imprisonment in a *separate* prison need be only a half or two-thirds the duration of a sentence to any other prison for it to be as severe and as much dreaded, and that the difference of expense will be thus made up.

The improvement in prison discipline has little more than commenced; and even in the metropolis vices which have been long admitted as such continue in undiminished force. The description of

the great gaol of Newgate, given by the Inspectors of Prisons in their Report for 1837, equally applied in the year 1842:—"The prisoners are associated in smaller numbers than formerly, but they are thrown into closer contact, and companionship is more directly facilitated; their mutual acquaintance is more perfect; their knowledge of each other's habits, tempers, and capacities is more readily acquired, more firmly established, and more mischievously brought to bear against the interests of society and their own well-being and reformation. What (say the inspectors) but mischief, inevitable and manifold, can be expected from locking up from morning to night, without intermission and change, in utter idleness (in numbers varying from three to fifteen, or even more), the most abandoned characters, adepts in crime, compelled associates with the uninitiated or trivial offender?"

The new County Gaol and House of Correction at Reading, Berkshire, has been constructed for the application of the separate system, and has now (1846) been more than two years in operation. Alterations have recently been made in the Hertford County Prison, for the same purpose. The results have been in the highest degree satisfactory wherever the system has been brought into operation.

Criminals are sometimes punished by fine, and sometimes by whipping. Fine is imposed for criminal offences only in peculiar cases—where, for instance, the offender is a wealthy person. Whipping is seldom used excepting in the case of juvenile offenders, or as a disciplinary punishment in the hulks or in prison. But the principle of corporal punishments, in England, as everywhere else, is becoming daily more unpopular, and its practice going into disuse. Another mode of punishment, but one which has also nearly passed into desuetude, is that of the stocks.

Prisoners committed for trial or for examination are permitted to wear their own clothing in prison, provided it be sufficient; they are not compelled to work or labour; but at their own request or with their own consent may be supplied with any work not severe, or they may, at their own expense, procure any employment, materials, and tools which the governor may deem safe and proper. Provided no bill has been found against a prisoner, or that upon his trial he has been acquitted, he is allowed such a proportion of the amount of his earnings as the visiting justices deem fit and reasonable. Prisoners of this class are permitted to see their friends on any weekday without any order, within specified hours; and their legal adviser at any reasonable hour. Letters to and from them are subject to the inspection of the governor. They are liable, in case of their being riotous, or disorderly, or being guilty of a breach of the regulations, to be confined in separate cells, and be allowed no other food from the county than bread and water. (*Regulations for Prisons in England and Wales*, issued by the Secretary of State, 1841.)

The application of the separate system to untried prisoners remains yet to be carried into more complete operation. Clerkenwell Prison, Middlesex, has been taken down, and a new County Gaol, on the separate system, for the untried and for prisoners under examination, is in progress of construction, on an enlarged site and extended scale.

The disposal of criminals after the expiration of the period of their imprisonment is, in England, one of the most difficult questions connected with punishments, and it is one for the settlement of which no measures have yet been adopted or devised. Until this deficiency is supplied, under any system of secondary punishment whatever, the immense amount of recommitments which take place in this country may be expected to continue. The amount of recommitments is an evidence not merely of the inefficiency of particular modes of punishment, but probably, more generally, of the difficulty of finding employment in this country. Mr. Bentham suggested several means whereby this object might be met: employment in the army or navy; the encouragement of voluntary emigration to the colonies; the requiring of security for good behaviour, with liberty to the surety to contract for the prisoner's labour; or a subsidiary establishment for the recep-

tion of the prisoners under a modified kind of imprisonment. Of these methods it is not improbable that the encouragement of voluntary emigration will be resolved upon. It is a question whether the emigration should not be compulsory instead of voluntary. But to this it has been objected, that making emigration thus as it were a punishment or part of a punishment, would tend to render it, by association of ideas, a mark of disgrace, whereas it is desirable that industry should be encouraged to find channels for itself in the colonies.

Until recently there was no further distinction observed in the discipline of juvenile offenders than by their separate classification from the adults in the hulks, in prisons, &c., where they were put to the same or nearly the same routine of duties as the adults: but with the establishment of the Parkhurst Reformatory, in the Isle of Wight, the commencement of systematic improvement in this respect has been made.

The objects sought to be attained at the Parkhurst prison, are the penal correction of boys with a view to deter juvenile offenders generally from the commission of crime, and their moral reformation. The disposal of the boys at Parkhurst on release is a question of some difficulty. Of those liberated since its establishment some have been apprenticed to the trades in which they were educated there; others have been sent to the Refuge for the Destitute, and the Philanthropic Institution, and a considerable number have been sent to New Zealand. Nine years have now (1846) elapsed since the opening of the Parkhurst Prison, and its results have been highly satisfactory. The establishment originally provided for 320 boys, but it has been so materially enlarged as to be capable of accommodating 720.

Provision has also been recently made at the Millbank Prison, Westminster, for the probationary confinement of 200 youths, from 16 to 20 years of age. There is now sufficient provision for juvenile transports; but further establishments, on the reformatory plan, are still required for those boys who from their tender age and small size are unfit to be transported, and for various descriptions of minor juvenile offenders.

The Prisons Regulation Act (5 and 6 Wm. IV. c. 38) empowers one of the principal Secretaries of State to appoint a sufficient number of persons, not exceeding five, to visit and inspect, either singly or together, every gaol, bridewell, house of correction, penitentiary, or other prison or place for the confinement of prisoners, in any part of Great Britain; and to examine officers, inspect books and papers, and inquire into all matters relating to the management and discipline of such place of confinement, and to deliver to the Secretary of State a Report thereon.

The Tenth Report of the Inspectors of Prisons for the Home District, is dated August 8, 1845, and states—that prison discipline and management have been generally improved; that great success has attended the application of the separate system, "by which alone," they observe, "we are convinced, the prevalence of crime can be stayed, and the morals and habits of the prisoners can be permanently amended;" that, under this system, the health as well as the character of the prisoners have been improved, and the number of prison punishments greatly diminished; and that it is especially suitable for persons untried, who ought neither to be exposed to the contamination of association with other prisoners nor subjected to the irritating regulations of the silent system. The inspectors object in very decided terms to tread-wheel labour, as being opposed to the formation of permanent habits of useful labour, which ought to be aimed at in prison discipline, rather than compulsory labour for the mere purpose of punishment. The Report states that a great reduction has taken place in the number of debtors committed to prison, which has been in consequence of the act (7 and 8 Vict. c. 96) to amend the law of insolvency, which came into operation August 9, 1844. For instance, in the Debtors' Prison, for London and Middlesex, the number committed between August 9, 1843, and August 9, 1844, was 2,529; whilst between August 9, 1844, and August 9, 1845, the number

was only 656, showing a decrease of 285·5 per cent. The Inspectors recommend urgently the formation of district prisons for juvenile offenders, where they may be kept apart from the contamination of the common gaols. As exceptions to the general improvement which has taken place in prison management and discipline, the inspectors state that no improvements have been effected in the prisons of the county of Bedford; and with reference to the prisons of the city of London they say, "We are compelled, by an imperative sense of duty, to advert, in terms of decided condemnation, to the lamentable condition of the prisons of the city of London — Newgate, Giltspur-street Compter, and the City Bridewell —in which the master-evil of gaol association, and consequent contamination, still continues to operate directly to the encouragement of crime." . . . "We have often recorded our opinion with reference to this subject, and we shall not fail to repeat our protest against the prisons of the city of London, until we see substituted," &c.

The Tenth Report of the Inspectors of Prisons for the Northern and Eastern District, which is dated February 20, 1846, states that a very material decrease has taken place in the criminal population of the district during the years 1844 and 1845; and that the prisons continue in a state of improvement. The Inspector remarks, that in consequence of the passing of the 8 and 9 Vict., c. 127, which authorizes the imprisonment, for short terms, of debtors who have contracted their debts under fraudulent circumstances, there has been some increase in the number of prisoners committed on that account.

As to the great reduction in the number of debtors in consequence of the 7 and 8 Vict. c. 96, coming into operation, and the increase in the number of debtors committed, as having contracted debts under fraudulent circumstances, in consequence of the passing of the 8 and 9 Vict. c. 127, it will be useful to refer to the remarks under the article INSOLVENT, p. 114, &c. The facts stated by the reports do not in this instance prove that there was any social improvement, because the number of commitments were diminished under the 7 and 8 Vict. c. 96: the true conclusion is, that a number of dishonest debtors were let out of prison or did not get into prison, and that is all. The increased number of committals of fraudulent debtors under the 8 and 9 Vict. c. 127, confirms this conclusion. It is true that the inspectors' report merely gives the decrease in the number of imprisoned debtors under 7 and 8 Vict. c. 96, as a fact; but it is possible that some persons might draw the wrong conclusions from this fact.

The Tenth Report of the Inspector of Prisons for the Southern and Western District, which is dated August 4, 1845, states that beneficial alterations are taking place, both in the construction of prisons and in prison discipline, and speaks in terms of approbation of the results of the application of the separate system.

There are several institutions auxiliary to the penal institutions of the country. The institutions referred to are either wholly supported by voluntary contributions, or partly by voluntary contributions and annual parliamentary grants, and their objects are to receive convict youths after they have endured the sentence of the law, as voluntary inmates, and to educate them in suitable branches of knowledge, and in useful trades; or to receive the destitute offspring of adult convicts who have been executed or transported, or are imprisoned for a lengthened period, and to give them the advantages mentioned. In the metropolis there are the Refuge for the Destitute, and the Philanthropic Society's Institution.

The Refuge for the Destitute was founded in 1805, and incorporated by Act of Parliament in 1838. It is a place of refuge for young persons of both sexes, discharged from penal confinement; or who, having lost their character by dishonest practices, are unable to procure an honest maintenance. The females in the establishment are employed in washing and in needlework, for which the institution contracts with the public, and in household work. The males are employed in shoemaking, tailoring, and preparing fire-wood for sale.

The Philanthropic Society embraces in

its scheme, besides juvenile criminals, the destitute offspring of criminals. The education given at the Society's institution, in addition to the details at the Refuge, includes the trades of printing, bookbinding, rope and twine-making. To those young men who, after quitting the institution, bring satisfactory testimonials from their masters by whom they have been employed of honesty, sobriety, and steady habits, rewards varying in amount are given at the end of one and two years respectively. This institution is entirely dependent upon voluntary contributions. (*An Account of the Philanthropic Society*, 1842, printed at the Institution.)

The prisons of Scotland were in a state of gross mismanagement when, in 1826, a Committee of the House of Commons was appointed to inquire into the subject. The recommendations of that committee, the appointment of inspectors, and the passing of an act of parliament (2 & 3 Vict. c. 46), by which the burden of maintaining prisons is removed from the royal burghs, and provided for by a general rate upon property, and their management is devolved upon county boards and upon a general board sitting in Edinburgh, have led to some improvements, and paved the way for still greater. This act, which was passed in August, 1839, is to continue in force ten years. Where system can be said to have been attempted in Scotland, it has been one of those which we have noticed in connection with England. The separate system has been for several years in force at Glasgow in respect to prisoners, the duration of whose sentence is six months or under, and, according to the reports of the inspectors of Scotch prisons, with generally good effects, although the construction of the prison in which the system is conducted is not completely favourable. The difficulty of procuring employment on release from prison has however been so great, that lately criminals in confinement at the Glasgow penitentiary, when in prospect of their liberation, have been found to threaten the commission of crimes for which they might again be sent there. Another separate prison has been established at Perth, and the extension of the system is contemplated by the board of direction in connection with Scotch prisons, provision for the purpose having been made already by parliament.

The Seventh Report of the Board of Directors of Prisons in Scotland is dated February 11, 1846, and gives an account of the proceedings of the Board with relation to the General Prison at Perth; the proceedings with relation to Local Prisons; a statement of Receipts and Expenditure during the year 1845, and an estimate of the funds which will be required for the year 1846.

The gaols of Ireland are regulated by an act of parliament (7 Geo. IV. c. 74) passed in 1826, by which annual reports of the state of the several prisons are required from inspectors of prisons who had been appointed some years previously. From the reports of the inspectors a lamentable picture is to be drawn of the management of the prisons so recently as 1841. Industry appears to have been only partially introduced; classification, where it is attempted, is of the most imperfect description, and lunatics are frequently committed to prison simply as being dangerous to society, of which practice the results are, "that each prison in the kingdom has charge of from five to ten lunatics, and even more, to the great injury of the internal discipline and peace of the establishment, as well as to the poor individuals, as there is no proper accommodation for them, or means of treating the disease with a view to cure." (*Report of the Inspectors of Prisons for Ireland*, 1842, p. 9.)

As to the prisons in the British dependencies, the following authorities may be referred to:—"Resolution recorded by the Government of India on the 8th of October, 1838, after taking into consideration the Report of the Committee on Prison Discipline," Calcutta, 1838; "Report of the Committee on Prison Discipline to the Governor-General of India in Council," January 8, 1838, Calcutta; "Report of Captain J. W. Pringle on Prisons in the West Indies," July, 1838; and as to Lower Canada, the "Report of the Hon. D. Mondelet and J. Neilson, Esquires," Quebec, 1835.

TREASON. [LAW, CRIMINAL.]

TREASURE-TROVE, in legal Latin called *thesaurus inventus*, is a branch of the revenue of the crown of England, and belongs to the king or his grantees. Where coin, plate, or precious metals are found hidden in the earth or any private place, and the owner or person who deposited them is unknown, the property becomes vested in the king by virtue of his prerogative. But if the owner is known, or is ascertained after the treasure is found, the property belongs to him and not to the king. By a constitution of Hadrian (*Inst.* i. tit. i., § 39), if a man found treasure (*thesauri*) in his own ground, it belonged to the finder, and also if he found it in a place which was sacer (sacred to the gods above), or religious (sacred to the Dii Manes). If a man found treasure accidentally in another man's ground, the constitution gave half to the finder, and half to the owner of the ground. If he found treasure in the ground of the emperor, the finder had half, and the emperor half; and the law was the same if the ground belonged to the fiscus, or to the Roman people, or to any civic community. A constitution of the Emperors Leo and Zeno (*Cod.* x. tit. 15) is to the same effect as far as it goes. Grotius says that the title of the prince to treasure-trove had in modern times been so generally established in Europe as to have become 'jus commune et quasi gentium' (*De Jure Belli et Pacis*, lib. ii. c. viii. § 7). The law of England adopts the Roman definition of treasure-trove of Paulus (*Dig.* 41, tit. i. § 31). "Treasure (thesaurus) is an antient deposit of money, of which there is no record so as to give it an owner: for thus it becomes his who has found it, because it does not belong to another;" and to entitle the crown to the property, it must appear to have been hidden or deposited by some one who at the time had the intention of reclaiming it. Whenever therefore the intention to abandon appears from the circumstances—as for instance, where the property has been found in the sea, or in a pond or river, or even openly placed upon the surface of the earth—it belongs to the finder. In England the concealment of treasure-trove from the king was apparently formerly a capital offence; at present it is a misdemeanour punishable by fine and imprisonment. (Blackstone's *Commentaries*, vol. i. p. 295.)

TREASURER. [MUNICIPAL CORPORATIONS, p. 391.]

TREASURY, a department of the British government which controls the management, collection, and expenditure of the public revenue. It is the business of another department, the Exchequer, to take care that no issues of public money are made by the Treasury without their being in conformity with the authority specially enacted by parliament. When money is to be paid on account of the public service, this is almost always done on the authority of a Treasury warrant; and in other cases the countersign of the Treasury is requisite. The Board of Treasury consists of the prime minister and the chancellor of the exchequer. The real office which the premier holds is generally that of first lord of the Treasury. There are also four junior lords, who have usually seats in parliament, as have also the two joint secretaries of the Treasury. The departments immediately subordinate to the Treasury are the boards of customs, of excise, of stamps and taxes, and the post-office, the various officers in which are to a great extent appointed by the lords of the Treasury; and this constitutes an important part of the patronage of the ministry. The control of the Treasury over the different boards of revenue and other departments is said to be much less complete now than it was fifty years ago. Constitutionally, its authority ought to be paramount. The duties of the board of Treasury are heavy and multifarious, all exceptional cases in matters relating to the revenue being referred to it. Previous to 1839 the annual parliamentary grant for education was dispensed by the Treasury; but from this business, to which it certainly could not pay sufficient attention, it was relieved by the appointment of the committee of Privy Council on Education. The offices of the Treasury are in Whitehall. The amount paid in salaries of 1000*l.* and upwards, is about 30,000*l.* a year. The First Lord of the Treasury receives 5000*l.* a year; two secretaries of the Treasury receive 2500*l.*

a year each, and the assistant-secretary 2000*l.* a year; the solicitor of the Treasury receives 2850*l.* a year; four commissioners of the Treasury receive 1200*l.* a year each; and other officers receive sums varying from 1000*l.* to 1500*l.* each. The amount paid in salaries below 1000*l.* a year we have no means of ascertaining. (Lord Congleton's *Financial Reform.*)

TREATY (from the French *traité*) means literally that which has been drawn up, or, in other words, arranged and agreed upon, by two or more parties, who are accordingly called the contracting parties.

Although a treaty is commonly defined to be an agreement made with one another by two or more governments, it is not necessary that every party to a treaty should always be a sovereign power or an independent political society. Bodies of persons or even individuals, may be empowered to enter into treaties. Thus the English East India Company has the power, and has repeatedly exercised it, of making treaties under certain limitations. But in all such cases this power must be given by the supreme authority in the state to which the contracting party belongs, or, which is the same thing, by the constitution or political system of which it is a member. Treaties then can only be made by sovereign powers, or by parties upon whom the sovereign power has conferred that right. In our constitution, for example, where the sovereign power consists of the king and the parliament, the power of concluding treaties with foreign powers generally belongs to the king. This is the all-important fact for foreign countries or other powers to look to in negotiating and entering into conventions with the English nation: the only party with whom they have to do in such matters is the king, or the ministers whom he may have delegated to act for him and in his name. In the United States of North America the president makes treaties with the consent of the Senate.

It is usual for the crown, in this as in other cases, to act through its representatives; and the question has arisen how far the principals to a treaty are to be held bound by the agreements entered into by the authorised negotiators. The difficulty is this. The instructions given to the actual negotiator by his principal, as to what he shall accept or concede, are kept secret, at least in part, for obvious reasons: it is impossible therefore to know whether on any particular point he has exceeded his authority or not; and it would be always in the power of a government to allege that he had done so, if for any reason it desired to escape from the engagements which he may have made in its name. If such a plea were well founded, it would seem to be a reasonable one; and it could hardly be proved not to be founded in fact, in any case in which it was urged. It would appear therefore to be either useless or unfair to hold the negotiator's signature to be the real conclusion of the treaty; useless, if the plea that he had exceeded his powers were to be allowed to be afterwards urged in abatement of the stipulations he had made; unfair, if such plea were not to be permitted. Accordingly, notwithstanding some writers on the law of nations (De Martens, for example) have contended that a treaty is, strictly speaking, valid from the moment of its being signed, that is not the doctrine generally maintained; and at any rate the practice now completely established and always adhered to is for ratifications of the treaty to be exchanged between the contracting parties before it comes into operation. And there are many instances of states declining to ratify or to act upon treaties which have been signed by their accredited representatives.

A treaty, when made, is in fact only in force so long as the contracting parties choose to observe it; for as the contracting parties are sovereign powers, there is no superior authority to enforce the observance of the treaty. Respect for opinion and fear of other powers interfering, and various other motives may often combine to ensure the due execution of treaties, when the parties to them are not disposed to observe them.

Treaties between nations for mutual commercial advantages have been made at different times, but the small value of such treaties is now pretty well understood by those who are in favour of unre-

stricted commercial intercourse. Such treaties are cumbrous expedients for effecting what may generally be done better by the nation, which has most to give and is able to take most, relaxing its own restrictive laws; which is what Great Britain is doing now. A striking instance of the effect of Great Britain's example is contained in the 'Reciprocity Acts.' [SHIPS.]

A complete account of the printed collections of treaties is contained in the 'Discours Préliminaire sur les différens Recueils de Traités publiés jusqu'à ce Jour' (pp. 3-73), in the first volume of the 'Supplément au Recueil des Principaux Traités,' &c., by De Martens, 8vo., Göttingen, 1802. All preceding general collections are superseded by the great work of Du Mont and Rousset, entitled 'Corps Universel Diplomatique du Droit des Gens, contenant un Recueil des Traités d'alliance, de paix, de trêve, de neutralité, de commerce, d'échange, de protection, et de garantie, de toutes les Conventions, &c. . . . depuis le règne de l'Empereur Charlemagne jusques à present,' &c., &c. The original work is in eight volumes, to which there is a supplement in five volumes which appeared in 1739.

The collection of Du Mont and Rousset has been completed and brought down to the present day by the late George Frederic de Martens, professor of the Law of Nature and Nations at Göttingen, and his successors, in their work entitled 'Recueil des Traités d'Alliance, &c. des Puissances et Etats de l'Europe,' &c., &c., the first volume of which, in 8vo., was published at Göttingen in 1790. Various supplements have been since published. The original work of de Martens consists of seven volumes.

There are separate collections of treaties published in nearly all the countries of Europe, consisting for the most part of those treaties to which the country has been a party, and which therefore form the history of its connection with foreign states. Most of those collections also De Martens has enumerated in the discourse already referred to. The most important of English collections is that entitled 'Thomæ Rymeri Fœdera, Conventiones, Litteræ, cujuscumque generis Acta Publica, inter Reges Angliæ et alios quosvis imperatores, reges,' &c., in 20 volumes, folio, 1704—1735. It includes the period from A.D. 1101 to 1654. A second edition of the first 17 volumes (the last of which is occupied with an index to those that precede) was published at London, under the care of George Holmes, in 1727; a third, including the whole 20 volumes in 10, and with considerable additions and improvements, was brought out at the Hague in 1739; and a fourth, augmented by many new documents, has been in part printed under the direction of the late Record Commission. Various collections have been published since that of Rymer. The latest general collection of treaties which has appeared in this country is by George Chalmers, 2 vols. 8vo., London, 1790, which is a useful work. The new treaties and other state papers are annually published by the Foreign Office; and there is a very convenient work, entitled 'A Complete Collection of Treaties, &c., at present subsisting between Great Britian and Foreign Powers, so far as they relate to Commerce and Navigation, to the repression and abolition of the Slave Trade, and to the Privileges and Interests of the Subjects of the high contracting Parties,' compiled from authentic documents by Lewis Hertzlet, Esq., librarian and keeper of the papers, Foreign Office, 5 vols. 8vo.. London, 1840.

For an enumeration of the principal works on the subject of treaties, and references to the passages in the writers on public law in which the subject is considered, the reader may consult the Introduction to De Martens's 'Précis du Droit des Gens Modernes de l'Europe, fondé sur les Traités et l'Usage,' 2 vols. 8vo., Paris, 1831; vol. i., pp. 132-166, 268-270, 316; and ii., 22-33, 63-69, 113, 216-234, 291-308. There is a very useful work by De Martens, entitled 'Cours Diplomatique,' 3 vols. 8vo., Berlin, 1801; of which the first two volumes (entitled separately 'Guide Diplomatique') contain an account of the principal laws of the powers of Europe and of the United States of America, relating to commerce and the rights of foreigners in peace and

in war, and a list of the treaties and other public acts connecting these states, from the commencement of their diplomatic intercourse to the end of the eighteenth century; and the third is entitled 'Tableau des Relations Extérieures des Puissances de l'Europe, tant entre elles qu'avec d'autres E'tats dans les diverses Parties du Globe.' In the *Companion to the Almanac for* 1831, pp. 44-63, will be found 'A Chronological Table of the more important Treaties between the principal civilized Nations, with Notices of the Wars and other Events with which they are connected, from the beginning of the fourteenth century to 1830.'

TRIAL. [LAW, CRIMINAL.]

TRINITY HOUSE OF DEPTFORD STROND, THE CORPORATION OF —its full title is, 'The Master, Wardens, and Assistants of the Guild, Fraternity, or Brotherhood of the most Glorious and Undivided Trinity, and of Saint Clement, in the parish of Deptford Strond, in the county of Kent'—an institution to whose members is intrusted the management of some of the most important interests of the seamen and shipping of England. The earlier records, together with the house of the corporation, were destroyed by fire in 1714, so that the origin of the institution can only now be inferred from usage and the occasional mention of its purposes in documents of a later period. It is probable that with Henry VII. originated the scheme, afterwards carried into effect by his son Henry VIII., of forming efficient navy and admiralty boards, which then first became a separate branch of public service. During the reign of Henry VIII. the arsenals at Woolwich and Deptford were founded; and the Deptford-yard establishment was subsequently placed under the direction of the Trinity House, who likewise surveyed the navy provisions and stores. The earliest official document relating to the Trinity House now extant, is a charter of incorporation made by Henry VIII. in the 6th year of his reign. An exemplification of this charter was granted by George II., in the third year of his reign. In this charter Henry says "We on account of the sincere and entire love and likewise devotion which we bear and have towards the most glorious and undividable Trinity, and also to Saint Clement the Confessor, have granted and given licence, for us and our heirs, as much as in us is, to our beloved liege people and subjects, the shipmen or mariners of this our realm of England, that they or their heirs, to the praise and honour of the said most glorious and undividable Trinity and Saint Clement, may of *new begin*, erect, create, ordain, found, unite, and establish a certain guild or perpetual fraternity of themselves and other persons, as well men as women, in the parish church of Deptford Strond, in our county of Kent." The brethren are by the same charter empowered from time to time to elect one master, four wardens, and eight assistants, to govern and oversee the guild, and have the custody of the lands and possessions thereof, and have authority to admit natural-born subjects into the fraternity, and to communicate and conclude amongst themselves and with others upon the government of the guild and all articles concerning the science or art of mariners, and make laws, &c., for the increase and relief of the shipping, and punish those offending against such laws; collect penalties, arrest or distrain the persons or ships of offenders, according to the laws and customs of England or of the court of Admiralty. The charter also grants to the corporation all liberties, franchises, and privileges which their predecessors the shipmen or mariners of England ever enjoyed.

In the 8th year of the reign of Elizabeth, an act was passed enabling the corporation to preserve antient sea-marks, to erect beacons, marks, and signs for the sea, and to grant licences to mariners during the intervals of their engagements to ply for hire as watermen on the river Thames.

In the 36th year of her reign Queen Elizabeth made a grant to the corporation of the lastage and ballastage of all ships in the river Thames, and of the beaconage and buoyage upon the coasts of the realm, which had previously afforded a considerable source of revenue to the lord high admiral. The grant recites that he had surrendered into the queen's hands the lastage and ballastage of all

ships coming into or being in the Thames, and also the right to erect and place beacons, buoys, marks, and signs for the sea, on it or on the shores, coasts, uplands, or forelands near it, and besought her to grant all powers respecting these matters to them. And it then proceeds to grant the same and all fees relating to them in the fullest manner to the corporation for ever.

James II. granted the Trinity House a fresh charter, the one now in force, in the first year of his reign. It recites the former grant and charter, and declares the body to be a corporation, and that for the future it shall consist of one master, and one deputy master, four wardens, and four deputy wardens, eight assistants, and eight deputy assistants, eighteen elder brethren, and a clerk. The master nominated by the charter was Pepys, then secretary to the admiralty. It determines the mode of election of those officers, their continuance in office, and the mode of removing them from it, if necessary; and declares that all seamen and mariners belonging to the guild shall be younger brethren. It directs the masters and wardens to examine such boys of Christ's Hospital as shall be willing to become seamen, and to apprentice them to commanders of ships. It also enables them to appoint and license all pilots into and out of the Thames, and prohibits under penalties all other persons from exercising that office; it also authorises the corporation to settle rates of pilotage, &c., to hold courts, &c. to punish seamen, deserting, &c., and make laws as to their subject-matters not inconsistent with the laws of the kingdom. It also contains many provisions directed to the object of keeping the navigation of the channels secret from foreigners, and renders the officers of the corporation liable to attend when required at the king's bidding. Since that time several acts of parliament have been passed for the purpose of authorising the Trinity House to regulate matters connected with the pilotage, &c., of vessels.

The various provisions in matters of pilotage under the management of the corporation were repealed by the 6 Geo. IV. c. 125, entitled 'An Act for the Amendment of the Law respecting Pilots and Pilotage, and also for the better Preservation of floating Lights, Buoys, and Beacons,' which recites the extent of the jurisdiction of the Trinity House in regard to pilots to be upon the river Thames, through the North Channel, to or by Orfordness, and round the Long Sand Head, or through the Queen's Channel, the South Channel, or other channels into the Downs, and from and by Orfordness and up the North Channel, and up the rivers Thames and Medway, and the several creeks and channels belonging or running into the same; and contains a variety of minute regulations respecting the examination, licensing, and employment of pilots, the rates of pilotage, provisions for decayed pilots, the protection of buoys, &c. At present, however, besides those under the jurisdiction of the Trinity House and of the lord warden of the Cinque Ports, many independent pilotage establishments exist in various parts of the kingdom; but the expediency of subjecting all these to the uniform management of the Trinity House has been felt for some time past. The inconvenience resulting from the exercise of similar authorities vested in the hands of different parties had been felt with regard to the lighthouses on the coast, several of which had been vested in private hands by the crown; while some had been in times past leased out by the corporation itself, the lights in both instances being found to be conducted probably rather with a view to private interest than public utility. By an Act therefore of the 6 & 7 Wm. IV. c. 79, passed "in order to the attainment of uniformity of system in the management of lighthouses, and the reduction and equalization of the tolls payable in respect thereof," provision was made for vesting all the lighthouses and lights on the coasts of England in the corporation of Trinity House, and placing those of Scotland and Ireland under their supervision. Under this Act all the interest of the crown in the lighthouses possessed by his Majesty was vested in the corporation in consideration of 300,000*l.* allowed to the Commissioners of Crown Land Revenue for the same; and the corporation were empowered to buy up

the interests of the various lessees of the crown and of the corporation, as well as to purchase the other lighthouses from the proprietors of them, subject, in case of dispute, to the assessment of a jury. Under this Act purchases have been made by the corporation of the whole of the lighthouses not before possessed by that body, the amount expended for which purpose is near a million of money.

The annual revenue of the corporation is very considerable, and is derived from tolls paid in respect of shipping, which receives benefit from the lights, beacons, and buoys, and from the ballast supplied. The ballast is raised from such parts of the bed of the river as it is expedient to deepen, by machinery attached to vessels, and worked partly by the power of steam and partly by manual labour. The remainder of the revenue proceeds from lands, stock, &c., held by the corporation, partly by purchase, partly from legacies, &c., and donations of individuals. The whole is employed upon the necessary expenses of the corporation in constructing and maintaining their lighthouses and lights, beacons and buoys, and the buildings and vessels belonging to the corporation; in paying the necessary officers of their several establishments, and in providing relief for decayed seamen and ballastmen, their widows, &c. Many almshouses have also at various times been erected, which are maintained from the same funds. The present house of the corporation is on Tower Hill; the Trinity House was formerly in Water Lane, where it was twice destroyed by fire. There are thirty-one Elder Brethren. The Younger Brethren (who are unlimited in number) are or have been commanders of merchant-ships. Neither the honorary members nor the Younger Brethren derive any pecuniary advantage from their connection with the corporation. King William IV. was master at the time of his accession to the throne. Formerly, according to Stowe, sea-causes were tried by the Brethren, and their opinions were certified to the common-law courts and courts of admiralty, such cases being referred to them for that purpose. This is not the practice at present; but two of the Elder Brethren now sit as assistants to the judge in the court of admiralty in almost all cases where any question upon navigation is likely to arise. The various duties of the corporation are parcelled out among the wardens and different committees appointed for the purpose of discharging the same. One of the most important of these is the Committee of Examiners, before whom all masters of vessels in the navy, as well as pilots, undergo an examination. The deputy-master and Elder Brethren are employed on voyages of inspection of their lighthouses and lights, beacons and buoys, not unfrequently in most trying weather and seasons; and they are also often engaged in making surveys, &c., on the coast, and reports on such matters of maritime character as are referred to them by the government. The sums paid to the deputy-master and Elder Brethren for their services are—to the former 500*l.* per annum, and 100*l.* further as the chairman of all committees, and to each of the Elder Brethren 300*l.* per annum.

TRINO'DA NECE'SSITAS. This term, in Anglo-Saxon times, signified the three services due to the king in respect of tenures of lands in England for the repair of bridges, the building of fortresses, and expeditions against his enemies. All the lands within the realm were bound to contribute to these three emergencies, on the principle of their necessity for general convenience or safety; and for this reason every man's estate was subject to the *trinoda necessitas*, whatsoever other immunities he might enjoy. Even in royal grants to the Church of privileges and exemptions from secular services, the right of requiring contribution for these purposes was almost always reserved to the king. (Selden's *Janus Anglorum*, i. 42; Cowell's *Interpreter*, ad vocam.)

TRIPLE ALLIANCE means a contract entered into by a treaty between three different powers, by which each of the contracting parties, by contributing its share to the execution of it, is also entitled to a proportionate share of those advantages which may be derived from it. Such a treaty may be concluded either for defensive purposes, when each power pledges itself to assist the other,

or the others in case of attack; or it may be entered into for an offensive object, when the contracting powers engage to commence and carry on a war against a fourth party. It has been discussed by several writers on international law, whether two of the three contracting parties have a right, after a triple alliance or treaty has been concluded among them, to enter into separate stipulations in which the third party does not participate and is not privy to. This question has never been fairly settled, like many other intricate questions in that obscure branch of jurisprudence, and in case of difficulty, the strongest hand would establish and maintain its own particular doctrine. Martens, however, is of opinion that no separate stipulations can be made without the consent of all parties, if three or more, and that this doctrine is recognised by all civilised nations. Powers allied by a treaty may in fact be considered as partners, who as such can enter into any agreements or treaties with other parties, without these other parties becoming participators in the first contract. For instance, this was the case in the late war, which resulted in the destruction of Napoleon's empire. Russia and Prussia concluded a treaty of alliance, defensive and offensive, at Kalish, which Austria afterwards joined; and this triple alliance, or partnership, entered afterwards as such into treaties under various conditions with Great Britain, Sweden, and almost all European powers, without these states however becoming parties to the original triple alliance.

TRUCK SYSTEM. TRUCK ACT. Truck, which means exchange or barter, has come to be appropriated to signify the payment of wages of labour in goods, and not in money. By the truck-system is meant this mode of paying wages, together with the mass of its tendencies and results. The Truck Act, 1 & 2 Wm. IV. cc. 36, 37, is an act passed in 1831, which, repealing all the previous acts passed for the same purpose, provided anew and more stringently for the prevention of payment of wages in truck in the departments of industry therein enumerated. The wages of agricultural labourers and domestic servants are exempted from the operation of the act. The evidence published in the Report of the Select Committee of the House of Commons appointed in the session (1842) "to enquire into the operation of the law which prohibits the payment of wages in goods, or otherwise than in the current coin of the realm, and into the alleged violations and defects of the existing enactments," shows that, notwithstanding the Truck Act, the truck system is still in extensive operation in mills, factories, iron-works, colleries, and stone-quarries in the kingdom, and abundantly illustrates the evil tendencies of the system. These evil tendencies will be found also ably explained in the debates in parliament to which the introduction of the Truck Act gave rise in the years 1830 and 1831, and especially in the speeches of Mr. Littleton (now Lord Hatherton), the author of the act, Mr. Herries, and Mr. Huskisson.

It is to be observed, in the outset, that the chief part of the evil of what is called the truck-system is incidental, and not essential to the payment of wages in truck, and arises out of the power of the master over the workman, which enables the former to use this mode of paying wages to defraud and oppress the latter. A master may pay the wages of his workmen wholly or in part in truck, in articles of food, clothing, &c., either by agreement, or with only the understood consent of his workmen; and if he supply these articles at prices no higher than those at which they are to be procured elsewhere, and study to meet the various wants of the workmen and their families, the utmost harm that can result is the loss to the workmen of the moral and economical lessons which the disbursement by themselves of weekly money-wages is fitted to supply, and the interference with the business and profits of neighbouring retail shopkeepers; and there will always in such cases be some advantage to set against these, so far as they go, evil results. Where the truck-system acts beneficially, it is owing entirely to the justice and benevolence of the individual truck-masters. On the character of the master everything depends. In the hands of masters of opposite character, and

under circumstances, whether of scarcity of employment, of isolated situation, or of combination among masters in the same business, or through an extensive district, which place the workman more or less at the mercy of his employer, the payment of wages in truck may be, and continually has been, and is still extensively, used for the defrauding and oppressing of workmen.

The following is a summary of the Truck Act, often known as Mr. Littleton's Act, which was passed in 1831. It declares all contracts for hiring of the artificers afterwards enumerated, by which wages are made payable wholly or in part otherwise than in the current coin of the realm, or which contain regulations as to the expenditure of wages, to be illegal, null, and void. All payment of wages is to be in money entire; and any payment of wages in goods is declared illegal. Wages which have been paid otherwise than in the current coin of the realm are made recoverable; and in an action brought for the recovery of wages, no set-off is to be allowed for goods given in payment of wages, or for goods sold at any shop in which the employer has an interest. Employers are denied an action in return against artificers for goods which have been supplied in payment of wages. If workmen or their wives or children become chargeable to the parish, overseers may recover from their employers wages which have been earned within three months previous, and have not been paid in money. The penalty on employers making the illegal contracts or illegal payments of wages, to be for the first offence a sum not greater than 10*l.* nor less than 5*l.*; for the second a sum not greater than 20*l.*, nor less than 10*l.*; and the third offence is declared a misdemeanour; and the employer who has been convicted, to be punishable by fine within the discretion of the convicting magistrates, but not in a sum greater than 100*l.* The convicting justices are empowered to award a portion of the penalty, which shall never exceed 20*l.*, to the informer. The penalties may be sued for and recovered by any one before two justices of the peace having jurisdiction in the county, riding, city, or place within which the offence has been committed. No justice of the peace being engaged in any of the trades or manufactures enumerated in the act, or the father, son, or brother of such person, shall act as a justice of the peace under this act; and provision is made for county magistrates taking the place of borough magistrates thus disqualified. Justices are empowered to compel attendance of witnesses. Power is given to levy the penalties by distress. A member of a partnership is not liable personally for the offence of his partner, but distress may be made on the partnership property. The 19th clause thus enumerates the artificers to whom the act relates:—"artificers employed in or about the making, casting, converting, or manufacturing of iron or steel, or any parts, branches, or processes thereof, or in or about the working or getting of stone, salt, or clay; or in or about the making or preparing of salt, bricks, tiles, or quarries; or in or about the making or manufacturing of any kinds of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter, or other metal; or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufactures; or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed one with another, or in or about the making or otherwise preparing, ornamenting, or finishing of any glass, porcelain, china, or earthenware whatsoever; or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of bone, thread, silk, or cotton-lace, or of lace made of any mixed materials." Domestic servants and servants in hus-

bandry are exempted from the act. The 23rd clause declares that nothing in the act shall prevent the supplying to artificers of medicine or medical attendance, or fuel, materials, tools or implements to be used in his trade or occupation, if a miner; or of hay, corn, or other provender to be consumed by any horse or beast of burden, or the letting to any artificer the whole or part of any tenement, or the supplying of victuals dressed under the roof of any employer and there consumed; and making deduction of wages on any of the above accounts, or on account of money advanced, "provided always that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not be in any case made from the wages of such artificer unless the agreement or contract for such stoppage or deduction shall be in writing and signed by such artificer." The interpretation clause (25th) gives a most extensive meaning to the word contract: "Any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other."

Such are the provisions of the Truck Act. Well adapted, as it would appear, for the purpose of protecting the workman against this species of oppression by his master, it is yet extensively violated and evaded.

TRUST AND TRUSTEE. A trust, which is in fact a new name given to a use, is defined by Lord Coke in the words employed by him for the definition of a use: "A confidence reposed in some other, not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land, for which *cestui que use* has no remedy but by *subpœna* in Chancery." (Co. Litt., 272 b.) A trustee is he who undertakes to discharge a trust; and a *cestui que trust*, is the person who is entitled to the benefit of a trust.

Owing to the settlements made upon marriage, and the dispositions of property made by will, a great amount of property is in the hands of persons who hold it in trust for certain purposes defined by the instruments which create the trusts. There are also trusts for charitable purposes and others. The law relating to trusts is accordingly implicated with the law of property, and it also contains the rules as to the duties and powers of trustees, both with reference to the *cestuis que trusts* and other persons. The Court of Chancery has the sole jurisdiction in trusts.

Trusts may be created either by deed or by testament. The Roman Fideicommissum was only created by testament, and it was a testamentary disposition by which the testator gave something to one person, and imposed on him the duty of transferring it to another. It is stated that there were no legal means of compelling the discharge of this duty till the time of Augustus, who gave the consuls jurisdiction in Fidei commissa. Under Claudius prætors were appointed to exercise jurisdiction in Fidei commissa.

TURBARY. [COMMON, RIGHTS OF.]

TURKEY COMPANY. [JOINT STOCK COMPANIES.]

TURNPIKE TRUSTS. Turnpike-roads are a peculiar species of highways placed by the authority of acts of parliament under the management of trustees or commissioners, who are invested with certain powers for the construction, management, and repair of such roads.

Besides the various local acts, there are several acts of parliament called General Turnpike Acts, the provisions of which extend and apply to all existing and subsequent local acts. The subsisting enactments upon this subject are contained in 3 Geo. IV. c. 126, which repeals former General Turnpike Acts; 4 Geo. IV. c. 16, c. 35, c. 95; 5 Geo. IV. c. 69; 7 & 8 Geo. IV. c. 24; 9 Geo. IV. c. 77; 1 & 2 Wm. IV. c. 25; 2 & 3 Wm. IV. c. 124; 3 & 4 Wm. IV. c. 80; 4 & 5 Wm. IV. c. 81; and 5 & 6 Wm. IV. c. 18, c. 62. The General Highway Act (5 & 6 Wm. IV. c. 50) also contains certain provisions applicable to turnpike-roads; but,

by the 113th section, does not extend to them except where expressly mentioned.

The trustees of turnpike-roads consist of persons nominated for that purpose in the Local Acts, who must be persons possessed of a certain property qualification, and of the justices of peace of the county or counties through which the roads pass; but all persons who are contractors or otherwise personally interested in the roads are disqualified from being trustees. (3 Geo. IV. c. 126, ss. 61, 62. *et seq.*) They are exempt from personal liability for acts done in pursuance of their powers, and may sue and be sued in the name of their clerk. (7 & 8 Geo. IV. c. 24, ss. 2 & 3; 3 Geo. IV. c. 126, s. 74.)

For the purpose of providing the necessary funds for making and maintaining the roads under their charge, trustees are usually empowered to receive moneys by way of subscription, upon which interest is payable to the subscribers out of the produce of the tolls which the trustees are by the local acts empowered to levy upon persons using the roads. Power is also given them to borrow money upon mortgage of the tolls. (3 Geo. IV. c. 126, s. 81.)

The enactments of the General Highway Act (5 & 6 Wm. IV. c. 50, s. 94), relating to summary proceedings before justices to compel repairs of highways, extend the jurisdiction of the justices to turnpike officers, where the highway out of repair is part of a turnpike-road; and while the liability to statute labour existed, it was exigible as well in respect of turnpike-roads as other highways; but the obligation of statute labour seems to be now entirely abolished by the repeal, in the 5 & 6 Wm. IV. c. 50, of the statutes under which statute labour was compounded for.

The amounts of toll exigible on any turnpike-road are regulated by the table of tolls which is contained in the local act by which the trust is constituted, and no tolls can be charged except such as are given by clear and unambiguous language in the Act; and there are various cases of exceptions.

Tolls upon turnpike-roads are in most cases made payable once a day only at any one gate, and payment at one gate generally gives exemption from payment at other gates within a certain distance. Post-horses having passed through any gate may return toll-free before nine o'clock in the morning of the following day, and when horses, having passed through a gate, return the same day or within eight hours, drawing a carriage, the toll paid on the horses is to be deducted. (3 Geo. IV. c. 126, ss. 29, 30.)

The General Turnpike Acts contain various provisions regulating the weights to be allowed to carriages passing along turnpike-roads, and imposing additional tolls for overweight, and also provisions regulating the amount of toll leviable upon waggons and carts, depending upon the construction, breadth, and tire of their wheels. (3 Geo. IV. ss. 7, 9, &c.; 4 Geo. IV. c. 95, ss. 2, 5, &c.)

Trustees are enabled to erect toll-gates and toll-houses, the property in which is vested in them, and are required to put up at every toll-gate a table of the tolls leviable thereat, and to provide tickets denoting payment of toll to be delivered to persons paying the same. (9 Geo. IV. c. 77, s. 3, &c.; 3 Geo. IV. c. 126, ss. 37, 60; and 4 Geo. IV. c. 95, s. 28.) The remedies for the recovery of tolls, and the penalties for evading them are contained in 3 Geo. IV. c. 126, s. 39, &c.

The trustees of every turnpike-road have power to enter into compositions for any term not exceeding a year at a time, with any person for tolls payable at any toll-gates under their management. (4 Geo. IV. c. 95, s. 13.) They may also, though not empowered to do so by the local act, reduce the tolls leviable under the authority of the act, and advance them again to any amount not exceeding the rates authorised by the act; provided that where money has been borrowed on the credit of the tolls, no reduction shall be made without the consent of the persons entitled to five-sixths of the money due. (3 Geo. IV. c. 126, ss. 43, 44.) Trustees may also farm out the tolls, though no express power be given in the local act, for any term not exceeding three years at a time. (3 Geo. IV. c. 126, ss. 55, 57, 58; 4 Geo. IV. c. 95, s. 52, *et seq.*)

The General Turnpike Acts contain numerous provisions with respect to the appointment and duties of officers, the meetings and proceedings of trustees, the making of causeways, ditches, and drains, the erection of milestones, the watering of roads, the prevention and removal of annoyances and nuisances, the marking of carriages and regulations as to drivers, the apprehension of offenders, the recovery and application of penalties, the limitation of actions, &c.; all which general enactments have been made from time to time for the purpose of shortening and lessening the expense of private road bills, so that almost the only objects which now require to be attended to in the construction of road acts are the appointment of trustees, the number and situations of toll-gates, and the amounts of tolls.

(Wellbeloved, *On Highways;* Burn's *Justice of the Peace*, by D'Oyly and Williams, art. 'Highways (Turnpike)'.)

TUTOR. By the Roman law a male under the age of fourteen, and a female under the age of twelve, were called Impuberes. A male who was impubes was incapable of doing any legal act by which he might be injured; his property was under the care of a tutor, who was so called from his office of defending or protecting (tuendo) the impubes in the transactions which were necessary for the administration of his property. The office of the tutor was tutela; and the impubes, who with respect to his tutor was called pupillus, was said to be in tutela, in tutelage. The tutor's business was to manage the property of his pupillus, and to add to his acts the legal sanction (auctoritas). The tutor's office as tutor was confined to the property of his pupillus, who, as to his person, was under the care (custodia) of his mother, if he had one; if not, we must suppose that the tutor would sometimes have the care of his person also. When the pupillus attained the age of puberty, he had the capacity of contracting marriage, and of doing other legal acts, and was freed from the control of his tutor. But though the law gave full legal capacity to the pupillus on his attaining puberty, it still gave him some further protection until he was twenty-five years of age. [CURATOR.]

A father could appoint by testament a tutor for his male children who were impuberes and in his power; he could also appoint a tutor for females who were in his power, even if they had attained puberty. He could also appoint a tutor for the wife of a son, who was in his power, and for his grandchildren, unless by his death they should come into the power of their father. A man could also appoint a tutor for his wife, who was in manu, for she stood to him in the legal relation of a daughter; and he could also give her the power of choosing a tutor. The origin of this testamentary power was probably immemorial custom, which was confirmed by the Twelve Tables. Tutors thus appointed were called dativi: those who were chosen by a wife under a power given by the husband were tutores optivi. If a testator appointed no tutor, the tutela was given to the nearest agnati by the Twelve Tables: such tutores were legitimi. If there were no agnati, the tutela belonged to the Gentiles so long as that part of the law (Jus Gentilitium) remained in force. When there was no person appointed tutor, and no legitimus tutor existed, a tutor was appointed for persons at Rome under the provisions of a Lex Atilia, and for persons in the provinces under the provisions of a Lex Julia et Titia.

Though a pupillus could not do any legal act which should be to his injury, he could enter into contracts which were for his benefit. The tutor's office was defined to consist in doing the necessary acts for the pupillus, and interposing or adding the legal authority to his proper acts (negotia gerere et auctoritatem interponere: Ulpiani *Frag.*, tit. xi., s. 25.) The doing of the necessary acts applied to the case of the pupillus being infans, that is, under seven years of age, absent, or lunatic (furiosus). When the pupillus ceased to be infans, he could do many acts himself, and the auctoritas of the tutor was only necessary to make them legal acts.

A tutor might be removed from his office if he misconducted himself in it.

The pupillus had also an action against him for mismanagement of his property. The tutor was allowed all proper costs and expenses incurred by him in the management of the affairs of the pupillus; and he could recover them by action. Security was required by the praetor from a tutor for the due management of the affairs of a pupillus, unless he was a testamentary tutor, for such tutor was chosen by the testator, and, generally, unless he was appointed by a magistratus, for in such case he had been selected as a proper person.

The tutela of women who were puberes was a peculiar Roman institution, founded on the maxim that a woman could do nothing without the auctoritas of a tutor. But there was this difference between the tutela of pupilli and of women who were puberes: in the case of pupilli the tutor both did the necessary acts, particularly when the pupillus was infans, and gave his auctoritas; in the case of women who were puberes, the tutor only gave his auctoritas.

The Vestal virgins, in virtue of their office, were exempted from tutela. Both libertinae and ingenuae were exempted from it by acquiring the Jus Liberorum, which was conferred by the Lex Julia et Papia Poppaea on women who had a certain number of children. The tutela of a woman was terminated by a marriage by which she came in manum viri; and also by other means.

A woman had no right of action against her tutor as such, for he did not do any act in the administration of her property: he only gave to her acts their legal validity by his auctoritas.

The subject of the Roman tutela is one of considerable extent, and in the case of women it involves some difficult considerations.

TWELVE TABLES. [ROMAN LAW.]

TYRANNY. [TYRANT.]

TYRANT. The words tyrant and tyranny come respectively from the Greek *tyrannos, tyrannis* (*τύραννος, τυραννίς*) through the Latin. The earliest use of the word tyrannus is perhaps in the Homeric hymn to Ares (Mars). It is used by Herodotus and Thucydides, to signify a person who possessed sovereign power and owed it to usurpation, or who derived it from a person who had obtained such power by usurpation, and who maintained it by force. Pisistratus, who usurped the supreme power at Athens, B.C. 560, was succeeded in it by his eldest son Hippias. A Greek tyrant who obtained sovereign power was a monarch in the proper sense of that term. [MONARCH.] If he acquired a power which was somewhat less than sovereign, he was not monarch; but in either case he would perhaps be called tyrannus; and accordingly the word does not express with accuracy the degree of political power, but it rather expresses the mode of acquisition, or refers to its originally illegal origin. The word, as used by the older Greek writers, did not carry with it any notion of blame: it simply denoted a person possessed of such political power as above mentioned, whether he used it well or ill. Many so-called tyrants were popular, and were men of letters, and patrons of literature and art. They might appropriately be called kings or princes in the modern acceptation of those terms, except perhaps that the uncertainty of their tenure of power and the want of a recognised hereditary succession in the tyranny, or a regular mode of succeeding to it, would render the application of any modern name inappropriate.

In some passages in Herodotus (iii. 80, &c.; vi. 23, &c.; vii. 165) the words monarch and tyrant are used as synonymes to express an individual who possessed sovereign power; and in one instance at least, vi. 23, 24) he calls the same person king (*βασιλεύς*) and monarch (*μούναρχος*). Aristotle (*Polit.* iii. 7), after stating that a polity or government must either be in the hands of one or of a few, or of the many, adds that we are accustomed to call a monarchy which has regard to the interests of all members of the state a kingship (*βασιλεία*); and that a monarchy which has regard only to the interests of the monarch is a tyranny. In the case of Miltiades, who became tyrant of the Thracian Chersonesus, Nepos (*Miltiad.*) remarks that "all persons are considered and called tyranni who enjoy lasting power in a state which has once been free." This definition seems to express pretty clearly the old Greek notion of a

tyrant, but it leaves out of consideration the mode in which the power was acquired. Nepos remarks that Miltiades was called "Tyrannus sed justus," "tyrant, but tyrant in constitutional form" (not *just*), for he had been elected by the people. Accordingly, he says in another place, he had the dignity or rank of king without the name. This is consistent with Herodotus (vi. 36), who says that the people made Miltiades tyrant (τύραννον κατεστήσαντο).

Few of the Greek tyrannies lasted long, and the conduct of those who held this power was generally such as to attach in the course of time an odious signification to the word tyrant; but it does not exactly appear when this change in the signification of the word was introduced. Many of the old Greek tyrannies were abolished in part by the influence of Sparta, the constitution of which was hostile both to monarchy and democracy. But we read of tyrannies so called among the Greeks in the time of Philip and Demosthenes. It was, according to the expression of Isocrates, one of the great merits of Evagoras, tyrant of Cyprus, that he raised himself from a private station to the rank of tyrant (τύραννος), which he expresses in another place as the acquisition of a kingship. (*Evag. Encom.*, c. 25, 26.)

The Roman writers often use tyrannus as simply equivalent to king, especially the poets. Cicero couples dominus and tyrannus, thereby intending to use tyrannus in a bad sense, which was perhaps the more common acceptation of the word among the Romans in his time. Seneca seems to refer to the original sense of tyrannus when he says, "A tyrant is to be distinguished from a king (rex) by his conduct, and not by the name: for Dionysius the elder (who was called a tyrant) was a better man than many kings; and Lucius Sulla may be appropriately called a tyrant, for he only ceased from slaughter when he had no more enemies to kill." (Facciol., *Lex.*, "Tyrannus.") According to this, a man might be called tyrant without being a cruel governor, for there were instances of persons so called who had used their power with moderation; and yet a man who had not the title of tyrant might be called tyrant on account of his cruelty. It seems as if Seneca was trying to distinguish the popular use of tyrant in his time from its earlier historical signification. Trebellius Pollio has written the 'History of the Thirty Tyrants' who sprung up in the Roman empire in the time of Gallienus and Valerian. These so-called tyrants were not more tyrannical, in the modern sense of the term, than many Roman emperors.

The use of the modern words tyrant, tyranny, tyrannical, has been as vague as that of most other political terms. The term tyrant is properly limited to the government of one man who is sovereign, and the popular application of the term expresses disapprobation of his conduct. Aristotle's definition of tyranny would apply well enough to a modern tyrant: he is a sovereign who looks only to his own interest, or what he considers his own interest, and cares not what he does in order to accomplish his objects. But if he were a wise sovereign, and administered the state solely with a view to his real interest, that would be found in the main to coincide with the interest of the people, and he would not be called a tyrant, though perhaps he would come within Aristotle's definition. But Aristotle's language, though apparently precise, is not so; and he means by a tyrant administering the state for his own interest, that he also administers it to the detriment of the people. As the mass judge of things by their results, a sovereign would now be called tyrannical whose administration should render his people unhappy; at least he would run great risk of having this odious epithet applied to him, whatever was the goodness of his intentions, if he failed to satisfy the people. The word tyrannical is now often applied to acts of governments which are not monarchies; but this is an improper use of the word. We may say that the laws enacted by the sovereign power in Great Britain are sometimes impolitic, unwise, or injurious to the state generally; they may also be sometimes called oppressive; but they cannot with propriety be called tyrannical, though such an expression may be and often is used in the vulgar sense of characterising a law which for some rea-

son the person who uses the term does not like.

U.

UDAL TENURE. The Norwegian term 'Udal,' or 'odel,' appears to be the same as the German 'adel,' or 'noble.' Tenure is an improper name as applied to Udal land, for the land so called in Norway is not held by any tenure, but is free from all services. There is neither superior nor vassal, nor any of the consequences of such feudal relation as exists in many countries in Europe. (Laing's *Norway*, p. 205.)

UMPIRE. [ARBITRATION.]

UNDERWRITER. [SHIPS, p. 706.]

UNFUNDED DEBT. Exchequer bills form the principal part of the unfunded public debt. These bills are issued under the authority of parliament for sums varying from 100*l.* to 1000*l.*, and bear interest. They were first issued in the reign of William III.; and although their amount has since varied greatly at different times, the convenience which they afford to individuals and their advantage to the public have been such as to cause their constant issue. Their convenience to individuals arises from the circumstance of their passing from hand to hand without the necessity of making a formal transfer, of their bearing interest, and of their not being subject to such violent fluctuations as sometimes occur in the prices of the funded debt. This comparative steadiness in value is caused by the option periodically given to the holders to be paid their amount at par, or to exchange them for new bills to which the same advantage is extended; besides this, when a certain limited period has elapsed from the date of their first issue, they may be paid to the government at par in discharge of duties and taxes. The amount of premium that may have been paid at the time of purchase is consequently all that the holder of an exchequer bill risks in return for the interest which accrues during the time that it remains in his possession. The advantage to the public consists in the lower rate of interest which they carry compared with the permanent or funded debt of the nation, to which, however, they must in this respect bear some certain proportion. When the price of the public funds is high, the interest upon exchequer bills will be low; and if the funds should fall in price so as to afford a much more profitable investment than exchequer bills, the rate of interest upon these must be raised in order to prevent their payment into the exchequer in discharge of duties: a thing which would embarrass the financial operations of government. When first issued in the reign of William III., the interest borne by exchequer bills was 5*d.* per 100*l.* per diem, being at the rate of 7*l.* 12*s.* 1*d.* per cent. per annum. In the same reign the interest was afterwards lowered to 4*d.* per 100*l.* per diem, or 6*l.* 1*s.* 8*d.* per cent. per annum; and in the following reign the rate was still farther reduced to 2*d.* per diem, or 3*l.* 0*s.* 10*d.* per cent. per annum. During the greater part of the war from 1793 to 1814, the rate of interest upon these securities was fixed at 3½*d.* per cent. per diem, or 5*l.* 6*s.* 5½*d.* per cent. per annum. Since the last-mentioned year the rate has been progressively reduced to 2½*d.*, 2*d.*, and 1½*d.* per 100*l.* per diem, at which last rate they were in the market at the time of the derangement of the currency which was experienced in the beginning of 1837. Under these circumstances, it was considered important as far as possible to relieve the Bank of England, by which establishment a very large proportion of these securities were then held, and to place it in the most favourable position for affording relief to the commercial classes; and accordingly the rate of interest upon exchequer bills was raised to 2½*d.* per cent. per diem. The last exchequer bills which were issued (in June, 1846) bore interest at 1¾*d.* per 100*l.* per day.

In periods of commercial pressure, advances have been made to merchants, upon the security of goods, by the issue of exchequer bills. A more permanent occasion for their issue, apart from the immediate wants of the government, has been the desire of aiding individuals or private associations in the prosecution of works of public utility, such as canals, roads, &c. In these cases the rate of interest charged to the borrowers is some-

what greater than that borne by the bills, and the difference has been applied to defray the expense of management on the part of the public.

The amount of exchequer bills "outstanding and unprovided for" at the end of each of the under-mentioned years was as follows:—

	£.
1836 . . .	28,155,150
1838 . . .	24,026,050
1840 . . .	21,626,350
1842 . . .	18,182,100
1844 . . .	18,404,500

UNIFORMITY, ACT OF. [BENEFICE, p. 340.]

UNIGENITUS BULL. [BULLS, PAPAL.]

UNION, IRELAND, SCOTLAND. [COMMONS, HOUSE OF, pp. 584, 590; PARLIAMENT, p. 455.]

UNITED STATES OF NORTH AMERICA, *Government of.* The United States, at the time of the formation of the General or Federal government in 1787, as well as at the time of their separation from Great Britain, 1776, consisted of thirteen distinct political communities,—Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. The number is now increased to twenty-seven by the successive additions of the following States: Vermont, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Maine, Missouri, Arkansas, Michigan, and Florida. In the year 1845 Texas was admitted into the Union as a State and member thereof.

They formed a Federal Government for defence from foreign aggression, and tranquillity at home; to encourage and protect commerce; and for a few objects of internal legislation in which uniformity among the States was desirable, and an obvious and direct common interest existed. To the separate States was left the legislation which concerns the law of property, the punishment of offences, the administration of justice, and the exercise of all powers over the territory and the citizens except the few which have been either expressly withdrawn from the States, or delegated to the General government.

Both the General and State governments are essentially democratic. In both it is assumed that the interest of the majority is the proper end of government, and that the wishes of the majority truly indicate that interest.

By the written instrument called the Constitution of the United States, the power of the General government is divided into three branches; the legislative, executive, and judicial.

The legislative power is vested in two Houses. One, called the House of Representatives, is chosen every second year by those whom the laws of each State make legal voters. The number of representatives is not fixed, but has gradually increased from 65, in 1789, when the constitution went into operation, to 224 and two delegates. The two delegates are for the territories of Wisconsin and Iowa respectively. The representatives must be apportioned among the States according to their population, deducting two-fifths of the slaves in the estimate; and for the purpose of correcting the inequality of distribution arising from the variations in the relative numbers of the States, a census of the inhabitants is to be taken every ten years, at which time a new apportionment takes place, and a new ratio of population to each representative may be then also adopted, or the former one be continued. The act of Congress of 1842 declares that there shall be "one representative for every 70,680 persons in each State, and one additional representative for each State, having a fraction greater than one moiety of the said ratio, computed according to the rule prescribed by the constitution of the United States."

The Senate consists of two members from each State, chosen by its legislature, and consequently the whole number is now 54. One-third of the members is elected every second year, so that each member holds his seat for six years. In both houses the members are re-eligible.

All acts of legislation require the concurrence of both Houses, which constitute the Congress of the United States. They

have the power of levying taxes of every kind for all national objects pursuant to the powers given them by the constitution; of regulating commerce, foreign and domestic; of coining money; fixing the standard of weights and measures; establishing post-offices and post roads; prescribing a uniform rule of naturalization, and a uniform bankrupt law; creating and supporting an army and navy; of declaring war; defining and punishing treason, piracy, counterfeiting, and other offences arising under the constitution and acts of Congress; exercising exclusive legislation in the district of Columbia in which Washington, the seat of the General Government, is situated, and in forts, arsenals, dockyards, and all the territories belonging to the General Government; and the power of admitting new States into the Union.

The Congress is, by the same instrument, prohibited from laying any tax upon exports; from giving a preference to the ports of one State over those of another; from laying any direct tax except according to the number of inhabitants in each State who are represented in Congress; from suspending the writ of *habeas corpus*, except in case of rebellion or invasion; from passing any bill of attainder or *ex post facto* law; from granting, or permitting to be granted, any title of nobility; or from passing any law to restrict the freedom of religion, of speech, or the press.

Congress must assemble at least once in every year, which of late has been on the first Monday in December. The members of both Houses receive eight dollars for each day's attendance on Congress, and also for every 20 miles which they must travel to the seat of Government at Washington, and in their return home.

The powers of this body to give special encouragement to manufactures, to make roads and canals, to establish banks and other corporations, and to exercise some other legislative functions, are contested points in the construction of the federal constitution; and these questions often furnish the real or ostensible grounds of dispute between political parties.

Under the power to give special encouragement to manufactures, the Congress has passed acts which lay duties and imposts on the importation of foreign commodities, and these duties and imposts have been laid not merely for the purposes of revenue, but for the protection of domestic manufactures. Such duties for the protection of domestic manufactures are described in the ordinance of the Carolina Convention (about fourteen years ago) as "bounties to classes and individuals engaged in particular employments at the expense and to the injury and oppression of other classes and individuals." The object of the Carolina Convention was to *nullify* the revenue laws of the United States; and the verb nullify gave birth to the new word Nullification. Those who maintained this doctrine maintained that a State, which is a member of the Federal Union, can *nullify* certain acts of the General Government. The general doctrine of nullification was laid down in the following terms: "A State has a right in her sovereign capacity in Convention to declare an unconstitutional act of Congress to be null and void; and such declaration is obligatory on her citizens and conclusive against the General Government; which would have no right to enforce its construction of its powers against that of the State." This doctrine of Nullification was much discussed at the time in the United States. The objections to it, and the difficulty or rather impossibility of the process which the nullifiers of Carolina proposed for the purpose of getting rid of the revenue laws of the United States, are shown in an article in the North American Review on Nullification (vol. 36, Jan. 1833).

The executive power is vested in a President, who is commander-in-chief of the army and navy, collects and disburses the revenue according to law, and makes treaties with foreign nations, but in the exercise of the treaty-making power, the concurrence of two-thirds of the senators present is required. He nominates and, with the advice and consent of the Senate, appoints ambassadors, other public ministers, and consuls, and judges of the Supreme court, and other inferior officers. He has also a qualified negative on the

laws enacted by the two Houses, which becomes absolute unless it is subsequently countervailed by two-thirds of each House. He is provided with a ready-furnished house, and his salary is 25,000 dollars. He is chosen by a determinate number of electors; the voters in each State elect as many electors as are equal to the members which such State sends to both Houses of Congress. Every State has its own electoral college, and all the colleges give their votes on the same day, and by ballot. The votes are sent sealed to the President of the Senate. If no person has a majority of the electoral votes, the election devolves upon the House of Representatives, when all the representatives of a State give but one vote. The president must be thirty-five years of age, and he is re-eligible for life, but the usage has been never to elect the same person for more than two terms of four years each.

The executive business is distributed among four departments; that of the state, of the treasury, of war, and of the navy; the four secretaries of which, with the attorney-general, reside at Washington, and compose the president's cabinet council.

The vice-president is chosen at the same time and in the same way as the president, to whose office, if vacated during the term for which he was elected, he succeeds. His only function, in the mean while, is to preside over the deliberations of the Senate, in which he has a casting vote, which is given when the votes of the senators are equal. His salary is 5000 dollars.

The judicial power is vested by the constitution in a supreme court, and such inferior tribunals as Congress may from time to time establish. The supreme court consists of a chief-justice and eight associate justices. It sits in Washington, and has one session annually, which commences on the first Monday in December. The United States are divided into nine judicial circuits, in each of which a circuit court is held twice every year, for each State within the circuit, by a justice of the supreme court assigned to the circuit, and by the district judge of the State or district in which the court sits. There are also thirty-four district courts, each State containing one, and some of them two; and each of these district courts has a separate judge, with some few exceptions, where one judge presides in several district courts in the same State. The several courts have either original or appellate jurisdiction in all admiralty cases, breaches of the revenue laws, controversies between citizens of different States, or citizens and foreigners; cases affecting ambassadors and other public ministers; and in all cases criminal or civil, in law or equity, arising under the constitution or the laws of the United States. The judges all hold their offices during good behaviour; and their salaries, which vary from 5000 to 1000 dollars, cannot be diminished even by the legislature, during their continuance in office. All public officers are removable by impeachment, and the Senate is the tribunal for the trial of impeachments; but the judgment in these cases extends no further than to removal from office.

The constitution provides for its own amendment, whenever such amendment shall be proposed by two-thirds of both Houses of Congress, or by a convention called on the application of two-thirds of the States: but in either case, the amendment must be ratified by three-fourths of the States to give it effect. There have been twelve amendments in fifty years: ten were made immediately after the constitution went into operation, and were meant to provide some additional security for the protection of the rights of individuals, or of the States; the eleventh was for restricting the liability of a State to be sued in a federal court; and the twelfth altered the mode of electing the president and vice-president.

This instrument also imposes express restrictions on the state governments. They cannot enter into a treaty or alliance; coin money; emit bills of credit;* make anything but gold and silver a legal tender; pass a bill of attainder or *ex post*

* This phrase is borrowed from the Articles of Confederation of the old Congress. The paper money issued by that body was thus designated.

facto law; impair the obligation of contracts; grant any title of nobility; lay a duty either on imports or exports; nor can they, without the consent of Congress, enter into a compact with another State; keep troops or ships of war in time of peace; nor engage in war, except in case of invasion or of similar urgency.

The State governments, with a few great features in common, have great diversities in their laws, and in their written constitutions. In all of them, the legislative, executive, and judicial powers are separate. In all the legislature consists of two branches; one usually called the senate, and a more numerous branch, which is variously designated.

The time for which the senators are elected varies from one to five years. In the more numerous and popular branch the members are elected annually, except in South Carolina, Tennessee, and Missouri, where they are elected for two years. The number of members in the popular branch varies considerably. The number of the senate is usually from about one-fourth to one-half the number of the other branch.

In all the States the executive power is vested in a governor, who, in some of the States, is assisted by a council. In some he has the power of appointment to state offices; in others, merely the power of nominating persons to his council; but in most States, he has neither the one nor the other. He is chosen by the people in all the States, except in Maryland, Virginia, North and South Carolina, in which he is chosen by the legislature. His term of service varies in the different States from one to four years, and he is in some States re-eligible, and in others not.

The judicial systems are yet more various. In the greatest part the judges hold their offices during good behaviour. In the others they receive their appointment for a fixed term, varying from seven years to a single year. In New York, they retire from office when they reach the age of sixty. In some States they are appointed by the governor and council; and in others, by the legislature. In some they are removable only by impeachment; in others, on the vote of two-thirds of the legislature. In some, the salaries are liberal; in others, very small. Some States have separate Chancery courts; whilst in others, the courts of Common Law exercise Equity jurisdiction. In some, the court of Last Resort exercises no other than appellate jurisdiction; in others, the judges of separate courts unite to form an Appellate court; and in others again, the judges, combined with the senate, form a special court of Appeals.

In fourteen of the States negro slavery has the sanction of the law. These are the twelve States lying south of Pennsylvania and the river Ohio, together with the States of Missouri and Arkansas. In the other thirteen, slavery either never had existence, or has been abolished, except as to those who were slaves at the time of the abolition.

The right of suffrage has various restrictions in the different States as to property, residence, and length of citizenship; but it is now no where limited to an interest in land. In all the States the votes are given by ballot, except in Virginia, Kentucky, and Arkansas, where they are given orally. In all, except Virginia, lands can be taken in execution for debt, in the same way as personal property. The common law of England is the law of every State, so far as it has not been changed by the legislature, except in Louisiana, where the laws of every description have been digested into one code.

The revenues of the several States vary according to their population and wealth. Some of them, by judicious expenditure on canals and other public improvements, by the proceeds of public lands, and other sources, have a sufficient revenue for the ordinary expenses of the government, without the aid of taxes. In general, however, a sum equal to the annual expenditure is raised by taxes within the year, in which case it rarely averages more than a dollar for each inhabitant, and sometimes it is not one-fourth of that sum. But besides the taxes paid into the state treasuries, the county courts of the state or other corporate bodies have the power of levying money for special local objects, as for making and repairing roads, for providing court-houses and

jails, for the support of schools, &c., the amount of which taxes sometimes equals, and even exceeds the State tax.

Besides the twenty-seven States which constitute the Federal Union, there are territories beyond their limits which are immediately subject to the general government, though they have no participation in its political power. Over these the legislative power of Congress is supreme; but it is so exercised as gradually to fit them for admission into the Union. At first they are administered by a governor, appointed by the federal executive. When, by the progress of the settlements, they are deemed fit for it, they are advanced to the second stage of their probation. Of late years, the rights of the second stage are conferred on the territories at the time of their creation. They are then allowed to elect their own local legislature—the executive power continuing as before—and to send a delegate to Congress, who has the privilege of speaking, but not of voting: and lastly, when their numbers justify it, and Congress approves, they are made States and are admitted into the Union, and become like the other States. There are now two of these territories in the second stage: Wisconsin and Iowa.

The revenue of the general government arises from the sale of public land, customs duties, and the post-office. The whole produce of the post-office department is absorbed by the expenditure in that department. The sale of public land has produced for many years a large revenue. During the three years preceding 1838 there were sold more than 38,000,000 acres, the purchase money of which was 48,175,160 dollars. But the excessive issues of the banks afforded both the temptation and the means to extensive speculations in these lands, and made the amount sold much greater than it had ever been before, or is likely to be again. The produce of the sales of public land was in 1838 less than 4½ millions of dollars; in 1839 less than 6½ millions; in 1840 less than 3 millions; in 1841 less than 1½ millions; in 1842 less than 1½ millions: in 1843 a little above 2 millions; and in 1844 also a little above 2 millions of dollars.

The public land consists *first* of the lands which, having been once national domain by purchase, have never been sold or ceded by the general government, and of which there are yet large bodies in most of the Western States, and in all the territories; and *secondly*, of those lands in the unsettled western territory, which have been more recently purchased of the Indians. The system adopted by Congress for disposing of these lands is well contrived to facilitate settlements, to prevent disputes about titles or boundaries, and to render extensive purchases by speculators impracticable. The lands are accurately surveyed by the government; and are then laid off into ranges of townships by true meridian lines. Each township is exactly six miles square, and contains of course 23,040 acres. It is divided into 36 sections of a square mile each, which sections are again subdivided into four quarter sections, each of 160 acres, and sometimes into half-quarter and quarter-quarter sections. The space between these squares and the margin of a river, or Indian boundary, is laid off into the smaller parts of a section. When thus laid off, the lands are sold from time to time at public auction, provided they bring the minimum price, which is a dollar and a quarter per acre. Formerly the minimum price was two dollars, and the lands were sold partly on credit; but in 1820, to avoid the present inconvenience and future danger of thus placing the government in the delicate relation of creditor to so many of its citizens, Congress in 1820 reduced the minimum price, and abolished the credit. The public land to which the Indian title has been extinguished, and which was unsold on the 1st January, 1832, was 227,293,884 acres. The business of surveying and disposing of the public lands is managed by a general land-office at Washington, and numerous land-offices distributed among the western states and territories, all which are under the control of the Treasury department.

The customs duties are the chief source of revenue to the United States. The total revenue of the United States for the fiscal year ending June 30, 1844, was

a little more than thirty millions of dollars, with a balance in the Treasury of nearly 10½ millions on the 1st July, 1843. The expenditure for the year ending June 30, 1844, was near thirty-three millions, of which the war department cost above eight millions, and the navy department cost nearly six and a half millions of dollars.

(*Geography of America*, Library of Useful Knowledge; *American Almanac* for 1846.)

UNIVERSITIES are lay corporations, which, since the twelfth century, have had the charge of educating the members of the learned professions throughout Europe and the colonies founded by European states. The three oldest learned institutions to which the name University can with propriety be applied are those of Paris, Bologna, and Salerno.

It is impossible to fix a precise date at which the educational institutions of Paris can be said to have assumed the form and name of a university. As for the name (*universitas*), it was not confined in the middle ages to scientific bodies; it was used in a sense equivalent to our word *corporation*. [UNIVERSITY.] There were "universities of tailors" in those days. It was long before the name obtained its present limited acceptation. The school of Bologna was a 'universitas scholarium,' that of Paris a 'universitas magistrorum,' because the former was a corporation of students, the latter of teachers. The oldest printed statutes of the university of Bologna are called 'Statuta et Privilegia almae Universitatis Juristarum Gymnasii Bononiensis;' and in some universities we find a 'universitas juristarum' and a 'universitas artistarum' side by side: from which it appears that 'universitas' at one time approached nearly to the meaning of our word 'faculty.' What we now term a university was designated indifferently 'schola,' 'studium generale,' or 'gymnasium.' The term 'academia' has also been sometimes applied to universities, though academy has now a different meaning.

The oldest document in which the designation 'universitas' is applied to the university of Paris, is a decretal of Innocent III., about the beginning of the thirteenth century. But as early as 1180 two decretals had been issued by Alexander III., the first of which ordained that in France no person should receive money for permission to teach. The glossa of Vicentinus says, that this prohibition was directed against the chancellor of the university of Paris; and the second decretal alluded to exempts the then rector, Petrus Comestor, from the operation of the first; and much earlier than any legislative provisions of popes or kings we find the foundations of the university laid.

To almost every cathedral and monastery of Europe there had been, from a very early period, attached a school, in which all aspirants to priestly ordination, and such laymen as could afford it, were instructed in the *Trivium* and *Quadrivium*. It appears from the letters of Abelard (died 1142), and from other contemporary sources, that the poorer establishments intrusted the conduct of this school to one of their number called the Scholasticus; and that the wealthier bodies maintained a Scholasticus to instruct the junior pupils in grammar and philosophy, and a Theologus to instruct the more advanced in theology. About the time of Abelard the great concourse of students who flocked to the episcopal school of Paris appears to have rendered it necessary to assemble the two classes of pupils in different localities; the juniors were sent to the church of St. Julian, while the theologians remained in that of Notre Dame. All who had studied a certain time, and undergone certain trials, were entitled to be raised by the rector of the schools to the grade of teachers. This was done by three successive steps. The candidate was first raised to the rank of master, in which he acted for a year as assistant to a doctor (or teacher); then to the rank of baccalaureus, in which he taught for a year, under the superintendence of his doctor, pupils of his own; lastly, to the grade of independent doctor. The number of students rendered the profession of a teacher at Paris lucrative, and many from all nations embraced it. According to the custom of those unsettled times, they gradually

formed themselves into a kind of corporation for mutual support. The corporation consisted of the teachers of all the three grades, and stood under a rector elected by themselves. According to an agreement entered into in 1206, the rector was elected by the residents of the four nations —French, English or German, Picards, and Normans. Before this time, in 1200, Philip Augustus had confirmed the exclusive control of the rector over all students and teachers. The local separation of the artists from the theologians would have been of little consequence, but for the rapid progress which the Aristotelian philosophy made during and immediately after the life of Abelard. The speculations into which studious men were led by the writings of Aristotle necessarily led them to deal with topics which had hitherto been conceived to lie within the exclusive domain of theology. The consequences were frequent and bold attempts by individuals to modify the received doctrines of the church, clamours about heresy, persecutions, and counter-persecutions. All these contributed to bring about a tacit compromise between the professional theologians and the admirers of speculative philosophy: the former were left in possession of the pulpit and chairs of theology; the latter confined themselves ostensibly to literature and philosophy, and sought to avoid scandal by rarely overstepping the bounds of abstract inquiry. The progress of this tacit agreement may be traced in the writings of the learned from the time of Abelard down to that of Erasmus; under it grew up a class of literati, who may be called, although many of them took orders, secular scholars. It was the same incompatibility of the free spirit of speculative inquiry with the stability of a dogmatic theology which led to this compromise, that embittered the dispute about the claim of the mendicant orders to establish chairs of theology in the university of Paris about the middle of the thirteenth century. This controversy ended in the secession of the doctors of theology from the university, as it had for some time been called, and their incorporating themselves into a separate college or faculty. Their example was followed not long after by the doctors of canon law and medicine, who formed themselves into separate faculties. These faculties consisted exclusively of the actually teaching doctors (doctores regentes) of these three branches of knowledge. The masters and bachelors remained members of the university proper, which, from the secession of the theologians, canonists, and doctors of medicine, came in time to be called the Faculty of the Artists. From this period the university consisted of seven bodies or subincorporations—the four nations under their procurators, and the three faculties under their deans. The rector was the head of the university; he was elected by the procurators of the old university; no doctor of theology, canon law, or medicine could be elected or take part in the election. At first the rector was chosen by the procurators, but latterly by four electors, specially elected by each nation for that purpose. The Prevôt of Paris (so long as that officer retained any authority) was the conservator of the royal privileges in the university; the bishops of Meaux, Beauvais, and Senlis, of the papal privileges. In respect to criminal jurisdiction, the university was immediately under the king, till A.D. 1200, when its members were transferred to the episcopal court of Paris: about the middle of the fifteenth century they were transferred to the Parliament of Paris. In regard to civil jurisdiction the University was originally under the bishop; in 1340 it was transferred to the court of the Prevôt of Paris; when the Chatelet succeeded to the judicial functions of the prevôt, the university was transferred to that court. The rector, with the procurators and deans, formed a court, which had jurisdiction in all complaints against teachers for incompetency or neglect of duty; and against students for disobedience to their teachers, the rector, or the discipline of the university, and in all cases between students, lodging-keepers, booksellers, stationers, &c. From the decisions of the rectorial court there was an appeal to the university, and from it to the Parliament of Paris. Each faculty (that of the artists included), had its own common school. In the faculty of canon-

ists there were six professors (or doctores regentes); the number in the other faculties varied. At an early period colleges were established within the University of Paris by private families or religious orders. Originally they were intended exclusively for poor scholars, who were to live in them subject to a certain discipline. By degrees, as more numerous and able teachers were employed in these colleges, they assumed the character of boarding-houses for all classes of students. In the fifteenth century the students who did not reside in any college had come to be regarded as exceptions from the general custom, and were nicknamed "martinets." The College of the Sorbonne (founded in 1250) was commonly regarded as identical with the theological faculty, because the members of the one were most frequently members of the other also. The promotions however continued to be made by the officers of the university, although the charge of education had been in a great measure engrossed by the colleges. Degrees were conferred in the faculties of theology, canon law, and medicine, by the deans, with the concurrence of the chancellor of the Cathedral of Notre Dame; in the faculty of artists, by the rector, with the concurrence either of the chancellor of Notre Dame or the chancellor of St. Geneviève.

The oldest authentic document relating to the university of Bologna is the privilege granted by the Emperor Frederick I., at Roncaglia, in November, 1158, to all who travel in pursuit of learning, in which the professors of law are mentioned in terms of high encomium. Bologna is not named in this instrument, but history mentions no other law-school as existing at that time. The contents of this privilege are two-fold: foreign scholars are declared to stand under the emperor's immediate protection, and a special jurisdiction (their teachers, or the bishop of the city) is constituted to judge in all complaints against them. It seems universally admitted that the earliest teacher of civil law at Bologna was Irnerius: he is said to have been originally a teacher of philosophy, but to have acquired such a knowledge of Justinian's compilations that he was invited by the Countess Matilda to expound its doctrines from the professional chair. Matilda died in 1115: between 1113 and 1115 the name of Irnerius appears in a legal document as "causidicus" for the countess. From 1116 to 1118 he appears to have been employed in weighty missions by the Emperor Henry V. Under the Emperor Frederick "the four doctors" of Bologna were selected to investigate the prerogative of the crown, in order to determine how far the privileges claimed by the Lombard towns were usurpations. These circumstances show that the reputation for legal knowledge acquired by the law-teachers of Bologna had proved an introduction to state employments, honours, and emoluments; and this attracted to the city in which they taught a large concourse of the most intelligent and aspiring minds of Europe. The reputation of having studied at Bologna was a passport to office throughout Christendom. The earliest statutes and charters of the University of Bologna are compacts entered into by the students for mutual support and assistance, and immunities granted them by the popes and emperors. The university of Paris was originally an association of teachers; it was a corporation of graduates: the university of Bologna was originally an association of students who had repaired from distant lands to avail themselves of the instruction of a few celebrated teachers; it was a corporation of students. Disputes between the magistrates of the city, and between the students and professors, which occurred about 1214, are the first occasions on which we hear of a rector. From the history of these controversies it appears that the students had previously been in the habit of electing the rector, and that the right was confirmed to them for the future. At first there was merely a school of law in Bologna, and the jurists constituted the university, or rather the two universities of the Citramontani and Ultramontani. In course of time teachers of philosophy and medicine settled in Bologna, and the scholars of each class attempted to form a university: their right to do so was successfully contested by the jurists in 1295, but in 1316 they were allowed to elect a

rector of their own. They called themselves "philosophi et medici," or "artistae." In 1362 Innocent VI. founded a school of theology at Bologna. From this time therefore there were four universities in Bologna: two of law (which however were so intimately connected, that they are generally spoken of as one), one of medicine and philosophy, and one of theology. Each of these had its own independent constitution. That of the law university is best known, and agrees in its leading features with the others. The "universities" consisted of the foreign students, who were admitted upon the payment of twelve soldi entry-money, and obliged to renew annually their oath of obedience to the rector and the statutes of the university. The Bolognese students could neither hold offices in the university nor vote in its assemblies. The foreign students were divided into Citramontani and Ultramontani: the former were divided into seventeen nations, the latter into eighteen. The rector was chosen annually from among the students by his predecessor in office, the rector's council, and a number of electors chosen by the nations. A rector was taken from each nation in rotation. The council consisted of at least one representative of each nation: some had two. The university also elected annually a syndic, to act for them in courts of law; a notary; a massarius, or treasurer (chosen from among the town bankers); and two bidelli. The rector claimed exclusive jurisdiction in all civil cases in which one or both of the parties were students, and in criminal cases in which both were students. The professors were elected by the students, to whose body they were reckoned, and all whose privileges they enjoyed, except a vote at elections. They stood under the jurisdiction of the rector, who could fine or suspend them. The degree of Doctor was conferred by those who had previously obtained it: it was held to confer the privilege of teaching everywhere, the power of discipline over the doctor's own pupils, and the right to take part in the conferring of all the degrees. At first there were only doctors of civil law: the doctors of canon law appear later, and were for a long time less respected. In the thirteenth century the university began to create doctors of medicine, of grammar, of philosophy and arts, and even of the notarial art. Any student who had studied five years might be licensed by the rector to expound a single title, or if he had studied six years, to expound a whole book of the Pandects. He was termed a licentiate; and after he had performed his task, he was declared a baccalaureus. Salaried professors appear in Bologna for the first time about 1279. The doctors taught in their own houses or in halls hired for the purpose: their method of tuition was by lectures, examinations, and disputations.

The history of the university of Salerno is much more obscure than the histories of the universities of Paris and Bologna. Ordericus Vitalis, whose annals close with the year 1141, speaks of Salerno as a place long eminent for its medical schools. Its most celebrated teacher, Constantine of Carthage (died 1087), was a privy councillor of Louis Guiscard. This school was still flourishing in 1224, when the university of Naples was established. All that can be inferred from these scanty notices of the school of Salerno is, that the scientific study of medicine was making rapid strides about the same time that law began to be more systematically studied, and philosophical and literary pursuits to be regarded as the profession of a class whose members might or might not be priests.

This sketch of the early constitution of the universities of Paris and Bologna will assist a person in acquiring a more exact notion of the original constitution of other universities.

The growth of universities throughout Europe was rapid. Before the Reformation they were established in Italy, France, the Germanic Empire, the Peninsula, Great Britain, and even among the Sclavonic nations east of the Germans. There were numerous universities established in Italy previous to the year 1500, besides the three already named, within the limits of the Germanic Empire, which then extended over many provinces now incorporated into France, and over the Netherlands: in Great Bri-

tain; in Spain and Portugal; in Sweden at Upsala in 1476; and at Copenhagen in 1479.

In all of these institutions we recognise the leading features of Paris or Bologna. All of them, apart from the consideration of their academic character, are privileged corporations, with an independent jurisdiction more or less limited, and the power of making bye-laws. In most of them the division of the members of the corporation into nations prevails or did prevail. In all of them the faculties of philosophy (or arts), theology, law (civil and canon), and medicine, are more or less fully developed. Some contain within them all the faculties; some only two or more. Almost all have a faculty of arts, which, even where it is politically the most powerful (as in the university of Paris), is regarded as in a great measure preparatory to, and therefore in its scientific character inferior to the others.

The universities founded after the Reformation adopted the great outlines of the organization of their predecessors: the political incorporation, the privileged jurisdiction and power of making bye-laws, the faculties and modes of conferring degrees which custom had established. But the altered circumstances of society modified considerably their external relations. The same political power was not conceded to universities that had formerly been given to them. The old were restricted in their privileges; the new never received them. The protracted strife between the Romish and Protestant churches also had its effect: universities, though no longer allowed to lay down the law, were cherished as advocates of a party. Roman Catholic and Protestant universities were erected to do battle for their respective creeds. Lastly, other sciences had their practical utility recognised, in the same way as the sciences of law and medicine had theirs at an earlier period. The applications of mathematical science to the purposes of war and navigation had given an impetus to their cultivation: these new practical pursuits never produced a new faculty, but they lent greater importance to the miscellaneous faculty known as the Faculty of Arts. The number of universities founded in Europe, from the time of the Reformation down to the French Revolution was considerable. They were established in Italy, France, Germany, in the United Provinces of Holland, in Scotland, Ireland (Dublin), in Spain and Portugal, and elsewhere.

Many events concurred during this period to lower universities in the public estimation. The extension of elementary and secondary schools had raised the standard of education among the classes which did not receive a university education. The invention of printing had operated in the same direction. The diminished privileges and restricted jurisdiction of universities had brought them to be regarded merely as schools of a higher order. The increasing number of learned societies raised up a body of non-academical literati, hostile in many instances to the academical; and the public, looking only to the transactions of these societies, forgot that their members were indebted for their training to the universities. The presumptuous spirit of amateur dabblers in science undervalued these institutions; and, in the feverish spirit of innovation which occasioned or accompanied the French Revolution, they too were denounced. In France the old universities have entirely disappeared. In the rest of Europe, as soon as the storms of the Revolution were passed over, they revived; and adapting themselves more to the social necessities of the age, have in many instances started with increased energy on a fresh career of utility.

The present University system in France is peculiar: the expression "Royal University of France" is almost equivalent to that of "national system of education in France." The governing body is the council of public instruction, of which the minister of public instruction is the president. All educational institutions, from elementary schools upwards, are, with half-a-dozen exceptions, under the direction of this body. Under the councillors are inspectors-general of the university, whose office it is to examine all schools and colleges once a year. The educational functions discharged by uni-

versities in other nations of Europe are vested in twenty-six academies, each of which has a territory of two or more departments allotted to it. The twenty-six academies comprise forty-one royal colleges, and above six hundred professors or teachers. At the head of each academy are a rector, two inspectors, and a council: they have the superintendence over all the schools in their districts. The academy includes the faculties; but all the faculties are not organized in every academy, and some have none. There are six faculties of Roman Catholic theology,—at Aix, Bordeaux, Lyon, Paris, Rouen, Toulouse: and two of Protestant theology, one Lutheran, at Strasbourg, and one Calvinistic, at Montauban, under the academy of Toulouse. There are nine faculties of law,—at Aix, Caen, Dijon, Grenoble, Paris, Poitiers, Rennes, Strasbourg, and Toulouse. There are three faculties of medicine,—at Grenoble, Paris, and Montpellier, with seventeen secondary schools of medicine. And there are seven faculties of literature,—Paris, Strasbourg, Bordeaux, Toulouse, Caen, Dijon, and Besançon. The faculties consist of a variable number of professors, one of whom is dean, and a committee of whom examine candidates for degrees. The students sufficiently advanced to study the sciences taught by the faculties are instructed in royal colleges, and are classified according as they reside within or without the walls.

The universities of Great Britain are Oxford, Cambridge, Durham, London, St. Andrew's, Glasgow, Aberdeen, Edinburgh, Dublin. In Oxford and Cambridge the colleges have obtained a complete preponderance over the university, and the old university constitution is in practice changed. So great has been the change that many people, and even some learned judges, have erroneously conceived these two corporations as composed of a number of colleges something like a federal government, whereas the universities are distinct lay corporations, which confer degrees and have various powers: the colleges are properly boarding houses and eleemosynary foundations. [COLLEGE.] The earliest charter of privileges to the university of Oxford as a corporation is said to be the 28th of Henry III., and the first charter granted to the university of Cambridge as a corporation is said to be the 15th of Henry III. James I. in 1603, by diploma dated the 12th of March, granted to the universities of Oxford and Cambridge the power to send each two representatives to the House of Commons. The Dean and Chapter of Durham, by an act of chapter, 28th of April, 1831, established an academical institution in Durham in connection with the cathedral church, which by an act of parliament (2 & 3 Wm. IV.) entitled 'An Act to enable the Dean and Chapter of Durham to appropriate part of the property of their church to the establishment of a university in connection therewith for the advancement of learning,' was confirmed and endowed. In 1837 the university of Durham received a royal charter. The university of London received its first charter from William IV., which Queen Victoria revoked in the first year of her reign, and granted a new charter the 5th of December, 1837. The history of the establishment of this university is given at length in the 'Penny Cyclopædia,' UNIVERSITY COLLEGE, LONDON; and UNIVERSITY OF LONDON.

As in England and Scotland, the medical and legal professions are in the United States educated principally in distinct schools; and this is the case also in a great measure with the students of theology. Many of the colleges or universities contain only a faculty of arts.

According to the 'American Almanac' for 1846, there were 108 colleges in the United States; 29 medical schools, some of which are connected with colleges or universities; 34 theological schools; and 9 law schools. Most, if not all, of these are incorporated places, and all the colleges grant degrees. But many of these colleges are of very recent date, ill organized, and ill endowed. On the whole, however, the endowments and character of the older colleges in the United States are such as show that the higher branches of learning and science are zealously pursued and honourably supported. C

(Savigny, *Geschichte des Römischen Rechts im Mittelalter;* Ackermann, *In-*

stitutiones Historiæ Medicinæ; Bulæus, *Historia Universitatis Parisiensis;* Pasquier, *Recherches de la France;* *Edinburgh Review,* June, 1831, art. 'English Universities — Oxford;' Meiners, *Geschichte der Entstehung und Entwickelung der hohen Schulen unsers Erdtheiles;* *Quarterly Journal of Education;* Balbi, *Abrégé de Géographie;* *American Almanac* for 1846.)

UNIVERSITY. This word is the English form of the Latin *universitas,* which is often used by the best Latin writers. The adjective 'universus' signifies the whole of anything, as contrasted with its parts: the plural 'universi' also is often used to express an entire number of persons or things, as opposed to individual persons or things. The uses of the word universitas may be derived from the meaning of universus. Universitas is used by the Latin writers to express the whole of anything, as contrasted with its parts: thus Cicero speaks of all mankind as 'universitas generis humani;' and he proceeds to instance individuals (singuli) as the ultimate elements of this universitas. It is not necessary to the notion of a universitas that all the elements should be alike; 'universitas rerum' is Cicero's expression for the whole of things—for all things viewed as making one whole. The word universitas applies either to a number of things, or of persons, or of rights, viewed as a whole. The Roman jurists expressed by the term 'universitas bonorum' the whole of a property as contrasted with the parts (singulæ res) which composed it. Such a universitas might be the object of a universal succession. [SUCCESSION.]

Rights and duties are properly attached to individuals as their subjects: but a number of individuals may be viewed for certain legal purposes as one person or as a unity. Thus the notion of a number of persons forming a juristical person, or a universitas, obtained among the Romans, and universitas was a general name for various associations of individuals, who were also indicated by the names of collegia and corpora. The essential character of these universitates of persons, viewed as juristical persons, was the capacity of having and acquiring property. The property, when had or acquired, might be applied to any purposes which the nature of the association required: but it was the capacity of the association to have and acquire, like an individual, that was the essential characteristic of the body as a universitas; and the purposes for which the property might be had or acquired were no more a part of the notion of a universitas, than the purposes for which an individual has or acquires property are part of his capacity to have or to acquire.

The universities or corporate bodies at Rome were very numerous. There were corporations of bakers, publicani or farmers of the revenue, of scribae, and others. The name was also applied in the sense above explained to civitates, municipia, and respublicae; and also to the component parts of them, as curiae, vici, fora, conciliabula, and castella.

From the Roman words universitas, collegium, corpus, are derived the terms university, college, and corporation of modern languages; and though these words have obtained modified significations in modern times, so as not to be indifferently applicable to the same things, they all agree in retaining the fundamental signification of the terms, whatever may have been superadded to them. There is now no university, college, or corporation which is not a juristical person in the sense above explained. Wherever these words are applied to any association of persons not stamped with this mark, it is an abuse of terms.

The word university, in its modern acceptation, has often been misunderstood. Its proper meaning is explained in this article; and the application of the term to associations of teachers or pupils is explained in the article UNIVERSITIES. (Savigny, *Geschichte des Heut. Röm. Rechts,* ii. 261, &c.: and i. 378, *note* n.)

UNLAWFUL ASSEMBLY. [RIOT; SEDITION.]

USAGES. [CUSTOMS; PRESCRIPTION.]

USANCE. [EXCHANGE, BILL OF.]

USE. A use, at common law, was a beneficial interest in land, distinct from the legal property therein. The origin of uses is derived by Gilbert (*Law of Uses,* 3) from a title under the civil law,

which allows of an usufructuary interest, distinct from the ownership of the thing itself. He says it was introduced by the clergy, who were masters of the civil law, and who, "when they were prohibited from taking anything in mortmain, after several evasions by purchasing lands of their own tenants, suffering recoveries, purchasing lands round the church and making them churchyards by bull from the pope, at last invented this way of conveying lands to others to their own use; and this being properly matter of equity, it met with a very favourable construction from the judge of the Chancery court, who was in those days commonly a clergyman. Thus this way of settlement began; but it more generally prevailed among all ranks and conditions of men by reason of the civil commotions between the houses of York and Lancaster, to secrete the possessions, and to preserve them to their issue, notwithstanding attainders; and hence began the limitation of uses with power of revocation." [MORTMAIN.] But whatever may have been the origin of uses, it is certain that the desire of effecting secret transfers of property without resorting to the public modes of conveyance of the common law, as well as the desire to dispose of property by devise, which the common law did not allow, led to an early adoption of the system.

The person who was entitled to the use was called the *cestui que use*. He had no means of maintaining his title to the use except by the writ of subpœna, whereby the person who had the legal estate in the land, the feoffee to uses, was bound to appear in Chancery, and was compelled to answer upon oath as to the confidence reposed in him.

A use was descendible, according to the rules of the common law respecting estates of inheritance; the courts of equity having in this case followed the maxim that *æquitas sequitur legem*. It was also alienable by deed, and devisable before the statute of wills, the courts of equity having favoured this method of evading the strictness of the common law, which allowed no transfer of land without livery of seisin. But the *cestui que use* had no legal ownership. The feoffee was still complete owner of the land at law. He performed the feudal duties, his wife had dower, and his estate was subject to wardship, relief, &c. He might sell the lands, and forfeit them for treason or felony.

The system of uses having been found to produce many inconveniences, notwithstanding various statutes which had been passed from time to time to modify them, it was thought a remedy would be found by joining the possession to the use, or, as it is usually termed, transferring uses into possession. With this view the statute of 27 Hen. VIII. c. 10, commonly called the Statute of Uses, was passed, which enacted, that where any person or persons stood or were seised, or at any time thereafter should happen to be seised of any honours or other hereditaments to the use, confidence, or trust of any other person or persons, or of any body politic, by any manner of means whatsoever, it should be, that in every such case all such person and persons, and bodies politic, that had, or thereafter should have, any such use, confidence, or trust, in fee simple, fee tail for term of life, or for years or otherwise, or any use, confidence, or trust, in remainder or reverter, should, from thenceforth, stand and be seised, deemed, and adjudged in lawful seisin, estate, and possession of, and in the same honours and hereditaments with their appurtenances, to all intents, constructions, and purposes in the law, and in all such like estates as they had or should have in use, trust, or confidence of or in the same; and that the estate, title, right, and possession that was in such person or persons that were or thereafter should be seised of any lands, tenements, or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, should be from thenceforth clearly deemed and adjudged to be in him or them that had or should have such use, confidence, or trust, after such quality, manner, form, and condition as they had before in or to the use, confidence, or trust that was in them.

The statute then provides for the case of several persons being jointly seised to the use of any of them; and contains

two savings: 1st, To all persons (other than persons who were seised or thereafter should be seised of any lands, tenements, or hereditaments, to any use, confidence or trust) all such right, title, entry, interest, possession, writs, and action as they had or might have had before the making of the Act; and 2nd, To all persons seised to any use, all such former rights as they had to their own proper use in, or to any manors or hereditaments whereof they should be seised to any other use.

Probably the legislature intended by this act to put an end to the system of uses; nevertheless, it was soon settled by the courts that it had not that effect, but that uses might still as formerly be raised, upon which the statute would instantly operate. However, some modifications of the system were introduced. Before the statute, a mere agreement for sale, without words of inheritance, was sufficient to pass the equitable fee to the vendee; but, by the 27 Hen. VIII. c. 16, it was enacted that no contract should transfer the legal estate in the fee, unless it were made by deed enrolled. And it was resolved by the judges that words of inheritance were necessary to pass the fee at law. Indeed, no contract importing a future conveyance, even though made by deed enrolled, and containing words of inheritance, would now be held to transfer the legal estate under the Statute of Uses, though it would entitle the vendee in equity to call for a regular conveyance. A further modification of the system of uses was introduced by the seventh section of the Statute of Frauds (29 Car. II. c. 3), which required that all declarations of trusts or confidences of lands, tenements, or hereditaments (which might formerly have been created by parol), should be manifested and proved by writing, signed by the party by whom it is declared. [STATUTE OF FRAUDS.]

In order to raise a use which the statute will turn into a possession, it is necessary that there should be, 1st, one person seised to the use of another, *in esse;* 2nd, a use *in esse*, limited in possession, reversion, or remainder. The use may be either *express*, as where lands are conveyed to A and his heirs in trust for B and his heirs, or in confidence that he and they shall take the profits, or where a vendee, for a valuable consideration, conveys by bargain and sale enrolled, in both which cases the legal estate vests in the grantee or bargainee by the statute; or it may be *implied*, as where a feoffment is made without consideration or declaration of the use, in which case the use results, and the estate returns to the grantor. It was settled by the courts of law that the statute could not operate except upon an estate of freehold, and that therefore copyhold and leasehold estates are not affected by it. A term of years may of course be created out of a freehold estate by way of use, but when once subsisting cannot be conveyed to uses. If, therefore, a term were assigned to A to the use of B, the legal estate would remain in A, who however would be considered in equity as a trustee for B.

By the operation of the Statute of Uses, a man may, through the medium of a feoffee or releasee, make a conveyance to his wife, which he could not do at common law (Litt., s. 168; Co. Litt., 112 a.). In like manner a married woman, having a power to limit a use, may appoint to her husband.

At common law a man could not limit a remainder to himself, nor could he limit it to his heirs so as to make them take as purchasers, without departing with the whole fee simple out of his person (Dyer, 156 a, fol. 24; Co. Litt., 22 b.), but he may do so by means of a conveyance operating under the Statute of Uses.

On the system of uses and the Statute of Uses has been founded the system of conveying property in land, and making settlements of landed property in land, which is now in use in England; a system composed of numerous artificial rules and deductions, but, on the whole, well adapted to secure the numerous purposes which the owner of land in fee simple wishes to accomplish in disposing of his property.

It is a rule of the common law that joint tenants cannot take at different periods. (1 Co., 100, b. 2.) Again, by its rules a fee could not be limited upon a fee; a freehold could not be made to commence *in futuro*, and an estate could not

be made to cease by matter *ex post facto*, so as to let in another limitation before the expiration of the former. [REMAINDER.] But limitations of the above kinds may be made to take effect under the Statute of Uses. Such limitations are called *shifting or secondary and springing uses*; and *future or contingent uses.*

As the Statute of Uses was made previously to the Statute of Wills (32 & 34 Hen. VIII.), it has been questioned whether the Statute of Uses can be held to apply to wills; but as, before the statute, devises of the use were permitted, so, since the statute, the courts have uniformly held that, where a devise is made to a use, the intention of the testator must be taken to be that the devisee of the use should have the legal estate.

By a construction of the Statute of Uses, adopted soon after it was passed, it was settled that a use could not be limited on a use; that is, that the statute would operate on the first declaration of use only: so that if, by bargain and sale, a use in lands were limited to A and his heirs in trust or to the use of B and his heirs, the statute would vest the legal estate in A without adverting to the use declared in favour of B. The Court of Chancery availed itself of this construction to revive Uses under the name of Trusts; and it was determined that A was, in the case above mentioned, a trustee for B of the beneficial interest in the land.

The subject of this article is briefly treated in Sanders, "On Uses and Trusts;" and in Gilbert, "On Uses," by Sugden.

USES, CHARITABLE AND SUPERSTITIOUS. The term 'Charitable use' has a very extensive legal meaning, and includes dispositions of property which are not in ordinary language described as charitable, but which are so called with reference to the purposes enumerated in the statute 43 Eliz. c. 4, or such as are considered analogous to them. That statute enacted that the Commissioners thereby empowered should inquire as to the lands, &c. given by well-disposed people "for relief of aged, impotent, and poor people; for maintenance of sick and maimed soldiers and mariners; schools of learning, free-schools, and scholars in universities; for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; for education and preferment of orphans; for or towards the relief, stock, or maintenance of houses of correction; for marriage of poor maids; for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; and for relief or redemption of prisoners and captives, and for aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes." The term 'Charitable use' is applicable only to gifts for what are called public charities, the objects of which are not particular individuals, but a class or the public in general.

If lands, tenements, rents, goods, or chattels were given, secured, or appointed for or towards any of the following purposes: for the maintenance of a priest or other man to pray for the soul of any dead man in such a church or elsewhere; to have or maintain perpetual obits, lamps, torches, &c., to be used at certain times to help to save the souls of men out of purgatory,—these or the like purposes are declared to be Superstitious Uses by 1st Edward VI. c. 14. There is no statute making superstitious uses void generally, but it is now an established rule of law that gifts for superstitious uses generally are void, and many gifts have by the courts been declared to be for superstitious uses which are not such in the ordinary acceptation of the term, but are either expressly prohibited by the law or contrary to its policy. A change in the doctrine of superstitious uses has been made by the 2 & 3 Wm. IV. c. 115, which puts persons professing the Roman Catholic religion upon the same footing, with respect to their schools, places for religious worship, education and charitable purposes, as Protestant dissenters; with respect to whom the doctrine of the court is, that it will administer a fund to maintain a society of Protestant dissenters promoting no doctrine contrary to law, though at variance with that of the Established Church. The 2 & 3 Wm. IV. c. 115, is retrospective. (2 M. and K., 225.) Though it is now lawful to give money by will for Roman Catholic

schools or for promoting the Roman Catholic religion, it is not lawful to give money for prayers and masses for the soul of a testator.

The Court of Chancery has a general jurisdiction over property given for charitable purposes, and the regular mode in which matters relating to charities are brought before it, is by information by the attorney-general on behalf of the crown.

The Court of Chancery adopts a very liberal construction of gifts for charitable purposes; and there are numerous cases of gifts for objects not within the letter of the statute of Elizabeth which have been considered to be within the equitable meaning of the word charity as understood in that court, and have been administered accordingly. And when a gift is made for charity generally, without any purpose specified, if the gift be to trustees, the court will order a scheme to be prepared for the direction of the trustees in the administration of the trust; and where the declared object is charity, but no trust has been created, the crown by sign manual disposes of the property, and declares the particular charitable purposes to which it is to be applied. Where the particular objects which the donor had in view fail, either wholly or in part, the court adopts what is called the principle of *cy-pres*, that is, it directs the property to be applied to worthy objects in its judgment most nearly resembling those which have failed, or when more than one charity has been named by the donor, to such of the others as are still subsisting. When the revenue of the property increases from any cause, the increase goes to the charity, if it appear to have been the intention of the donor that the whole should be disposed of for the benefit of the charity. Several difficult questions have arisen as to the disposition of increased funds.

When property is given to a superstitious use, or for a charitable purpose which cannot legally be executed, the court of chancery will apply it to some other charity. "Whenever a testator is disposed to be charitable in his own way and upon his own principles, we are not content with disappointing his intention, if disapproved by us: but we make him charitable in our way and on our principles. If once we discover in him any charitable intention, that is supposed to be so liberal as to take in objects not only not within his intention, but wholly adverse to it." (Sir William Grant, 7 Ves., 495.) If the superstitious use be one which the court considers charitable, the fund goes to the king to be disposed of to such charitable uses as he shall direct by sign-manual: if the use be not charitable, the gift is merely void, and the property will go to the donor's representative. (2 M. and K., 684.)

The regular mode of proceeding in cases of abuse of charitable funds is by way of information in the name of the attorney-general on behalf of the crown. In informations with respect to charities the Court of Chancery always requires a person to be joined with the attorney-general, who is styled the relator, and is answerable for the conduct and costs of the suit. The crown never pays costs, and therefore, in order to protect the defendants, there must be a relator who will have to pay the costs, if the suit should appear to have been improperly instituted.

The above-mentioned Act of the 43rd of Eliz. empowered the Court of Chancery to issue commissions to inquire into the abuse or misapplication of property given for charitable purposes; but the proceedings under this act were found so unsatisfactory that they gradually fell into disuse, and recourse was again had to the original method of procedure by information.

By the 52 Geo. III. c. 101, commonly called Sir Samuel Romilly's Act, the legislature provided a summary remedy in cases of abuses of charitable trusts, or where the aid of the Court of Chancery was required for the administration of them. The act empowered any two or more persons to present a petition to a court of equity praying the requisite relief, which the court might thereupon grant in a summary manner.

By the 59 Geo. III. c. 91, continued by the 2 Wm. IV. c. 57, the attorney-general was empowered to institute a suit by information without a relator, upon

five or more of the commissioners of charities thereby appointed certifying that the case was one which required the interference of the court. [SCHOOLS, ENDOWED.]

The jurisdiction of the Court of Chancery over property given to charity must be distinguished from the authority frequently exercised by the lord chancellor or lord keeper as visitor of charities. Charities are either under the management of individual trustees, or are established by charter as eleemosynary corporations. On the institution of a corporate charity, a visitorial jurisdiction arises to the founder and his heirs, whether he be the king or a private person, or to those whom the founder has appointed for that purpose; and the office of visitor is to determine the differences of the members of the society, and to superintend generally the government of the body, in accordance with the statutes originally propounded by the founder. With this visitorial power the Court of Chancery has nothing to do: it only takes cognizance of the administration of the property. When the charity is of royal foundation, the visitorial power of the king is exercised by the lord chancellor as his representative; and even where the founder of the charity was a private person, if he has made no appointment of a visitor, and if his heir cannot be discovered, or has become lunatic, the visitorial power results to the crown, and, as in the case of royal foundations, is exercised by the lord chancellor. The mode of application to the visitorial in these cases is by petition addressed to the Great Seal.

Certain restrictions have been put upon the power of making gifts of property to charitable uses by the 9th of Geo. II. c. 36. The 9 & 10 Vict. c. 59, passed Aug. 18, 1846, places Jews as to charitable purposes on the same footing as Protestant dissenters. [COLLEGE; MORTMAIN; SCHOOLS, ENDOWED.]

USUCA'PIO. Gaius (ii. 40-42) states that if a Res Mancipi was transferred by bare tradition, without the forms of Mancipatio or in Jure Cessio, the original owner retained the Quiritarian ownership, and the person to whom the thing was transferred had only the right to the enjoyment of the thing until by possession he had acquired the ownership (possidendo usucapiat). For the effect of such enjoyment was to give him the same rights with respect to the thing as if it had been transferred in due legal form. In the case of moveables the Twelve Tables fixed one year as the term of Usucapio; in the case of land (fundus) and houses, two years. The acquisition of the Quiritarian ownership of a thing by enjoyment of it under the circumstances above stated for these several periods was called Usucapio.

Gaius states that there might also be Usucapio in the case both of things Mancipi and things Nec Mancipi which had been transferred by bare tradition from a person who was not the owner, provided the transferree received them in good faith (bonâ fide), or, in other words, believed that he received them from the owner. It seems probable that this rule of law was established by analogy to the rule of the Twelve Tables as to Res Mancipi which had been transferred by defective modes of conveyance. But the Twelve Tables may have fixed only the time of Usucapio; the origin of Usucapio may be anterior to the Twelve Tables.

When Gaius wrote (in the second century of our æra), Usucapio had become a regular mode of acquiring ownership; for property of all kinds might be so acquired which had been received by tradition and bonâ fide from a person who was not the owner. The case of things stolen (by the law of the Twelve Tables), and a thing the possession of which had been acquired by violence (vis), was an exception (by the Lex Julia et Plautia), for even if received bonâ fide by a purchaser, they could never become the property of the receiver by Usucapio. The Res Mancipi of women also, who were in the tutela of their agnati, could not be objects of Usucapio unless they had been received from her by traditio with the proper consent (auctoritas) of her tutor; and the hereditas of a woman who was in tutela legitima could not be an object of Usucapio. (Gaius ii. 47; Cicero, *Ad Attic.* i. 5.) As land (fundus) could not, according to the best opinion, be an object

of furtum, a bonâ fide purchaser of land from a man who was not the owner, and knew he was not the owner, might acquire the property of it by Usucapio, provided the seller had not acquired the possession by violence, but had either taken possession of land which was vacant through the carelessness of the owner, or from the owner dying without a successor, or having been long absent.

Besides individual objects of property, Usucapio could exist in the case of servitutes (easements), and marriage, and in the case of an hereditas. Originally such servitutes as followed the rule of law as to Res Mancipi could only be transferred like Res Mancipi; and therefore Usucapio could only apply to such servitutes. But by analogy to Res Mancipi, they could be acquired by bare contract, to which Usucapio was superadded; and when Mancipatio at a later period was replaced by bare tradition, they could be acquired by contract simply. In the case of marriage, when there was no co-emptio, the woman might come into the power of her husband by virtue of uninterrupted cohabitation of one year; and she was then said to become a part of his Familia by Usucapio founded on a year's possession. (Gaius, i. 111.) In the case of the Hereditas, when the testator had not disposed of his property by the necessary forms of the Mancipatio and Nuncupatio, the person who was named heres in the will could only acquire his legal title as such by Usucapio.

These various instances will show the original notion of Usucapio. It was a legal effect given to bonâ fide possession and uninterrupted enjoyment for a fixed time, by which defects in the transfer of a thing were made good: it was not originally a mode of acquisition. It was founded on a title good in substance but defective in form; and this defect was supplied by the proper period of enjoyment (usus). When this usus had continued for the legal time it gave its auctoritas (as the Romans expressed it), its efficiency and completeness to what was in its origin incomplete, and the phrase Usus Auctoritas was older than the expression Usucapio, which was afterwards the ordinary term. But Usus by itself never signified Usucapio; for Usus alone could not give a title to the ownership of a thing. In the case of public land the possessor had the usus, but this was all that he could be entitled to as possessor. Such usus could not from the nature of the case have an auctoritas, for the possessor did not occupy the public land as a bonâ fide purchaser. A man might also have the usus of private land without having a title to anything further: in which case also the usus could never have an auctoritas.

In the Roman law, as known to us in the Digest, Usucapio appears as a mode of acquisition which must have been owing to the circumstance of Mancipatio going out of use: for bare tradition in all cases, followed by the proper usus, gave complete ownership. Finally, when the difference between Res Mancipi and Nec Mancipi was abolished, Usucapio in its original sense ceased. But as in the time of Gaius we find Usucapio applicable to the case of things Nec Mancipi, which a person had possessed bonâ fide, this rule of law still continued, and various limitations were in course of time established as to the mode of acquiring the ownership of a thing by the enjoyment of it. Thus Justinian, in his 'Institutes' (ii. tit. 6), after reciting the old law, refers to one of his Constitutions (Cod. 7, tit. 31), by which the ownership of moveables might be acquired by use (usucapiantur), provided there was a bonâ fide possession (justa causa possessionis praecedente) for three years, and that of immoveable things by the "longi temporis possessio," which he explains to be ten years "inter praesentes," and twenty years "inter absentes:" and the Constitution applied to the whole empire. Usucapio is defined in the 'Digest' (41, tit. 3, s. 3) to be the "addition of ownership by the uninterrupted possession for a time fixed by law." As it was the addition of ownership, something is here implied to which this addition was to be made; and this something was a bonâ fide possession, that is, a possession obtained in a legal way, so that the possessor believed himself to be owner. To render possession effectual, it must be uninterrupted legal possession. An interruption

of possession was called Usurpatio. If the possession commenced bonâ fide, it was not interrupted in the person of the possessor's successor, but it was continued. The Romans did not use the term Praescriptio simply to express the title by Ususcapio obtained under the legislation of Justinian; but the expression was "longi temporis praescriptio." There was also an extraordinary præscriptio, or title by possession, of thirty or forty years, which was allowed in certain cases in which the general conditions of praescription had been complied with, but which for certain other reasons were excluded from the shorter praescription. There was also the praescription of time immemorial.

The Prescription of the English law is not exactly the Prescription of the Roman law. The Statutes of Limitation bear a nearer resemblance to the Prescription of the compilations of Justinian, but there are differences here also: Roman Prescription gave a title to the things; the Statutes of Limitation bar the claims of persons who have been out of possession for certain defined periods. The Scotch Prescription has a nearer resemblance to the Praescriptio longi temporis of the Roman law.—[PRESCRIPTION; STATUTES OF LIMITATION.]

The subject of Usucapio admits and requires a much more complete exposition. The reader may refer to the following works:—Engelbach, *Ueber die Usucapion zur zeit der zwölf Tafeln*, Marburg, 1828; Mühlenbruch, *Doctrina Pandectarum*; Mackeldey, *Lehrbuch des Heutigen Röm. Rechts*, where numerous authorities are referred to.

USUFRUCTUS, or USUSFRUCTUS, and USUS, belonged to the class of Servitutes Personarum or Personales among the Romans. Ususfructus is defined (*Dig.* 7, tit. 1, s. 1) to be "the right to use and take the fruits (fruendi) of what belongs to another without impairing its substance." Usus is defined (*Dig.* 7, tit. 8, s. 1, 2) to be the right "to use, but not to take the fruits (frui)."

The objects of ususfructus might be land (fundus), houses (ædes), slaves, beasts of burden, and other things. He who was entitled to Ususfructus was called Usufructuarius, or Fructuarius. A right to a Ususfructus might be given to a person by testament, or it might be established by contract.

Generally, it may be stated that all the "fructus," or produce of a thing that accrued during the time of enjoyment, belonged to the Fructuarius; but his title to fructus was not complete till he had taken them, and it was a general rule that any "fructus" which had not been got in or taken at the time when the Ususfructus ceased, did not belong to him. The law as to things that yield an increase, such as fruit-trees and animals, did not present many difficult questions. As to houses and lands, the questions were sometimes more difficult. The Fructuarius was entitled to the rents and profits of houses during his time of enjoyment, and he was bound at least to keep them in sufficient repair, but probably not to rebuild them, if they were in a ruinous condition. He was bound to cultivate land in a proper husbandlike manner. He could work existing mines and quarries for his benefit, and he could also open new mines and work them. Generally his right of enjoyment consisted in using the thing so as not to damage the substance (salva rerum substantia; Ulpian, *Dig.* 7, tit. 1, s. 1). The fructuarius could maintain his rights to the ususfructus by actions and interdicts. The period of ususfructus might either be for a fixed time or for the life of the fructuarius. At the termination of the period of enjoyment, the thing was to be given up to the owner, who could generally require security for its being properly used and given up in proper condition.

The usus of a thing, as already explained, was a right to the enjoyment of a thing, but not to the produce or profits of it. Yet in some cases the usus of a thing implied a right to a certain amount of produce. Thus the usus of cattle implied that the usuarius was entitled to a moderate allowance of milk; and a man who had the usus of an estate could take wood for his daily use, and could enjoy the fruits of the orchard and other things in moderation. If a man had the usus of oxen, he could employ them for all pur-

poses for which oxen are properly used. The duties of the usuarius resembled those of the fructuarius.

The rules of law which related to the Ususfructus and Usus were numerous. Many of them are collected in the *Digest*, lib. 7; see also 'Fragmenta Vaticana,' *De Usufructu*; and Mühlenbruch, *Doctrina Pandectarum.*

The Roman Servitutes Personarum were mere personal rights, which a man had as being a particular person. The rights which a man might have upon the land of another in respect of land of his own, were the Servitutes Praediorum or rerum: the land itself may here be viewed as the subject to which the rights were attached, and the person who possessed the land had with it the rights which were attached to the land. The Easements of the English law comprehend rights of way, and the like, which a man has on or over the property of another in respect of being the owner or occupier of land to which such rights are attached, or by virtue of a grant.

USURPATION. [USUCAPIO.]

USURY. This word comes from the Latin Usura, or as it is more frequently used, Usuræ in the plural number. The Latin word signifies money paid for the use of money lent. The old word in use in England to signify what we now call interest, seems to have been Usury. But usury now means taking more interest for the loan of money than the law allows. A good deal on the subject of usury is contained in the arguments and judgments in the case of the Earl of Chesterfield and others *v.* Sir Abraham Jannsen (2 Vez., 125).

Interest is money which is paid for the use of other money, called principal. The general practice is this: the borrower agrees to pay a fixed sum yearly, half-yearly, or quarterly, for each 100*l.* lent, until the money lent is returned. When this is not the case, and when the money paid for the loan depends upon the success of an undertaking, or any casualty not connected with the duration of life, it is called a *dividend:* when the money and its interest are to be returned by yearly instalments, and paid off in a certain fixed number of years, it is called an *annuity certain;* but when the payment is to depend upon the life of any person or persons, it is called a *life-annuity.* [ANNUITY.] But by whatever name the proceeds of money may be called, the rules of calculation are the same in every case except that of a life-contingency.

The amount of money which persons are willing to pay for the temporary use of money depends upon a variety of circumstances. When profits are high, the rate of interest will also be high. When, on the contrary, money capital is abundant in proportion to the calls for it, the competition of those persons who possess money, and who derive an income from it, will lower the rate of interest in the money-market. They will lend money at a low rate of interest to traders, who again will meet each other in competition in their various occupations, and must be content with such a rate of profit as will repay the low rate of interest for which they have bargained, together with such a compensation for their risk, skill, and trouble in its management as the degree of competition at the time will allow. If some new channel for the employment of money should be opened which holds out the promise of higher profits, a competition among borrowers will ensue, the effect of which will be to raise the rate of interest until it assumes its due proportion to the rate of profits; and as there never can, generally speaking, be two rates of profits at the same time (at least for any long period), in the same market, the effect of the additional call for capital to supply the partial demand that has been supposed, will be to raise profits and interest generally. An increase of money capital, either absolutely or relatively to the means for its employment, will obviously have the contrary effect of lowering its value in use, that is, reducing the rate of interest and profits.

It would be difficult to imagine any circumstances relating to the loan of money, which must not resolve themselves into the conditions here proposed; and it is therefore difficult to see wherein consists the wisdom of governments in limiting the rate of interest; and yet the fact of such limitation has usually been the rule, and the absence of restriction as to

the rate of interest the exception. The circumstance of the laws which regulate and limit the rate of interest in this country having been made by those who were among the class of borrowers rather than that of lenders, may perhaps afford some explanation of the views of the legislature in putting restrictions on the trade in money. That these restrictions however were, and so far as they exist still are, unfavourable both to lenders and borrowers, and more unfavourable to the borrowers than the lenders, may easily be demonstrated. In the year 1787 Mr. Bentham wrote his 'Defence of Usury,' and showed, in a manner which one would have thought adapted to produce general conviction, the mischief of such restrictions so far as the law was operative, and the inefficacy of the law to prevent altogether what are denominated usurious transactions. But the minds of men are slow in surrendering a prejudice or a false judgment to the attacks of true principles; and for many years the efforts of Mr. Bentham and others remained fruitless. The system of restriction has however of late been modified in some important particulars, so that within certain limits, as regards time, the rate of interest among the mercantile classes may now be said to depend upon what may be considered the market value of money, which is thus allowed to bear its due proportion to the current and usual rate of profits. A statute passed in 1545 limited the rate of interest to 10 per cent. per annum; in 1624 the rate was lowered to 8 per cent., in 1660 to 6 per cent., and by the statute 12 Anne, st. 2, c. 16 (1713), it was further reduced to 5 per cent., beyond which rate, with the recent exception above referred to, it has been illegal to charge since that time, under the penalty of forfeiting for every offence three times the amount of the money lent.

During the late war, when the rate of profit was high and when the government often borrowed enormous sums, the system of restriction was not adhered to in the negotiation of its loans, the interest upon which was necessarily regulated by the market value of money; and at all times necessitous borrowers and those who have a doubtful or insufficient security to offer to lenders have always found means to evade the statute by granting annuities [ANNUITIES] and by other means. Except for one or two almost momentary occasions of commercial difficulty or panic, the market rate of interest in this country has not been higher, since the peace in 1815, than the legal rate.

The law does not recognise the charge of interest upon interest, or, as it is called, compound interest; and yet it is only equitable that where money which is due for interest is not settled, it should be considered a fresh loan, for the use of which interest should be paid. This however is a rule so easily evaded by the borrower granting a further acknowledgment of the interest as though it were principal, that it does not amount to a practical hardship: such new contract, in fact, changes the interest already due into a principal sum. The law also recognises rests in mercantile and banking accounts, in which interest is charged upon a former ascertained balance. Such balance may, and in fact often does, include interest already due; and thus the creditor really receives interest upon interest, or compound interest.

Debts do not always carry even simple interest from the time when the money becomes due to the creditor: in such case payment of interest is rather the exception than the rule. Unless the debt be such a debt as carries interest by the custom of merchants or traders, or unless there is an express agreement to such effect between the parties, or unless such agreement can be inferred from their course of dealing, or unless there are some very special circumstances, debts do not carry interest from the time when due. But now, by 3 & 4 Will. IV. c. 42, a jury may, if they think fit, upon all debts or sums certain, allow interest to the creditor, at a rate not exceeding the current rate of interest, from the time when such debts or sums were payable, if payable by virtue of a written instrument at a certain time; or if payable otherwise, then from the time of a demand of payment in writing, so as such demand give notice that interest will be claimed from the date of such demand. This statute also empowers juries to give damages, in

the nature of interest, in respect of the detention or appropriation of goods. By 1 & 2 Vict. c. 110, all judgment-debts are to carry interest at the rate of 4 per cent. per ann. from the time of entering up the judgment. As to interest of money lent on ships or their cargo, see BOTTOMRY, and on legacies, see LEGACY.

The relaxation above mentioned as having been made as to the rate of interest formed part of the arrangement made in 1833, at the renewal of the charter of the Bank of England. (3 & 4 Wm. IV. c. 98.) It consisted in excepting from the operation of the statute all bills of exchange and promissory notes not having more than three months to run previous to their maturity; these might be discounted at any rate of interest agreed upon with the holder. More recently, by the act 1 Victoria, c. 80 (July, 1837), this relaxation was extended to all such mercantile instruments which have not twelve months to run before they are due.

USUS. [USUFRUCTUS.]

V.

VAGRANT. This term, which simply denotes "a wandering person," is derived from the Latin *vagor*. It was probably introduced into our law language from the Norman French; for the phrase "*vagerantz de lieu en lieu currants per paiis*," occurs in our early statutes in the sense in which the word "vagrant" is used in common language at the present day. (Stat. Rich. II. c. 5.) The persons to whom it is applied in ancient documents are usually classed with "faitours" (a word of doubtful origin, but meaning an idle liver or slothful person: Cowell's *Interpreter;* Kelham's *Dictionary*), "travelyng-men," and "vagabonds." The latter expression, "vagabundus," was known throughout Europe in connection with feudal law, and is interpreted to mean "crebro vagans, cui nec certum domicilium, nec constans habitatio est." (Calvini *Lexic. Jurid.*) It was used in this sense in English law as early as the reign of Henry II. (Cowel's *Interpreter.*) Modern laws have however given to the word "vagrant" a much more extended meaning, in the application of which the notion of wandering is entirely lost.

In the course of the transition made by the lower classes of society from the condition of feudal villeins to that of free labourers, vagrancy and mendicity ensued from the unsettled state of the poor; and in most countries where feuds had prevailed, severe laws were made to repress the evils which sprung from this source. In England various statutes and ordinances were passed to obviate the inconveniences arising from wandering mendicancy. These statutes were very numerous from the 23 Edward III. (1349) to the end of the reign of Henry VIII. But notwithstanding these laws vagrancy appears to have greatly increased at the beginning of the reign of Edward VI., and a severe enactment (1 and 2 Edward VI. c. 3) against vagrancy was passed in that reign, but it was repealed by 3 & 4 Edward VI. c. 16.

About the beginning of the reign of Elizabeth, a description of persons called *rogues* first appear in the general class of vagrants. The derivation of this word is variously given. Horne Tooke derives it from a Saxon word signifying "cloaked," or covered. (*Diversions of Purley*, vol. ii., p. 227.) Webster takes it from another Saxon word, and Dr. Johnson admits its derivation to be uncertain. Lambard says, "The word is but a late guest in our law; for the ancient statutes call such a one a valiant, strong, or sturdy beggar or vagabond, and it seemeth to be fetched from the Latin 'rogator,' an asker or beggar." (*Eirenarcha*, book iv., chap. 4.) Dalton also says, "A rogue may be so called quia ostiatim rogat." (*Country Justice*, chap. 83.) It is believed that the word does not occur in the English language before the middle of the sixteenth century; and if so, it is probably one of those numerous cant words by which, at that period, vagrants, in counterfeiting Egyptians or gipsies, began to designate different classes of their own "ungracious rabble," and of which Harrison enumerates twenty-three degrees. (Harrison's *Description of England*, prefixed to Hollinshed's *Chronicles.*)

In the course of the reign of Elizabeth the evils of vagrancy increased to an

alarming extent; and although the accounts given by historians of the multitude of vagabonds in England are founded upon rude estimates, and are probably somewhat exaggerated, there is undoubted evidence that the numbers and attitude of these persons at that period constituted an evil of dangerous magnitude.

In 1597, after experience had shown that temporary expedients and ill-directed charity only increased the amount of vagrancy, and that severe punishments and penalties were wholly ineffectual in preventing it, the House of Commons appointed a committee to whom most of the existing laws relating to the condition of the poor, as well as certain bills for their amendment, were referred. (D'Ewes's *Journals*, p. 561.) This committee, of which Sir Francis Bacon was a member, and which was composed of all the practical men of the House, seems to have perceived and to a certain extent acted upon the principle that, in order to justify severity against vagrancy and mendicity, it was necessary to provide the means of relieving that destitution which was the ready and plausible excuse for both. They therefore prepared the statute 39 Eliz. c. 3, which for the first time organized that machinery for the legal relief of the poor, which was a few years afterwards completed and made perpetual by the stat. 43 Eliz. c. 2. The same committee also recommended measures for encouraging the building of "hospitals, or abiding and working houses" for the poor, and for improving and reforming such as were already in existence, but had been misapplied or abused. And at the same time they introduced a more rational enactment for the correction and suppression of fraudulent vagrancy. (Stat. 39 Eliz. c. 4.) "Many statutes," says Sir Edward Coke, (2 *Inst.*, 728), "have been made for the punishment of rogues, vagabonds, and sturdy beggars, but very few to find them work and to enforce them thereunto." The statute 39 Eliz. c. 4, supplied this deficiency by providing houses of correction, with stocks and materials for the employment of the inmates, and by enforcing the use of the means thus placed in the hands of the poor by severe penalties against the idle. The provisions of this statute, with some alterations made by the stat. 1 Jac. I. c. 25, continued in force during the 17th century; and, when repealed by the stat. 12 Anne, stat. 2, c. 23, still served as the model and foundation for future acts. It declared that a great variety of persons, who are described in the act, should be deemed rogues, vagabonds, and sturdy beggars.

The continued unwillingness of magistrates to enforce the statute of Elizabeth, notwithstanding a proclamation of James I., occasioned the passing of the stat. 7 Jac. I. c. 5, which compelled the justices of every county under heavy penalties to erect proper houses of correction for setting rogues, vagabonds, and other idle and wandering persons to work, and also required them to meet twice a year or oftener, if occasion required, for the better execution of the law.

The laws relating to vagrants continued substantially upon the footing of the statutes of 39 Eliz. and 7 Jac. I. for more than a century, until, in 1744, they were reconsidered and remodelled by the stat. 17 Geo. II. c. 5. This was the first legislative measure which distributed vagrants into the three classes of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues. Although this statute is now wholly repealed, it continued in force nearly a century, until 1822, when a temporary act, stat. 3 Geo. IV. c. 40, passed, repealing all former laws and re-enacting most of the provisions of the stat. 17 Geo. II. c. 5, with many additions and modifications. The provisions of the stat. 3 Geo. IV. c. 40, were however entirely superseded by the 5 Geo. IV. c. 83, which now (1846) constitutes the law respecting vagrants. This act was amended by the 1 Vict. c. 38 (1838). The third section of the statute Geo. IV. declares what persons are idle and disorderly persons, and may be committed by a single magistrate to hard labour in the house of correction for any time not exceeding one month.

The 4th section of this act declares certain classes of persons, which are there described, to be rogues and vagabonds, and empowers a single magistrate to commit them to hard labour in the house

of correction, for any time not exceeding three months.

The 5th section authorizes a single magistrate to commit incorrigible rogues to the house of correction until the next sessions, during which interval they are to be kept to hard labour. The 10th section of the act authorizes the justices at sessions to continue the imprisonment of this class of offenders with hard labour for any time not exceeding a year, and to order whipping, if they deem it to be expedient. Incorrigible rogues are defined by the statute.

The statute, besides the definition of the facts and circumstances which are to constitute offences in the several classes above enumerated, contains various provisions for the prosecution of vagrants and the regulation and disposal of them. Thus it is enacted that any person may apprehend a vagrant and bring him before a magistrate. The persons as well as the carriages or luggage of the several descriptions of vagrants may be searched, and money or goods found upon them may on their conviction be applied towards the costs of apprehending them and maintaining them in prison. If proceedings at the sessions are contemplated, either by reason of an appeal against a summary conviction or the commitment of an incorrigible rogue, the committing magistrate may bind over witnesses to prosecute, and the justices at sessions may order the payment of costs to persons so bound. And an appeal is given to the next sessions to any person aggrieved by an act or determination of any magistrate out of sessions concerning the execution of the act.

Although the modern statute is in many respects an improvement of the law, it is liable to some of the objections which were made to the 17 Geo. II. c. 5, and to others of a graver character. It is by no means exclusively a Vagrant Act, though popularly so called; its provisions extend to various offences not necessarily connected with vagrancy, which the legislature has placed within the summary jurisdiction of justices of the peace. Under the former statute, a single magistrate was only intrusted with the power of summary commitment for a month in the case of idle and disorderly persons, or to the next sessions in case of rogues and vagabonds and incorrigible rogues. But, under the recent act, a single magistrate has the power of at once committing rogues and vagabonds to prison with hard labour for three months. If the offences to be punished had been precisely defined by the statute, this extensive summary jurisdiction might have been less objectionable; but the language of the law is very loose and inaccurate. For instance, who are to be considered "suspected persons," or "reputed thieves," or what is to be taken for an "unlawful purpose," or "frequenting a street," in the true legal construction of this statute, so as to render the persons to whose acts these phrases are applied rogues and vagabonds? are often questions of doubt and difficulty to practical lawyers, and may reasonably occasion hesitation and differences of opinion even among those to whom the final interpretation of penal laws belongs. This latitude and vagueness of expression are peculiarly dangerous in a law which gives large judicial power to unprofessional persons, who are for the most part withdrawn from the control of public opinion in the exercise of it; where the subjects and objects of the law are nearly connected with local excitements and prepossessions; and where the parties who suffer from misdecision are commonly the poor and helpless, to whom an appeal is wholly inaccessible.

VALUE. [Political Economy; Price.]

VASSAL. [Feudal System.]

VENDOR AND PURCHASER. The law of Vendors and Purchasers of real estate in England is a subject of great extent, which may be said to comprise nearly the whole practical application of the law of real property.

Contracts for the sale and purchase of land or other real estate may be entered into either privately between the parties, or upon a sale by auction. At common law, agreements for the purchase of real estates might be made by parol, but by the Statute of Frauds (29 Car. II. c. 3, ss. 1, 2, 3, and 4), "All leases, estates, interests of freeholds, or terms of years,

or any uncertain interest of, in, or out of any messuages, manors, lands, tenements, or hereditaments, made and created by livery and seisin only, or by parol only, and not put in writing by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the effect of leases or estates at will, any consideration for making any such parol leases or estates notwithstanding." But leases not exceeding three years, whereupon the rent reserved should amount to two-thirds of the full improved value, were excepted. The act requires the assignment, grant, and surrender of existing interests to be in writing, and enacts that "no action shall be brought whereby to charge any person upon any agreement made upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." The note or memorandum of agreement required by the statute need not be a formal document, and any writing, such as a letter, or receipt for purchase-money, may constitute an agreement within the statute, provided it contain the terms of the agreement within itself, or by reference to another writing; and if the document be written by the party, the occurrence of his name anywhere in the document is a sufficient signing.

Upon sales of estates by public auction, the highest bidder, upon being declared the purchaser, is considered to have entered into a contract for purchase according to the particulars and subject to the conditions of sale; and the auctioneer, who is for this purpose considered as the agent of both vendor and purchaser, is thereupon authorized to sign an agreement of purchase. The writing down the purchaser's name upon any memorandum of sale at the time of the bidding is a sufficient signing. Sales by auction of lands are within the above-mentioned enactments of the Statute of Frauds; but sales before a master under a decree of a court of equity will be carried into execution although the purchaser did not subscribe any agreement, for the judgment of the court in confirming the purchase takes it out of the statute. An auction duty of 7*d.* in the pound is payable upon all sales by auction of any interest in freehold, copyhold, or leasehold lands, tenements, houses, or hereditaments (27 Geo. III. c. 36; 37 Geo. III. c. 14; and 45 Geo. III. c. 30). The subject of the sale and purchase of estates is discussed at length in Sugden's *Treatise on the Law of Vendors and Purchasers of Estates.*

VENI'RE FA'CIAS, or *Venire,* the name of a writ addressed to the sheriff or other returning officer, commanding him "to cause to come" (venire facias) the parties set forth at the place named in the writ. The purpose to which the writ has been generally applied, and in reference to which it is generally known, is in summoning juries to serve for the ordinary trial of civil causes.

The form on such occasions now charges the sheriff to "cause to come here forthwith twelve good and lawful men of the body of your county, qualified according to law, and who are nowise of kin either to A B, the plaintiff, or C D, the defendant, to make a certain jury of the country between the parties aforesaid of a plea of ———, because as well the said defendant as the said plaintiff, between whom the matter in variance is, have put themselves upon that jury."

This writ is sued out, but is not acted upon, for the court assumes that the jurors have been summoned upon it and have failed to appear at Westminster, where anciently the trial itself took place. At the same time another writ issues, by which the sheriff is commanded to distrain their lands or goods, or have their bodies, so as to compel their appearance either before the court at a subsequent day, or before the judges of assize or Nisi prius, if they should previously come into the county. This is so arranged that the judges always do previously come into the county, and the jury are summoned and caused to appear before them.

(Tidd's *Practice;* Stephen *On Pleading;* 6 Geo. IV. s. 50; 3 & 4 Wm. IV. c. 67.) [JURY; VENUE.]

VENTRE INSPICIENDO, WRIT

DE. "When a widow is suspected to feign herself with child in order to produce a suppositious heir to the estate, the heir presumptive may have a writ de ventre inspiciendo, to examine whether she be with child or not; and, if she be, to keep her under proper restraint till delivered; which is entirely conformable to the practice of the civil law: but if the widow be, upon due examination, found not to be pregnant, the presumptive heir shall be admitted to the inheritance, though he hath to lose it again, on the birth of a child within forty weeks from the death of a husband." (Blackstone, *Comm.* i. 456.) The Roman practice is explained in the Title of the Digest (25 tit. 4): De inspiciendo ventre custodiendoque partu. The practice originated in the joint reigns of Aurelius and Verus, in a case in which a wife denied her pregnancy and the husband maintained it. The wife had separated from the husband, and probably wished to keep the child that might be born, though by law it would belong to the husband. If a woman alleged that she was left pregnant by her deceased husband, it was her duty to announce the fact to those whom it concerned, and to inform them that they might, if they pleased, send women to inspect her (quæ ventrem inspiciant). All the proceedings of inspection and of watching the woman, if she should be reported to be with child, are minutely prescribed in the Prætor's Edict. The penalty in case of the woman not complying with the Edict was, that the Prætor would refuse to the child the Bonorum Possessio.

The form of the English writ De Ventre Inspiciendo is given Co. Litt. 8 b. It is directed to the sheriff, and commands him to empanel a jury of twelve women to search whether she be enseint. If they find that she is with child, another writ issues which commands that she shall be safely kept and duly inspected by the women, who must be present at the delivery.

The use of this writ is an instance in which what is called a proceeding at common law is taken from the Roman system. The writ is not obsolete, as some people suppose; it has issued within the last fifteen years. (Co. Litt. 8 *b.*, and N. 44 in Butler's edition; Comyns, *Digest*, Bastard, C.)

VENUE (*vicinetum, visne,* "neighbourhood"). The county in which the trial of a particular cause takes place is said to be the Venue of that cause. The old practice in this matter is connected with the original functions of the jury, as persons who were acquainted with the facts in issue. [JURY.] In order then that a proper Venire might issue to the sheriff, the place in which the action was brought was stated in the margin of the declaration, and on the statement throughout the pleadings of any issuable fact a statement was also made of the place at which such fact was alleged to have occurred. As to all such facts upon which issue was taken, a venire was sued out applying to each different place. The sheriff returned jurors from that place, and by those jurors the facts were decided, so that several distinct Venires and trials might be necessary to dispose of the issues in one action.

When juries ceased to act on their own knowledge, and began to determine on the evidence of witnesses, the necessity ceased for summoning them from the particular part of the county, and the practice gradually declined, till at last, the form of the Venire still continuing the same, two jurors from the same hundred only were required for the trial of a personal action. By the stat. 16 & 17 Car. II. c. 8, it was enacted that no error should be brought, because there was no right Venue, provided the cause was tried by a jury of the proper county or place where the action was brought. After this statute the practice was established of trying all the issues by the jury of the general Venue in the action. By 4 Ann. c. 16, it was further enacted that "every Venire Facias for the trial of any issue shall be awarded of the body of the proper county where such issue is triable:" that is, from the county at large, without reference to the particular hundred containing the place laid as Venue; and such is still the practice. By a general rule of all the courts, of Hilary Term, 4 Wm. IV., it is ordered, that "In future the name of a county shall in all cases be stated in the margin of a de-

claration, and shall be taken to be the Venue intended by the plaintiff, and no Venue shall be stated in the body of the declaration, or in any subsequent pleading."

A distinction was long since established between local (that is, actions relating to real estate) and transitory (that is, actions of debt, contract, for personal injuries, &c). In regard to the former, it was held that the actual place in which the subject-matter was situated must be laid as the Venue in the action, and that rule still prevails. The reason is said to proceed from the circumstance that, unless the action were brought in the actual county, the sheriff of the county would be unable to give effect to the judgment in the action. In transitory actions, on the contrary, the subject-matter of them being held not to have any fixed place, the plaintiff had liberty to bring his action in any county in which he pleased. As a consequence of which it follows, that though the cause of action has occurred even out of the kingdom, it is still open to the plaintiff to bring his action in the courts of this country. The plaintiff has still this liberty in a transitory action. But the courts assert an authority upon application made to them of changing the Venue. This is done upon its being made to appear that great inconvenience would arise from trying in the original county, because the body of the evidence lies in another, or because from local prejudices a fair trial cannot be had, &c. And the same authority is exercised even in local actions in spite of the technical difficulty which has been before referred to. (3 Blackstone's *Com.*, 294, 384; Stephens *On Pleading*, c. ii., s. 4, v. 1.)

In criminal trials the Venue is the county in which the offence charged was actually committed; before a grand jury of that county the indictment must be preferred, and before a petty jury the trial had. The courts however have the same discretion as to the power of changing the Venue as in civil cases; and as to criminal trials, many exceptions have been introduced by various statutes.

VERDERER. [FOREST LAWS; WOODS AND FORESTS.]

VERDICT. [JURY.]

VESTRY is the name of that part of a parish church where the ecclesiastical vestments are kept; and inasmuch as meetings of parishioners have been usually held in this part of the church for parochial purposes, such meetings, duly convened, have acquired the name of vestries; so that even where a building remote from the church has been erected for parochial meetings, it is usually called the *vestry-room*. When the meeting is held in the church, or even in a building within the precincts of the churchyard, the ecclesiastical courts claim jurisdiction over the conduct of the parishioners.

By the common law all rated inhabitants of a parish have a right, either periodically or when specially convened, to meet in vestry for the affairs of the parish, and to vote the necessary pecuniary rates. But this common law right has been modified in many ways.

1. By custom, which has vested the government of some parishes in a select and usually a self-elected body of persons, probably the successors of individuals to whom the parishioners at some previous time delegated the management of their parish for a stated period, but who, by the indifference and neglect of their constituents, came to hold permanently the powers intrusted to them. The principal act for the regulation of these vestries is the 58 Geo. III. c. 69. It requires that three days' notice shall be given of the holding a vestry; that if the incumbent of the parish is not present, a chairman shall be elected by the meeting, and that minutes of its proceedings shall be kept and signed by the chairman and such of the parishioners present as think fit; and it gives to each inhabitant, provided he has paid his rates, one vote, if he is rated on a rental under 50*l.*, and, if on a higher rental, one vote for every 25*l.* for which he is rated, so that no one however shall have more than six votes. This act does not extend to parishes within the City of London or borough of Southwark.

2. Section 20 of the act 10 Anne, c. 11, gives to the commissioners appointed by that act (for the purpose of erecting fifty new churches in London and its neighbourhood) power to appoint, under their seals, with the consent of the ordinary, "a

convenient number of sufficient inhabitants, in each parish created under the act, to form a select vestry of such parish." It vests in the majority of such select vestry the power to supply vacancies, and gives them all the powers of other vestries. The 59 Geo. III. c. 134, another church-building act passed to explain and amend the act of the previous session, gives a similar power (§ 30) to the commissioners under those two acts to appoint, with the like consent, a select vestry out of the "substantial inhabitants of the district," parish, or chapelry, for the management of the affairs of the church, and the election of church or chapel wardens, vacancies being supplied by the select vestry itself; and the 10th section of the act 3 Geo. IV. c. 72, confines the powers of the vestryman to his own district with respect to ecclesiastical matters, and provides that any deficiency (a somewhat vague expression for an Act of Parliament) in the select vestry shall be supplied as vacancies have heretofore been filled up in the vestries of the particular parish. Local acts have also created vestries.

3. The 59 Geo. III. c. 12 (Sturges Bourne's Act), enables general vestries to appoint special vestries, consisting of not more than twenty, or fewer than five, parishioners to superintend the relief of the poor, the overseers of the poor being placed under their authority. These special vestries are little more than committees of the general vestries, to which they are responsible.

4. A fourth kind of vestry is created by 1 and 2 Wm. IV. c. 60 (Sir John Hobhouse's Act). The adoption of this act is left to the discretion of each particular parish; but rural parishes of less than 800 rated householders are excluded from its operation. In order to apply the act to any parish, either one-fifth, or else fifty, of the rated parishioners must sign a requisition to the churchwardens to take the votes of the parishioners for or against its adoption. When the act has been adopted in the manner provided by the act, the parishioners who have been rated one year to the relief of the poor meet on some day in May (21 days' notice having been previously given on the church-doors), and elect out of the resident householders assessed upon an annual rental of not less than ten pounds (or if the parish is in the City of London, or contains more than 3000 resident householders, upon an annual rental of 40*l.*) persons as vestrymen, in the proportion of twelve for every thousand rated householders: but the number of vestrymen is never to exceed 120. One-third of the vestry goes out of office in rotation annually, and their places are supplied by the method already described. The incumbent of the parish is entitled *ex-officio* to be a member of the vestry; indeed the rector of the parish is supposed to be entitled to preside at vestries, but by what authority, other than an implied opinion of the ecclesiastical courts, and the provision already cited from the 58 Geo. III. c. 69, is not clear. This act also prescribes that the parish accounts shall be open to the inspection of all the parishioners; and that on the day of electing vestrymen the rate-payers shall elect, out of persons with the same qualification as is necessary for vestrymen, five auditors of the accounts, who shall not be members of the vestry, or concerned in any contract with the parish. These are to audit the accounts every half-year, and an abstract of the accounts is to be published by the vestry clerk within a fortnight after the audit, and distributed to the rate-payers at the price of one shilling each copy. A statement is also to be made out annually, for the inspection of the parishioners, of all the estates and charitable foundations of the parish, their nature and application.

It is the duty of vestries to provide funds for the maintenance of the edifice of the church and the due administration of public worship; to elect churchwardens; to present for appointment fit persons as overseers of the poor; to administer such estates and other property as belong to the parish; and in some cases, under local acts, to superintend the paving and lighting of the parish, and to levy rates for those purposes.

The remedy for neglect of duty by a vestry is a mandamus from the Court of Queen's Bench, directed to the officer whose duty it would be to perform the

particular act, or in some cases by an ordinary process against him, or by a process against the churchwardens out of the ecclesiastical courts.

VICAR, VICARAGE. [BENEFICE, pp. 341, 342.]

VICAR APOSTOLIC. [CATHOLIC CHURCH.]

VICTUALLERS, LICENSED. [ALEHOUSES, p. 99.]

VIEW OF FRANKPLEDGE. [LEET.]

VILL. [TOWN.]

VILLEIN, or VILLAIN, denotes a species of bondman subject to his feudal superior. The word is from the low Latin form Villanus, which is from the Latin word Villa. In England, during the Anglo-Saxon period, a large part of the people appear to have been in a servile condition, either as domestic slaves or cultivators of the land. The power of the master among the Anglo-Saxons, though very extensive, had some limits. If a master beat out the eye or the tooth of his slave, the slave was entitled to his freedom; if he killed him, he paid a fine to the king, unless the slave lived a day after the wound was inflicted, in which case the offence was unpunished. The Norman conquest did not materially alter the state of slavery in England. The lands were transferred to Norman masters, and the slaves passed as part of the property. After the Conquest there were four classes of slaves. 1, Villeins in gross, who were the personal property of their lords, and performed the lowest household duties. They were very numerous, and were frequently sold and even exported to foreign countries. (Walsingham, *Hist. Ang.*, p. 258.) 2, Villeins regardant, or praedial slaves, who were attached to the soil and specially engaged in agriculture. These were in a better condition than villeins in gross, were allowed many indulgences, and even, in some cases, a limited kind of property; yet the law held that the person and property of the villein belonged entirely to his lord, the rule being the same as that in the Roman law, that whatever was acquired through the slave was acquired by the lord. 3, A class called Cottarii is mentioned in Domesday Book; and 4, in the same book, a class called Bordarii. But the first two classes in fact comprised all the villeins.

The legal condition of villeins in the reign of Edward IV., when Littleton wrote his book of Tenures, appears from that work, Sections 172-208.

In England a few instances of praedial servitude existed so late as the reign of Elizabeth, and perhaps at a still later period. (Barrington, *On the Statutes*, 274; Hallam's *Middle Ages*, vol. i. p. 223.) In some parts of France it existed down to the time of the Revolution. [SLAVERY.]

(Bracton; Littleton; Coke's *First Inst.*; Reeves, *Hist. of English Law*; Blackstone's *Commentaries*.)

VILLEINAGE was a base tenure of land. This tenure was founded on the servile state of the occupiers of the soil [VILLEIN], who were allowed to hold portions of land at the will of their lord, on condition of performing base and menial services. Where the service was base in its nature, and uncertain as to time and quantity, the tenure was called pure villenage; but where the service, though base, was certain and defined, it was termed privileged villenage, and sometimes villein-socage.

Villenage is generally supposed to be the origin of copyhold tenure. [COPYHOLD, ENFRANCHISEMENT.]

VISCOUNT, the name of a dignity in the English peerage, which is next above that of Baron. It is commonly said that Viscount Beaumont, created in 1440 by Henry VI., was the first who had the title. But it is not quite certain whether the title did not exist earlier as a dignity and distinct from the title of an office. The ancient vicecomes or viscount was the deputy of the earl or count; and vicecomes is the Latin word for the sheriff of a county. [COUNT, EARL, SHERIFF; Spelman, *Vice-comes nomen dignitatis*; Camden, *Britannia* (Gough), i. cxciv.; 2, 229; 4, 24.]

VISITOR. [COLLEGE; SCHOOLS, ENDOWED; USES, CHARITABLE.]

VISITATION. [ARCHDEACON; BISHOP.]

VOTING. Voting means the giving of a man's voice or opinion in some

matter which is to be determined by a majority of voices or opinions of persons who are empowered to give them. The commonest case of voting in countries where there is an elective branch of the supreme power is that of voting for members of a legislature, as in Great Britain and Ireland.

The vote may be given either orally, in which case it is notorious for what person or persons a man gives his vote; or it may be by ballot, that is, by the voter writing on a tablet or paper the name or names of the person or persons for whom he votes, and putting the tablet or paper into a closed box. When the voting is oral, it is open voting; when it is by ballot, it is secret voting, or at least secret so far as the voter chooses to keep it secret, if the business is properly managed; for secrecy is the object of the voting by ballot.

There has been much discussion on the vote by ballot. The question is resolvable into various parts: first, is it a matter of public utility that a man's vote for a member of the House of Commons (to take this as an instance, and the main instance here in Great Britain) should be open or secret? There is something to say on both sides, though those who have argued in favour of the one or the other of the two modes of voting have perhaps not discussed this part of the question fully. There is a short answer to those who say that the non-voters, or the whole body of voters, or that all people have a right to know how a man votes. The answer is, that they are abusing the term Right. The franchise is not given under any such conditions, and there is no Right of the kind, if we use the word Right in its strict and proper sense. What is meant is probably this, that it is for the general interest that a man's vote for a member of the Commons' House should be open, in order that opinion may operate upon him; for if this is not the reason, it is difficult to see that there is any other reason for open voting. But opinion may be wise or unwise, favourable to a good candidate or against him. Open voting, therefore, if it is to be affected by opinion, may have bad results as well as good results. On the whole, however, it must be admitted in a country in which there is a representative system, that the opinion of the majority of the voters must be considered to be right, and we must consistently admit that under a system of open voting, the whole influence of opinion, if it has any influence, bears a balance in favour of the majority. As then there must be a majority in any given case of voting, and as that majority represents the right opinion, the opinion of the majority before the voting ought to operate, and it can only operate effectually when the voting is open.

On the other side: when a man has a vote, it is implied that he has a voice and a will of his own, and that it is intended that he shall exercise it. But he can only exercise it freely when all restraint is removed. So far as public opinion has any value, so far as arguments have any weight, he may learn what opinion is, he may listen to the arguments, and he may vote as he thinks best. If his vote is to be more the expression of his own opinion than of the opinion of other people, which seems to be implied in the phrase of "having a vote," he ought to be allowed to give his vote in that way which gives him most freedom to do as he wishes, whichever of the two ways that may be. Again, opinion and power and influence and threats may and do operate largely on many persons who have votes, and accordingly they vote in a different way from what they would vote if they were free from all influence. We believe this fact is not denied by those who are in favour of the ballot or those who are against it. But then it may be urged that if voting were secret, improper means of working on the voter would still be resorted to. It must be admitted that they might and would; but the question is, would they be so efficient in making him vote contrary to his wish as when the voting is open?

A great many people have no opinions of their own: they follow the opinions of others. If the voting is secret, they can follow that opinion which they are inclined to follow, at least if the secrecy of their vote is effectually guarded. If the voting is open, they are exposed to the

risk of being led for some other reasons than their own choice to vote not as they wish to vote; and it does not follow that because the voting is open, they will be guided by the opinion of the majority, which is here assumed to be the right opinion. The opinion of the minority may be exercised as efficiently on any given voter as that of the majority. In fact one individual or a few individuals chiefly operate on voters either by themselves or by their agents, and the operation of the individuals who belong to the minority will be as efficient as the operation of the individuals who belong to the majority, in proportion to their numbers, other things being equal.

Suppose it to be determined, though it is not determined here, that secret voting is on the whole more consistent with the notion of a man "having a vote" and "giving a vote," and that it is at least as beneficial to the community as open voting, there remains the objection that there is no contrivance by which the secrecy of a man's vote can be secured. The two chief objections then to vote by ballot are—that it is not for the general interest, and that secrecy cannot be secured: to which may be added a third objection, that from the attempt to secure secrecy more mischief will ensue than arises from open voting.

That it is possible to devise means by which the bare giving of the vote may be secretly effected, can hardly be denied. If the giver of the vote does not keep his own secret, which sometimes he would not do, that is his own affair. If secrecy is secured for him against everybody except himself, that is all that can be attempted. But it is urged that there would be many attempts for many reasons and in various ways on the part of persons who were interested in elections, to ascertain a man's vote, and that these attempts would give rise to many evils and inconveniences to the voter himself, and subject him to much annoyance. Granted that this may be so or will be so, it does not follow that a greater amount of true expression of opinion, which is the thing assumed to be aimed at in taking men's votes, will not be gained by secret than by open voting.

Bribery is one means by which voters are induced to give their votes; and the enactment of laws against bribery is founded on the assumption that bribery should be prevented, that voters should give their votes without pay or reward. Under the system of open voting there is much bribery in the election of members for the Commons' House. It cannot be asserted that secret voting would destroy bribery, but perhaps it would render it more difficult. This subject is considered under the article BRIBERY.

The condition of the Roman voters was very peculiar. They were very numerous, and many of them very poor. Bribery existed to a great extent when the voting was secret, and there were severe penalties against the candidate who bribed, and probably against his agents also. The Roman voters did not undervalue the ballot, if we may take Cicero's testimony (*Pro Plancio.*, 6): the ballot (tabella), he says, is a favourite with the people, for it discloses a man's face, but closes up his mind, so that he can do what he chooses, and promise what he is asked. If this representation is true, a Roman might promise his vote to one man and vote for another, and be well pleased that he had the power of doing so.

The kind of immorality here suggested is not a matter for severe censure. He who is permitted by the form of the constitution and by law to ask for a vote and gets a promise, may not get the vote which is promised. The immorality of him who buys a vote, or tries to get it by threats, or unfair means, is the same whether the voter keeps his promise or not. The immorality of the voter who promises his vote to one man which his judgment gives to another, and keeps his promise, appears to be at least as great as that of the man who promises his vote to the man whom he does not like, and gives it to the man to whom he wishes to give it.

Secret voting is much used in England, in clubs, in committees, and on many occasions. Its use is recommended by its convenience. It enables a man to vote as he pleases without giving offence, and without getting into personal quarrels. The practice is maintained to be good on

the whole, though occasionally there is evil in it. A spiteful, ill-tempered fellow may, by a secret vote, sometimes inflict injury or at least great pain on an honest and respectable man. Yet the advantages of the secret voting in all cases where it is used, are supposed to be greater than the disadvantages.

If secret voting is in any case good, or if in many cases it is good, as we believe it is admitted to be by all persons, those who object to its being extended to other modes of voting than those in which it is at present practised, are loaded with the burden of showing in each case to which it is proposed to extend it, that there are good reasons against such extension. Those who are in favour of the ballot must reply to such reasons. It is sufficient for them to open the case of any particular extension of the ballot, by declaring that in such case the introduction of the ballot would be beneficial.

This matter sleeps at present, but when more urgent reforms are accomplished, it is probable that the discussion of it may be revived.

VOYAGE. [BOTTOMRY; SHIPS.]

W.

WAGER. [GAMING.]

WAGER-POLICY is a name given to a policy of insurance made by persons having no interest in the event about which they insure. [GAMING, p. 59.]

WAGER OF BATTLE. [APPEAL.]

WAGES are the price paid for labour. The labour of man, being an object of purchase and sale, has, like other commodities, a natural or cost price, and a market price. Its natural price is that which suffices to maintain the labourer and his family, and to perpetuate the race of labourers. The rate of wages cannot be permanently below this natural price, for if in any country labourers could not be thus maintained, they must cease to exist; they must be exterminated by famine, or be removed to some other country. If the price paid were only sufficient to maintain the labourer himself, without any family, he would be unable to marry, or his children would die of want. By these distressing causes the supply of labour would be reduced until the competition of employers had raised the price of labour to its natural level. But, although the natural price would thus appear to be that which only wards off starvation, there is, happily for mankind, a principle which tends to raise it to a much higher standard. Every man desires to improve his condition, to enjoy more of the comforts and luxuries of life than have fallen to his lot, and to raise himself in the estimation of others. If he has accomplished this, he acquires habits of living which it is painful for him to forgo. He endeavours to bring up his children with the same views and habits as his own, and feels it a degradation if they fall below the standard which he has himself attained. The necessary consequence of this tendency to social improvement is to cause prudence and forethought in marrying, and undertaking the support and settlement of a family. If a labourer had been accustomed to abundance of nourishing food, to decent clothing, and to a comfortable home, he would be restrained from marriage by a fear of losing these comforts himself, and of bringing want upon his wife and family. He would thus be induced to defer the responsibilities of marriage until he should be better able to bear them. This is a sound and wholesome principle as regards an individual, and is conducive to the welfare of himself and his family. It is not less advantageous to society at large, and to the class of labourers in particular. The sufferings and demoralization of poverty are avoided, and the population being restrained within reasonable limits, the supply of labour does not exceed the demand. A labourer cannot have too many wants. He should desire good food, good clothing, a cleanly and comfortable home, and education for his children. If the standard of wants could be universally raised, the natural price of labour would rise in proportion; for if each labourer were determined not to render himself unable to gratify these wants, all could command the wages that would supply them. The degree in which this principle operates determines the natural rate of wages and the condition of the working classes. Where it has no influence,

as in Ireland and many parts of Asia, the wages are only sufficient to support life upon the commonest food, and to provide the most squalid clothing and habitations. In more civilized countries, the wants and prudence of the middle classes extend lower in the scale of society, and the labourers want more and enjoy more of the comforts and decencies of life. Happy, indeed, is that country in which the natural price of labour is the highest! In investigating the principles of population in reference to wages and to the condition of the labouring classes, Mr. Malthus did no more than apply the common and recognised maxims of individual prudence to the social state of the poor. He laid down rules for their guidance, which every richer man would require to be observed by his children; and yet he has been ignorantly and vulgarly defamed by many of that class who have only acquired and maintained their present station by acting upon the very principles which he neither suggested nor discovered, but the consequences of which he has only more scientifically explained.

The general market-rate of wages depends upon the ratio which the capital applied to the employment of labour bears to the number of labourers. If that ratio be great, the competition of capitalists must raise wages; if small, the competition of labourers amongst each other, for employment, must reduce them. Whenever the accumulation of capital is proceeding more rapidly than the increase of population, wages will be on the increase, and the condition of the working classes will be continually improving; until some check has been given to the increase of capital, or until the growth of population (which is naturally encouraged by high wages) has altered the relative proportion of capital to labourers, and reduced the market-rate of wages to the natural rate. While the general rate of wages is regulated by these causes, there are various circumstances which, by increasing or decreasing competition for employment, tend to raise or depress the wages paid to persons engaged in particular occupations. Some of the principal of these are—

1. The agreeableness or disagreeableness of the employments.
2. The easiness or cheapness, or the difficulty and expense of learning them.
3. Their constancy or inconstancy.
4. The small or great trust that must be reposed in those who carry them on.
5. The probability or improbability of succeeding in them.

It is not uncommon to hear these circumstances stated as the direct and immediate causes of high or low wages in particular employments; as if in some cases employers voluntarily gave high wages, or the labourer could command them merely on account of the nature of the employment. But the relation of supply to demand will influence wages in particular employments, as it does the price of labour generally, and of other commodities; and the circumstances stated above will obviously tend to increase or diminish the number of competitors for particular employments. More will naturally seek an agreeable trade, easily learned, than one of a disagreeable character and difficult to learn. All descriptions of skilled labour bear a higher price than unskilled labour. The expense of acquiring the knowledge of any art or trade would not be acquired at all, unless the person who had incurred it were better remunerated than others who have nothing to offer except their natural strength and intelligence, which is common to all men: but many cannot incur the expense of learning a trade if they would; others are too indolent, too careless, or too awkward; and thus the class of skilled workmen are not open to the same unlimited competition as other classes of labourers, and are in a condition to command higher wages. Wherever uncommon skill, talent, or other advantages are required, the number of persons actually practising and living by an employment, must be comparatively limited. Most persons are deterred from attempting to learn it by the fear of failure, and many who attempt it do not succeed in gaining their livelihood by it. The few who are really successful can then command an extraordinary reward for the exercise of their peculiar talents or acquirements. The world will enjoy the advantage of them at any

price, not being satisfied with any less degree of excellence. Even if an unusual influx of skilled labourers into any employment should lower the rate of wages, this lower rate is not likely to continue very long, as the superfluous number would seek other employments which offered a higher reward. This result is facilitated by the fact that the ordinarily high price of skilled labour causes a much more expensive mode of living, and thus raises the natural rate of wages of skilled labourers; or, in other words, induces them to regard as necessaries a variety of comforts which are beyond the reach of common workmen.

Wages are usually calculated in money, and are called high or low according to the money price actually paid; but the condition of the labourer is obviously affected by the price of commodities as well as by the amount of his wages. If the necessaries of life be cheap, low money wages will maintain him in comfort; if they become dearer, higher wages will not improve his condition, but will leave him as he was. Hence it becomes a most important object to inquire whether the price of provisions affects the rate of wages. The disputes which have arisen upon this question would seem to be chiefly caused by attempts to apply a universal law to countries and employments under totally different circumstances. Some contend that as wages are regulated by supply and demand, the price of provisions cannot affect them; while others maintain that the average prices of labour and of food must always, for long periods of years, conform one with the other. It is evident, at the outset, that the former are speaking of the market rate of wages, and the latter of the natural rate; and if this distinction be borne in mind, the two propositions may easily be reconciled. If the market rate of wages be high, it is because the demand for labour is greater than the immediate supply. A fall in the price of provisions could not then lower the rate of wages, because the supply of labour would still be the same; but if the fall were permanent, the condition of the labourer would become so easy, that population would increase, and the supply of labour would be more abundant. The market rate would thus be brought down to the natural rate, unless capital should be increasing in the same proportion as the supply of labour; and any increase in the price of food must then check the growth of population, limit the supply of labour, and ultimately raise wages. There is the same tendency in the market price of labour to conform to the natural price, as there is in the market value of commodities to conform to their real value. Both labour and commodities are equally capable of increase and diminution, and the varying causes which encourage or check production adjust the proportion between the natural or cost price and the market price. But in some countries the market rate of wages may be very much above the natural rate, and in others nearly the same. In one country capital may be increasing more rapidly than population, and in another not so fast. It is clear that a rise or fall in the price of food cannot influence the rate of wages alike in all these countries. Where the wages are high, and capital is rapidly accumulated, any reduction in the price of food and other commodities is a clear gain to the labourer, and can have only a very remote, if any, effect in lowering wages; but where wages are already reduced to the natural rate, and capital is not increasing faster than population, wages will undoubtedly rise and fall with any permanent increase or diminution in the cost of subsistence.

The question is further affected by the differences which exist in the natural rate of wages in various countries. Where the natural rate is so low as only to afford the bare means of existence, the least rise in the price of food must be fatal to numbers of the labouring population, and, by thus limiting the supply of labour, must raise its price; but where the natural rate is high, the labourers suffer indeed from a rise in the price of food, but their existence is not endangered, the supply of labour is not diminished, and their wages consequently do not rise. From these circumstances it is evident that the precise condition of a country in respect to capital, population, and wages must be ascertained before it

can be determined whether the price of food will affect the money rate of wages. It may however be generally affirmed, that in proportion as the market rate approaches to the natural rate, and the latter to the mere cost of the commonest subsistence, will the price of the necessaries of life affect the rate of wages.

When the causes which regulate the price of labour are understood, the folly and injustice of any legislation to fix the rate of wages are obvious. The seller of an article will always endeavour to obtain a high price for it, which the purchaser will only give if he be unable to obtain it for less. Labour is the most important object that man has to buy or to sell. Each will make the best bargain he can, and in this no law ought to restrain him. Laws may purpose to affect wages either directly or indirectly. Direct interference with the rate of wages has been frequently resorted to. By several acts of parliament a legal rate of wages in particular employments was ordered to be settled, from which any deviations either on the part of the employer or labourer were punishable. (See 25 Edw. III. stat. 1; 34 Edw. III. c. 11; 13 Rich. II. c. 8; 11 Hen. VII. c. 22; 5 Eliz. c. 4; 1 James I. c. 6.) Unless all the causes of high or low wages already explained be visionary, it is plain that no law can overrule them and establish a legal rate different from that which natural causes would have produced. It may embarrass the operations of trade, and mischievously disturb the freedom of the labour market; but it cannot attain its immediate end—a compulsory rate of wages. The experience of this fact has long since put an end to any such legislation in this country; but the indirect effect of laws upon wages is still felt. The most pernicious interference with wages ever effected by the indirect operation of a law, resulted from the mode of administering the laws for the relief of the poor. Before these laws were altered in 1834, it was the practice in most parishes, especially in the south of England, to give relief from the poor-rate to labourers in proportion to the number of their children. The effect of such a system of relief was to remove the ordinary inducements to prudence in regard to marriage, and even to encourage improvidence. The farmers, taking advantage of the addition made to wages from the poor-rate, offered lower wages than would have sustained a family; and the labourer accepted them, because he was indifferent whether he received his pay from his employer or from the parish. The rate of wages thus became fixed, in agricultural districts, so low as barely to support an unmarried labourer; and as the parish would maintain a family, every man saw that by remaining single he would have no chance of improving his condition, and that by marriage he would be equally well and often better provided for. This system of relief injuriously affected both the market rate and the natural rate of wages. The market rate was completely disturbed; for a man was paid not according to the value and demand for his services, but in proportion to the number of his family. The natural rate was continually undergoing depression, because marriages being encouraged without reference to the sufficiency of wages to support a family, population was extraordinarily promoted. At the same time, the property destined to support it was suffering diminution, by being taxed heavily for the payment of comparatively unproductive labour.

The only sound mode of raising wages and improving the condition of a people is to promote and encourage the increase of the general wealth of a country [WEALTH], by every means which legislative science points out as best suited to that end; and at the same time to remove obstructions, and give facilities to the moral and intellectual improvement of the working classes. By these means capital will be increasing with the natural growth of population; while the labourers, with better habits, will be less prone to reckless improvidence, and consequently not so likely to outrun the increase of capital.

It is not unusual for persons in particular employments to desire higher wages, and to enter into combinations against their masters in order to obtain them. Such combinations were formerly prohibited both by the common and sta-

tute law of this country; but since the 5th Geo. IV. c. 95, if unattended with violence or intimidation, they are not unlawful. Unless he has bound himself by a contract, every man has a right to give or withhold his own labour as he pleases; but he has no right to prevent others from disposing of their labour. But the only mode of rendering a combination effectual is to exclude fresh workmen, which frequently can only be done by molestation and threats, which are subversive of the freedom and peace of society. Strikes, temperately conducted, cannot in principle be condemned: being often a necessary protection to the working classes. When masters are not dealing fairly with their workmen, the fear of a strike may often control them; especially as, when acting unjustly, they would find a difficulty in obtaining new hands. But where the cause of a strike or combination is not an occasional dispute concerning wages, but an attempt to limit the number of workmen by compulsory regulations and bye-laws, and to dictate to their employers, it is injurious to trade, and ultimately to the parties themselves. To the labouring classes at large such combinations cannot be beneficial. Whenever they are successful, it is by excluding many competitors, who are, of course, injured by the exclusion. The labour market must become clogged by a mass of exclusive trades, which render it difficult to find employment. The injury suffered by trade in consequence of the artificial limits to the supply of labour and the unnaturally high wages, must also have the effect of diminishing capital, and consequently the means of employing labour.

(Adam Smith's *Wealth of Nations;* Ricardo's *Political Economy and Taxation;* M'Culloch's *Principles of Political Economy;* Malthus, *Essay on Population.*)

WAIF. If the goods of any person were stolen, and the thief thinking that pursuit was made after him, fled, and during his flight waived or abandoned the goods, they became waif, and were forfeited to the king. The king could grant the right of waif to others; and many lords of manors were entitled to waif by prescription or presumption of an antient grant to that effect. No goods could become waif which were not in possession of the thief at the time of his flight. Therefore if he concealed the goods, or placed them in a house, or left a horse at an inn in pledge for his meat, and afterwards fled, the goods did not become waif.

It was necessary, in order to complete the title of the king or lord of the manor to waif, that it should be taken possession of by some one on his behalf; otherwise the original owner was not barred from recovering his goods at any time, and if he seized them first, they remained his property. Various other rules as to waif are merely legal curiosities.

Lord Coke distinguishes between waif which was stolen property, and the goods which were the property of a person who fled for a felony, which goods were always forfeited on proof and finding by a jury of the fact of flight, even though the party were acquitted of the felony. By 7 & 8 Geo. IV. c. 29, s. 57, the court before whom a prisoner is convicted has power in all cases, without restriction as to time, to make restitution of stolen property to the owner, except as to negotiable instruments in the hands of parties who, without notice, have given value for them: and by 7 & 8 Geo. IV. c. 28, s. 5, the jury are no longer to be charged to inquire whether a prisoner fled for treason or felony, and there is now no forfeiture for such flight.

(5 Co., 109: Com. *Dig.* tit. 'Waife.')

WALES, PRINCE OF, is the title usually borne by the eldest son or heir apparent of the King or Queen Regnant of Great Britain and Ireland. Before the reign of Edward I. the eldest son of the Prince was called the Lord Prince. The title of Princes of Wales originally distinguished the native princes of that country. Henry III., in the 39th year of his reign, gave to his son Edward (afterwards Edward I.) the principality of Wales and earldom of Chester, but rather as an office of trust and government than as a special title for the heir apparent to his crown. When Edward afterwards became king, he conquered, in 1277, Llewellyn and David, the last native Princes of Wales, and united the kingdom of Wales with

the crown of England. There is a tradition that Edward, to satisfy the national feelings of the Welsh people, promised to give them a prince without blemish on his honour, a Welshman by birth, and one who could not speak a word of English. In order to fulfil his promise literally, he had sent the queen Eleanor, to be confined at Caernarvon Castle, and he invested with the principality her son, Edward of Caernarvon, then an infant, and caused the barons and great men to do him homage. Edward was not at that time the king's eldest son, but on the death of his brother Alphonso, he became heir apparent, and from that time the title of Prince of Wales has ever been borne by the eldest son of the king. The title is not inherited, but is conferred by special creation and investiture; and was not always given immediately on the birth of the heir apparent. Edward II. did not create his son Prince of Wales till he was ten years old, and Edward the Black Prince was not created until he was about thirteen.

The eldest son of the king or queen regnant is by inheritance Duke of Cornwall. Edward the Black Prince was first created Duke of Cornwall on the death of John of Eltham, his uncle, who was the last Earl of Cornwall; and by the grant under which the title was then conferred, in the 11th Edward III., the dukedom is inherited by the eldest living son and heir apparent. If the duke succeed to the crown, the duchy vests in his eldest son and heir apparent; but if there be no eldest son the dukedom remains with the king, the heir presumptive being in no case entitled to it. The Black Prince was also created by his father Earl of Chester and Flint. By the statute 21 Richard II. c. 9, the earldom of Chester was erected into a principality, and it was enacted that it should be given only to the king's eldest son. Although that statute, with all the others in that parliament, was repealed by the 1st Henry IV. c. 3, the earldom has ever since been given together with the principality of Wales.

The titles now borne by the Prince of Wales are "Prince of Wales and Earl of Chester, Duke of Saxony, Duke of Cornwall and Rothsay, Earl of Carrick, Baron of Renfrew, Lord of the Isles, Great Steward of Scotland." As to the Duchy of Cornwall, see *Civil List*, p. 515.

(Selden's *Titles of Honour*, part ii. c. 5; Connack's *Account of the Princes of Wales*, 8vo. 1751.)

WAPENTAKE. [SHIRE.]

WAR. [BLOCKADE; INTERNATIONAL LAW.]

WARD. [GUARDIAN; TENURE.]

WARDS. [MUNICIPAL CORPORATIONS, p. 386.]

WARDS, COURT OF. The Court of Wards and Liveries was established by the statute 32 Henry VIII. c. 46, to superintend the inquests which were held after the death of any of the king's tenants by knight's service, for the purpose of ascertaining what lands the tenant died seised of, who was his heir, whether the heir was an infant; and thus what rights accrued to the king in the shape of relief, primer seisin, wardship, or marriage.

By the statute passed in the first Parliament of Charles II. (12 Charles II. c. 24), the Court of Wards was abolished. The preamble of the statute states that it had been intermitted since Feb. 24, 1645. [GUARDIAN; KNIGHT'S SERVICE.]

WARDSHIP. [KNIGHT'S SERVICE.]

WAREHOUSING SYSTEM is a Customs regulation, by which imported articles may be lodged in public warehouses at a moderate rent, without being chargeable with duty until they are taken out for home consumption, and are exempt from duty if re-exported. This regulation gives valuable facilities to trade, is beneficial to the consumer, and ultimately to the public revenue. Where no such system exists, the merchant must either pay the duty on every article as soon as it is landed, or must enter into a bond with sureties for payment at a future time. If he pays at once, he is obliged to advance a large capital, on which interest must be charged to the consumer until the goods be sold; or he must effect an immediate sale, perhaps at an inadequate profit, or even at a loss, in order to raise the funds necessary to pay the duty. If he wishes to defer the payment until the market shall offer an advantageous sale, he may find it difficult to induce persons to become his sureties,

and, when he has succeeded, he may involve them in ruin. The result of these difficulties is that none but wealthy capitalists can import articles on which heavy duties are charged, and the trade in such articles is limited, to the injury of the consumer. The immediate payment of customs duties also obstructs the carrying trade of a country, by making the re-exportation of articles more troublesome as well as more expensive.

The first British statesman who proposed a remedy for these evils was Sir Robert Walpole, in his celebrated Excise scheme, in 1733. His object was to unite the Excise laws with those of the customs as regarded wines and tobacco, and to charge a small duty immediately on importation, and the remainder on being removed from the Excise warehouses for home consumption. Speaking of tobacco, he thus explained his proposal:—"If the merchant's market be for exportation, he may apply to his warehouse-keeper, and take out as much for that purpose as he has occasion for, which, when weighed at the custom-house, shall be discharged of the three farthings per pound with which it was charged upon importation; so that the merchant may then export it without any further trouble. But if his market be for home consumption, that he shall then pay the three farthings charged upon it at the custom-house upon importation; and that then, upon calling his warehouse-keeper, he may deliver it to the buyer, on paying an inland duty of 4*d.* per pound to the proper officer appointed to receive the same." Walpole clearly foresaw the advantages of his scheme to the carrying trade. "I am certain," he said, "that it will be of great benefit to the revenue, and will tend to make London a free port, and, by consequence, the market of the world." This wise plan, unfortunately for English commerce, was not permitted to be carried into effect.

The advantages of the warehousing system were most forcibly pointed out by Dean Tucker in 1748, in his 'Essay on the Advantages and Disadvantages which respectively attend Great Britain and France with respect to Trade,' and afterwards by Adam Smith, in his 'Wealth of Nations;' but it was not established before 1803 (43 Geo. III. c. 132). The act by which warehousing is now regulated is the 8th & 9th Vict. c. 91. The lords commissioners of the treasury are empowered to determine the ports at which goods may be warehoused, and the warehouses in which particular descriptions of merchandize may be deposited. The various regulations and restrictions under which warehousing is conducted, and the ports to which the privilege is extended, are fully explained in Ellis's 'Customs, Laws, and Regulations,' vol. ii., pp. 240-377, edition 1841; and 'Yearly Journal of Trade,' for 1846, by Charles Pope.

The main objection to Sir Robert Walpole's scheme was that the warehousing was compulsory; but, under the existing law, it is at the option of the importer. Amongst other privilges enjoyed by the merchant, he may remove any merchandize from one port to another, either by sea or inland carriage, to be warehoused again. The revenue is said to have sustained little or no loss in these removals, and it naturally becomes a question, Why should warehousing be confined to seaports? It is obvious that the power of warehousing on the spot must be a great convenience to the merchants and traders of inland towns, and no reason can be assigned for not conceding it, except insecurity to the revenue. But if goods may be removed with safety from London to Hull, they could be removed with equal safety from Liverpool to Manchester, or from Hull to York. Government would incur no expense in erecting warehouses, as they would be provided by private capitalists, in the same manner as the docks and warehouses in London, Liverpool, and other ports. A committee of the House of Commons reported, in 1840, "that the privilege of having bonding warehouses may be conceded to inland towns, under due restrictions and regulations, with advantage to trade and safety to the revenue;" and by act 7 & 8 Vict. c. 31, the privilege was conferred upon Manchester; but no other inland town has obtained a similar concession.

The advantages of warehousing have been understood in various foreign countries as well as in England. So long

since as 1664, M. Turgot established it in France; but it was discontinued in 1668, except for merchandize imported from the East and West Indies and Guinea, or exported thereto. In 1805 the system was re-established in a more extensive manner, but was confined to certain sea-ports, until 1832, when it was extended to several of the principal cities in the interior. Warehousing both at the ports and at certain inland towns is permitted in Holland. In Belgium, Denmark, and other commercial countries, the system has also been adopted. In the United States of America, its adoption was recommended not only on account of its importance to trade, but for a novel reason —its republican tendency. The president, in his message of December, 1842, said that, without such a system of paying the duties, "the rich capitalist, abroad as well as at home, would possess, after a short time, an almost exclusive monopoly of the import trade, and laws designed for the benefit of all would thus operate for the benefit of the few—a result wholly uncongenial with the spirit of our institutions, and anti-republican in all its tendencies."

WARRANT. A warrant is a delegation by A, who has power to do some act, of that power to B. As a man has power to manage his own concerns, he may give a warrant of attorney to another to act or manage on his behalf. A sheriff who has power to arrest, &c., may give a warrant to his bailiff to act for him. A landlord who has power to make a distress upon his tenant may give a warrant of distress to another for that purpose. A magistrate who has authority to bring before him persons who are within his jurisdiction, and reasonably suspected of having committed certain offences, may make a warrant to others to do that act. A warrant should be in writing, and ought to show the authority of the person who makes it, the act which is authorized to be done, the name or description of the party who is authorized to execute it, and of the party against whom it is made; and in criminal cases, the grounds upon which it is made. The sense in which the word warrant is more generally known relates to criminal matters. A justice of the peace has power within his own jurisdiction to apprehend a person whom he has seen commit an offence in which he has jurisdiction. He may also verbally direct, that is, give a verbal warrant to others to arrest such person in his own presence. He may also give a warrant in writing to apprehend in his absence such person, or any person against whom he has reasonable cause of suspicion from the information of others. The warrant should always be under the hand and seal of the justice. It should be addressed to the constable or constables, or to some private person by name; and the constable or the private person acting within the justice's jurisdiction will not be liable for any of the consequences of obeying a proper warrant. The warrant should name the person against whom it is directed. A warrant to apprehend all persons suspected, or all persons guilty, &c., is illegal; for the pointing out the individual person to be apprehended is the function of the justice, not of the officer. The law as to this was laid down by Lord Mansfield in the case of Money *v.* Leach, 3 Bur. 1742, where the warrant, being of the form called a general warrant, and which had been in use since the Revolution down to that time, directing the officers to apprehend the 'authors, printers, and publishers' of the famous No. 45 of the 'North Briton,' was held to be illegal and void. The warrant should also set forth the time and place of making it, and the cause for which it is made. A warrant may be to bring the party before the justice who grants it, or before any justice of the same county. A warrant of a justice of one county cannot be executed in another until it has been backed, that is, signed by some justice in that other county; and the same provision has been also enacted with respect to warrants granted in any one of the three kingdoms, and requiring to be executed in any other. But a warrant granted by one of the judges of the Court of Queen's Bench is tested England, and may be executed in any part of the kingdom. A warrant is in force until it has been ex-

ecuted, if the justice who granted it be still alive. An officer to whom it is addressed is indictable if he neglects or refuses to act upon it. He is justified in apprehending the party at any time, and in breaking open the doors of a house; but he ought first to make known to those within the cause of his coming, his authority, and to request their assistance. After the party is apprehended, the officer ought forthwith to carry him wherever he is directed by the warrant. Much of what has been said as to a warrant of apprehension is equally applicable to a Warrant of Commitment, which is the document by which a justice authorizes a commitment of a party to prison, either to suffer a summary punishment or to await his trial. The same matters are essential as to showing the authority, the parties, the cause, and the purpose of the warrant. A Search Warrant is a document which authorizes a search to be made for stolen goods. (Burn's *Justice.*)

A Warrant of Attorney is a writing by which a man authorizes another to do an act for him, or as his agent or deputy. [LETTER OR POWER OF ATTORNEY.] But the term is most commonly applied to cases where a party executes an instrument of that name, authorizing another to confess judgment against him in an action for a certain amount named in the warrant of attorney. [COGNOVIT.]

WARRANT OF ATORNEY AND COGNOVIT. [COGNOVIT.]

WARREN. A Free Warren is a franchise which gives a right to have and keep certain wild beasts and fowls, called game, within the precints of a manor, or any other place of known extent, whereby the owner of the franchise has a property in the game, and a right to exclude all other persons from hunting or taking it. It is stated by Blackstone (2 *Comm.* 417), that originally the right of taking and destroying game belonged exclusively to the king; and it is certain that this franchise, like that of a chace or park, must either be derived from a royal grant, or from prescription, which supposes a grant. The law is thus settled in the Case of Monopolies (11 *Rep.*, 87, b.), where it is said that "none can make a park, chace, or warren without the king's licence, for that is *quodammodo* to appropriate those creatures which are *feræ naturæ et nullius in bonis* to himself, and to restrain them of their natural liberty." It is the opinion of Spelmann (*Gloss.* in voc. *Warrenna*) that free warren was introduced into England by the Normans; and there are many instances of such grants by the English kings subsequent to the Conquest.

Free warren cannot appertain to a manor except by prescription; and even when held with the manor, it does not pass by a grant of the manor without the appurtenances; nor if it be held in gross, will it pass by a grant of the manor and appurtenances. (3 N. & M. 671.) The general rights with respect to game which now belong to lords of manors are vested in them by statute. [MANOR.]

It does not appear that the crown ever had the right of granting free warren to one person over the lands of another, though such a right might be enjoyed by prescription. The right of free warren over the land of another might also arise under other circumstances, as when a man, having free warren over certain lands, aliened them, reserving the warren. (8 *Rep.*, 108.)

A warren may lie open, and there is no necessity of enclosing it, as there is of a park. (4 *Inst.*, 318.) The beasts of warren appear to be only hares and rabbits; and the fowls of warren are partridges and pheasants, though some add quails, woodcocks, and water-fowl. (*Terms de la Ley*, 589.) The grantee of free warren acquired thereby the right to appoint a person to watch over and preserve the game, called a warrener, who is justified in killing dogs, polecats, or other vermin which he finds disturbing or destroying the game (Cro. Jac. 45), and by 21 Edward I. s. 2, entitled *De Malefactoribus*, every forester, parker, or warrener was authorized to kill persons trespassing in forests, parks, or warrens, who resisted and refused to render themselves.

The franchise of free warren still exists in some places, and is viewed as an intolerable remnant of feudalism.

WASTE, says Coke (Co. Litt. 53), "vastum dicitur a vastando, of wasting and depopulating;" but he gives no further definition. The notion of waste seems to be when a tenant for years, by the courtesy, by dower, or for life, so deals with land, or such things as are attached to the soil, as to destroy them or greatly damage them. Accordingly the old action of waste lay against such tenants by him who had the immediate estate of inheritance. Waste is either *voluntary*, which is an act of commission, or *permissive*, which is a matter of omission only.

Voluntary Waste chiefly consists in felling timber trees, pulling down houses, or permanently altering any part of a house, in opening new mines or quarries, in changing the course of husbandry, and in the destruction of heir-looms.

Permissive Waste consists chiefly in allowing the buildings upon an estate to go to decay. It is a general rule that the waste which arises from the act of God is excuseable, as if a house falls in consequence of a tempest. But if the destruction of the house by the tempest has been owing to its being out of repair, the tenant is guilty of waste: and so he will be if he do not repair a house which has been uncovered or damaged only by a tempest. In the same manner, if the banks of a river, while in a state of proper repair, are destroyed by a sudden flood, the tenant is not answerable. (1 *Inst.*, 53 a, b.) The rule applies also to the case of a house burnt down by accident. (6 Ann. c. 31, s. 6.) But in these and all similar cases the tenant will still be bound to repair or rebuild, if he has entered into a general covenant to repair. [TENANT AND LANDLORD.]

Tenants in tail, as they have estates of inheritance, are entitled to commit every kind of waste; but this power continues and can be exercised only during the life of the tenant in tail. When it is said that a tenant in tail may commit every kind of waste, the meaning is that he can do those acts to the land which tenants who have not an estate of inheritance cannot do. Tenants in tail after possibility of issue extinct, are not impeachable for waste, but, like tenants for life when their estates are given without impeachment of waste, they may be restrained from wilfully destroying the estate. (2 *Cha. Ca.* 32.) A mortgagee in fee in possession has a right at law to commit any kind of waste, being then considered as the absolute owner of the inheritance; but he will be restrained by a court of equity, which will direct an account of timber cut down, and order it to be applied in reduction of the mortgage debt. (2 Vern. 392.) Copyholders cannot, unless there be a special custom to warrant it, commit any kind of waste, and every species of waste not warranted by the custom of the manor operates as a forfeiture of the copyhold. (13 *Rep.*, 68.)

The original remedy for waste was that under the statute of Marlbridge, 52 Henry III. c. 24, which gave to the owner of the inheritance an action of waste against the tenant for life, in which he was entitled to recover full damages for the waste committed. But as this remedy was often found inadequate, it was enacted by the statute of Gloucester, 6 Edw. I. c. 5, that the place wasted should be recovered, together with treble damages for the injury done to the inheritance. No person was entitled to an action of waste against the tenant for life under these statutes, except him who had the estate of inheritance immediately expectant on the determination of the estate for life; so that if there were an existing estate of freehold interposed between the estate for life and that of inheritance, the right of action was suspended. (1 *Inst.*, 53, b.) The action of waste had long given way to the much more expeditious and easy remedy by an action of trespass on the case in the nature of waste, which may be brought by the person in reversion or remainder for life or for years, as well as in fee, and in which the plaintiff is entitled to costs, which he could not have in an action of waste (2 Saund., 252, n. 7); and the writ of waste is now finally abolished by the 3 and 4 Wm. IV. c. 27, s. 36. It seems that there was formerly no remedy for mere permissive waste after the death of the tenant, though if the estate of the tenant was benefited by the injury inflicted, as if money

was derived to it from the sale of trees cut down, an action for the value of the property might have been sustained against the executor. (Cowp. 376.) Now however, by the 3 and 4 Wm. IV. c. 52, s. 2, remedies by action of trespass or trespass on the case are given against the executors of any deceased person for any wrong committed by him in his lifetime against the real or personal property of another within six months of his death, provided the action be brought within six months after the personal representatives have taken upon themselves the administration of the estate.

But the most complete remedy in cases of waste is that in the Court of Chancery, which, upon application to it by bill, will not only direct an account to be taken and satisfaction to be made for the damage done, but will interpose by way of injunction to restrain the commission of future waste. A Court of Equity will grant its assistance against the commission of waste wherever the case appears to require it, even though the plaintiff is not in a condition to maintain an action at law. (3 Atk., 91, 211, 723). The court will also grant an injunction against waste *pendente lite;* and in such cases it is not necessary that the plaintiff should wait till waste is actually committed; it is sufficient if an intention to commit waste appears, or if the defendant insists upon his right to do so. (2 Atk. 182.)

It has long been usual when estates for life are expressly limited, to insert a clause declaring that the tenant shall hold the lands "without impeachment of waste." These words were originally intended merely to exempt the tenant from the penalties of the statute of Marlbridge, though it has long been settled that they enable him to cut down timber and to convert it to his own use; but he may be restrained in equity from committing malicious waste so as to destroy the estate, or cutting down timber, which serves for shelter or ornament to a mansion-house, or timber unfit to be felled. (2 Vern. 738; 3 Atk. 215.) This is what is called the doctrine of Equitable Waste. The privileges of the tenant for life under the words "without impeachment of waste" are annexed in privity to his estate, and determine with it. Thus it seems that if a lease were made to one for the life of another without impeachment of waste, with remainder to him for his own life, he would become punishable for waste, the first estate being merged in the second. (11 Rep. 83, b.)

Ecclesiastical persons, who hold lands in right of a church, are disabled from committing waste, though, like other tenants for life, they have the right to take from the land materials for necessary repairs. They may not only fell timber and dig stones for that purpose, but have even been allowed to sell timber or stone, when the money was to be applied in repairs; also, though they cannot open mines, they may work those already open. (Amb. 176.) Ecclesiastical persons may be proceeded against for waste in the civil as well as the ecclesiastical courts. It has been held that an action on the case will lie against them for dilapidations, and may be brought by the successor to a benefice either against his predecessor or his personal representatives. (3 Lev. 268; 2 *T. R.* 630.) It seems doubtful whether the courts of common law have any power to issue a prohibition against the commission of waste by ecclesiastical persons. (1 Bos. and Pull. 105.) But there is no doubt as to the jurisdiction of the Court of Chancery to grant an injunction against any ecclesiastical person whatsoever to stay waste in cutting down timber, pulling down houses, or opening quarries or mines on the glebe. The proper person to make the application is the patron of the living, or, when the living is in the crown, or the application is made against a bishop or a dean and chapter, the attorney-general on behalf of the crown. (3 Mer. 421.) But the patron of the living in such cases has no right to an account, for he cannot have any profit by the living. (Amb. 176.) An injunction has been granted against waste by the widow of a rector during the vacancy of the living. (2 Bro. cc. 5, 62.) By the 56 Geo. III. c. 52, the incumbents of benefices are enabled to cut down timber on the glebe-lands for the purposes of the statute (55 Geo. III.) enabling them to

exchange their parsonage-houses or glebe-lands.

Tenants in tail and tenants in fee have the inheritance in the land, and they are the real owners. Those who have less estates are in the situation of the Roman Usufructuarius. [USUFRUCTUS.]

(See Bacon's 'Abridgment,' art. *Waste.*)

WATER AND WATERCOURSES. The right of conducting water through one piece of land for the use of another is an incorporeal hereditament of the class of easements, and was known in the Roman law by the name of the *servitus aquæ ductus.* The right of taking water out of the well or pond belonging to another person is an incorporeal hereditament of the class of profits called in the Roman law the *servitus aquæ haustus.* These rights, in our law, must be either derived from a grant or established by prescription. [PRESCRIPTION.]

It is the law of England that water flowing in a stream is originally *publici juris,* that is to say, a thing the property of which belongs to no individual, but the use to all. The legal presumption is that the proprietor of each bank of a stream is the proprietor of one-half of the land covered by the stream, but there is no property in the water. Every proprietor has an equal right to use the water which flows in the stream, and consequently no one can have the right to use the water to the prejudice of any other without his consent. No proprietor can either diminish the quantity of water which would otherwise descend upon the proprietors below, nor throw back the water upon the proprietors above, so as to overflow or injure their lands. For the same reason, no proprietor has a right to use the water of a stream so as to injure its quality to the detriment of other proprietors.

The only modes in which a right to the use of running water, in a manner inconsistent with the common law rights of others can be established, are either proof of an actual grant or licence from the persons whose rights are affected, or proof of an uninterrupted enjoyment of such a privilege for such a period as the law considers sufficient to constitute a right by prescription. The period of twenty years had been generally fixed upon by the courts of law and equity for this purpose, and the same period has been adopted in the Prescription Act (2 & 3 Wm. IV. c. 71, s. 2). [PRESCRIPTION.] But if water has not been appropriated, it seems that the person who first appropriates and renders it useful acquires a right, and for a violation of such right an action may be maintained on an enjoyment of less than twenty years. It has been decided that after the erection of works and the appropriation by the owner of the land of a certain quantity of the water flowing over it, if a proprietor of other land afterwards take what remains of the water before unappropriated, the first-mentioned owner, however he might before such second appropriation have taken to himself so much more, cannot do so afterwards. (6 East, 219.) The privilege of a watercourse is not confined to private individuals. It may be vested in a corporation, or may be claimed by the inhabitants of a township or parish. If land with a run of water upon it be sold, the water *primâ facie* passes with the land; but it is laid down by Coke that if a person grants *aquam suam,* the soil will not pass, but only a right of fishing in that water; for the proper words in that case to pass the soil would be, so many acres of land *aquâ coopertas:* whereas the word *stagnum,* or pool, will pass both water and land. (1 *Inst.,* 4, b.) The exclusive right to a flow of water once acquired can only pass by grant as an incorporeal hereditament, and a licence, by parol or otherwise, to use or take the water at any place, may be revoked even without an express power of revocation being reserved, unless works have been constructed and expenses incurred upon the faith of it. (5 B. & Ad., 1.)

When the owners of property have, by long enjoyment, acquired special rights to the use of water in its natural state, as it was accustomed to flow, and not merely a use, which is common to all the king's subjects, an action may be maintained for a disturbance of the enjoyment; but where the injury, if any, is to all

the king's subjects, the only remedy is by indictment. The mere obstruction of water which has been accustomed to flow through a person's lands does not in itself afford a ground of action. The plaintiff in such an action must be enabled to show, either that some benefit arose to him from the water going through his lands, of which he has been deprived, or at least that some deterioration was occasioned to the premises by the subtraction of the water; but where the proprietor of the lands can prove that he is injured by the diversion of the water, it is no answer to his action to show that the defendant was the first person who appropriated the water to his own use, unless he has had twenty years' undisturbed enjoyment of it in its altered course. If the injury occasioned by the diversion or obstruction of water is of a permanent nature and injurious to the reversion, an action may be brought by the reversioner, as well as by the tenant in possession, each for his respective loss.

The diversion of watercourses or injury to their banks so as to cause inundation are nuisances against which a court of equity will protect parties by injunction; and if there be a question as to the right to the flow of water, an issue will be directed to try it. Although a court of equity will not in terms decree the banks of rivers, watercourses, or navigable canals to be repaired, the effect of such an order may be obtained by an order that parties shall not be at liberty to use them while out of repair, or against their impeding the use of them by the obstructions consequent upon a state of disrepair. An injunction may also be obtained against conducting the water from one man's tenement upon that of another to his injury by drains or otherwise, in a manner in which it has not been accustomed to flow. And it may be laid down generally, that, with respect to water and watercourses, the aid of a court of equity may be obtained for the purpose either of restraining injury or of quieting possession. (Fonblanque, *On Equity.*)

WAY, *Chimin* (from the French *Chemin*), is a term used to denote either a right, in one person or more, of passing over the land of another, or the space over which such right is exercisable. In the former sense a way is an incorporeal right of the class called EASEMENTS.

There are five kinds of way:—1, A foot-way, for persons passing on foot only; 2, a horse-way, for persons passing on horseback, but including a foot-way; 3, a drift-way, for driving cattle; 4, a carriage-way, for leading or driving carts and other carriages, always including a foot and horse-way, and usually, but not necessarily, including a drift-way; 5, a water-way for ships and boats. [RIVER.]

All these may be either private or public ways. Private ways are enjoyed by particular persons or classes; public ways are open to all persons; hence such a way is said to be *communis strata*, or *alta via regia*—in the language of pleading, a common and public queen's highway.

I. The proper origin of a private right of way is, a grant from the owner of the soil.

Such a grant may be made to a party, or to him and his heirs *in gross; i. e.* without respect to any land or house of which he may be the owner or occupier: or to the grantee, his heirs, and assigns, *being* owners of such a house or close; in which case the right granted will be *appurtenant* to the house or close to which the grant is annexed, and the right will pass with the house or close.

The grant of a way may be either express or implied; and in the case of an express grant, the grantor may impose such restrictions upon his grant as he thinks proper. If a man at the time when he conveys part of his land to another, has no access to the land conveyed, except over the land which he reserves, the grant of a right of way over the land reserved is implied. If a man conveys part of his land, and has no access to the part reserved, except over the land conveyed, a right of way over the land conveyed is impliedly reserved. The way so impliedly granted or reserved is called a "way of necessity."

Where no deed can be produced whereby a way is expressly or impliedly cre-

ated, the party who claims the way may, in the case of a long-continued user of the right without evidence of commencement or interruption within the period of legal memory, plead that it has been immemorially enjoyed by him and his ancestors in the case of a way in gross, or by him and all those whose estate he has, in the house or close to which the way is annexed, in the case of a way appendant (*i. e.* immemorially appurtenant).

Until lately also, a lost grant would be presumed in ordinary cases, after an uninterrupted and unexplained user of 20 years. The rule of law as to prescription for ways is settled by 2 and 3 Wm. IV. c. 71, § 2. [PRESCRIPTION.]

A grant of a right of way made by a person who has only a limited estate in the land over which the way passes, is effectual only during the continuance of the estate of the grantor. If a claim to a right of way is set up in respect of the 20 years' or the 40 years' enjoyment mentioned in the statute, if it appear that the land over which the right is claimed has, during the whole or part of the 20 or 40 years, been in the occupation of a party who had a limited estate in such land, not only is no right of way acquired against the reversioner, but no right whatever is gained by the user. (4 Tyrwh. 552; 1 Cro. M. & R., 217.) As to the construction of this act, see 6 N. & M. 230; 4 Ad. & Ell. 369: 11 Ad. and Ell. 688, 788.

The party to whom a private road is allotted under the general enclosure act, has a *statutory* right of way.

If the party entitled to a way becomes the owner of the land over which it passes, the right of way is extinguished if the party has the same extent of interest in the land and in the way. But if the one be held for an estate different in extent of duration from the other, the right is only *suspended* during the union of the two interests. Even where a right of way is extinguished by unity of possession, it will, in some cases, revive upon a severance of that unity, as by partition among parceners, &c. A private right of way may also be extinguished by a deed of release executed by the party who is entitled to such way; and such a release may be presumed from a non-user for 20 years or from a declaration made by the party that he has no such right.

A way of necessity is limited by the necessity out of which it has arisen. If the party to whom such a way is impliedly granted, or by whom it is impliedly reserved, becomes entitled to some other access to his land, equally direct, the way of necessity is gone.

The particular rights of the grantee of a private way continue to exist notwithstanding the owner of the land may have dedicated it to the public as a highway.

By the general enclosure act (41 Geo. III. c. 102) all roads, private as well as public, within the district, not set out by the commissioners, are declared to be extinguished.

The grantee cannot throw the burthen of repairing the way upon the grantor, unless by the terms of the grant, evidenced by the deed or by user, the grantor has engaged to enable the grantee to use the way. In the ordinary case, where the right and the liability to repair the way are in the grantee, he is not entitled to go upon the adjoining land when the direct way is impassable (4 Maule and Selw., 387); whether he may do so where the state of non-repair is caused by the wrongful act of the occupier of the land, or where the liability to repair rests upon the latter, does not appear to have been decided.

If the occupier of the land over which a private way passes, or any other person, obstruct the way, the party entitled to the way may remove the obstruction, and he may also bring an action on the case, or, in some cases, an action of covenant against the obstructor. On the other hand, if the occupier of the land resisting the claim of a right of a way, bring an action of trespass against the person exercising the alleged right, the defendant may plead in justification a title founded upon prescription, grant, reservation, or statute.

II. Between private ways and public ways stand what may be called *quasi public* ways, which partake of the

qualities of both, but differ in some respects from each. By some writers these are classed among private, by others, among public ways; they seem more properly to constitute a distinct intermediate class. Such are ways which the inhabitants of a town, &c., have immemorially used from their town, &c., to a church or market. A right of this description cannot, in modern times, be created. It cannot be the subject of a grant, inasmuch as inhabitants, as such, are not at this day capable of taking any interest by grant; nor can it, like a public way, be created by dedication, as the dedication of a way can only be to the public at large. Such a right therefore can exist only as the consequence of an antient custom.

III. A highway is created where the owner of the soil has, by express words or by some act done or forborne, declared his intention that the public shall have the use of a way over such soil. The dedication of a way to the public may be by writing or by words; so that it may be inferred from the acts of the party, as the throwing down of fences, or from mere tacit acquiescence where the acquiescing party is in possession of the land, and therefore has the means, if disposed so to do, of preventing the use of the way. In all cases, however, it is necessary that the party dedicating should have a sufficient interest in the land to warrant such dedication. If he has a less estate than a fee-simple, his dedication will not bind the reversioner. But it would also appear that the owner of such a limited estate could not even dedicate a highway to the public for the limited period of his interest in the soil, and that his attempted dedication, however distinctly and formally made, would amount to nothing more than a licence revocable at pleasure.

When there is no express dedication, the presumption of an intention to dedicate, arising out of the conduct of the party, may be rebutted; as by showing that when the public were first admitted a bar or a chain was occasionally placed across the road, whereby passengers might, at times, be excluded; although it should also appear that the bar, &c., had long been omitted to be used, or that it had been suffered to fall into decay, or had been actually broken down, and that no attempt had afterwards been made to restore it.

A highway is frequently created by statute, principally under inclosure acts.

Whatever may have been the origin of a highway, it cannot, at common law, be destroyed or altered, except after an inquisition taken upon a writ of *ad quod damnum*.

By the common law the burthen of maintaining highways is thrown upon the occupiers of lands and tenements within the parish, or rather within the township in which the way is situated. But particular persons may be bound to repair a highway. This special liability may exist by reason of enclosure (ratione coarctationis), against parties who have enclosed the sides, or one side of the road, and have thereby lessened the facilities for breaking out into the adjoining lands where necessary; or by reason of the possession of lands (ratione tenuræ terræ suæ), which have by some means become chargeable with the burthen. In the case of a corporation aggregate, a liability to repair may also be established by prescription only, or antient usage, without enclosure or tenure.

Any obstruction or other nuisance in a highway may be abated or removed by any person who chooses to undertake the task. The wrong-doer may also be proceeded against by indictment as for a misdemeanor; but he is not liable to an action, as he is in the case of a nuisance to a private or to a quasi-public way, except in respect of special damage.

The regulation of highways has frequently been made the subject of legislative interference. The statute now in force is the 5th and 6th William IV. c. 50.

In the case of a way over water, either private, quasi-public, or public, if the course of the water alter by sudden or gradual change, the way is continued over the new course. Every navigable river, arm of the sea, or creek, is a highway for ships and boats. [RIVER.]

WEALTH. [POLITICAL ECONOMY.]

WEALTH OF NATIONS. [POLITICAL ECONOMY.]

WEIGHTS AND MEASURES. We shall first describe the English weights and measures as they stood on the last day of the year 1825, immediately before the introduction by law of the Imperial Measures, with some remarks on their states at different times.

Troy Weight.—The pound is 12 ounces; the ounce is 20 pennyweights; the pennyweight is 24 grains. The pound is 5760 grains. There is but one grain in use, whether troy or avoirdupois, and a cubic inch of pure water is 252·458 grains (barometer 30 inches, thermometer 62° Fahr.). A cubic foot of water is 75·7374 pounds troy. Only gold and silver are measured by this weight. It is usual to say that precious stones are also measured by troy weight; but, as may be supposed, the measure of these is the grain. The diamond is measured by carats of 151½ to the ounce troy; so that the carat is 3⅛ grains, very nearly. In pearls, the old foil measure still exists; for the pearl grain is one-fifth less than the troy grain.

Apothecaries' Weight.—In *dispensing* medicines, the pound troy is divided into 12 ounces, the ounce into 8 drams, the dram into 3 scruples; consequently each scruple is 20 grains. But in buying and selling medicines wholesale, averdupois weight is and always has been used. The fact seems to be that in the first instance the more precious drugs, as musk, were weighed by troy weight, in the same manner as the more precious metals; and that the common medicines were dispensed by fractions of what was then the common pound.

Apothecaries' Fluid Measure.—In 1836, in the new edition of the 'Pharmacopœia,' the College of Physicians prescribed the use of the following measure:—60 minims make a fluid dram; 8 fluid drams a fluid ounce; 20 fluid ounces a pint. For water this is actual weight as well as measure, since the imperial pint is 20 ounces averdupois of water; but for other liquids the fluid ounce * must merely be considered as a name given to the 20th part of a pint. The minim of water is as nearly as possible the natural drop; but not of other substances, the drops of which vary with their several tenacities.

According to Dr. Young (who has reduced them from Vega), the apothecaries' grains used in different countries are as follows:—1000 English grains make 1125 Austrian, 956 Bernese, 981 French, 850 Genoese, 958 German, 978 Hanoverian, 989 Dutch, 860 Neapolitan, 824 Piedmontese, 864 Portuguese, 909 Roman, 925 Spanish, 955 Swedish, 809 Venetian.

Averdupois Weight.—The pound is 16 ounces, and the ounce 16 drams: the modern pound is 7000 grains (the same as the troy grains); whence the dram is 27 grains and 11-32nds of a grain. The hundredweight is 112 pounds, and the ton 20 hundredweight. The cubic foot of water is 62·3210606 pounds averdupois. The stone is the 8th part of the hundredweight, or 14 pounds. The ton of shipping is not a weight but a measure, 42 cubic feet, holding 24 hundredweight of sea-water. Down to the statute of Geo. IV. the averdupois pound varied a little, according to the notion of the writer: Dilworth makes it 6999½ grains; Dr. Robert Smith, 7000 grains; Bonnycastle, 6999½ grains. That act declares "that seven thousand such grains shall be, and they are hereby declared to be, a pound avoirdupois."

Long Measure.—Three barleycorns make an inch, 12 inches a foot 3 feet a yard, 5½ yards a pole or perch,* 40 poles a furlong, 8 furlongs (1760 yards) a mile. Also 2¼ inches are a nail, 3 quarters of a yard a Flemish ell, 5 quarters an English ell, 6 quarters a French ell. A pace is 2 steps, or 5 feet; a fathom is 6 feet. The chain is 22 yards, or 100 links; 10 chains make a furlong, and 80 chains a mile. The barleycorn is now disused, and the inch is sometimes divided into 12 lines (as in France), but oftener into tenths or eighths. The yard is frequently called an ell in old books; *commonly*, Recorde says. Mellis says

* It is not noted in the 'Pharmacopœia' that the fluid ounce, when it is an ounce, is an ounce averdupois.

* In recent times the word perch has been almost confined to the square perch.

that both the yard and the ell were divided each into 16 nails. A goad is an old name for a yard and a half. The hand (antiently handful), used in measuring the height of horses, is fixed at 4 inches by 27 Henry VIII. cap. 6. The furlong is probably a corruption of forty-long, from its forty poles.

Square Measure.—A square perch is 30¼ square yards; 40 square perches are a rood (formerly also farthendele), 4 roods are an acre. The acre is also ten square chains, or 4840 square yards. Four square perches were antiently called a day's work. The rood* is the same word as rod: Mellis says four *rods* make an acre. The old terms which have come down from 'Domesday Book' at latest, the hide, plowland, carucate, and oxgang, are wholly unsettled as to what magnitudes they meant.

The cubic measures, or measures of capacity, do not immediately depend upon the cubic foot, except in the case of timber. Forty cubic feet of rough timber, or fifty feet of hewn timber, make a load.

The preceding measures have been untouched by the act which introduced the imperial measures. The old measures of capacity, the wine measure, ale and beer measure, and the dry measure, are now replaced by the imperial measure.

Old Dry or Corn Measure.—The gallon is 268·6 cubic inches. Two pints make a quart, two quarts a pottle, two pottles a gallon, two gallons a peck, four pecks a bushel, two bushels a strike, two strikes a comb or coomb, two coombs a quarter (eight bushels), five quarters a wey or load, and two weys a last. In measuring grain, the bushel is struck; that is, the part which more than fills the measure is scraped off. Most other goods were sold by heaped measure, or as much as could be laid on the top of the measure was added. This heaped measure (which was supposed to give about a third more than the other) was at first allowed in the imperial system, but has since been abolished. Coals, which must now be sold by weight, were sold by the chaldron. Three bushels make a sack,* three sacks a vat, and four vats a chaldron.

There was antiently a *dell*, or half-bushel (also called a *tovit*), which makes the binary character of this measure almost complete. In the 'Pathway' we do not find the load or wey,† and the coomb is also called a *cornook* (by Jonas Moore, *canock*), and the quarter also a seam.‡ The 'Pathway,' Mellis, and Moore, &c. mention the *water measure* of five pecks to a bushel (11 Henry VII. cap. 4), and always in conjunction with dry measure: it means a dry measure in use at the waterside, and lime, sea-coal, and salt were measured by it. The common dry bushel was called the Winchester bushel; this name is a remnant of the laws of King Edgar, who ordained that specimens kept at Winchester should be legal standards.

Old Wine§ Measure.—The gallon contains 231 cubic inches. Four gills make a pint, 2 pints a quart, 4 quarts a gallon, 18 gallons a rundlet, 31½ gallons a barrel, 42 gallons a tierce, 63 gallons a hogshead, 2 tierces a puncheon, 2 hogsheads a pipe or butt,‖ 2 pipes a tun. But the pipes of foreign wine depend more on the measures of their different countries than on the above. The rundlet and barrel are generally omitted, but they are both found in writers of the sixteenth century. Mellis gives 18½ gallons, and the 'Pathway' 18 gallons, to the rundlet. Tierce merely means the third part of a pipe, and the puncheon was antiently called the tercian (of a tun). The pottle (of two quarts) formerly existed. The anker of brandy, a foreign measure of comparatively recent introduction into England, is ten gallons.

Old Ale and Beer Measure.—One gallon contains 282 cubic inches. Two

* Rod or rood merely means a piece of wood much longer than it is broad or thick. So the word rood frequently was used for the cross; and when Milton says that Satan "lay floating many a rood," he is taking the length of his hero, and not the ground which he covered.

* In 1596 the sack was four bushels.

† Moore makes six quarters, and Ward ten, in a wey.

‡ This word has been preserved as a measure of glass.

§ For wine and spirits, cider, mead, oil, honey, vinegar.

‖ According to Mellis, the butt was a name applied only to half tuns of malmsey or sack.

pints make a quart, 4 quarts a gallon, 9 gallons a firkin, 2 firkins a kilderkin, 2 kilderkins a barrel, 1½ barrels a hogshead, 2 hogsheads a butt, 2 butts a tun. Up to the year 1803, when the two measures were assimilated by statute, this was the beer measure, and the ale measure only differed from it in that 8 gallons made a firkin. Nothing above a barrel is mentioned in the oldest tables, and the pottle (two quarts) is introduced. Two tuns were sometimes called a last.

Imperial Measure.—This measure supersedes the old corn, wine, and beer measures. The gallon contains 277·274 cubic inches, and is 10 pounds averdupois of water. Four gills are a pint, 2 pints a quart, 4 quarts a gallon, 2 gallons a peck, 4 pecks a bushel, 8 bushels a quarter, 5 quarters a load. Of these the gill and load are not named in the statute, but are derived from common usage. When heaped measure was allowed, three bushels made a sack, and twelve sacks a chaldron. This heaped measure was abolished * by 4 & 5 Wm. IV. c. 49, and the abolition was re-enacted by 5 & 6 Wm. IV. c. 63, which repealed the former. These acts leave the higher measures of wine, &c., to custom, considering them apparently as merely names of casks, which in fact they are, and leaving them to be gauged in gallons. It must be remembered that in former times any usual vessel which was generally made of one size came in time to the dignity of a place among the national measures.

Wool Measure.—Seven pounds make a clove, 2 cloves a stone, 2 stones a tod, 6½ tods a wey, 2 weys a sack, 12 sacks a last. The 'Pathway' points out the etymology of the word cloves; it calls them "*claves* or *nails*." It is to be observed here that a sack is 13 tods, and a tod 28 pounds, so that the sack is 364 pounds. Jeake says this was arranged (31 Edward III. cap. 8) according to the lunar year of 13 months of 28 days each. The reason no doubt was that the multitudes of whose occupation the spinning of wool formed a part might instantly be able to calculate the supply for the year or month from the amount of the day's work; a pound a day being a tod a month and a sack a year.

Tale or Reckoning.—If we were to collect every mode of counting, this would be the largest head of all. The dozen, the gross of 12 dozen, and the score, are the only denominations not immediately contained in the common system of numeration, which are universally received; and in all cases, by a dozen, a score, a hundred, a thousand, &c., were signified different numbers, composed of the arithmetical dozen, score, &c., together with the allowances usually made upon taking quantities of different goods. The "baker's dozen," for instance, which has passed into a proverb, arose from its being usual in many places to give 13 penny loaves for a shilling. The increased dozen, hundred, &c., were sometimes called the long dozen, long hundred, &c.; and this phrase is sometimes heard in our own day, when a dear price is called a "long price." The 12 dozen was formerly called the *small* gross, and 12 small gross made the great gross. The hundred was more frequently 120 than 100, the thousand generally ten hundred. Ten thousand was frequently called a last; and it is to be observed that the word last was frequently (almost usually) applied to the highest measure of one given kind. The *shock* was always 60; the dicar, or dicker, always 10, as the name imports. In measuring paper (1594) the quire was 25 sheets, the ream 20 quires, and the bale 10 reams. By 1650 the practice of reckoning 24 sheets to the quire (now universal) had been introduced as to some sorts of paper. Tale-fish, as those were called which were allowed to be sold by tale, were (22 Edw. IV. cap. 2) such as measured from the bone of the fin to the third joint of the tail 16 inches at least.

WEIR, or WEAR, is a dam erected across a river, either for the purpose of taking fish, of conveying a stream to a mill, or of maintaining the water at the level required for the navigation of it.

The erection of weirs across public rivers has always been considered a

* It was abolished in Scotland two centuries ago, and re-enacted by neglect in the act of 1825. But the re-enactment did not obtain for it the slightest introduction, according to Mr. M'Culloch.

public nuisance. Magna Charta (c. 23) directs that all weirs for the taking of fish should be put down except on the sea-coast. By the 12 Edw. IV. c. 7, and other subsequent acts, weirs were treated as public nuisances, and it was forbidden to erect new weirs, or to enhance, straighten, or enlarge those which had aforetime existed. Hence in a case where a brushwood weir across a river had been converted into a stone one, whereby the fish were prevented from passing except in flood-time, and the plaintiff's fishery was injured, this was considered to be a public nuisance, although two-thirds of the weir had been so converted without interruption for upwards of forty years. And it was laid down in that and other cases, that though a twenty years' acquiescence might bind parties whose private rights only were affected, yet that no length of time can legitimate a public nuisance. (7 East, 198; 2 B. & Ald. 662.) On the same grounds it will probably be held that the Prescription Act (2 and 3 Wm. IV. c. 71) does not apply to weirs. It appears therefore that no weirs can be maintained on any rivers to the prejudice of the public, or even, as it seems, of individuals, except such as have existed time out of mind, or such as have been erected under local acts of parliament for the navigation of particular rivers.

The provision of the Roman law as to the maintenance of public rivers (flumina publica) against any impediment to navigation, or against any act by which the course of the water is changed, are contained in the Digest (43. tit. 12, 13).

WESTMINSTER ASSEMBLY OF DIVINES. One of five bills to which it was proposed by the parliamentary commissioners that King Charles I. should give his consent in the negotiations at Oxford (from 30th January to 17th April, 1643) was entitled 'A Bill for calling an Assembly of learned and godly Divines and others to be consulted with by the Parliament for the settling of the government and liturgy of the Church of England, and for the vindication and clearing of the doctrine of the said church from false aspersions and interpretations.' This bill was afterwards converted into 'An Ordinance of the Lords and Commons in Parliament,' and passed 12th June, 1643.

The persons nominated in the ordinance to constitute the assembly consisted of a hundred and twenty-one clergymen, together with ten lords and twenty commoners as lay assessors. Several other persons (about twenty in all) were appointed by the parliament from time to time to supply vacancies occasioned by death, secession, or otherwise, who were called superadded divines. Finally, two lay assessors, John Lord Maitland and Sir Archibald Johnson of Warriston, and four ministers, Alexander Henderson and George Gillespie of Edinburgh, Samuel Rutherford of St. Andrew's, and Robert Baillie of Glasgow, were, on the 15th of September, 1643, admitted to seats and votes in the assembly by a warrant from the parliament as commissioners from the Church of Scotland. They had been deputed by the General Assembly, to which body, and to the Scottish Convention of Estates, commissioners had been sent from the two houses of the English parliament, and also from the Assembly of Divines, soliciting a union in the circumstances in which they were placed. This negotiation between the supreme, civil, and ecclesiastical authorities of the two countries gave rise to the Solemn League and Covenant, which was drawn up by Henderson, moderator (or president) of the General Assembly, and, having been adopted by a unanimous vote of that body on the 17th of August, was then forwarded to the English parliament and the Assembly of Divines at Westminster for their consideration.

The ordinance of the Lords and Commons by which the Assembly was constituted only authorized the members, until further order should be taken by the two houses, "to confer and treat among themselves of such matters and things touching and concerning the Liturgy, discipline, and government of the Church of England, or the vindicating and clearing of the doctrine of the same," &c. as should be "proposed to them by both or either of the said houses of parliament, and no other," and to deliver their opinions and advices to the said houses from time to time in such manner and

sort as by the said houses should be required. They were not empowered to enact or settle anything. As the discussions proceeded, a discordance of principles and views upon various points between the ruling Presbyterian party in the Assembly and the growing Independent or Erastian majority in the parliament became more evident; while the progress of events also tended to separate the two bodies more widely every day, and at last to place them almost in opposition and hostility to each other. The Assembly of Divines continued to sit under that name till the 22nd of February, 1649, having existed five years, six months, and twenty-two days, during which time it had met 1163 times. The Scottish commissioners had left above a year and a half before. Those of the members who remained in town were then changed by an ordinance of the parliament into a committee for trying and examining ministers, and continued to hold meetings for this purpose every Thursday morning till Cromwell's dissolution of the Long Parliament, 25th of March, 1652, after which they never met again.

All the important work of the Assembly was performed in the first three or four years of its existence. On the 12th of October, 1643, the parliament sent them an order directing that they should "forthwith confer and treat among themselves of such a discipline and government as may be most agreeable to God's holy word, and most apt to procure and preserve the peace of the church at home, and nearer agreement with the Church of Scotland and other Reformed churches abroad, to be settled in this church in stead and place of the present church government by archbishops, bishops, &c., which is resolved to be taken away; and touching and concerning the directory of worship or Liturgy hereafter to be in the church." This order produced the Assembly's Directory for Public Worship, which was submitted to parliament on the 20th of April, 1644; and their Confession of Faith, the first part of which was laid before parliament in the beginning of October, 1646, and the remainder on the 26th of November in the same year. Their Shorter Catechism was presented to the House of Commons on the 5th of November, 1647; their Larger Catechism on the 15th of September, 1648. The other publications of the Assembly were only of temporary importance, such as admonitory addresses to the parliament and the nation, letters to foreign churches, and some controversial tracts. What are called their Annotations on the Bible did not proceed from the Assembly, but from several members of the Assembly and other clergymen nominated by a committee of parliament, to whom the business had been intrusted.

The Directory of Public Worship was approved of and ratified by the General Assembly of the Church of Scotland held at Edinburgh in February, 1645; the Confession of Faith, by that held in August, 1647; the Larger and Shorter Catechisms, by that held in July, 1648; and these formularies still continue to constitute the authorized standards of that establishment. The Directory of Public Worship was ratified by both houses of the English parliament on the 2nd of October, 1644; and also the doctrinal part of the Confession of Faith, with some slight verbal alterations, in March, 1648. On the 13th of October, 1647, the House of Commons passed an order that the Presbyterian form of church government should be tried for a year; but it was never conclusively established in England by legislative authority; and even what was done by the parliament in partial confirmation of the proposals of the Westminster Assembly of Divines, having been done without the royal assent, was all regarded as of no validity at the Restoration, upon which event episcopacy resumed its authority without any act being passed to that effect.

It is remarkable that there is not in existence, as far as is known, any complete account of the proceedings of the Westminster Assembly of Divines, either printed or in manuscript. The official record is commonly supposed to have perished in the fire of London. Three volumes of notes by Dr. Thomas Goodwin are preserved in Dr. Williams's Library, London; and two volumes by George Gillespie in the Advocate's Library, Edin-

burgh. Baillie's Letters, however, contain very full details of what was done during the period of his attendance; and a Journal kept by Lightfoot has also been printed. Much information is to be found scattered in various works, such as Reid's 'Memoirs of the Westminster Divines;' Orme's 'Life of Owen;' and especially Neal's 'History of the Puritans.' The only work that has appeared professing to be a 'History of the Westminster Assembly of Divines' is a 12mo. volume, of 390 pages, with that title, by the Rev. W. M. Hetherington, then minister of Torphichen, published at Edinburgh in the year 1843. The reader is referred for a further account of the sources of information on the subject to Mr. Hetherington's Preface, and to a note on p. 521 of Aiton's 'Life and Times of Alexander Henderson,' 8vo., Edinburgh, 1836.

WHIG. Different accounts are given of the origin of this word. Burnet, in his 'History of his Own Time' (i. 43), under the year 1648, says, "The south-west counties of Scotland have seldom corn enough to serve them round the year; and the northern parts producing more than they need, those in the west came in the summer to buy at Leith the stores that came from the north; and from a word *whiggam*, used in driving their horses, all that drove were called *whiggamors* and shorter the *whiggs*. Now, in that year, after the news came down of Duke Hamilton's defeat, the ministers animated their people to rise and march to Edinburgh; and they came up marching on the head of their parishes, with an unheard of fury, praying and preaching all the way as they came. The Marquis of Argyle and his party came and bearded them, they being about 6000. This was called the whiggamors' inroad; and ever after that all that opposed the court came in contempt to be called *whiggs;* and from Scotland the word was brought into England, where it is now one of our unhappy terms of distinction."

Whig has long been the name of the one of the two great political parties in the state; the other is Tory. [Tory.] The Whigs of the last century and a half are generally viewed as the representatives of the friends of reform or change in the antient constitution of the country, ever since the popular element became active in the legislature, whether they were called puritans, non-conformists, round-heads, covenanters, or by any other name. Down to the Revolution of 1688 the object of this reform party was to make such change; since that event, at least till recently, it has principally been to maintain the change then made. Of course, however, this party, like all other parties, has both shifted or modified its professions, principles, and modes of action within certain limits from time to time, in conformity with the variation of circumstances, and has seldom been without several shades of opinion among the persons belonging to it in the same age. These differences have been sometimes less, sometimes more distinctive; at one time referring to matters of apparently mere temporary policy, as was thought to be the case when the Whigs of the last age, soon after the breaking out of the French revolution, split into two sections, which came to be known as the Old and the New Whigs; at another, seeming to involve so fundamental a discordance of ultimate views and objects, if not of first principles, as perhaps to make it expedient for one extreme of the party to drop the name of Whig altogether, and to call itself something else, as we have seen the Radicals do in our own day. All parties in politics indeed are liable to be thus drawn or forced to shift their ground from time to time; even that party whose general object is to resist change and to preserve what exists, although it has no doubt a more definite course marked out for it than the opposite party, must still often, as Burke expresses it, vary its means to secure the unity of its end; besides, upon no principles will precisely the same objects seem the most desirable or important at all times. But the innovating party, or party of the movement, is more especially subject to this change of views, aims, and character: it can, properly speaking, have no fixed principles; as soon as it begins to assume or profess such, it loses its true character and really passes into its opposite. Accordingly, in point of fact, much of what was once

Whiggism has now become Toryism or Conservatism, the changes in the constitution which were formerly sought for being now attained; and, on the other hand, as new objects have presented themselves to it, Whiggism has, in so far as it retains its proper character, put on new aspects, and even taken to itself new names.

WIFE; HUSBAND and WIFE. Many of the legal incidents of the relation of husband and wife, or, as they are called in our law books, *Baron* and *Feme*, have been already noticed: the mode of contracting the relation under MARRIAGE, and of dissolving it, under DIVORCE; the provision for the wife out of her husband's real estates, made by the common law and modified by statute, is treated of under DOWER; and the right of the husband to a life interest in his wife's estates of inheritance if he survives her and has had by her a child capable of inheriting, under COURTESY OF ENGLAND; the provision which may be made for the husband, the wife, and the offspring of the marriage belongs to the subjects of Settlement and Jointure; and the nature of the property which the wife may have independently of her husband belongs to the subjects of Paraphernalia, Pin-money, and Separate Property. The article PARENT AND CHILD shows the relation of both parents to the children of the marriage.

The common law treats the wife (whom it calls a feme covert, and her condition coverture) as subject to the husband, and permits him to exercise over her reasonable restraint; but the wife may obtain security that the husband shall keep the peace towards her, and also the husband may have it against the wife. The husband and wife are in some respects legally one person. Hence a wife cannot sue separately from her husband for injuries done to her or her property, or be sued alone for debts, unless her husband shall have abjured or been banished the realm; or unless where she is separated from him and has represented herself as a single woman, or where, by particular customs, she is permitted to trade alone, as in London; but even here the husband should be joined as defendant by way of conformity, though execution will issue against the wife alone. For injuries to the wife's person or property the remedy is by a joint action. They cannot contract with or sue one another; and compacts made between them and all debts contracted towards each other when single (except contracts made in consideration and contemplation of marriage) are made void by their union. This rule does not, however, apply to debts due from the husband to the wife in a representative character as administratrix or executrix. They cannot directly make grants one to another to take effect during the joint lives; nor can the wife, except in the exercise of a power, devise lands to her husband or to any other person unless (as it is said) by the custom of London and York; but the husband may devise or bequeath to his wife property to be enjoyed by her after his death. They cannot give evidence touching one another in civil matters, with this exception, that under the 6 Geo. IV. c. 16, s. 37, a bankrupt's wife may be examined touching the estate of her husband, and she is subject to the usual penalties if she suppresses or falsifies facts. In criminal prosecutions for injuries done by either party to the person of the other, the injured party may be a witness. With the person of his wife the husband takes the liability to her debts contracted before marriage; but those debts are only recoverable during the wife's life. If she dies before him, he is relieved from that responsibility, whatever fortune he may have had with her, except that he must apply to the discharge of such debts any assets which he acquires as his wife's administrator. As the wife is supposed to be under the perpetual control of her husband, she is free from responsibility for offences short of murder and treason committed at his instigation—the evidence of that instigation being his presence during the commission of the offence. For the same reason all deeds executed by her are void, unless by virtue of powers given to her or under the guarantee of certain solemnities the object of which is to ensure her free agency. A disposition by a woman of her property after the commencement of a treaty for

marriage, without the privity and concurrence of her intended husband, is considered by courts of equity to be fraudulent, and will be set aside after the marriage; and by the act 1 Vic. c. 26, passed in 1837, a will made before marriage, either by a man or a woman, is revoked by the subsequent marriage of the party who has made it. [WILL AND TESTAMENT.]

This legal identity cannot be dissolved by any voluntary act of the parties. Consequently no deed of separation, unless it contains an immediate and certain provision for the wife, and no advertisement or other public notice will relieve a husband from the liability to provide his wife with necessaries fitting to her rank in life (the question of fitness being decided by a jury), or from the duty of paying the debts contracted for such necessaries, if she has been driven from his house by his misconduct. On the other hand, a wife cannot recover at law from her husband from whom she lives apart any allowance which he has contracted with herself to pay her in consideration of the separation, if he desires that their union should be renewed. A deed of separation is not a sufficient answer to a suit promoted by either party for restitution of conjugal rights; nor is it an answer to the charge of adultery committed either before or after separation, for though "the ecclesiastical court does not look upon articles of separation with a favourable eye, yet they are not held so odious as to be considered a bar to adultery." (Haggard's *Consistory Reports*, i. 143.)

A divorce can only be obtained by act of parliament, as explained in ADULTERY and DIVORCE. A separation may be obtained by sentence of divorce pronounced by the ecclesiastical courts for conjugal infidelity or cruelty on the part of the husband; but this is not a dissolution of the marriage.

Considerable difficulty has arisen out of the conflict between the law of England and Scotland, in consequence of marriages celebrated in England having been dissolved by judicial sentence in Scotland. Some of the cases are given in Burge's *Commentaries*, &c. i. 668, &c.

The sentence of separation relieves the husband of his responsibility for his wife's debts contracted after the sentence is pronounced, or, in case of his wife's adultery, contracted after the discovery of the adultery and the consequent separation; for if no separation takes place, or if the husband abandons his usual residence to his wife and her paramour, he will be liable to debts contracted by her with tradesmen who are ignorant of the facts. By the common law, also, a husband is not liable for the debts of his wife contracted after she has quitted his house without sufficient cause, and he has given particular notice to the tradesmen that he will not pay her debts. Nor is he liable for debts contracted while she is living in open adultery. If the separation is obtained by the wife on account of the cruelty or adultery of her husband, the spiritual court compels him to maintain her (if her separate property will not enable her to live according to her rank in life) by requiring him to make her an allowance proportionate to his means. [ALIMONY.]

Though a woman cannot take by direct grant from her husband, she can take by a grant made by her husband to trustees for her benefit. She can also acquire lands by descent and by purchase [PURCHASE].

By the common law the husband acquires all the personal property which the wife has at the time of the marriage, and also all that accrues to her during the marriage. He also acquires all her chattels real or leasehold interests; yet if a settlement has not been made on her expressly in consideration of her fortune, those portions of her personal property which consist of securities for money or beneficial contracts, and her chattels real, survive to herself, if the securities have not been realised and the chattels real have not been aliened, during his life by her husband: a marriage settlement does not deprive her of this right with regard to things in action acquired subsequently to the execution of the settlement, unless it expressly reserves to the husband future as well as present personalty. If a husband requires the intervention of a court of equity for the purpose of reducing

into possession his wife's property, the court will require him to make on her a settlement proportionate to the benefit which he derives. Usually one half of the fund is settled upon the wife and children, but the court takes all the circumstances into consideration; especially whether any settlement already exists: and it will not grant its aid to the wife who demands a settlement, if she is the born subject of a state which gives the whole property of the wife to the husband. The adultery of the wife deprives her of her equity (unless she has been a ward of court married without the consent of the court); but her delinquency will not induce the court to vest the whole of her property in her husband because he does not maintain her. The court will secure the property for the benefit of the survivor and the children. On the other hand, in case of the cruelty of the husband, or his desertion of his wife, the court will award to her and her children not only the whole principal, but the interest of the property in question.

The husband is entitled during his life to the profits of his wife's freehold estates of which she is seised at the time of marriage or during the coverture. By the common law a husband might aliene his wife's real estate by feoffment or fine, or lease it for her life or that of the tenant, and she was left to her remedy if she survived him, or her heir at law had his remedy if the husband survived: if they neglected that remedy, the alienation by the husband was good; but by the 32nd Henry VIII. c. 28, the wife or her heir may enter and defeat the husband's act. By that statute the lease of lands held by a man in right of his wife, or jointly with her, is good against husband and wife if executed by both; the lease may be for years or for life, but it must relate to land usually leased, it must not be by anticipation or in consideration of a fine; it must reserve a fair yearly rent to the husband and wife and heirs of the wife; and the husband is restricted from aliening or discharging the rent for a longer term than his own life. If however the wife receives rent after her husband's death upon any lease of her estate improperly granted by him, she confirms that lease. A wife's copyhold estates are forfeited to the lord by any such acts of her husband as are ruinous to the estate (*e.g.* waste), as destroy the tenure (*e.g.* an attempt to convert it into a freehold), or otherwise deprive the lord of his rights, as a positive refusal to pay rent or perform service. But courts of equity will relieve the tenant when the forfeiture is not wilful or can be compensated. The enfranchisement of the wife's copyhold estate by the husband does not alter the mode of descent, but the estate will go to the wife's and not to the husband's heirs. Husband and wife to whom freehold or copyhold lands are given or devised take in entireties, and not as joint tenants; they are jointly seised, but neither can aliene without the consent of the other, and the lands will belong to the survivor.

As to the wife's DOWER, see that article.

The Statute of Distributions (22 & 23 Car. II. c. 10) gives to the widow of an intestate husband (if her claim has not been barred by settlement) one-third of his personal property when there is issue of the marriage living, and one-half when there is none. But the widow of a freeman of the city of London, or of an inhabitant of the ecclesiastical province of York (excepting the diocese of Chester), if the husband die intestate, leaving personal property more than sufficient to pay his debts and funeral expenses, is entitled to the furniture of her bedchamber and her apparel (*widow's chamber*), or to 50*l.* in lieu of it if her husband's personalty is worth 2000*l.*; then the personal estate is divided into three parts, whereof one-third goes to the widow, one to the children, and one (the *dead man's share*) to his administrator. Of this last share the widow is entitled under the Statute of Distributions, which regulates the division of it, to one-third if there is a child, and one-half if there is not. The benefit of this custom cannot be taken from the widow by any fraudulent device, such as a gift by the husband to a third party whilst he was at the point of death; or a gift with a reservation that it should only take effect after his death.

Marriage revokes powers of attorney

previously granted by the wife, and disables her from granting them; but it does not disable her from accepting such a power, or from acting on one granted to her before coverture. She may also be attorney for her husband. She can bequeath her personal estate by will under a power.

The separation of husband and wife, and the effect of deeds made by them either in consequence or in contemplation of such an event involves many difficult questions. The ecclesiastical courts consider all deeds of separation and all covenants in the nature of such deeds to be void. The courts of law, however, not only have supported such deeds against the husband, but have enforced a covenant made by him with his wife's trustees to pay her an annuity as a separate maintenance in the event of their future separation, with the approbation of the trustees. Whether such a covenant would now be supported by the courts of law is very doubtful. In order to render a deed of separation valid, it ought to be made by the husband and wife, with trustees for the wife, and any provision made in it by the husband ought to be for a valid consideration, such as a covenant on the part of the trustees to relieve the husband from the wife's debts or maintenance; the cruelty, or adultery, or desertion of the husband is a consideration, because the wife might have sued him in the ecclesiastical courts, and obtained alimony. But courts of equity will not interfere to enforce such deeds, though by a strange inconsistency they will enforce the husband's covenant for a separate maintenance if made through the intervention of trustees, and indeed in certain rare cases if made between the husband and wife alone. Nor is the adultery of the wife a sufficient answer to her claim to the separate maintenance. It is doubtful whether the wife can anticipate or dispose of this kind of allowance; the more so, because it ceases if the cohabitation is renewed, or is only prevented by the perverseness of the wife. The ecclesiastical courts permit husband and wife to be sued separately.

A queen-regnant is legally a feme sole or single woman: and so is a queen-consort as to property.

(Roper's *Law of Husband and Wife*, edited by Jacob.)

WIFE, ROMAN. [MARRIAGE.]

WIFE. (*Scotland*). The moveable or personal estate of a husband and wife is under the administration of the husband; according to the phraseology of the law it is called "the goods in communion," because on the dissolution of the marriage by the death of either party, it falls to be so divided that if there be issue of the marriage a third, and if there be no issue a half, goes to the nearest of kin or to the legatees of the deceased, whether husband or wife, the remainder being the property of the survivor. During the continuance of the marriage the husband's right, as administrator, is in all respects equivalent to the right of a proprietor; and whether the common property has been acquired by himself or by the wife, it is entirely at his disposal, in so far as that disposal is intended to have effect during his lifetime. His right of bequeathing it is limited by the Scottish law of succession. [WILL.] As the husband has the administration of the wife's property, he is responsible not only to the extent of the goods in communion, but personally, for the wife's obligations, whether contracted before or after marriage. Action against a wife for debts contracted before marriage is laid against herself, but her husband is cited as administrator of the goods in communion, and while all "diligence" or execution for attaching property falls on the goods in communion, he is liable to whatever execution may proceed against the person. In case of the dissolution of the marriage before execution, the execution will proceed only against the portion of the goods in communion which falls to the share of the wife or to her representatives and will not lie against the person of the husband. No suit can be raised against a married woman unless the husband has been made a party. The wife cannot of herself enter into a contract exigible by execution against the goods in communion and the person of her husband, unless in certain cases in which by general law or by practice she holds an

agency. To this effect she is *praeposita negotiis domesticis*, and whatever debts she incurs for household purposes are debts against the husband. The husband may discharge himself from debts so incurred, by suing out an "inhibition" against her in the Court of Session. The sphere of her authority may be enlarged by her husband intrusting to her the management of any department of business, and she will then, as ostensibly authorized to represent him in the transactions relating to the business, render him responsible for the performance of her acts, as a principal is responsible for those of his agent. A wife's agency will not extend, without special authority, to the borrowing of money.

Heritable property (a term nearly equivalent to that of real property in England) belonging to either party is in the administration of the husband. He can, however, grant no lease of his wife's heritable property, to last beyond his own life, without her concurrence. On the other hand, from the date of the proclamation of the banns, all deeds granted by the wife are null if they do not bear the husband's concurrence. His right of administration, including the necessity for his concurrence in the wife's deeds, may be excluded, either generally or in relation to some particular estate. The former can only take place by his resigning his *jus mariti* in an antenuptial contract of marriage; the latter may be accomplished by the special exclusion of the *jus mariti* in the title of any estate conveyed to the wife. Every deed executed by a wife is presumed to have been executed under the coercion of her husband, and is reducible as a deed executed under the effect of force and fear, unless the wife ratify it by oath before a magistrate. On occasion of the ratification, not only must the husband be absent, but the act of ratification must bear that he was so.

A separation of married parties may take place either by judicial interference or voluntary contract. Actions of judicial separation proceed before the court of session, which in such cases exercises its consistorial jurisdiction as succeeding to the commissary court. Personal violence or acts physically or morally injurious on the part of the husband, will justify a judicial separation at the suit of the wife. That the husband insisted on retaining a servant with whom he had held an illicit intercourse before the marriage was held a ground of judicial separation. (Letham *v.* Letham, 8th March, 1823, 2 S. D, 284.) In judicial separations at the instance of the wife, an alimentary allowance is awarded to her against the husband, proportioned to his means. When a husband abandons his wife, an alimentary allowance will be awarded to her without a judicial separation. A voluntary separation may take place by mutual agreement, but in such a case an alimentary allowance will not be awarded unless it has been stipulated for. It is in a wife's power, however, notwithstanding a voluntary separation, to sue for judicial separation if the previous conduct of the husband towards her would justify it, and thus obtain an award of alimony. The husband whose wife is either judicially or voluntarily separated from him ceases to be responsible for the debts incurred by her after the date of the separation. Her own property is liable to execution for her obligations, but not her person, unless her husband be living out of Scotland, in which case it has been decided that a wife transacting business on her own account is liable to diligence against her person, or arrest and imprisonment. (Orme *v.* Diffors, 30th November, 1833, 12 *S. D.* 149.) The husband has the uncontrolled custody of the children of the marriage during pupillarity. The court of session will interfere for their protection in the case of their personal ill-usage, or of danger of contamination, but not on the ground of a special estate being settled on a child by a third party.

On the dissolution of a marriage by the death of either party, an anterior question to that of the distribution of the property is, whether the marriage was permanent. A permanent marriage is one which has lasted for a year and part of a day, or of which a living child has been born. In the case of dissolution by death of a marriage not permanent, there is a question of accounting, and the property of the parties is, as nearly as cir-

cumstances will permit, so distributed as it would have been had no marriage between them been solemnized. In the case of a permanent marriage, the moveable property is divided as above stated, the survivor getting a half, if there is no issue, and a third if there is issue. Of any real property in which a wife dies infeft, if there has been a living child born of the marriage, and if there is no surviving issue of the wife by a former marriage, the widower enjoys the life-rent use: this is called "the courtesy of Scotland." A widow enjoys the life-rent of one-third part of the lands over which her husband has died infeft, by way of "Terce." The distribution of the property, personal or heritable, may be otherwise arranged by antenuptial contract, or equivalents to the property to which a party would succeed may be made by the settlements of the deceased.

On the dissolution of marriage by divorce [DIVORCE], the offending party forfeits whatever provisions, legal or conventional, he or she might be entitled to from the marriage: and the innocent party, at whose instance the suit of divorce is brought, retains whatever benefits, legal or conventional, he or she may have become entitled to by the marriage. It follows, that when the divorce proceeds at the suit of the wife, she obtains, at the date of the decree of divorce, the provisions which, as above, she would be entitled to on the death of her husband; and that, on the other hand, if the suit be at the instance of the husband, the wife not only loses her right to such provisions, but forfeits to the husband whatever property she may have brought into the goods in communion.

WILL AND TESTAMENT. Before the passing of the 32 Hen. VIII. c. 7, commonly called the Statute of Wills, and the 34 & 35 of Henry VIII. c. 5, there was no general testamentary power of freehold land in England, but the power of making a will of personal property, appears to have existed from the earliest period. Yet this power did not originally extend to the whole of a man's personal estate; but a man's goods, after paying his debts and funeral expenses, were divisible into three equal parts, one of which went to his children, another to his wife, and the third was at his own disposal. If he had no wife or no children, he might bequeath one half, and if he had neither wife nor children, the whole was disposable by will (2 Bl. *Comm.*, 492; Fitzherbert, *Nat. Brev.*, 122). The law however was gradually altered in other parts of England, and in the province of York, the principality of Wales, and in the city of London more lately by statute, so as to give a man the power of bequeathing the whole of his personal property. At present by the 1 Vict. c. 26, for the amendment of the law with respect to wills (whereby the former statutes there enumerated with respect to wills are repealed, except so far as the same acts or any of them respectively relate to any wills of estates *pur autre vie* to which this act does not extend), it is enacted that it shall be lawful for every person to devise, bequeath, and dispose of, by his will, executed as required by that act, all real and personal estate which he shall be entitled to either at law or in equity at the time of his death. Great alterations have been introduced into the law of wills by this statute; but as it does not extend to any will made before the 1st of January, 1838, it is necessary to consider the law as it stood previous to the act.

In general all persons are capable of disposing by will of both real and personal estate who have sufficient understanding. The power of the king to make a will is defined by the 39 & 40 Geo. III. c. 88, s. 10. By the former statute of wills, married women, persons within the age of twenty-one years, idiots and persons of nonsane memory, were declared incapable of making wills of real estate. These disabilities also applied to a bequest of personal estate, except that infants of a certain age, namely, males of fourteen and females of twelve might dispose, by will, of personalty; and that by the 12 Car. II. c. 21, s. 8, a father under twenty-one might, by a will attested by two witnesses, appoint guardians to his children. But, by the second section of the new Wills Act, no will made by any person under the age of twenty-one years is valid; and no

will made by any married woman is valid, exept such a will as might have been made by a married woman before the passing of the new act. The disability of a married woman is not absolute. She may make a will of her personal property if her husband consents to that particular will, and it will be operative if he survive her. The validity of a lunatic's will depends upon the state of his mind at the time of making it. Persons born deaf and dumb are presumed to be incapable of making a will, but the presumption may be rebutted by evidence. Blindness and deafness alone do not produce incapacity. Devises of lands by aliens are at least voidable, the crown being entitled, after office found, to seize them in the hands of the devisee, as it might have done in those of the alien during his life.

Previously to the late act the general power of testators was subject to exceptions. Customary freeholds and copyholds were not within the Statute of Wills, and therefore, unless where devisable by special custom, could in general be passed only by means of a surrender to the use of a will. By the 55 Geo. III. c. 192, the want of a surrender was supplied in cases where it was a mere form, but the act did not apply to cases where there was no custom to surrender to the use of a will, nor to what are called customary freeholds. A devisee or surrenderee of copyholds could not devise before admittance, though an heir-at-law might. Conditions were not devisable, nor were rights of entry or action, nor contingent interests when the person to be entitled was not ascertained: lands acquired after the execution of the will also did not pass by it; but by section 3 of 1 Vict. c. 26, the power of disposition by will extends to all real and personal estate, and to all estates, interests, and rights to which the testator may be entitled at the time of his death, though acquired subsequently to the execution of his will. There is no restriction as to the persons to whom devises or bequests may be made except under the 34 & 35 Hen. VIII. c. 5, which forbids devises of lands to bodies politic and corporate. Exceptions to this statute have been introduced by the 43 Geo. III. c. 107, and 43 Geo. III. c. 108, which authorize devises of lands to the governors of Queen Anne's Bounty, and for the erection or repair of churches or chapels, the enlargement of churchyards or of the residence or glebe for ministers of the Church of England. Alienage cannot be properly called an incapacity to take by devise, as the devised lands remain in the alien till office found, when they vest in the crown. By the 9 Geo. II. c. 36, no lands or personal estate to be laid out in the purchase of or charged on land can be given to any charitable use by way of devise. [MORTMAIN.] By the 40 Geo. III. c. 98, no disposition of property can be made by will or otherwise, so as to accumulate the income for a longer period than for twenty-one years after the death of the settlor, or during certain minorities [ACCUMULATION]; and by what is called the rule against perpetuities, no property can be settled by deed or will so as to be inalienable for more than a life or lives in being, and twenty-one years afterwards.

Before the 1 Vict. c. 26 wills of personal estate might even be nuncupative, that is to say, might be declared by the testator without writing before witnesses, provided they were made in conformity with the directions contained in the 19th section of the Statute of Frauds (29 Car. II. c. 3). A will of freehold lands of inheritance was required to be executed in the manner prescribed by the 5th section of the Statute of Frauds, which required it to be signed by the party devising, or by some other person in his presence and by his express direction, and to be attested and subscribed in the presence of the devisor by three or more credible witnesses. The term "credible," which gave rise to much discussion under the old law, is omitted in the new act, and it is enacted in the 14th section that no will is to be void on account of the incompetency of any attesting witness. By the 15th section gifts to attesting witnesses or their wives or husbands are declared void. This is an extension of the 25 Geo. II. c. 26, which related only to wills which at that time required the attestation of witnesses, that is to say, to wills of real estate. The words as to

wives or husbands are new. The signature of the testator was not required for the validity of a will of personalty or of copyholds, whether the instrument was in his own hand-writing or in that of another. But by the 9th section of 1 Vict. c. 26, no will, whether of real or personal estate, is to be valid unless it be in writing, and signed at the foot or end by the testator or by some person in his presence and by his direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses must attest and subscribe the will in the presence of the testator, but no particular form of attestation is necessary. Section 10 enacts that all appointments made by will are to be executed in the manner above prescribed, and are to be valid when so executed notwithstanding the nonobservance of any other ceremonies required by the power under which the appointment is made. By the 11th and 12th sections, it is declared that the act is not to affect the wills of soldiers on actual service or of mariners at sea, which are to remain subject to the particular provisions made respecting them by the 11 Geo. IV. and 1 Wm. IV. c. 20. Questions formerly arose as to what was a publication of a will, but section 13 of 1 Vict. c. 26 enacts that no other publication shall be requisite than execution in the manner prescribed.

It is the rule in England, that a will of lands is regulated by the law of the country in which the lands are. The place where and the language in which such a will is written are unimportant: the locality of the lands is the only point to be considered. A will made in France and written in French, of lands in England, must contain expressions which when translated into English would properly designate the lands in question, and must be executed according to the forms required by the English law. Lands in England which belong to an English subject domiciled abroad and dying intestate, will descend according to the English law. With respect to personalty, on the other hand, in cases both of testacy and intestacy, the law is different. If a British subject becomes domiciled abroad, the law of his domicile at the time of his death is the rule which the English courts follow in determining the validity of his will and administering his personal property in England, and *vice versâ* in the case of a foreigner dying domiciled in England. Cases sometimes arise in which it is difficult to determine what was the domicile at the time of the death of the party, and consequently what rule is to be followed in the distribution of his personal estate. If an Englishman domiciled abroad has real property in England, he ought, on account of the difference of the doctrine with respect to real and personal property, to make two wills, one duly executed according to the English law for devising his real estate, and another framed according to the law of his domicile for the disposal of his personal property.

A will is a revocable instrument. It was an established rule of law that the will of a *feme sole* was revoked by her marriage, but marriage alone was not considered a revocation of the will of a man; though marriage and the birth of a child, whom the will would disinherit, conjointly were admitted by the courts to have that effect, on the ground that these circumstances together produced such a change in the testator's situation, that it could not be presumed he could intend any previous disposition of his property to continue unchanged. By section 18 of the new act every will made by a man or woman is revoked by marriage, except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of appointment, pass to the heir, personal representative, or next of kin of the appointor. And by the 19th section no will is to be considered as revoked by any presumption of intention on the ground of an alteration in circumstances. By the 20th section no will or codicil is revocable except as above mentioned, or by another will or codicil executed in the manner required by the act, or by a writing declaring an intention to revoke, executed in the same manner, or by burning, tearing, or otherwise destroying the will by the testator himself, or by some other

person in his presence, and by his direction, with intent to revoke. By the 21st section no obliteration, interlineation, or other alteration made in any will after execution is to have any effect, except in so far as the words or effect of the will previous to the alteration cannot be made out, unless the alteration be executed as a will, such execution to be in the margin opposite or near to the alteration, or to a memorandum referring to the alteration. By the Statute of Frauds witnesses to a will were required to sign in the testator's presence, but it was not necessary that he should sign in their presence, whereas by section 6 of that act a mere revocation in writing must have been signed by the testator in presence of the witnesses, but they were not required to sign in his presence. This inconsistency is now removed. The 21st section alters the law as to the effect of obliterations where the words remain legible, and of cancellation by drawing lines across the whole or any part of the will. These acts will now be of no effect unless properly executed and attested. By the 23rd section no conveyance or other act made or done subsequently to the execution of a will of real or personal estate, except an act of revocation, is to prevent the operation of the will upon such estate or interest as the testator has power to dispose of at the time of his death: and by the 24th section every will is to be construed with reference to the real and personal estate comprised in it, so as to take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appear on the will.

Republication of a will is in fact a re-execution of it, being a repetition of the ceremonies required for its original validity: before the recent act a devise of lands could only be republished by signature and attestation by three witnesses, while with respect to copyholds and personalty a will might be republished without any formal execution, and even by the mere parol acts and declarations of the testator.

The 22nd section of the act provides that no will or codicil, or any part thereof, which shall have been in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner required by the act, and showing an intention to revive the same; and when any will or codicil which shall be partly and afterwards wholly revoked, shall be revived, the revival is not to extend to such parts as had been revoked before the revocation of the whole, unless a contrary intention appear. Under the old law, if a second will or codicil which revoked a former will was afterwards cancelled, the first, if it had been kept undestroyed, was held to be revived. It had previously been determined (4 Ves., 610) that a subsequent codicil, merely for a particular purpose and confirming the will in other respects, did not amount to a republication of parts of the will revoked by a former codicil. This section extends the doctrine to the case where a will had been first partially and afterwards wholly revoked.

Estates or interests in property created by way of executory devise or bequest, that is to say, such as are made expectant on the determination of prior estates in the same property, may be, like estates created by way of remainder in a deed, either vested or contingent. So far as depends upon the nature of the limitations themselves, the same rules are in general applicable to executory devises or bequests as to remainders; but testamentary instruments are not construed with the same strictness as deeds, and in determining the question of vesting or contingency, many considerations, depending on expressions in the will or other circumstances appearing upon the face of it, are admitted as affording presumptions of the intention of the testator. It is impossible here to give any enumeration of the numerous rules which have been laid down on this subject, and which are of course liable to be modified according to the circumstances of each particular case. It may however be observed generally that when a future gift is preceded by a gift of the immediate interest, it is to be presumed that the enjoyment only is postponed, and that the future gift is vested in interest; whereas when there is no gift of the immediate interest, the contrary presumption obtains: and again, that when the enjoyment of a gift is post-

poned, not on account of circumstances personal to the object of the gift, but with a view to the circumstances of the estate, the gift is to be presumed vested. With respect to pecuniary legacies, some distinctions, borrowed from the civil law, are admitted which have no place as to real estate. One of these distinctions is that where futurity is annexed to the *substance* of the gift, the vesting is in the mean time suspended; but where the *time of payment* only is future, the legacy vests immediately. If however the only gift is contained in the direction to pay, this case is to be regarded as one in which time is annexed to the substance of the gift. When a future gift of a principal sum is coupled with a gift of the interest in the mean time, a strong presumption exists in favour of vesting. It is generally considered that a very clear expression of intention must exist in order to postpone the vesting of residuary bequests, on the ground that intestacy may often be the consequence of holding them to be contingent.

Great changes have been introduced in the law, as to the interpretation of wills by the above-mentioned 24th section of the act, which declares that wills are to be construed to speak as if they were executed immediately before the death of the testator, and the six following clauses. The 25th section enacts that, unless a contrary intention appear on the will, a residuary devise shall include all estates comprised in lapsed and void devises. This alters the former law, whereby such estates devolved on the heir. The 26th clause enacts that a general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands, unless a contrary intention appear. This also effects a considerable alteration in the law of devises. Formerly neither copyholds (unless surrendered to the use of the will) nor leaseholds would pass by a general devise of lands or other general words descriptive of real estate, unless the testator had no freehold lands on which the devise might operate. Since the statute of the 55 Geo. III. c. 192, which dispenses with the necessity of surrenders in certain cases, copyholds stood upon nearly the same footing as freeholds, in respect to a general devise; but leaseholds still continued subject to the old rule of law. By the 27th section, unless a contrary intention appear, a general devise of real estate and a general bequest of personal estate are respectively to include estates and property over which the testator has a general power of appointment. It was never considered necessary in the execution of a power of appointing real estate, whether general or special, to refer expressly to the power. It was sufficient if the intention to exercise it appeared from a description of the property in the will or by other means. If the testator had no other lands which answered the description, a general devise would have been a good execution of the power; but it was otherwise if he had any other lands which would satisfy the terms of the devise. The enactment applies only when the testator has a general power of appointment. Where the power is limited or special, it seems that the old rule of construction will still hold. As to personal property the rule was, that there must be some reference to the power, on the somewhat unsatisfactory ground that as any person must be supposed possessed of some personalty, there was enough to make a general bequest operative without reference to the property comprised in the power. With respect to devises, it seems that the old rule must still prevail where the power is special or limited. By the 28th section a devise of real estate without words of limitation is, unless a contrary intention appear by the will, to be construed to pass the fee. This clause introduces a very considerable alteration of the old law, under which, in accordance with the doctrine that the heir was not to be disinherited by implication, it was settled that a devise of lands without words of limitation conferred on the devisee an estate for life only, notwithstanding the appearance of a contrary intention in other parts of the will. The 29th section enacts, that in any devise or bequest of real or personal estate the words "die without issue," "die without leaving issue," or "have no issue," or any other words of the like import, shall be construed to mean a want or failure of issue

at the time of the death, and not an indefinite failure of issue, unless a contrary intention appear; except in cases where such words mean, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. Under the old law, when a testator gave an estate to A and his heirs, and directed that if A died without issue it should go to B, though his meaning in most cases was that B should have it unless A had issue living at the time of his death, the word "issue" was held to comprise descendants of every degree existing at any distance of time, and the consequence was, that where the subject of the devise was real estate, A took an estate tail and acquired the absolute dominion over the property, and where it was personalty the ulterior disposition to B was void for remoteness.

By the 30th section every devise of real estate (not being a right of presentation to a church) to a trustee or executor is to be construed to pass a fee simple, unless where a definite term of years or an estate of freehold less than the fee simple is expressly given to him. And by the 31st section trustees under an unlimited devise to them, when the trust may endure beyond the life of a person beneficially entitled for life, are to take the fee. When the limitation in a will was made to a trustee by way of use, he took the legal estate by the operation of the statute of uses, without reference to the nature of the trust. But in other cases the question was determined by the intention of the testator, as collected from the nature of the trust; and the trustee was considered to take only that quantity of estate which the exigencies of the trust required. Such a rule of construction was obviously of very difficult operation, and it was often not easy to determine in whom the fee was vested at any given period, and therefore who were the proper parties to deal with the property and to join in a conveyance of it. The enactments contained in the two last-mentioned sections will in a great measure remedy this inconvenience.

It follows from the nature of wills that the devises and bequests contained in them are liable to failure from the death of the devisee or legatee before the testator. This is called the doctrine of lapse. It applies equally to devises of real estate and to bequests of personalty. It is a general rule that words of limitation to heirs or executors superadded to a gift have no effect in preventing lapse in case of the devisee or legatee dying before the testator, for they are considered not as words of gift, but merely as indicating the legal devolution of the property. When the gift is to several persons as joint tenants, unless all the objects die before the testator, there can be no lapse; for as joint tenants are each takers of the whole, any one existing at the death of the testator will be entitled to the whole. The same is the case where the gift is to a class, unless where the individuals of the class were ascertained before the lapse. Two changes have been introduced into the law of lapse by the new act. The 32nd section enacts that devises of estates tail shall not lapse, but that where the devisee in tail dies during the life-time of the testator, leaving issue, the devise shall take effect as if he had died immediately after the testator, unless a contrary intention appear by the will: and, by the 33rd section, gifts to children or other issue who shall die before the testator, having issue living at the testator's death are not to lapse, but, if no contrary intention appear by the will, are to take effect as if the persons had died immediately after the testator. As a will of personalty operated upon all the property of that kind belonging to the testator at the time of his decease, there could obviously be no intestacy with regard to any part of the personal estate while there was a valid residuary bequest. The same will now be true of wills of real estate in which there is a valid residuary devise, so that there will no longer be room for many of the questions that arose as to whether the residuary devisee took beneficially or as a trustee, and as to the devolution of real estate directed to be sold.

If an ambiguity exists on the face of

a will, or, as it is technically termed, is patent, parol evidence cannot be admitted to remove it, because to admit evidence to explain what the will has left uncertain would be in effect to make a new will by parol. If the ambiguity is not apparent on the face of the will, but arises from circumstances disclosed when an attempt is made to carry the will into effect, it may be removed by evidence of the same nature.

(Powell *On Devises*, and Jarman's *Notes* to Bythewood's *Precedents, Wills.*)

WILL, ROMAN. A Roman will was called Testamentum. Testamentum was defined by the jurists of the Imperial period to be "a legal mode of a man's declaring his intention in due form, to take effect after his death." The person who made such declaration was called Testator.

The power of making a Roman testament only belonged to Roman citizens who were sui juris, a rule which excluded a great number of persons: those who were in the power of another, as sons not emancipated, and daughters; impuberes; dumb persons, deaf persons, insane persons, and others; and, as a general rule, all women. The circumstances under which a woman could make a will were peculiar; and they would require a very particular statement. A male of the age of fourteen years complete, unless under some special incapacity, could make a valid will. A female, so far as respected age only, acquired this capacity on the completion of her twelfth year.

Originally Roman citizens made their wills at Calata Comitia, which were held twice a year for this purpose. It is not said that these wills were made in writing; and it is here assumed that they were made at the Calata Comitia only for the purpose of securing the proper evidence of the testator's intention. It has been maintained by Niebuhr, that wills were made at the Calata Comitia in order that the Gentes might give their consent to the testamentary disposition, but this conjecture is not supported by evidence. Wills could also be made in procinctu, that is, by a soldier under arms and in presence of the enemy. Another mode of testamentary disposition was introduced, apparently for the purpose of preventing intestacy. If a man, says Gaius (ii. 102), had neither made his will at the Calata Comitia nor in procinctu, and was threatened with sudden death, he transferred, by the form of mancipatio, his familia, that is, his patrimonium, to a friend, and told him what to give to each person after his death: this was called the testamentum per æs et libram, because the transfer was effected by mancipatio. Thus it appears that the testamentum per æs et libram was a formal transfer of the property during the lifetime of the owner to a person who undertook to dispose of it as he was directed. As it was a substitute for the testament made at the Calata Comitia, it is a probable inference that it only differed from the testament made at the Comitia in wanting that publicity. The two old forms of testamentary disposition, adds Gaius, fell into disuse, and that per æs et libram became the common form. Originally the formal purchaser of the testator's estate (familiæ emptor) occupied the place of the heres at a later time; when Gaius wrote, and long before his time, the old form of testamentary disposition was retained as to the familiæ emptor, but a heres was appointed by the will to carry into effect the testator's intention. The formal purchaser was only retained out of regard to antient custom, and the institution of a heres became necessary to the validity of a will.

The form of testamentary transfer per æs et libram is described by Gaius (ii. 104). As in other acts of mancipation, so in this, there were five witnesses of full legal age (puberes). These five witnesses are considered by some modern writers to be the representatives of the five classes of the Roman people, and that as the original act of mancipation was rendered valid by the consent of the five classes, so here it was rendered valid by the presence of the five witnesses. In this article it is supposed that they were present as witnesses only.

Written wills, as already observed, were not necessary, for neither mancipation nor the institution of a heres required a writing. But written wills were the common form during the later Republican and the Imperial period. Wills

were written on tablets of wood or wax; hence the word "cera" (wax) is often used as equivalent to tabula. A Roman will was required to be in the Latin language until A.D. 439, when it was enacted that wills might be written in Greek. A Roman will in the later periods was sealed and signed by the witnesses. The sealing consisted in making a mark with a ring or something else on the wax, and the names were added. The seals and names were on the outside, for according to the old law there was no occasion for the witnesses to know the contents of the will. The old practice was for the testator to show the will to the witnesses, and to call on them to witness that what he so presented to them was his will. It was not unusual for a man to make several copies of his will, and to deposit them in some safe keeping. (Dig. 31, tit. 1, s. 47, and the case of a legacy put to Proculus.) Augustus, the emperor, made two copies of his will (Sueton., *Aug.* 101); and also his successor Tiberius (Sueton., *Tib.* 76). The Vestal Virgins were often the keepers of wills, or they were deposited in a temple or with a friend. (Tacit. *Ann.* i. 8.) At the opening of the will the witnesses or the greater part, if alive and on the spot, were present, and after acknowledging their signatures the will was opened.

It has been mentioned that in order to make a Roman will valid, it must appoint or institute a heres. The heres was a person who represented the testator, and who paid the legacies which were left by the will. He stood in the place of the familiæ emptor, or formal purchaser of the property in the old form of will. A heres might be appointed in such words as follow: "Titius heres esto," "let Titius be my heres;" or "Titium heredem esse jubeo," "I will Titius to be my heres." Generally all Roman citizens who could make a will could be heredes; but persons could be heredes who could not make a will—slaves, for instance, and others who were not sui juris.

Fraud in the case of wills and other instruments was punished by severe penalties under a Lex Cornelia.

The development of the Edictal or Prætorian law at Rome introduced a less formal kind of will. If there were seven proper witnesses and seven seals, and if the testator had the power of disposition both at the time of making his will and at the time of his death, the edict dispensed with the ceremony of mancipation and gave to the heres or heredes the bonorum possessio. This mode of testamentary disposition existed under the Republic, and accordingly a man could either make his will by the civil form of mancipatio, or he might make it after the prætorian form with seven seals and seven witnesses, without any mancipatio. The form of testamentary disposition by mancipatio was ultimately superseded by the more convenient prætorian form. The legislation of Justinian required seven male witnesses of proper age and due legal capacity; and it was sufficient if the testator declared his will orally before these witnesses.

A Roman will, as already observed, was valid if the testator had a disposing power at the time of making his will and at the time of his death. It follows that his will, though made at any time before his death, was sufficient to dispose of all the property that he had at the time of his death. This rule of law is now established in the case of an English will by the recent act (1 Vict. c. 26) as to real property; it always applied in the case of an English will to personal property. But an English will is valid if the testator subsequently loses his disposing power, as for instance if he become insane. A Roman will was not valid under such circumstances; and it also became invalid in other cases.

In order to render a Roman will valid, it was necessary that the heredes sui of a man (his sons and daughters were in the class of heredes sui) should either be appointed heredes or should be expressly excluded from the inheritance. A will which was illegal at the time of being made was testamentum injustum, that is, "non jure factum," not made in due legal form. A will which was justum might become invalid; it might become ruptum (broken) or irritum (ineffectual).

A second will duly (jure) made rendered a former will invalid (ruptum); and it was immaterial whether the second

will took effect or not. If it was duly made, it rendered a former will of no effect, and if the second will did not take effect, the testator died intestate.

If a testator sustained a capitis diminutio after making his will, that is, if he lost any part of his status of a Roman citizen which was essential to give him a full testamentary power, the will became Irritum, ineffectual. A prior will might become Ruptum by the making of a subsequent will; and such subsequent will might become Irritum in various ways; for instance, if there was no heres to take under the second will.

Though a will became Ruptum or Irritum, and consequently lost all its effect by the Jus Civile, it might not be entirely without effect. The bonorum possessio might be granted by the Prætorian edict, if the will was attested by seven witnesses, and if the testator had a disposing power, though the proper forms required by the Jus Civile had not been observed.

The rule of Roman law which required heredes sui to be expressly exheredated applied to posthumous children. The word Postumus (from which our word posthumous has come) simply signified "last;" and a child born after the date of his father's will was Postumus. If he was born after the father's death he would also be born after the date of his father's will and consequently would be Postumus. If a suus heres was born after the making of the will, and was not recognised as heres or exheredated in due form, the will became Ruptum. This rule of law was thus expressed: "adgnascendo rumpitur testamentum." There were also cases in which a will might become Ruptum by a quasi-adgnatio.

A testament was called Inofficiosum when it was made in due legal form, but not "ex officio pietatis." Thus when a man did not give the hereditas or a portion of it to his own children or to others who were near of kin to him, and when there was no sufficient reason for passing them by, the persons so injured might have an action called Inofficiosi Querela. The persons who could maintain this action were particularly defined by the legislation of Justinian. If the Testamentum was declared by the competent authorities to be Inofficiosum, it was rescinded to the amount of one-fourth of the hereditas, which was distributed among the claimants.

The ground of the Inofficiosi Querela is explained by Savigny (*System des Heutigen Röm. Rechts*, ii. 127, &c.). When the testator in his will passed by persons who were his nearest kin, it was presumed that such persons had merited the testator's disapprobation. If this was not so, it was considered that the testator had by his will done them a wrong, and the object of the action was to get redress by setting the will aside. The main object, however, was the establishment of the complainant's character, to which the obtaining of part of the testator's property was a subsidiary means. The expression Testamentum Inofficiosum occurs in Cicero and in Quintilian; but it is not known when the Inofficiosi Querela was introduced.

A Roman codicil (Codicilli, for the word is not used in the singular number till a late period under the Empire) was a testamentary disposition, but it had not the full effect of a will. A heres could not be appointed or exheredated by codicilli; but codicilli were effectual so far as to bind a heres, already appointed by a will, to transfer a part or the whole of the hereditas to another. Codicils were in fact useless unless there was a will prior or subsequent, which confirmed them either retrospectively or prospectively. (Gaius, ii. 270; *Dig.* 29, tit. 7, s. 8; Pliny, *Ep.* ii. 16, which has been sometimes misunderstood.)

Codicilli were originally informal writings; it was only necessary to prove that they were by the testator. The later legislation required codicilli which were in writing to have five witnesses, who subscribed their names to the codicilli.

The subject of Roman wills is of great extent, and it involves questions of considerable difficulty. The principal authorities have been mentioned in this article, to which may be added Ulpian, *Fragmenta*, tit. 20; *Dig.* 28, tit. 1, &c.; 29, tit. 1, &c.; *Cod.* 6, tit. 23; *Das Testament des Dasumius*, *Zeitschrift f. Gesch. Rechtsw.*, article by Rudorff on a frag-

mentary inscription which contains a Roman will. The date of the will is A.V.C. 862 or A.D. 109, in the twelfth year of Trajan.

WILL. (*Scotland.*) The right of bequest in Scotland is confined to moveable or personal property. It does not extend to heritable or real property—which comprehends lands and tenements, fixtures, those appurtenances of a family mansion (such as the pictures, plate, and library) which are called "heirship moveables," the machinery in mines and manufactories, the stock on farms, and every description of security or other right over any of these kinds of property. Settlements may be made of heritable property in the manner which will be described below, but it is a principle of the greatest importance, and one the neglect of which is often productive of the most serious consequences, that no such settlement can be made in the form of a will. All persons of sound mind above the age of puberty (14 in males, and 12 in females) may execute wills; and persons under guardianship, as wives and minors who have curators may do so without the consent of their guardians. Until very lately the will of a bastard was ineffectual, and the moveable goods of such a person, lapsing to the crown on his death, were distributed by a gift in exchequer; but this peculiarity has been abolished by 6 & 7 Wm. IV. c. 22. A verbal or "nuncupative" will, if uttered in the presence of two witnesses who bear testimony to it, is valid to the extent of a hundred pounds Scots, or 8*l.* 6*s.* 8*d.* sterling; and if the bequest should exceed that sum, the legatee may recover to the extent of the hundred pounds Scots. A will, sufficiently formal in all points to prove its terms and its date, must be executed in the following manner:—The granter's usual signature must be given at the end, and, if there be more than one sheet, on each sheet: the usual practice is to sign each page. Any interpolation in the margin must have the christened name or the initial letter of it above, and the surname or its initial letter below. He must either sign in the presence of, or show and acknowledge his subscription to, two witnesses, who must be males, above fourteen years old. The witnesses sign the deed at the end, each putting after his name the word "witness." The will must terminate with "a testing clause," setting forth that the granter has signed the deed in presence of the witnesses, who are named and so designed as to be distinguishable from other persons, at a certain place on a certain day. The testing clause must contain the name and description of the writer of the deed, the number of pages it consists of, the number of words written in erasure or interlined, and the number of marginal notes. There are some of these formalities of which the absence is fatal to the deed—others in which it will throw the onus probandi on the holder.

Where the will is holograph, or written by the granter himself, it does not require to be attested; but if it be not attested, it in the first place does not prove itself to be holograph, and the statement that it is in the handwriting of the granter must be proved by extraneous evidence to be true; and, secondly, it does not prove its own date; and if there be any other competing title, it will be presumed to have been granted at such a time as will give that title the preference. If the party cannot write, he can execute a will through a notary, who receives authority in presence of two subscribing witnesses to sign for the testator, and describes the transaction in his notarial docquet. A clergyman of the Established Church of Scotland may act as a notary for the signing of a will. It is usual to nominate an executor of the will, but it is not essential to do so; and if there be no one named, an executor is supplied by operation of law. Wills executed by persons domiciled out of Scotland, if they be according to the form which would carry such property in the place where they were executed, will be effectual to convey moveable property in Scotland; but no will, whatever be the law of the place where it is made, can dispose of heritable property in Scotland. The last dated will is the effectual one, and all others are considered as revoked by it in so far as they are inconsistent with it.

The peculiar feature of the law of Scotland out of which arises the circumstance

that heritable or real property cannot be bequeathed is, that no deed conveying such property is effectual unless it be expressed in what are called "dispositive terms," or terms making over the property at the moment of the signing of the deed. Thus the terms "I grant, convey, and make over," are sufficient to carry heritage: but the terms "I leave and bequeath" are not. The peculiarity arose during the time when the holder of a fief could not part with it to another person unless that person were accepted as a vassal by the feudal superior. A conveyance not intended to take effect until after the cedent's death did not admit of the superior's using his privilege, and the method of creating a settlement of landed property was constructed on the forms by which the feudal usages were gradually adapted to the conveyance of land from a seller to a purchaser. A deed of settlement relating to landed property must thus be essentially a conveyance de præsenti, but to accomplish the purposes of a virtual bequest, the following methods have been adopted by conveyancers:—1, the granter may convey to himself, with a "substitution" or remainder to his destined successor; 2, he may grant a direct conveyance, reserving to himself the life-rent; 3, he may grant such a conveyance, reserving power to alter. It is of the nature of a conveyance of land that to be effectual, delivery of the deed to the assignee, or an equivalent, must have taken place, and thus a settlement of land to be effectual after the granter's death must have been delivered to the person favoured by it, or some one for his behoof, or must have been entered in a public register, or must contain a clause dispensing with delivery. The formalities above mentioned as necessary to the execution within Scotland of wills carrying moveables are necessary to settlements conveying heritable property in Scotland, but with this difference, that in the settlement of heritable property, if the party cannot write, the deed must be executed by two notaries before four witnesses; and in this case a clergyman cannot act as notary. To be an effectual deed, a settlement of landed property must also contain authority for completing the feudal title to the property, and this authority will vary with the nature of the holding. When however there is an effectually attested deed, containing in clear terms a conveyance de præsenti, although the formalities necessary for completing the feudal investiture be omitted, and it be thus insufficient of itself to carry the estate, it may give a right of action to compel the heir-at-law to make it over. If the heir-at-law found upon the deed, he is by that act bound to make good its provisions in favour of all other persons. Thus, if the deed be in the form of a bequest, and in itself incapable of carrying heritage, if it convey moveable property to the heir which he would not have otherwise succeeded to, he is bound, if he take advantage of it, to fulfil its destination of the heritage. No settlement of heritable property to the prejudice of the heir-at-law can be validly granted on a death-bed. Three elements are necessary to constitute the legal exception of death-bed: 1st, that the granter was ill of the disease of which he died when he granted the deed; 2nd, that he died within sixty days after executing it; and, 3rd, that he did not go to church, or to a market, unsupported, during the sixty days. The act 7 Wm. IV. & 1 Vict. c. 26, and the other enactments relating to wills in England, do not apply to Scotland.

WINE AND SPIRIT TRADE. The consumption of wine and spirits in the United Kingdom amounts in round numbers to about 28 million gallons, the duty on which, about 9,000,000*l.*, is equal to above one-sixth of the whole revenue. The average consumption of wine of all kinds is about 6 million gallons, though in some years it has fallen much below this quantity. Of foreign and colonial spirits the annual consumption is about 3½ million gallons; and of British spirits about 20 million gallons, though in 1842 it fell below this quantity from various causes. The stock of wine in bond is usually equal to two years' consumption: in January, 1843, the quantity under bond in the port of London was 7,004,347 gallons, and there were 4,440,246 gallons at the outports. At the same date there were 6,081,205 gallons of foreign and

colonial spirits in bond, of which 3,589,672 gallons were in London, and 2,491,533 at the outports.

The rate of duty on wines and spirits has had great influence on the consumption. In 1700 the average consumption of wine in England was nearly one gallon per head, whereas it is now less than a fourth of a gallon. Prior to the Methuen Treaty the wines consumed in this country were almost entirely the produce of France, but although the duty on French wines was equalised in 1831, the annual consumption only amounts to one gallon amongst sixty people. In France the consumption of wine is 19 gallons per head; and in Holland, with moderate duties, the consumption of French wine is one gallon per head. Mr. Porter states in his 'Progress of the Nation,' that there are wines produced in France better adapted to the English taste than the French wines usually drunk here, and that they could be imported at sixpence a bottle without duty. If, as he remarks, wines of fair quality and flavour could be sold by retail at one shilling the bottle, the consumption would no doubt be very large; but the duty alone is at present not less than a shilling a bottle, and the consequence is that the consumption of French wines is chiefly confined to those of the first class. But beer is the common drink in England, and it would probably continue to be so, if wines were as cheap in England as in France. The present duty on all foreign wines is 5*s.* 6*d.* the gallon; the duty on Cape wines is 2*s.* 9*d.* the gallon. The number of gallons of foreign wines retained for home consumption in the year ending January 5, 1845, was 6,838,684, of which 2,887,501 were Portugal wines, 2,478,360 were Spanish wines, and 473,789 were French wines; the rest were Cape, Sicilian, and other sorts. As another illustration of the effect of high duties in checking consumption, it may be stated that the duty of 22*s.* 10*d.* on foreign spirits was less productive than the duty of 11*s.* 1*d.* in 1801; though if the rate of consumption had followed the increase of population, the duty would have been 2,465,767*l.* more than the amount actually received. The present rates of duty on British spirits are from 500 to 600 per cent.; on Irish and Scotch corn spirits (whisky) about 200 per cent.; and on Irish and Scotch malt spirits (whisky) 300 per cent. and upwards. By the last Tariff (1846) the duty on foreign spirits is reduced to 15*s.* the gallon; the duties on colonial spirits, on home-made spirits, and on foreign wines were not altered by it. The number of gallons, including overproof, of foreign and colonial spirits, of all sorts, retained for home consumption, was—

Year.	England.	Scotland.	Ireland.	United Kingdom.
1842 . . .	3,099,542	71,927	29,546	3,201,015
1843 . . .	3,061,699	71,820	28,438	3,161,957
1844 . . .	3,134,350	78,142	30,114	3,242,606
1845 . . .	3,431,614	84,478	33,797	3,549,889

In the year ending January 5, 1845, the quantities of foreign and colonial spirits retained for home consumption were—

	Gallons.
Rum	2,198,592
Brandy	1,023,073
Geneva	14,864
Other sorts . .	6,077
	3,242,606

For many years the number of distillers in England has not exceeded twelve. In 1835 six distillers in London and the vicinity paid 1,030,202*l.* duty out of 1,420,525*l.*, the total amount of duty paid by distillers in England. The number of distillers in Scotland in the above year was 260, and there were 87 in Ireland; but the number of rectifiers in England, Scotland, and Ireland is a proof of the different tastes of the people in each country. In England, in 1835, there were 108 rectifiers, in Scotland 11, and in Ireland 19. Very little brandy or rum is consumed either in Scotland or Ireland, the pure home spirit without any artificial flavouring being preferred. Nearly the whole of the spirit distilled

in England passes through the hands of the rectifier, who, by the addition of various ingredients, produces the compound called gin; and above 500,000 gallons of English spirit are flavoured in imitation of French brandy.

Malt and unmalted grain together are used in the English distilleries; six-sevenths of the Scotch spirits are made from malt, and the remainder from malt and unmalted grain; in Ireland about a tenth is from malt, and, with the exception of a few hundred gallons from potatoes, the remainder is from malt and unmalted grain. Of the British spirits consumed in 1845 the number of gallons made from malt only was 6,668,759, the remainder (16,453,829) having been made from a mixture of malt with unmalted grain. The number of gallons made from malt only was 5,368,697 in Scotland; 717,483 in England; and 582,579 in Ireland. The duty was 7*s.* 10*d.* per gallon on English spirit, 3*s.* 8*d.* on Scotch spirit, and 2*s.* 8*d.* on Irish spirit.

The number of persons engaged in the various trades of distilling, compounding, and retailing spirits, in 1840, was as follows:—

	England.	Scotland.	Ireland.
Distillers and rectifiers	106	215	112
Dealers not retailers	2,922	452	364
Retailers—premises rated			
Under 10*l.*	15,431	10,364	11,054
10*l.* and under 20*l.*	19,692	4,112	3,078
20 „ 25	3,303	321	287
25 „ 30	2,199	178	189
30 „ 40	3,684	207	271
40 „ 50	2,349	85	148
50 and upwards	6,022	246	296

The dealers in foreign wine in the same year were as follows:—

	England.	Scotland.	Ireland.
Not being dealers in spirits or beer	1,793	28	173
Dealers in beer but not in spirits	44	31	252
Dealers in wine, spirits, and beer	22,113	2,800	1,964
Passage vessels with retail licences	254	93	25

The following table, showing the consumption of British spirits in different years during the present century, is abridged from vol. iii. of Porter's 'Progress of the Nation:'—

	England. galls.	Scotland. galls.	Ireland. galls.	United Kingdom. galls.
1802	3,464,380	1,158,558	4,715,098	9,338,036
1812	3,622,970	581,524	4,009,301	9,213,795
1821	4,125,616	2,385,495	3,311,462	9,822,573
1831	7,434,047	5,700,689	8,710,672	21,845,408
1838	7.938,490	6,259,711	12,296,342	26,486,543
1841	8,166,985	5,989,905	6,485,443	20,642,333
1842	7,956,054	5,595,186	5,290,650	18,841,890
1843	7,724,051	5,593,798	5,546,483	18,864,332
1844	8,234,440	5,922,948	6,451,137	20,608,525
1845	9,076,381	6,441,011	7,605,196	23,122,588

In 1841 the consumption of British spirits was at the rate of 0·51 gallons per head in England, 2·28 gallons in Scotland, and 0·80 gallons in Ireland. Before the commencement of the temperance movement in Ireland, the rate of consumption in that country was 1·52 gallons per head. The quantity of spirits charged with duty in Ireland fell from 12,296,342 gallons, in 1838, to 6,485,443,

in 1841, the only change of duty being an addition of 5 per cent. The further diminished consumption in 1842-3 is partly apparent, as the increase of duty from 2*s.* 8*d.* to 3*s.* 8*d.* a gallon led to illicit distillation. By this addition of a shilling a gallon duty, the minister anticipated an increased revenue of 250,000*l.*; instead of which, in the year ending 5th April, 1843, there was a positive decrease of 7361*l.*, the quantity of spirits brought to charge having fallen to 4,813,045 gallons, or 1,715,901 gallons less than in the previous year. On the 5th of April, 1841, the number of persons in gaol for illicit distillation was 48; on the same day in 1843 the number was 368. The financial mistake was so obvious that, in the session of 1843, an act was passed (6 & 7 Vict. c. 49) for returning to the old scale of duty.

The duty on rum from British colonies is 9*s.* 4*d.* the gallon. The consumption of rum has been declining for many years in England, and is insignificant in Scotland and Ireland. With the same duty in each country the contribution per head to the revenue, in 1841, was 1*s.* 3½*d.* in England, 2¼*d.* in Scotland, and 0⅙*d.* in Ireland. In 1831, with nearly the same duty as in 1841 (9*s.* instead of 9*s.* 4*d.*), it was 2*s.* 3*d.* in England, 5½*d.* in Scotland, and ¼*d.* in Ireland. The same rate of duty on foreign spirits, in 1841 yielded 1*s.* 7½*d.* per head in England, 5*d.* in Scotland, and 0½*d.* in Ireland. The quantity of all descriptions of wine consumed in the United Kingdom was less in 1841 than in 1801. In 1840, out of 100 gallons, there were consumed—of Portugal wines, 26·7 gallons; Spanish, 46·9; Madeira, 1·3; Teneriffe, 0·4; Sicilian, 8·1; Cape, 7·7; French, 7·4; Rhenish, 1·1. The consumption of the wines of Portugal was 75 per cent. of the total quantity half a century ago.

(Porter's *Progress of the Nation*, vol. iii.; *Report of Commissioners of Excise Inquiry on British Spirits; Parliamentary Papers.*)

WITNESS. [EVIDENCE.]

WOMAN. The political and social condition of men varies greatly in different countries. The condition of women also varies greatly, though the variations in the condition of women are not univerally determined by the social or political condition of the men.

It is sometimes said that the condition of women is a kind of index to the degree of civilization in any given nation. The word civilization is somewhat indefinite, but perhaps we may understand the proposition thus: in those countries in which the social and political conditions of men nearly approach one another, the social position of the women will also be nearly the same. Thus in Great Britain and the United States of North America the social and political condition of men and the social condition of women are nearly the same. The differences are not worth noticing here.

The difference of sex satisfactorily explains the subordinate condition which women occupy in a political system. Their average strength is below that of the male, and those who become mothers have all the burden of the child before it is born and the chief labour of nurturing the child after it is born. The conformation of their body and its general more delicate organization disqualify them for many of the labours of the male sex, but qualify them for other labours of a different kind.

Among some nations the wife is the servant of the husband, and is compelled to do many things which the male could do better. This happens among some savage nations, and is justly considered a proof of barbarism; for it implies an abuse of power on the part of the male and a miscalculation of his own interest. Woman is adapted to be a solace to man when he is wearied, a help to him in his labours, and a companion in his moments of relaxation. She increases his happiness by co-operating with him in such ways as her strength and the peculiarities of her sex allow, not by labouring as he does or can do. The condition of women in nations called civilized approaches the condition of women in some nations called uncivilized, when they join in the labours of the man instead of performing the offices which are peculiarly suited to the female.

The exclusion of women from political

power, from the discharge of public functions, and from many other things that can only be done by mingling with men out of doors, is nearly universal, and it is founded on sufficient reasons. The difference of sex is the cause, and the necessary cause, of this almost universal practice. In some nations the principle of hereditary succession allows a female to take in course of descent the regal power and title: in some nations females are excluded. In a constitutional government where the administration is conducted by responsible agents of her who has the regal power and title, there seems no reason why a female should not exercise the kingly office as well as a male. In a monarchy properly so called, where the monarch is absolute, the administration of a woman is perhaps more likely to be bad than that of a male; though the reasons for excluding women from a participation in political power generally do not apply in their full extent to exclude a woman from exercising sovereign power.

Married women and unmarried women are not in the same condition in any country. The married woman by consenting to live with a man subjects herself to a control which is very different from that of a father or guardian. The purposes of marriage are among others the union of the sexes, the consequence of which is the procreation of children. The husband claims the exclusive possession of his wife's person, and obedience to his reasonable commands, which in general his superior strength enables him to enforce. It is the condition of married women in different countries which is comprehended under the term "condition of women" rather than that of unmarried women; and their condition comprehends the power of the husband over their person, over the children of the marriage, and over the property which the wife has at the time of marriage or may acquire during the marriage. In all these matters the positive law of different nations varies very much.

But it would be a great mistake if we were to judge of the condition of women in any country simply by viewing the positive rules of law as evidence of their condition. There are many things in the relation of husband and wife, parent and child, for which no positive law has ever attempted to provide: these matters are governed by the positive morality, that is, by the usages and habits of any given society. It would not follow that if positive law gave women more power, they would also receive more respect and tender consideration from the stronger sex. On the contrary, if the two sexes were placed on the same footing by positive law, so far as it could be done, this would contradict the constitution of nature as indicated by the difference of sex, and would rather tend to deprive the female of the respect and consideration which she receives in most countries. There is some mean between the absolute subjection of the wife to the husband and the perfect equality by law, which appears to be most in harmony with the physical differences of sex, and best adapted to maintain a system of positive morality that shall conduce to the happiness of both.

As to unmarried women, so long as they are under parental authority, there are reasons in the relation of parent and child for maintaining the power of the parent by positive law to a certain extent; and positive morality supplies what law leaves defective. As women who are unmarried expect to marry some time, or at least may marry, it follows that in all nations in which any value is set on the chastity of women, they are by that very opinion excluded from an active life, which would require them to mingle freely with the other sex. If a single woman were a soldier or a sailor, or followed any other occupation which required her to mingle with men, she could not preserve a reputation for chastity; and if she did preserve her chastity, she would not have the credit of it. If there are any branches of industry in which the males and females freely intermingle, and there are such, it is a necessary consequence that the opinion of the chastity of the females must be unfavourable, and in many cases the opinion must be correct. Usage might establish an indifference to the chastity of women, and they might still be able to get hus-

bands, though generally reputed to be unchaste, and often known to be unchaste; and such a condition of society, arising from other causes than those here mentioned, is described by Herodotus (i. 93). Viewed as a portion of the positive morality of any nation, such a usage is faulty because contradictory to the notion of marriage, which implies a regulated commerce of the sexes and a recognised paternity for every child that is born.

The sexual difference then is the ground for a separation of males and females in many of the labours which are essential to the existence and sustenance of both. The union of the male and female in marriage is a just ground for limiting the wife's legal capacity to do certain acts and relieving her from some legal duties, which acts as an unmarried woman she might do, and which duties as an unmarried woman she might owe. The Roman system went further, and placed unmarried women who were of full age and free from parental authority under a kind of tutelage, not with a view of limiting their legal capacity, but in order to save them from fraud. The ground of this is in some passages stated to be the general infirmity of the sex, which, however, resolves itself into the difference of sex, and the consequent danger which on that account there is of a woman being overreached. The Roman law was here wiser than the English.

The condition of a married woman in England, Scotland, and in antient Rome, is discussed under WIFE. The reader may collect some information on the condition of women in various countries from the following work: Laboulaye, *Recherches sur la Condition Civile et Politique des Femmes*, &c., Paris, 1843; but this and other works of a like kind must be read with caution, if a man would avoid making false inferences from the positive law of any given country.

WOODS AND FORESTS. A considerable portion of the royal revenue consisted formerly of the rents and profits of the crown lands, which comprised numerous lordships and honours, together with forests and chaces: from the forests the principal source of profit lay in the fines or amerciaments levied for offences against the Forest Laws. The demesne lands which were retained by the king, or which came to the crown by forfeiture or otherwise, and were farmed out to subjects, were originally very extensive; but owing to the generosity or the necessities of different kings, so large a part of them was granted away, that the Houses of Parliament frequently interposed in order to prevent the total alienation of the crown property. William III. had used the power of alienation so profusely, that upon the accession of his successor, it was enacted (1 Anne, st. 1, c. 7) that no grant or lease should be made of any crown lands for a longer term than thirty-one years or three lives, except houses, &c., which might be let for fifty years.

By the 26 Geo. III. c. 87, amended by 30 Geo. III. c. 50, Commissioners were appointed to inquire into the state and condition of the woods, forests, and land revenues belonging to the crown. By the 46 Geo. III. c. 142 (altered by the 50 Geo. III. c. 65), an office of surveyor-general of his Majesty's works and public buildings was created; but this and some other offices are now incorporated with that of "the Commissioners of her Majesty's Woods, Forests, Land Revenues, Works, and Buildings" (2 Will. IV. c. 1, s. 1), who are commonly called "the Commissioners of Woods and Forests," which office or board owes its present permanent shape to the statute 10 Geo. IV. c. 50 (amended and extended by 2. Will. IV. c. 1; 2 & 3 Will. IV. c. 112; and 3 & 4 Will. IV. c. 69).

The Commissioners, who are not to exceed three in number, are appointed by letters patent (2 Will. IV. c. 1, s. 1). They are to make a declaration (5 & 6 Will. IV. c. 62. s. 2, in lieu of the oath required formerly, 2 Will. IV. c. 1, s. 6) that they will faithfully and diligently execute the duties of commissioners. Their salaries are fixed at 2000*l.* per annum for the chairman or first commissioner, and 1200*l.* for the other two (10 Geo. IV. c. 50, s. 11; 2 Will. IV. c. 1, s. 7). Only one of them is allowed to be a member of the House of Commons (2 Will. IV. c. 1, s. 11).

Their powers are very large. The

whole of the possessions (except advowsons) and land revenues of the crown in England, Ireland (10 Geo. IV. c. 50, s. 8), and Scotland (2 & 3 Will. IV. c. 112; 3 & 4 Will. IV. c. 69) are under their management; but the property therein still remains in the crown. (1 *Q. B. Rep.*, 352.) They are required to observe all the orders and directions of the Lords of the Treasury touching the exercise of their powers (2 Will. IV. c. 1, s. 3).

The Commissioners have the power of appointing and removing various officers, such as receivers, surveyors, &c., whose salaries however are fixed by the Treasury (10 Geo. IV. c. 50, s. 12). They may also appoint stewards of the royal hundreds and manors to hold courts, and different manerial and forestal officers to preserve game, fish, &c.; and they may grant licences to hunt, fish, &c. (Id., s. 14).

They are empowered to grant leases of any part of the crown possessions for thirty-one years (10 Geo. IV. c. 50, s. 22); or, in case of houses, buildings, &c., or building-land, for ninety-nine years (Id., s. 23); but this power of leasing does not extend to the royal forests in England (Id., s. 25), except for the purpose of making railroads (Id., s. 97). The leases must contain certain specified provisions, and the lessees are not be made dispunishable for waste, except in leases of mines, and at the option of the Commissioners, in leases for ninety-nine years (Id., s. 27). The leases are to be granted at a rack-rent, and no fine is to be reserved (Id., s. 28), except in building-leases, in which a nominal rent may be reserved for the first three years (Id., s. 30), and a fine may be taken not exceeding one-third of the rent (Id., s. 31).

They may also sell any part of the crown possessions, except the forests (Id., s. 34), according to a mode pointed out (s. 35); and they may also sell rents, or manerial or forestal rights, to corporations, or trustees of incapacitated persons, who have estates subject thereto (ss. 39, 40).

They may exchange or purchase lands, &c. (Id., ss. 42, 52, 98).

They are declared to be exempt from all personal responsibility as to any covenants or contracts which they may enter into in their official character (Id., s. 17).

All deeds relating to lands, &c. leased, &c. by the authority of the commissioners are required to be inrolled in the office of Land Revenue Records and Inrolments (10 Geo. IV. c. 50, s. 63; 2 Will. IV. c. 1, ss. 16, 18, 21), and to be certified by the commissioners to parliament (10 Geo. IV. c. 50, s. 125); and all conveyances and sales respecting such lands are to be free from stamp and auction duty (10 Geo. IV. c. 50, ss. 67, 68.)

The Commissioners are also empowered to give certain notices and claims, and to authorize entries on land for breach of covenant, &c. (10 Geo. IV. c. 50, s. 92), and to compound, in certain cases, for rent (Id., s. 93).

Their accounts are to be audited by the commissioners for auditing public accounts, under the 25 Geo. III. c. 52 (10 Geo. IV. c. 50, s. 19).

The receivers appointed by the Commissioners of Woods and Forests must be land-surveyors (Id., s. 80). They are required to account at stated periods to the Commissioners (Id., s. 81), and to transmit all sums received monthly (s. 84); and they are empowered to distrain for rent (s. 90).

Notwithstanding the management of the crown lands is thus vested in the Commissioners, and the general power of alienation has been taken from the crown, a power is reserved to the crown to grant sites for churches, chapels, and burial grounds, not exceeding five acres in extent, or 1000*l.* in value (10 Geo. IV. c. 50, s. 45); and by 1 & 2 Will. IV. c. 59, s. 1, churchwardens and overseers are empowered, with the consent of the Lords of the Treasury, to inclose a portion not exceeding fifty acres of any forest or waste lands belonging to the crown, lying in or near their parish, for the purpose of cultivating the same for the use of the poor.

Besides this general control over the crown lands, certain powers are given to the Commissioners which are connected with the execution of the Forest Laws. The powers and authorities belonging to the offices of wardens, chief-justice,

and justices in eyre (which were abolished upon the termination of the then existing interests by 57 Geo. III. c. 61), are vested in the First Commissioner (10 Geo. IV. c. 50, s. 95); and the commissioners are also empowered to make compensation to parties for old encroachments made upon the royal forests where they have been in uninterrupted possession for ten years (Id., s. 96).

The verderers of the royal forests are also required to make inquiry as to all unlawful inclosures, encroachments, &c. in their courts of attachment, and may impose fines upon the offenders (Id., s. 100), who may however be proceeded against by the ordinary course of law (s. 103). The verderers may appoint regarders, under-foresters, and other officers of the forests and courts (s. 101), and may inquire into their conduct, and fine them for neglect of duty (s. 102). Other penalties may be recovered before a justice of the peace (s. 104); and all such fines and penalties are to be applied to the expenses relating to the forests (s. 105).

As to the general revenue arising from the letting, &c. of the crown lands, the commissioners are directed to pay in the moneys received by them, to a proper account with the Bank of England and Ireland respectively (10 Geo. IV. c. 50, s. 117, 118) and the chartered banks of Scotland (3 and 4 Will. IV. c. 69, s. 17); and the annual income (after certain deductions) is to be carried to the consolidated fund (10 Geo. IV. c. 50, s. 113; 3 & 4 Will. IV. c. 69, s. 16). The transfer of the revenue arising from the crown lands to the consolidated fund is however the subject of a special arrangement between the crown and the subjects, terminating with the life of the king or queen regnant in whose reign it is made.

The 10 Geo. IV. c. 50, contains some provisions peculiar to Ireland. Leases, grants, &c., of any of the small branches of the royal revenue (s. 128), and the powers appertaining to the chancellor and council of the Duchy of Lancaster (s. 130), are exempted from its operation.

The real property of the crown may be thus classified:—

1. Honours, manors, and hundreds, not in lease.

2. Other lands in the occupation of the crown, either for the personal convenience of the king or for the public service.

3. Forests, chaces, and wastes.

4. Lands, tenements and hereditaments, held of the crown by lease.

5. Fee-farm rents, issuing out of lands, tenements, and hereditaments, held of the crown in fee-simple.

Of the first, fourth, and fifth classes it would be impossible to attempt any particular enumeration; the fourth consisted, at the time of passing the statute 26 Geo. III. c. 87 (A.D. 1786), of about 130 manors, 52,000 acres of land in cultivation, 1800 houses in London and Westminster, and 450 houses and other buildings in other parts of England, exclusive of houses demised with manors or forests.

The second class comprises the following royal palaces and houses:—Buckingham Palace; St. James's Palace; the Pavilion at Brighton; Windsor Castle; the palaces of Hampton Court, Kensington, and Whitehall; the King's House at Winchester; the palace at Greenwich (converted into an hospital for seamen); Somerset House (used as public offices); the palace of Westminster (Westminster Hall, including the houses of parliament and courts of law). The following palaces and buildings have been pulled down and their sites used for other purposes:—Carlton House; the Mews; Newmarket Palace. The following parks are also included in this class:—St. James's, Hyde, Bagshot, Bushey, Greenwich, Hampton Court, Richmond, and Windsor.

In the third class are included not only the royal forests which have preserved their *jura regalia*, but several nominal forests and chaces, warrens, wastes, &c. The following is a list of the real forests:—In Berks, Surrey, and Wilts, Windsor Forest; in Essex, Waltham Forest; in Gloucestershire, the Forest of Dean; in Hampshire, Bere Forest, New Forest, and the Forest of Woolmer and Aliceholt; in Northamptonshire, Rockingham, Whittlewood, and Salcey Forests; in Nottinghamshire, Sherwood Forest; in Oxfordshire, Whichwood Forest.

There has arisen incidentally out of the proper duties of the department of Woods and Forests, since it was united

with the Board of Public Works, the important office of providing public walks and access to the national buildings and collections. This branch of administration has only been recognised of late years, and perhaps we owe it to our intercourse with the Continent, and especially with France, that it has been at all acknowledged. Twenty years ago Hyde Park and Kensington Gardens were the only public places of recreation open to the crowded and hard-worked population of London; since then, beside the improvements in those two places, and the formation of new streets and squares in those parts of the metropolis of which the land either belongs to the crown or has been purchased by parliament for public improvements, there have been opened the large gardens of St. James's Park and the Regent's Park; Primrose Hill, at the north of the Regent's Park, and a large piece of land at the north-east end of London, called 'Victoria Park,' have been purchased for public convenience. The palace and grounds of Hampton Court have been repaired and ornamented, and have been thrown open gratuitously to the public, and the collection of pictures has been arranged: for all this the nation is indebted to the department of Woods and Forests.

WOOL. [TARIFF.]

WORKHOUSE. [POOR LAWS.]

WOUNDING. [MAIM.]

WRECK. [FRANCHISE; SHIPS, p. 704.]

WRIT, a law term, which in its proper signification means a *writing* under the king's seal, whereby he confers some right or privilege, or commands some act to be done. Writs are either *patent* (open, commonly called *letters patent*, *literæ patentes*), which are not sealed up, but have the great seal attached to them; or *close* (*literæ clausæ*), which are, or are supposed to be, sealed up. The former are addressed to all persons indiscriminately, generally in these terms—"To all to whom these presents shall come;" the latter are directed to some officer or other individual. Of the former kind is the creation of a peer by patent, which is a royal grant of peerage; of the latter, the creation of a peer by writ, which is a summons to attend the house of peers by the style and title of some barony.

Writ in its ordinary and more limited sense is a term applicable to process in *civil* or *criminal* proceedings. Civil writs are divisible into *original* and *judicial*: original writs issue out of the Court of Chancery, and give authority to the courts, in which they are returnable, to proceed with the cause; judicial writs are awarded by the court in which the action is already pending. These are again subdivided into *mesne* and *final*. Original writs (which now, except in the few *real* actions still preserved, have been superseded by the writ of summons) used to contain a *brief* statement of the plaintiff's alleged cause of action; and such a writ was called in law Latin *breve*, in law French *brief*: and this term was afterwards applied to judicial and other writs. Original writs issuing from Chancery were always witnessed, or *tested*, in the name of the king; judicial writs issued from that one of the superior common law courts in which the original writ was made returnable, and were tested in the name of the chief judge of such court. In cases where the plaintiff seeks to recover a sum under 40*s*., he may bring his suit in the county-court, or court-baron, in which no royal writ is necessary, but the suits therein commence, not by original writ, but by *plaint*, which is a statement of the party's cause of action in the nature of a *declaration*.

There are many kinds of writs, some of the more important of which may be here mentioned. There is the writ to the sheriff of a county to elect a member or members of the Commons' House of Parliament, in case of a vacancy or general election, which issues upon the warrant of the lord chancellor or in certain cases of the speaker of the House of Commons. The writ of *habeas corpus* (*ad subjiciendum*), which is directed to any person who detains another, commanding him to produce the body of the prisoner at such a time and place, together with the cause of his caption and detention, to do, submit to, and receive (*ad faciendum, subjiciendum, et recipiendum*) whatever the court or judge by whom the writ is awarded shall think fit. [HABEAS CORPUS.] There

are various other writs of *habeas corpus*, for the purpose of bringing up prisoners to be charged in execution, to give testimony, &c.—the writs of *subpœna ad testificandum*, by which a party is commanded to appear at the trial of a cause, to give evidence under a *nominal* pecuniary penalty; and of *subpœna duces tecum*, by which the party is commanded to bring certain specified documents for the purpose of the trial. There is also the writ of *subpœna* in equity, whereby the defendant in a suit is commanded to appear and answer the plaintiff's bill. A defendant privileged from the particular suit, or from being sued except before some other tribunal, is entitled to a writ of *Privilege*, by which the court is required to discontinue the suit. In modern times a party is allowed his privilege without suing out any *writ* of privilege. The new Natura Brevium of the Most Reverend Judge, Mr. Anthony Fitz-Herbert, contains a great variety of writs.

WRIT OF ERROR. There may be a writ of error for an alleged mistake in the proceedings of a Court of Record. The writ may be for matter of fact or of law. In the case of an alleged error in fact the writ is addressed to the court which has given the judgment and the correction of the record is left to it. In the case of an alleged error in law, a writ of error must be sued out of the common law side of the Court of Chancery, and it is addressed to the chief justice of the Queen's Bench or Common Pleas, or to the chief baron of the Exchequer, in one of which courts it is alleged that the error has been made. The writ commands the chief justice of the court in which the error is alleged to have been made to send a copy of the record to the Exchequer Chamber to be examined there. The writ of error on any judgment of the Queen's Bench, Common Pleas, or Exchequer is returned only before those judges of the two courts in which the alleged error has not been made (1 Wm. IV. c. 70); and there is no writ of error from the Exchequer Chamber except to the House of Lords.

In criminal cases there is a writ of error from all inferior courts to the Queen's Bench and from that to the House of Lords.

WRIT OF INQUIRY. In cases where a plantiff seeks to recover a specific chattel (as in the action of *Detinue*), or a specific sum of money (as in *Debt*), if the defendant allows judgment to go against him by default, this is considered as an admission that the plaintiff is entitled to what he claims; and the judgment therefore is final in the first instance, provided the plaintiff is content to take a small nominal sum for the damages resulting from the detention of the chattel or the debt. But where a plaintiff only seeks to obtain damages for an injury done to his person or his real or personal estate, or for the non-performance of a promise, if the defendant lets judgment go by default, this, though an admission that the plaintiff has a cause of action, does not operate as an admission of the amount of damages to which he is entitled; and such judgment is called interlocutory. In such cases, and also where the plaintiff seeks to recover substantial damages for the detention of a chattel, or of a debt, the intervention of a jury is required in order to ascertain for what damages the plaintiff is entitled to have final judgment. For this purpose, a *judicial* process, called a *writ of inquiry*, issues to the sheriff commanding him to summon a jury to inquire what damages the plaintiff has sustained. If the plaintiff offer no evidence before the jury, a verdict must be found for nominal damages, as existence of *some* damage is admitted.

When the *inquisition* (or finding of the jury) is returned, the plaintiff is entitled to judgment for that amount. In some cases where the amount of damages is readily ascertainable, as being a mere matter of calculation, such as in actions upon bills of exchange, upon covenants for the payment of a certain sum, and the like, the court, instead of directing a writ of inquiry, will refer the matter to one of its officers to compute the amount of principal and interest due to the plaintiff, for writs of inquiry are merely to inform the court, who may assess the damages themselves, if they think proper, after interlocutory judgment has been obtained.

WRIT OF SUMMONS. [WRIT.]

WRIT OF TRIAL. All trials of causes in the superior courts took place formerly either at *bar* before the whole court, or at *nisi prius* before one of the judges of the court, or a judge or serjeant named in the commission of assize; but now, by the 3 and 4 W. IV., c. 42, s. 17, in any action depending in any of the superior courts for any *debt* or *demand* in which the sum sought to be recovered and indorsed on the writ of summons shall not exceed 20*l.*, the court, or a judge (if satisfied that the trial will not involve any difficult question of fact or law), may order the trial to take place before the sheriff of the county where the action is brought, or some judge of an inferior court, and for that purpose a writ shall issue (called the Writ of Trial) directed to the sheriff or such judge, commanding him to try the cause before a jury, and to return such writ with the finding of the jury thereon indorsed. The statute applies only to actions for a *debt* or *demand* indorsed on the writ of summons; it does not therefore extend to cases where the action is brought for a wrong, or where the demand, being for unliquidated damages, the amount claimed cannot properly be indorsed on the writ of summons. (3 Mann. and Gra. 850.) The proceedings under the writ of trial, when directed to the sheriff, usually take place before his under sheriff or other his deputy; and they are conducted in the same manner as at a trial at *nisi prius:* and the court will grant a new trial for the same causes as if the trial had been before one of the superior judges; but a new trial will not be granted upon the ground that the verdict is against the evidence, where the amount of such verdict is less than 5*l.*, unless such verdict be manifestly *perverse*.

WRITER, in Scotland, is a term of nearly the same meaning as attorney in England, and is generally applied to all legal practitioners who do not belong to the bar, although it has of late become customary to substitute for it the term solicitor. As special exceptions, the body who in Edinburgh enjoy, concurrently with writers to the signet, the privilege of conducting cases before the Court of Session, the Court of Justiciary, &c., are called solicitors of supreme courts (abbreviated S. S. C.), and the practitioners before the sheriff court of Aberdeen are by local custom called advocates. In each county there is generally a society of writers privileged to practise in the sheriff court and in the other local judicatories, who frame their own bye-laws, and regulate the terms of admission to their body. Individually, they are responsible for their conduct to the local judges before whom they practise; and as bodies they are, on the one hand, protected from the infringement of their privileges by unlicensed persons, and, on the other, liable to judicial control if they attempt unduly to restrict the means of admission to their privileges.

WRITER TO THE SIGNET, abbreviated W. S., is the designation of the members of the most numerous and important class of attorneys or procurators in Scotland. The writers to the signet enjoy, in common with the solicitors of supreme courts, and with one or two smaller bodies, the privilege of conducting cases before the Court of Session, the Court of Justiciary, and the Commission of Teinds. Their peculiar privilege, however, is that of preparing the writs which pass the royal signet. The signet was a seal or die under the control of the secretary of state, with which the writs by which the king directed parties to appear in court, or ordered them to obey the decrees given against them, and other executive instructions, were stamped for the sake of authentication. In the sixteenth century, the persons who were entitled to present the writs which received the impression of the signet are supposed to have been the clerks in the secretary of state's office; and it is not known how or precisely at what time the persons who transacted this department of official business became converted into a body of private practitioners. Since the union of 1707, the signet has been under the disposal of the Court of Session; but down to about the middle of last century the keeper of the signet was deputed by the secretary of state for the home department. Since that time he has been appointed under the great seal,

and he names a deputy, who is a member of the society of writers to the signet, and by usage presides at their meetings. In the general case the summons by which an ordinary action is brought into the Court of Session requires to be signeted, and to be, as a preliminary, signed by a writer to the signet; although a member of one of the other privileged bodies may conduct the case. Advocation [ADVOCATION] and some other analogous classes of procedure, required formerly to have the interposition of the signet; but this step in the procedure was abolished by 1 and 2 Vict. c. 86. In the various forms of execution against person and property, the signet was, until lately, a prominent feature; but, unless in some special cases, it has been dispensed with by the Act 1 and 2 Vict. c. 114. In these departments of legal practice the writers to the signet now possess few privileges which are not shared by the other practitioners before the supreme courts. They still retain their privileges as to summonses, and they have the exclusive right of presenting signatures in exchequer, or of presenting, through the judges acting in exchequer, the indorsed drafts of the writs passing under the great and other seals in Scotland appended to crown charters, appointments to offices, &c. They have thus a monopoly of the business of making up the titles of the crown vassals or freeholders in Scotland, and this circumstance, added to their skill and respectability as a body, has put the greater part of the conveyancing of the country in their hands. The society require of their intrants an apprenticeship of five years, with a curriculum of university study, which includes two sessions of attendance, the one at Latin and the other at some other literary class, and four courses of attendance at law classes. The expenses connected with apprenticeship amount to about 380*l.*, and additional fees to the extent of 140*l.* are incurred on entering the society. The writers to the signet possess a library, amounting, it is supposed, to between forty and fifty thousand bound volumes, distributed in two large halls. The collection was commenced in 1755, by the purchase of some law books, to which works on other subjects were added in 1778. It is supported by an annual grant by the society, which fluctuates with the state of its funds, and has in some years exceeded 2000*l.* The eminent men who have successively acted as librarians, have made praiseworthy and successful efforts to obtain the most useful works, and to prevent the funds from being wasted in the purchase of books at random. They have kept in view in many cases the acquisition of those books which are wanting to the advocates' library, and as the two institutions are within the same range of buildings, and are both liberally laid open to those who wish to consult books for literary purposes, the writers to the signet have thus performed an essential service to the literature of Edinburgh.

Y.

YEAR-BOOKS. [REPORTS.]

YEOMAN, YEOMANRY CAVALRY. Of the various derivations proposed for the word yeoman—jung man, young man; jemand, any one; gemein, common; goodman—perhaps "gemein" or "common" is the most probable. A yeoman is at the head of the classes beneath gentlemen; he is in legal sense a probus et legalis homo, who may dispend of his own freehold 40*s.* yearly. In an antient statute (20 Ric. II. c. 2, 1326) they ("Vadlez appellez yomen") are prohibited, in common with all other persons under the rank of an esquire, from wearing any lord's livery unless they form part of the lord's household; and Fortescue (c. 29), who wrote somewhat more than half a century after the passing of that act, says that there are yeomen (valecti) who can spend out of their patrimony 600 skutes a-year, a sum equal, according to some computations, to 130*l.* The term yeoman is used in inferior offices about the palace; and there is a body-guard called the yeomen of the king's guard, established by Henry VII., and by some writers considered the first approach towards a standing army, which attends the king upon state occasions. It consists of 100 men habited in the costume of the sixteenth century, and commanded by a captain and other officers. The vulgar name of beef-eaters,

by which they are known, is a corruption of buffetiers, from their having been stationed in state banquets at the buffet or sideboard. During the long war consequent on the French revolution, and whilst this country was threatened with invasion, there was embodied in almost every county a mounted force under the name of Yeomanry Cavalry. It was subject to the same regulations, when on service, as the militia, and consisted of volunteers, of whom a large proportion were gentlemen or wealthy farmers; they were mounted and in most respects equipped at their own expense; but they received pay whilst in actual service, and there was some small allowance made by the crown towards the regimental expenses, such as the permanent pay of non-commissioned officers. They were commanded by the lord-lieutenant of the county, who granted commissions to the subaltern officers.

The first act for embodying corps of volunteers was passed in the spring of 1794 (34 Geo. III. c. 31). It enacts that all persons who may, during the war then raging, voluntarily enrol themselves under officers holding commissions for that purpose from the king or from the lieutenants of counties, shall be entitled to receive the pay, and shall be subject to the same discipline by courts martial, composed of volunteer officers, as troops of the line, if, on being called upon by the king in case of actual invasion or appearance of invasion, they shall march out of their own counties or assemble within it to repel such invasion; or if they shall march at the command of the king or of the lieutenant or the sheriff of the county to suppress riots or tumults within it or the adjacent counties. The act exempts volunteers from the militia; it gives power to magistrates to billet the non-commissioned officers and drummers on tavern-keepers; and grants to commissioned officers a right to half-pay, and to non-commisioned officers the benefit of Chelsea Hospital if they are disabled when on actual service.

In the year 1798 another act was passed (38 Geo. III. c. 51), to facilitate the training of volunteer corps of cavalry, who are called in the title to the act, though not in the body, "yeomanry cavalry." It authorizes the billeting of the privates when called out to be trained, and it exempts from taxation the horses used in the service. After the short peace in 1802, the provisions of the preceding acts were renewed (42 Geo. III. c. 66), and the existence of the volunteer corps of cavalry (called by this act for the first time "yeomanry cavalry") was revived or continued, without reference, as in the previous statutes, to the then existing war.

Of late years, although many of these yeomanry regiments still exist, they are rather maintained for the purpose of amusement and good fellowship than for any practical service.

According to a Parliamentary Return, there were, in 1836, 338 troops of yeomanry cavalry, including 1155 officers and 18,120 men, at a cost of about 100,000*l.* a-year to the nation. In 1838, the number of troops was reduced to 251, and the privates to 13,594. Between the years 1816 and 1838, the average annual expense of maintaining the yeomanry corps was 128,000*l.*; the greatest cost being in the years 1820, 1821, and 1822, when the annual average exceeded 192,000*l.*

THE END.

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