THE JUSTICE of the PEACE, AND PARISH OFFICER.

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Execution.

1. WHERE a perſon attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution ſhould not be awarded againſt him; if he deny that he is the ſame perſon, it ſhall be immediately tried by a jury returned for that purpoſe. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2 *Haw.* 463.

3. In fixed and ſtated judgments, the law makes no diſtinction between a peer and a commoner, or between a common and ordinary caſe, and one attended with extraordinary circumſtances; for which reaſon it was adjudged in *Felton*'s caſe, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the ſentence that his body ſhould be hanged in chains, but that the body after execution being at the king's diſpoſal, might be hanged in chains, or otherwiſe ordered as the king ſhould think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading; whereby the judgment is not altered, but part of it remitted. 2. *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See Proceſs.

Extortion.

IT is ſaid, that extortion, in a large ſenſe, ſignifies any oppreſſion under colour of right; but that, in a ſtrict ſenſe, it ſignifies the taking of money by any officer, by colour of his office, either where none at all is due, or not ſo much is due, or where it is not yet due. 1 *Haw.* 170.

And by the ſtatute of the 3 *Ed.* 1. *c.* 26. (which is only in affirmance of the common law) *No ſheriff, nor other the king's officer, ſhall take any reward to do his office, but ſhall be paid of that which they take of the king; and he that ſo doth, ſhall yield twice as much, and ſhall be puniſhed at the king's pleaſure.*

No ſheriff nor other the king's officer] Under theſe words, the law beginning with the *ſheriffs*, are underſtood eſcheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whoſe offices were inſtituted before the making of this act, which do any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the king's ſervice. 2 *Inſt.* 209.

Alſo the juſtices of the peace, whoſe office was inſtituted after this act, are bound by their oath of office, to take nothing for their office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.

And generally, no publick officer ſhall take any other fees or rewards, for doing any thing relating to his office, than ſome ſtatute in force gives him, or elſe as hath been antiently and accuſtomably taken: and if he do otherwiſe, he is guiltly of extortion. *Dalt. c.* 41.

Shall take any reward] Therefore by this ſtatute, they can at this day take no more for doing their office, than hath been ſince allowed to them by authority of parliament. 2 *Inſt.* 210.

And all preſcriptions which have been contrary to this ſtatute, and to the common law in affirmance of which it is made, have been always holden to be void. 1 *Haw.* 170.

And it has been reſolved, that a promiſe to pay them money for the doing of a thing, which the law will not ſuffer them to take any thing for, is merely void. 1 *Haw.* 171.

To do his office] It is not ſaid, that he ſhall take no reward generally, but no reward to do his office: Thus the fee of 20 *d.* called bar fee, time out of mind taken by the ſheriff of every priſoner that is acquitted, is not againſt this ſtatute; for it is not taken for doing his office. 2 *Inſt.* 210.

But there ſeems to be no neceſſity for this diſtinction, for it cannot be intended to be the meaning of the ſtatute to reſtrain the courts of juſtice, in whoſe integrity the law always repoſes the higheſt confidence, from allowing reaſonable fees for the labour and attendance of their officers: for the

the chief danger of oppreſſion is from officers being left at their liberty to ſet their own rates on their labour, and make their own demands; but there cannot be ſo much fear of theſe abuſes, while they are reſtrained to known and ſtated fees, ſettled by the diſcretion of the courts, which will not ſuffer them to be exceeded, without a proper reſentment. 1 *Haw.* 171.

But in the eccleſiaſtical court, a perſon was libelled againſt for fees, and upon motion a prohibition was granted, for that it was holden that no court hath a power to eſtabliſh fees: the judge of a court may think them reaſonable, but that is not binding; but if on a *quantum meruit* a jury think them reaſonable, then they become eſtabliſhed fees. 1 *Salk.* 333.

The fees in ſeſſions, for traverſing, trying, or diſcharging indictments, diſcharging recognizances, and the like, do vary according to the different cuſtoms in different places. *Dalt. c.* 41.

Shall yield twice as much] At the common law this offence is ſeverely puniſhable at the king's ſuit, by fine and impriſonment, and alſo by a removal from the office in the execution whereof it was committed. And this ſtatute doth add a greater penalty than the common law did give; for hereby the plaintiff ſhall recover his double damages. 2 *Inſt.* 210. 1 *Haw.* 171.

And by the 31 *El. c.* 5. Actions for extortion may be laid in any county.

At the king's pleaſure] That is, by the king's juſtices, before whom the cauſe depends. 2 *Inſt.* 210.

Indictment for extortion in a gaoler.

THE *jurors for our lord the king, upon their oath preſent, that* A. O. *late of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was taken upon ſuſpicion of having committed a certain felony, by* ——— *conſtable of* ——— *in the ſaid county, by virtue of a warrant directed to the ſaid* —— *under the hand and ſeal of* Robert Bolton, *doctor of laws, then and yet one of the juſtices of our ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and was on the ſame day and year committed by him the ſaid* Robert Bolton, *to* A. G. *keeper of the gaol of our ſaid ſovereign lord the king at* ——— *in the ſaid county, under the cuſtody of him the ſaid* A. G. *to be ſafely kept, upon ſuſpicion of the felony aforeſaid, and the ſaid* A. O. *was detained in that priſon*

under the cuſtody of the ſaid A. G. *from the time that he was committed to the ſaid priſon for one month from thence next enſuing, upon ſuſpicion of the ſaid felony; nevertheleſs the ſaid* A. G. *in no wiſe regarding the ſtatute in that caſe made, and the penalty therein contained, did on the —— day of —— at —— aforeſaid, in the ſaid county, demand and receive —— pounds of lawful money of* Great Britain *of and from the ſaid* A. O. *for eaſe and favour in the ſaid gaol for the ſaid time, in contempt of our ſaid ſovereign lord the king, and againſt the form of the ſtatute aforeſaid, and againſt the peace of our ſaid ſovereign lord the king, his crown and dignity.*

Indictment for extortion of a bailiff.

THE *jurors for our lord the king upon their oath preſent, that* A. B. *late of —— in the ſaid county, yeoman, being bailiff of the hundred of —— in the ſaid county, on the —— day of —— in the —— year of the reign of —— at —— in the ſaid county, by pretext and colour of his ſaid office, did unjuſtly and by extortion take and extort* 5 s. *of one* A. I. *of —— in the ſaid county, yeoman, one of the freeholders qualified to ſerve upon juries in the ſaid county, to excuſe the ſaid* A. I. *from attending or appearing at the aſſizes that were then next to be holden in and for the ſaid county, when in fact the ſaid* A. I. *was not returned by the ſheriff of the ſaid county in any panel of jurors, and alſo when indeed no ſuch ſum of money was due to the ſaid* A. B. *for his fee for excuſing the attendance or appearance of the ſaid* A. I. *at the aſſizes aforeſaid, to the evil example of other offenders, to the great damage of him the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

False tokens. See **Cheat.**

Faſt days.

BY the 2 & 3 *Ed.* 6. *c.* 19. for the encouragement of the fiſheries, and the increaſe of cattle; and the 5 *El. c.* 5. intitled, an act touching political conſtitutions for the maintenance of the navy; and by the 35 *El. c.* 7. it is enacted as follows:

No

No perſon ſhall eat any manner of fleſh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fiſh day; on pain of forfeiting 20 *s.* or being impriſoned one month.

And every perſon in whoſe houſe any fleſh ſhall be eaten on fiſh days, and not diſcloſing the ſame to a publick officer having authority to puniſh the ſame; ſhall forfeit 13*s.* 4*d.*

Which ſaid forfeitures ſhall be, one third to the king, one third to the informer, and one third to the common uſe of the pariſh where the offence ſhall be committed; to be levied by the churchwardens after conviction.

Proſecution to be at the aſſizes or ſeſſions, in three months after the offence committed.

But nothing herein ſhall extend to any perſon having the king's licence; or being in great age, and weakneſs thereby, or ſick, or notably hurt; or a woman with child, or lying in child-bed, for eating of ſuch one kind of fleſh as ſhe ſhall have great luſt unto; or in priſon; nor to the king's lieutenant, deputy, or captain in his armies, but the ſame may eat, or licenſe his ſoldiers to eat fleſh for lack of other victual; nor to perſons licenſed by the archbiſhop of *Canterbury*.

And ſuch licences ſhall be on condition, that the perſon licenſed ſhall within ſix days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26*s.* 8*d.* a knight 13*s.* 4*d.* and all others 6*s.* 8*d.*

But ſick perſons may be licenſed by the biſhop of the dioceſe, or by the parſon, vicar, or curate of the pariſh, or (if there be none, or he be wilful) of the next pariſh; and if the ſickneſs continues above eight days, the licence ſhall be regiſtered in the church book, with the knowledge of a churchwarden; and the curate ſhall have 4*d.* for entry; and the ſame to endure no longer than ſuch ſickneſs.

And no licence ſhall extend to the eating any beef at any time of the year, nor veal from *Sep.* 29. to *May* 1. in any year.

And perſons licenſed (except for ſickneſs) ſhall for every diſh of fleſh at their table, have one diſh of ſea fiſh.

Fees. See Extortion.

Felo de ſe. See Homicide.

Felony, Miſpriſion of Felony, and Theftbote.

I. Felony.

FELONY is generally ſuppoſed to come from the Saxon *fell*, which ſignifieth fierce, or cruel; of which the verb *fell* ſignifieth to throw down or demoliſh; and the ſubſtantive of that name is uſed to ſignify a mountain rough and uncultivated. But the ſame word, with a little variation, runneth through moſt of the *European* languages, and ſignifieth more generally an offence at large; and the Saxon word *fællan* ſignifieth to offend, and *fælniſſe* an offence or *failure*: and although *felony*, as it is now become a technical term, ſignifieth in a more reſtrained ſenſe an offence of an high nature, yet it is not limited to *capital* offences only, but ſtill retaineth ſomewhat of this larger acceptation; for petit larceny is felony, altho' it is not capital.

It would ſwell this title near to the bigneſs of half the book, to ſet down every thing which may be comprehended under this word *felony:* therefore it is neceſſary to refer the conſideration of the ſeveral particular kinds of felonies to their reſpective titles; as for inſtance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and eſpecially the law relating to ſtolen goods of all kinds belongeth to title *Larceny*.

The method of bringing a felon to juſtice from the firſt commiſſion of the felony, to his condemnation and execution, is treated of under the ſeveral titles of *Hue and cry*, *Arreſt*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Mute*, *Confeſſion*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Tranſportation*, *Execution*. And the courſe and whole procedure of trying an offender, is treated of under title *Seſſions*.

So that there is nothing left for this place, but to take notice of one circumſtance which is common to all felonies in general, and that is, concerning the charges of proſecution.

By the 3 *J*. *c*. 10. The felon ſhall pay the charges of his carrying to gaol, if able; to be levied by diſtreſs by warrant of one juſtice.

And by the ſtatute of the 27 *G*. 2. *c*. 3. if he is not able, the ſame ſhall be paid, by order of ſuch juſtice, by the

the treaſurer out of the county rates; and in *Middleſex* by the overſeers of the poor where the party was apprehended.

And by the 25 *G.* 2. *c.* 36. the court, before whom any perſon hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the proſecutor, and on conſideration of his circumſtances, order the treaſurer of the county in which the offence ſhall have been committed, to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble; and the clerk of aſſize, or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on paying 1 *s.* and the treaſurer ſhall pay the ſame on ſight, and be allowed the ſame in his accounts.

And by the aforeſaid act of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on recognizance to give evidence, the court may order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable, for his time, trouble, and expences, (whether the perſon hath been convicted or not); which order the proper officer ſhall make out for the fee of 6 *d.* Except in *Middleſex*, where the ſame ſhall be paid by overſeers of the poor where the perſon was apprehended.

II. Miſpriſion of felony.

Miſpriſion of felony (from the *French* word *meſpris*, a neglect or contempt, 3 *Inſt.* 36.) is the concealing of a felony which a man knows, but never conſented to: for if he conſented, he is either a principal or acceſſary in the felony, and conſequently guilty of miſpriſion of felony and more. 1 *H. H.* 374.

For it is ſaid, that every felony includes miſpriſion of felony, and may be proceeded againſt as a miſpriſion only, if the king pleaſes. 1 *Haw.* 125.

The puniſhment of miſpriſion of felony in a common perſon, is fine and impriſonment; in an officer, as ſheriff or bailiff of liberties, impriſonment for a year, and ranſom at the king's pleaſure, by the ſtatute of 3 *Ed.* 1. *c.* 9.

If any perſon will ſave himſelf from the crime of miſpriſion, he muſt diſcover the offence to a magiſtrate with all ſpeed that he can. 3 *Inſt.* 140.

Miſpriſion, in a larger ſenſe, is uſed to ſignify every conſiderable miſdemeanor, which hath not a certain name given to it in the law.

III. Theft-

III. Theftbote.

Theftbote (from the *Saxon* words *theft*, and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to proſecute. 1 *Haw.* 125.

But the bare taking of one's own goods again, which have been ſtolen, is no offence, unleſs ſome favour be ſhewn to the thief. 1 *Haw.* 125.

This offence is very nearly allied to felony, and is ſaid to have been anciently puniſhed as ſuch; but at this day it is puniſhable only with ranſom and impriſonment, unleſs it were accompanied with ſome degree of maintenance given to the felon, which makes the party an acceſſary after the fact. 1 *Haw.* 125.

Warrant for felony.

Weſtmorland. { To the conſtable of ——

FORASMUCH *as* A. I. *of* —— *in the county of* —— *yeoman, hath this day made information and complaint upon oath, before me* —— *one of his majeſty's juſtices of the peace for the ſaid county, that this preſent day divers goods of him the ſaid* A. I. *to wit,* —— *have felonioufly been ſtolen, taken, and carried away from the houſe of him the ſaid* A. I. *at* —— *aforeſaid in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* —— *yeoman, felonioufly did ſteal, take and carry away the ſame* [Or otherwiſe as the caſe ſhall be:] *Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and to bring him before me to anſwer unto the ſaid information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and ſeal the* —— *day of* —— *in the year* ——.

The forms of indictments for ſtolen goods of various kinds, are inſerted under the title Larceny.

Feme covert. See Wife.

Fences. See Wood.

Fern. Burning of it in foreſts. See Burning.

Fire. See Burning.

Fire in London.

THE acts relating thereto are,
6 *An.* c. 31.
7 *An.* c. 17.
11 *G.* c. 28.

Fireworks.

1. IT ſhall not be lawful for any perſon to make or cauſe to be made, or to ſell or expoſe to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; or to permit the ſame to be caſt or fired from his houſe or other place thereto belonging, into any publick ſtreet or road; or to throw or fire, or be aiding in throwing or firing the ſame, in any publick ſtreet, houſe, ſhop, river, or highway; and every ſuch offence ſhall be adjudged a common nuſance. 9 & 10 *W.* c. 7. *ſ.* 1. Fireworks a nuſance.

2. And if any perſon ſhall make or cauſe to be made, or give, ſell, or offer to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; he ſhall on conviction before one juſtice, or chief magiſtrate, by confeſſion, or oath of two witneſſes, forfeit 5 *l.* half to the poor, and half to the proſecutor; to be levied by diſtreſs, by warrant of ſuch juſtice or chief magiſtrate. 9 & 10 *W.* c. 7. *ſ.* 2. Making or ſelling rockets.

3. And if any perſon ſhall permit any the ſame to be caſt or fired, from his houſe or other place thereto belonging, into any publick ſtreet or road, or any other houſe or place; he ſhall forfeit 20 *s.* in like manner. 9 & 10 *W.* c. 7. *ſ.* 2. Suffering rockets to be fired.

4. And if any perſon ſhall caſt or fire, or be aiding in caſting or firing any the ſame, into any publick ſtreet, houſe, ſhop, river or highway; he ſhall forfeit 20 *s.* in like manner: and if he ſhall not immediately on conviction pay to the juſtice the ſaid forfeiture for the uſes aforeſaid, he ſhall commit him to the houſe of correction to be kept to hard labour for any time not exceeding one month, unleſs he ſhall ſooner pay the forfeiture. 9 & 10 *W.* c. 7. *ſ.* 3. Firing rockets.

5. But nothing herein ſhall extend to the officers of the ordnance, or artillery company. 9 & 10 *W.* c. 7. *ſ.* 4, 5. Exception.

Fiſh and fiſhing. See **Game.**
Fiſh ſalted. See **Exciſe.**
Flight. See **Forfeiture.**

Forcible entry and detainer.

FORCE, in the common law, is moſt commonly taken in ill part, for unlawful violence. 1 *Inſt.* 161.

It ſeems that at the common law, a man diſſeiſed of any lands or tenements, if he could not prevail by fair means, might lawfully regain the poſſeſſion thereof by force, unleſs he were put to a neceſſity of bringing his action, by having neglected to re-enter in due time: And it ſeems certain, that even at this day, he who is wrongfully diſpoſſeſſed of his *goods*, may juſtify the retaking of them by force from the wrong doer, if he refuſe to re-deliver them; for the violence which happens thro' the reſiſtance of the wrongful poſſeſſor, being originally owing to his own fault, gives him no juſt cauſe of complaint, inaſmuch as he might have prevented it by doing as he ought. 1 *Haw.* 140.

But this indulgence of the common law, in ſuffering perſons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the publick peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and alſo by force to retain their wrongful poſſeſſions, it was thought neceſſary by many ſevere laws to reſtrain all perſons from the uſe of ſuch violent methods of doing themſelves juſtice. 1 *Haw.* 141.

However even at this day, in an *action* of forcible entry grounded on thoſe laws, if the defendant make himſelf a title which is found for him, he ſhall be diſmiſſed without any inquiry concerning the force; for howſoever he may be puniſhable *at the king's ſuit*, for doing what is prohibited by ſtatute, as a contemner of the laws, and diſturber of the peace, yet he ſhall not be liable to pay any damages for it to the plaintiff, whoſe injuſtice gave him the provocation in that manner to right himſelf. 1 *Haw.* 141.

Since therefore offences of this nature are made ſuch, not by the common law, but by ſtatute (after having premiſed, that *they who keep poſſeſſion with force, in lands and tenements, whereof they or their anceſtors, or they whoſe eſtate they*

they have in the ſame, have continned their poſſeſſion in the ſame, by three whole years next before without interruption, ſhall not be endamaged by force of any of the ſtatutes concerning forcible entry, 8 H. 6. c. 9. ſ. 7. 1. Haw. 152.) I ſhall conſider thoſe ſeveral ſtatutes, with the interpretation that hath been put upon them, under the following heads:

I. What is a forcible entry.

II. What is a forcible detainer.

III. How the ſame are puniſhable by action at law.

IV. How puniſhable at the general ſeſſions.

V. How puniſhable by one juſtice.

VI. How puniſhable on a certiorari.

VII. How puniſhable as a riot.

I. What is a forcible entry.

By the 5 *R.* 2. *c.* 8. *None ſhall make any entry into any lands or tenements (or benefices of holy church*, 15 R. 2. c. 2. *or other poſſeſſions*, 8 H. 6. c. 9. ſ. 2.) *but where entry is given by the law; and in ſuch caſe not with ſtrong hand, nor with multitude of people, but only in peaceable and eaſy manner; on pain of impriſonment and ranſom at the king's will.*

Or other poſſeſſions] It ſeems clear, that no one can come within the danger of theſe ſtatutes, by a violence offered to another in reſpect of a *way*, or ſuch like eaſement, which is no poſſeſſion. And there ſeems to be no good authority, that an indictment will lie in this caſe for a *common*, or *office*. 1 Haw. 146.

Not with ſtrong hand, nor with multitude of people] It ſeems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for ſuch like purpoſe, without doing any act, which either expreſsly or impliedly amounts to a claim of ſuch lands, he cannot be ſaid to make an entry thereinto. 1 *Haw.* 144.

But it ſeemeth, that if a perſon enter into another man's houſe, or ground, either with apparent violence offered to the perſon of any other, or furniſhed with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, graſs, or other goods, or to fell or crop wood, or do any other like treſpaſs, and tho' he

do

do not put the party out of his poſſeſſion, yet it ſeemeth to be a forcible entry. *Dalt. c.* 126.

But if the entry were peaceable, and after ſuch entry made, they cut or take away any other man's corn, graſs, wood, or other goods, without apparent violence or force; tho' ſuch acts are counted a diſſeiſin with force, yet they are not puniſhable as forcible entries. *Dalt. c.* 126.

But if he enter peaceably, and there ſhall by force or violence cut or take away any corn, graſs, or wood, or ſhall forcibly or wrongfully carry away any other goods there being; this ſeemeth to be a forcible entry puniſhable by theſe ſtatutes. *Dalt. c.* 126.

So alſo ſhall thoſe be guilty of a forcible entry, who having an eſtate in land, by a defeaſible title, continue with force in the poſſeſſion thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way concurred in, or promoted the force. 1 *Haw.* 145.

And, in general, it ſeemeth clear, that to denominate the entry forcible, it ought to be accompanied with ſome circumſtances of actual *violence*, or *terror*; and therefore that an entry which hath no other force than ſuch as is implied by the law, in every treſpaſs whatſoever, is not within theſe ſtatutes. 1 *Haw.* 145.

As to the matter of *violence*; it ſeems to be agreed, that an entry may be forcible, not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it or not, eſpecially if it be a dwelling houſe, and perhaps alſo by any act of outrage after the entry, as by carrying away the party's goods; but it ſeems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *ſtrong hand*, or *multitude of people*; and it hath been holden, that an entry into a houſe thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In reſpect of the circumſtances of *terror*; it is to be obſerved, that wherever a man, either by his behaviour or ſpeech, at the time of his entry, gives thoſe who are in poſſeſſion juſt cauſe to fear, that he will do them ſome bodily hurt, if they will not give way to him, his entry is eſteemed forcible, whether he cauſe ſuch a terror, by carrying

with

with him ſuch an unuſual number of attendants, or by arming himſelf in ſuch a manner, as plainly intimates a deſign, or by actually threatning to kill, maim, or beat thoſe who ſhall continue in poſſeſſion, or by giving out ſuch ſpeeches, as plainly imply a purpoſe of uſing force, as if one ſay that he will keep his poſſeſſion in ſpite of all men, or the like. 1 *Haw.* 145.

But it ſeems that no entry ſhall be judged forcible, from any threatning to ſpoil another's *goods*, or to deſtroy his cattle, or to do him any other ſuch like damage, which is not perſonal. 1 *Haw.* 146.

However it is clear, that it may be committed by a ſingle perſon, as well as by twenty. 1 *Haw.* 146.

But nevertheleſs all thoſe who accompany a man, when he makes a forcible entry, ſhall be adjudged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It ſeemeth certain, that the ſame circumſtances of violence or terror which will make an entry forcible, will make a detainer forcible alſo. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How they are puniſhable by action at law.

If any perſon be put out or diſſeiſed of any lands or tenements in forcible manner, or put out peaceably, and after holden out with ſtrong hand; the party grieved ſhall have aſſize of novel diſſeiſin, or a writ of treſpaſs againſt the diſſeiſor; and if he recovers, he ſhall have treble damages, and the defendant moreover ſhall make fine and ranſom to the king. 8 H. 6. c. 9. ſ. 6.

The party grieved ſhall have aſſize &c.] But this action, being at the ſuit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he ſhall not be puniſhed by way of action; but yet he may be indicted upon the ſtatute, for the indictment is for the force, and for the king, and he ſhall make fine to the king, altho' his right be never ſo good. *Dalt. c.* 129.

Treble damages] And this he ſhall recover, as well for the mean occupation, as for the firſt entry: And albeit he ſhall recover treble damages, yet he ſhall recover coſts, which

ſhall

ſhall be trebled alſo; for the word *damages* includeth coſts of ſuit. 1 *Inſt.* 257.

IV. How puniſhable at the general ſeſſions.

The party grieved, if he will loſe the benefit of his treble damages and coſts, may be aided and have the aſſiſtance of the juſtices at the general ſeſſions, by way of indictment (A) on the ſtatute of 8 *H.* 6. Which being found there, he ſhall be reſtored to his poſſeſſion, by a writ of reſtitution granted out of the ſame court to the ſheriff. *Dalt. c.* 129.

In the caption of which indictment, it will be ſufficient to ſay, *juſtices aſſigned to keep the peace of our lord the king*, without ſhewing that they have authority to hear and determine felonies and treſpaſſes; for the ſtatute enables all juſtices of the peace, as ſuch, to take ſuch indictments. 1 *Haw.* 147.

And the tenement in which the force was made, muſt be deſcribed with convenient certainty; and muſt ſet forth that the defendant actually entered; and ouſted the party grieved; and continueth his poſſeſſion at the time of finding the indictment; otherwiſe he cannot have reſtitution, becauſe it doth not appear that he needeth it. 1 *Haw.* 147, 149, 150.

But if a man's wife, children, or ſervants do continue in the houſe or upon the land, he is not ouſted of his poſſeſſion; but his cattle being upon the ground, do not preſerve his poſſeſſion. *Dalt. c.* 132.

An indictment for forcible entry was quaſhed, for not ſetting forth, that the party was ſeiſed or diſſeiſed, or what eſtate he had in the tenement; for if he had only a term for years, then the entry muſt be laid, into the freehold of *A.* in the poſſeſſion of *B.* 3 Salk. 169.

V. How puniſhable by one juſtice.

1. For a more ſpeedy remedy, the party grieved may complain to any one juſtice; or to a mayor, ſheriff, or bailiff, within their liberties. 8 *H.* 6. *c.* 9.

2. But altho' one juſtice alone may proceed in ſuch caſes, yet it may be adviſable for him, if the time for viewing the force will ſuffer it, to take to his aſſiſtance one or two more juſtices.

3. Concerning which power of one juſtice, it is enacted as follows:

After complaint made to ſuch juſtice, by the party grieved, of a forcibbe entry made into lands, tenements, or other poſſeſſions,

ſions, or forcible holding thereof, he ſhall within a convenient time, at the coſts of the party grieved (without any examining or ſtanding upon the right or title of either party) *take ſufficient power of the county, and go to the place where ſuch force is made.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2. Dalt. c. 44.

Complaint——by the party grieved] Yet theſe words do not inforce any neceſſity of ſuch a complaint; for it is holden, that the juſtice may and ought to proceed, upon any information or knowledge thereof whatſoever, tho' no complaint at all be brought unto him, by any party grieved thereby. *Lamb.* 147.

Power of the county] All people of the county, as well the ſheriffs as other, ſhall be attendant on the juſtices, to arreſt the offenders; on pain of impriſonment and fine to the king. 15 *R.* 2. *c.* 2.

4. And if the doors be ſhut, and they within the houſe ſhall deny the juſtice to enter, it ſeems he may break open the houſe, to remove the force. *Dalt. c.* 44.

5. And if after ſuch entry made the juſtice *ſhall find ſuch force; he ſhall cauſe the offenders to be arreſted.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2.

6. He ſhall alſo *take away their weapons and armour, and cauſe them to be appraiſed, and after to be anſwered to the king as forfeited, or the value thereof.* 2 Ed. 3. c. 3.

7. Alſo ſuch juſtice ought to *make a record* (B) *of ſuch force by him viewed*; which record ſhall be a ſufficient conviction of the offenders, and the parties ſhall not be allowed to traverſe it: And this record, being made out of the ſeſſions, by a particular juſtice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himſelf. For this view of the force by the juſtice, being a judge of record, maketh his record thereof, in the judgment of the law, as ſtrong and effectual, as if the offenders had confeſſed the force before him; and touching the reſtraining of traverſe, more effectual, than if the force had been found by a jury, upon the evidence of others. (That is, as to the fine and impriſonment, but not as to reſtitution.) 15 *R.* 2. *c.* 2. *Dalt. c.* 44.

8. And the offenders, being arreſted (as before is ſaid), *ſhall be put in the next gaol* (C) *there to abide convict by the record of the ſame juſtice, until they have made fine and ranſom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is ſaid, that the juſtice hath no power to commit the offender to gaol, unleſs he do it upon his own view of the fact, and not upon the jury finding the ſame afterwards. *Dalt. c.* 44. 1 *Haw.* 142.

And if ſuch offenders, being in the houſe at the coming of the juſtice, ſhall make no reſiſtance, nor make ſhew of any force, then the juſtice cannot arreſt or remove them at all upon ſuch view. *Dalt. c.* 44.

But howſoever, if the force be found afterwards, by the inquiry of the jury, the juſtice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after ſend them to the gaol, until they have found ſureties for the peace. *Dalt. c.* 44.

Note; Mr. *Dalton* in this place ſays *good behaviour*, which I have preſumed to alter to *the peace*, as deeming it much the ſafer; and not being ſufficiently ſatisfied concerning the power of a juſtice of the peace to bind to the good behaviour in the like caſes, which power Mr. *Dalton* hath enlarged more than all other authors, without any aſſiſtance from the commiſſion of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] *H.* 1 *G.* 2. *K.* and Sir *Edm. Ellewel.* He was brought up upon a *habeas corpus*, with a return of the cauſe of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to diſcharge him upon exceptions to the commitment, the court refuſed to enter into the conſideration of them, till the conviction was likewiſe regularly removed before them. But by conſent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine ſet by the juſtices, and it was therefore moved to be quaſhed. It was agreed on both ſides, that there ſhould be a fine; but it was inſiſted, that it being now before the king's bench by a certiorari, they might ſet the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the propereſt judges what fine to ſet; and though a certiorati ſhould come before the fine is ſet, yet it would be no contempt in the juſtices to compleat their judgment by ſetting one. *Lambard* indeed was of opinion, that the juſtices could not ſet the fine at all; but upon what foundation we can never imagine. The juſtices are not bound to do it upon the ſpot, but may take a reaſonable time to conſider of the fine; becauſe by the words of the act, the commitment is to be, till he has paid the fine. The conviction

viction muſt be quaſhed, and the defendant diſcharged. *Str.* 794. L. *Raym.* 1515. *Seſſ. C. V.* 1. 289.

And the ſame was likewiſe ſolemnly reſolved in *Leighton*'s caſe; and that the juſtice may aſſeſs the ſame, either before the commitment or after. 1 *Haw.* 142.

And the fine muſt be aſſeſſed upon every offender ſeverally, and not upon them jointly; and the juſtice ought to eſtreat the fine, and to ſend the eſtreat into the exchequer, that from thence the ſheriff may be commanded to levy it for his majeſty's uſe. *Dalt. c.* 44.

But upon payment of the fine to the ſheriff, or upon ſureties found (by recognizance) for the payment thereof, it ſeemeth that the juſtice may deliver the offenders out of priſon again at his pleaſure. *Dal. c.* 44.

9. And ſo much concerning removing the force: But the party ouſted cannot be reſtored to his poſſeſſion by the juſtice's view of the force; nor unleſs the ſame force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the perſons making ſuch entry be preſent, or elſe departed before the coming of the juſtice; he may notwithſtanding in ſome good town next to the tenements ſo entered, or in ſome other convenient place by his diſcretion* (and that, tho' he go not to ſee the place where the force is; *Dalt. c.* 44.) *have power to enquire by the people of the county, as well of them that make ſuch forcible entry, as of them which hold the ſame with force.* 8 H. 6. c. 9. ſ. 3.

10. In order to which, *the juſtice ſhall make his precept* (D) *to the ſheriff, commanding him in the king's behalf, to cauſe to come before him, ſufficient and indifferent perſons, dwelling next about the lands ſo entered, to enquire of ſuch entries; whereof every man ſhall have lands or tenements of* 40s. *a year, above reprizes. And the ſheriff ſhall return iſſues on every of them, at the day of the firſt precept returnable* 20s. *and at the ſecond day* 40s. *and at the third day* 100s. *and at every day after double. And the ſheriff making default, ſhall on conviction before the ſame juſtice, or before the judge of aſſize, forfeit* 20l. *half to the king, and half to him who ſhall ſue, with coſts; and moreover ſhall make fine and ranſom to the king.* 8 H. 6. c. 9. ſ. 4, 5.

Before the ſame juſtice] And the juſtice may proceed againſt the ſheriff for this default, either by bill at the ſuit of the party, or by indictment at the ſuit of the king. *Dalt. c.* 44.

11. And the defendant alſo, if he is not preſent, ought to be called to anſwer for himſelf; for it is implied by natural

tural juſtice, in the conſtruction of all laws, that no one ought to ſuffer any prejudice thereby, without having firſt an opportunity of defending himſelf. 1 *Haw.* 154.

12. And it ſeems to be ſettled at this day, that if the defendant tender a *traverſe* of the force, the juſtice ought not to make any reſtitution, till the traverſe be tried. 1 *Haw.* 154.

13. The defendant may alſo by the 31 *El. c.* 11. plead *three years poſſeſſion*; whereby it is enacted, that *no reſtitution upon an indictment of forcible entry, or holding with force, ſhall be made, if the perſon indicted have had the occupation, or been in quiet poſſeſſion for three years together next before the indictment found, and his eſtate therein not determined; and reſtitution ſhall ſtay till that be tried: and if it is found againſt the party indicted, he ſhall pay ſuch coſts and damages as the judges or juſtices ſhall aſſeſs; to be recovered as coſts and damages in judgments on other actions.*

And it hath been holden, that the plea of ſuch poſſeſſion is good, without ſhewing under what title, or of what eſtate ſuch poſſeſſion was; becauſe it is not the title, but the poſſeſſion only, which is material in this caſe. 1 *Haw.* 152.

14. And it was holden by the court in *Leighton*'s caſe, that if the defendant ſhall either traverſe the entry or the force, or plead that he has been three years in poſſeſſion, the juſtice may ſummon a jury for the trial of ſuch traverſe, for it is impoſſible to determine it upon view; and if the juſtice have no power to try it, it would be eaſy for any one to elude the ſtatute by the tender of ſuch a traverſe, and therefore by a neceſſary conſtruction the juſtice muſt needs have this power as incidental to what is expreſly given him. 1 *Haw.* 142.

15. And this traverſe muſt be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* muſt be awarded, a jury returned, the iſſue tried, a verdict found, and judgment given, and coſts and damages awarded; and there muſt be a record, which muſt be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. 1 *Haw.* 154.

16. Upon which traverſe tendred, the juſtice ſhall cauſe a new jury to be returned by the ſheriff, to try the traverſe; which may be done the next day, but not the ſame day. *Dalt. c.* 133.

17. And it ſeemeth, that he who tendreth the traverſe, ſhall bear all the charges of the trial; and not the king, or the party proſecuting. *Dalt. c.* 133.

18. And *if ſuch forcible entry or detainer be found* (E) *before ſuch juſtice, then the ſaid juſtice ſhall cauſe to reſeiſe*

(F)

(F) *the lands and tenements ſo entered or holden, and ſhall reſtore the party put out, to the full poſſeſſion of the ſame.* 8 H. 6. c. 9. ſ. 3.

The ſaid juſtice] It ſeems to be agreed, that no other juſtices of the peace, except thoſe before whom the indictment ſhall be found, ſhall have any power either at the ſeſſions or out of it, to make any award of reſtitution. 1 *Haw.* 152.

Shall cauſe to reſeiſe] And the juſtice may break open the houſe by force, to reſeiſe the ſame; and ſo may the ſheriff do, having the juſtices warrant. *Dalt. c.* 44.

Reſeiſe] That is, ſhall remove the force, by putting out all ſuch offenders as ſhall be found in the houſe, or upon the lands, that entered or held with force. *Dalt. c.* 130.

And ſhall reſtore the party put out] And this he may do in his own proper perſon; or he may make his warrant to the ſheriff to do it *Dalt. c.* 44. 1 *Haw.* 151, 2.

19. And by 21 *J. c.* 15. it is enacted, *that ſuch judges, juſtices, or juſtice of the peace, as may give reſtitution unto tenants of any eſtate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's ſervice, tenants by elegit, ſtatute merchant and ſtaple, of lands or tenements by them ſo holden, which ſhall be entered upon by force, or holden from them by force.*

VI. How puniſhable on a certiorari.

Although regularly the juſtices only who were preſent at the inquiry, and when the indictment was found, ought to award reſtitution; yet if the record of the preſentment or indictment ſhall be certified by the juſtice or juſtices into the king's bench, or the ſame preſentment or indictment be removed and certified thither by certiorari, the juſtices of that court may award a writ of reſtitution to the ſheriff, to reſtore poſſeſſion to the party expelled: for the juſtices of the king's bench have a ſupreme authority in all caſes of the crown. *Dalt. c.* 44.

Alſo where upon a removal of the proceedings into the king's bench the conviction ſhall be quaſhed, the court will order reſtitution to the party injured. As in the caſe of *K.* and *Jones*, *M.* 8 *G.* A conviction of forcible entry was quaſhed for the old exception of *meſſuage* or *tenement*, by reaſon of the uncertainty; but the reſtitution was oppoſed, on an affidavit that the party's title (which was by leaſe) was expired ſince the conviction. But the court

ſaid, they had no diſcretionary power in this caſe, but were bound to award reſtitution on quaſhing the conviction. *Str.* 474.

VII. How puniſhable as a riot.

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

A. Indictment for a forcible entry and detainer at common law.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— ——— *in the county aforeſaid, gentleman, and* B. O. *late of the ſame, yeoman, together with divers other malefactors and diſturbers of the peace of our ſaid lord the king (whoſe names to the jurors aforeſaid are yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforeſaid, in the county aforeſaid, unlawfully and injuriouſly did enter into a certain barn and a certain orchard, then and there being in the poſſeſſion of one* A. I. *and that the ſaid* A. O. *and* B. O. *together with the ſaid other malefactors, then and there, with force and arms, unlawfully and injuriouſly did expel, amove, and put out the ſaid* A. I. *from the poſſeſſion of the ſaid barn and orchard, and the ſaid* A. I. *ſo as aforeſaid expelled, amoved, and put out from the poſſeſſion of the ſaid barn and orchard, then and there, with force and arms, unlawfully and injuriouſly did keep out, and ſtill do keep out, to the great damage of him the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment on the ſtatute.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. I. *late of the pariſh of* ——— *in the county aforeſaid, gentleman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was poſſeſſed of a certain meſſuage, with the appurtenances, ſituate, lying, and being in* ——— *in the pariſh aforeſaid, in the county aforeſaid, for a certain term of years, then and ſtill to come, and unexpired, and being ſo poſſeſſed thereof, one* A. O. *late of* ——— *in the ſaid county, yeoman, afterwards, to wit, the ſaid* ——— *day of* ——— *in the*

year aforeſaid, into the ſame meſſuage, with the appurtenances aforeſaid, in ——— aforeſaid, in the pariſh and county aforeſaid, with force and arms, and with ſtrong hand, unlawfully did enter, and the ſaid A. I. *from the peaceable poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, then and there with force and arms, and with ſtrong hand, unlawfully did expel and put out, and the ſaid* A. I. *from the poſſeſſion thereof, ſo as aforeſaid, with force and arms, and with ſtrong hand, being unlawfully expelled and put out, the ſaid* A. O. *him the ſaid* A. I. *from the aforeſaid ——— day of ——— in the year aforeſaid, until the day of the taking this inquiſition, from the poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, with force and arms, and with ſtrong hand, unlawfully and injuriouſly then and there did keep out, and ſtill doth keep out, to the great damage of the ſaid* A. I. *againſt the peace of our ſaid lord the king, and againſt the form of the ſtatutes in that caſe made and provided.*

Note; If it is a freehold, then the party muſt be ſaid to be *ſeiſed* thereof in his demeſne as of fee; and conſequently he muſt be thereof *diſſeiſed*: otherwiſe if it is of a leſſer eſtate, of which he is not properly ſaid to be *ſeiſed*, but poſſeſſed thereof at the will of the lord, according to the cuſtom of the manor, or the like, and then he muſt be *expelled*, *ejected*, *amoved*, or the like.

B. Record of a forcible detainer upon view.

Note, That the books upon the office of a juſtice of the peace do generally ſet forth, that the record ought to be in the preſent tenſe, and not in the time paſt (and herewith do accord the adjudged caſes in the court of king's bench, *Str.* 443.); yet nevertheleſs they do all exhibit the form of a record in the time paſt, and not in the preſent: Therefore I have taken the liberty to alter the ſame, from the record in L. *Raymond* of the conviction of Sir *Edm. Elwell* aforeſaid, and others; adding the fine thereunto, for the want of which that conviction was quaſhed. And I have given the form of a record of a forcible *detainer*, rather than of a forcible *entry*, becauſe the juſtice for the moſt part cannot be ſuppoſed to be preſent at the entry, as not having knowledge thereof until after the entry is made.

Kent, to wit. BE *it remembered, that on the* 15*th day of* Sep. *in the firſt year of the reign of our ſovereign lord* George, *the ſecond of* Great Britain, France, *and* Ireland,

king, defender of the faith, and ſo forth, at Beckingham *in the county of* Kent *aforeſaid*, Eliz. Elwell, *complained to us Sir* E. Bettenſon, *baronet*, P. Burrel, *and* W. Paſſenger, *eſquires, three of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, that Sir* Edm. Elwell, *late of* London, *baronet*, Joſeph Billers, *late of* ——— *and* Daniel Monty, *late of* ——— *into the meſſuage of her the ſaid* E. E. *being the manſion houſe of her the ſaid* E. E. *called* Langley houſe, *ſituate within the pariſh of* Beckingham *aforeſaid, did enter, and her the ſaid* E. E. *of the meſſuage aforeſaid, whereof the ſame* E. E. *at the time of the entry aforeſaid, was ſeiſed as of the freehold of her the ſaid* E. E. *for the term of her life, unlawfully ejected, expelled, and amoved, and the ſaid meſſuage from her the ſaid* El. E. *unlawfully, with ſtrong hand and armed power, do yet hold and from her detain, againſt the form of the ſtatute in ſuch caſe made and provided; whereupon the ſame* El. E. *then, to wit, on the ſaid 15th day of* Sep. *at the pariſh of* B. *aforeſaid, prayeth of us, ſo as aforeſaid being juſtices, to her in this behalf that a due remedy be provided, according to the form of the ſtatute aforeſaid: Which complaint and prayer by us the aforeſaid juſtices being heard, we the aforeſaid* E. B. *baronet*, P. B. *and* W. P. *eſquires, juſtices aforeſaid, to the meſſuage aforeſaid perſonally have come, and do then and there find and ſee the aforeſaid* Edm. E. J. B. *and* D. M. *the aforeſaid meſſuage, with force and arms, unlawfully, with ſtrong hand and armed power, detaining, againſt the form of the ſtatute in ſuch caſe made and provided, according as ſhe the ſame* El. E. *ſo as is aforeſaid hath unto us complained: Therefore it is conſidered by us the aforeſaid juſtices, that the aforeſaid* Edmund Elwell, Joſeph Billers *and* Daniel Monty, *of the detaining aforeſaid with ſtrong hand, by our own proper view then and there as is aforeſaid had, are convicted, and every of them is convicted, according to the form of the ſtatute aforeſaid; Whereupon we the juſtices aforeſaid, upon every of the aforeſaid* Ed. E. J. B. *and* D. M. *do ſet and impoſe ſeverally a fine of* 10l. *of good and lawful money of* Great Britain, *to be paid by them and every of them ſeverally to our ſaid ſovereign lord the king, for the ſaid offences; and do cauſe them, and every of them, then and there to be arreſted; and the ſame* Ed. E. J. B. *and* D. M. *being convicted, and every of them being convicted upon our own proper view, of the detaining aforeſaid, with ſtrong hand as is aforeſaid, by us the aforeſaid juſtices are committed, and every of them is committed, to the gaol of our ſaid lord the king, at* Maidſtone *in the county of* Kent *aforeſaid, being the next*

gaol

gaol to the meſſuage aforeſaid, there to abide reſpectively, until they ſhall have paid their ſaid ſeveral fines reſpectively, to our ſaid lord the king, for their reſpective offences aforeſaid. Concerning which the premiſſes aforeſaid, we do make this our record. In witneſs whereof, we the aforeſaid E. B. *baronet,* P. B. *and* W. P. *eſquires, the juſtices aforeſaid, to this record our hands and ſeals do ſet, at the pariſh of* B. *aforeſaid, in the county of* Kent *aforeſaid, on the* 15*th day of* Sep. *in the firſt year aforeſaid of the reign of our ſaid ſovereign lord the now king.*

C. Mittimus for forcible detainer.

Weſtmorland. EDWARD Haſſel, *eſquire, one of the juſtices of our ſovereign lord the king's majeſty, aſſigned to keep the peace within the ſaid county of* W. *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the keeper of his majeſty's gaol at ——— in the ſaid county, and to his deputy and deputies there, and to every of them, greeting. Whereas upon complaint made unto me this preſent day, by* A. I. *of ——— in the ſaid county, yeoman, I went immediately to the dwelling houſe of the ſaid* A. I. *at ——— aforeſaid in the ſaid county, and there found* A. O. *late of ——— labourer,* B. O. *late of the ſame, weaver, and* C. O. *late of ——— butcher, forcibly, with ſtrong hand and armed power, holding the ſaid houſe, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided: Therefore I ſend you, by the bringers hereof, the bodies of the ſaid* A. O. B. O. *and* C. O. *convicted of the ſaid forcible holding, by mine own view, teſtimony and record; commanding you in his ſaid majeſty's name to receive them into your ſaid gaol, and there ſafely to keep them, and every of them reſpectively, until they ſhall have reſpectively paid the ſeveral ſum of* 10 l. *of good and lawful money of* Great Britain, *to our ſaid ſovereign lord the king, which I have ſet and impoſed upon every of them ſeparately, for a fine and ranſom for their ſaid treſpaſſes reſpectively. Herein fail you not, at the peril that may follow thereof. Given at ——— aforeſaid, in the county aforeſaid, under my ſeal, the ——— day of ——— in the ——— year of the reign of our ſaid ſovereign lord king* George *the third.*

Note; By the forms in all the books, all the offenders ſtand committed until all have paid, ſo as that the firſt ſhall

ſhall not be diſcharged on payment of his own fine, but continue until all the reſt have paid likewiſe; which ſeems unreaſonable, and is not warranted by the ſtatute.

D. Precept to the ſheriff to return a jury.

Weſtmorland. HENRY Aglionby, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: On behalf of our ſaid lord the king, I command you, that you cauſe to come before me at* ——— *in the county aforeſaid, on the* ——— *day of* ——— *next enſuing, twenty-four ſufficient and indifferent men, of the neighbourhood of* ——— *aforeſaid, in the county aforeſaid, every of whom ſhall have lands or tenements of* 40s. *yearly at the leaſt, above reprizes, to enquire upon their oaths for our ſaid lord the king, of a certain entry made with ſtrong hand (as it is ſaid) into the meſſuage of one* A. I. *at* ——— *aforeſaid, in the county aforeſaid, againſt the form of the ſtatute in ſuch caſe made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled,* 20s. *of iſſues at the aforeſaid day. And have you then and there this precept. And this you ſhall in no wiſe omit, upon the peril that ſhall thereof enſue. Witneſs the ſaid* J. P. *at* ——— *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

The jurors Oath.

YOU *ſhall true inquiry and preſentment make of all ſuch things as ſhall come before you, concerning a forcible entry* [or *detainer*] *ſaid to have been lately committed in the dwelling houſe of* ——— *yeoman, at* ——— *in this county; you ſhall ſpare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the beſt of your knowledge, and according to the evidence that ſhall be given to you: So help you god.*

The oath that A. F. *your foreman hath taken on his part, you and every of you ſhall truly obſerve and keep on your parts: So help you god.*

E. The inquiſition, indictment, or finding of the jury.

Weſtmorland. AN *inquiſition for our ſovereign lord the king, indented and taken at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oaths of* ——— *good and lawful men of the ſaid county, before* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, who ſay upon their oaths aforeſaid, that* A. I. *of* ——— *aforeſaid, yeoman, long ſince lawfully and peaceably was ſeiſed in his demeſne as of fee* [if it is not freehold, then ſay, *poſſeſſed*] *of and in one meſſuage, with the appurtenances, in* ——— *aforeſaid, in the county aforeſaid, and his ſaid poſſeſſion* [*and ſeiſin*] *ſo continued until* A. O. *late of* ——— *yeoman,* B. O. *late of the ſame, yeoman, and* C. O. *late of the ſame, yeoman, and other malefactors unknown, the* ——— *day of* ——— *now laſt paſt, with ſtrong hand and armed power, into the meſſuage aforeſaid, with the appurtenances aforeſaid, did enter, and him the ſaid* A. I. *thereof diſſeiſed, and with ſtrong hand expelled; and him the ſaid* A. I. *ſo diſſeiſed and expelled from the ſaid meſſuage with the appurtenances aforeſaid, from the ſaid* ——— *day of* ——— *until the day of the taking of this inquiſition, with like ſtrong hand and armed power did keep out, and do yet keep out, to the great diſturbance of the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided.*

We whoſe names are hereunto ſet, being the jurors aboveſaid, do upon the evidences now produced before us, find the inquiſition aforeſaid true.

A. B.
C. D. *&c.*

F. Warrant to the ſheriff for reſtitution.

Weſtmorland. HENRY Fletcher, *eſquire, one of the juſtices of our ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: Whereas by an inquiſition taken before me the juſtice aforeſaid, at* ——— *in the county aforeſaid, on this preſent* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *upon*

——— *upon the oaths of* ——— *and by virtue of the ſtatutes made and provided in caſes of forcible entry and detainer, it is found, that* A. O. *late of* ——— *yeoman, and* B. O. *late of* ——— *yeoman, on the* ——— *day of* ——— *now laſt paſt, into a certain meſſuage, with the appurtenances, of* A. I. *of* ——— *aforeſaid, in the county aforeſaid, gentleman, ſituate, lying, and being at* ——— *aforeſaid, in the county aforeſaid, with force and arms did enter, and him the ſaid* A. I. *thereof then with ſtrong hand did diſſeiſe and drive out, and him the ſaid* A. I. *thus driven out from the aforeſaid meſſuage with the appurtenances, from the* —— *day of* ——— *aforeſaid, to this preſent day of the taking of the ſaid inquiſition, with ſtrong hand and armed force did keep out, and do yet keep out, as by the inquiſition aforeſaid more fully appeareth of record: Therefore on the behalf of our ſaid ſovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the ſaid meſſuage and other the premiſſes, and the ſame with the appurtenances you cauſe to be reſeiſed, and that you cauſe the ſaid* A. I. *to be reſtored and put into his full poſſeſſion thereof, according as he, before the entry aforeſaid was ſeiſed, according to the form of the ſaid ſtatutes. And this you ſhall in no wiſe omit, on the penalty thereon incumbent. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Foreign ſervice.

Artificers.

1. BY the 5 *G. c.* 27. If any perſon ſhall contract with, entice, or endeavour to perſuade any manufacturer or artificer in wool, iron, ſteel, braſs, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majeſty's dominions, and ſhall (on proſecution in 12 months) be convicted thereof on indictment or information, in the courts at *Weſtminſter*, aſſizes, or ſeſſions of the county where the offence ſhall be committed; he ſhall for the firſt offence be fined not exceeding 100*l.* and be impriſoned for three months, and until the fine be paid; for the ſecond offence, ſhall be fined at the diſcretion of the court, and be impriſoned 12 months, and till the fine is paid. *ſ.* 1, 2.

And if any ſubject, being ſuch artificer or manufacturer, ſhall go into any country out of his majeſty's dominions,

to

to exerciſe or teach any the ſaid manufactories to foreigners, or if any ſubject who ſhall be in any ſuch foreign country, and there exerciſing any the ſaid manufactories, ſhall not return in ſix months next after warning be given him, by the ambaſſador, miniſter, or conſul, or perſon authorized by him, or by a ſecretary of ſtate, and from thenceforth continually inhabit within this realm; he ſhall be incapable of any legacy, or of being executor, or adminiſtrator, and of taking any lands, by deſcent, deviſe, or purchaſe, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. *ſ.* 3.

And on complaint on oath before a juſtice, that any perſon is endeavouring to ſeduce or draw away any ſuch manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may iſſue his warrant to bring ſuch perſon before him or ſome other juſtice; and if it ſhall appear to ſuch juſtice by confeſſion, or the oath of one witneſs, that ſuch perſon was guilty of any the ſaid offences, he may bind him over to the next aſſizes or ſeſſions, to anſwer the premiſſes; and if he ſhall upon indictment be there convicted of any ſuch promiſe or contract, or preparation to go abroad beyond the ſeas, he ſhall give ſuch ſecurity not to depart out of the realm, as ſuch court ſhall think reaſonable, and be impriſoned until ſuch ſecurity be given. *ſ.* 4.

And by the 23 *G.* 2. *c.* 13. If any perſon ſhall contract with, or endeavour to perſuade or ſeduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and ſhall be thereof convicted, in twelve months, in the king's bench, or at the aſſizes; he ſhall for every ſuch perſon forfeit 500 *l.* and be impriſoned in the common gaol for twelve months, and till payment of the forfeiture; and for a ſecond or other ſubſequent offence, ſhall forfeit 1000 *l.* and be impriſoned two years, and till payment. *ſ.* 1, 2.

And if any perſon ſhall put on board any veſſel not bound directly to ſome of the *Britiſh* dominions, any tools or utenſils, or part thereof proper for either the woollen or ſilk manufactures; he ſhall forfeit the ſame, and 200 *l.* *id. ſ.* 3.

And any officer of the cuſtoms may ſeize, and ſecure in ſome of the king's warehouſes, all ſuch tools and utenſils as ſhall be found on board any ſuch veſſel; and the ſame, after condemnation, ſhall be publickly ſold. *id. ſ.* 4.

And if the maſter or captain ſhall knowingly permit any the ſaid tools or utenſils to be put on board his ſhip; he ſhall

ſhall forfeit 100*l.* and if it is a king's ſhip he ſhall alſo forfeit his office, and be incapable of any office under the crown. *id. ſ.* 5.

And if any officer of the cuſtoms ſhall take any entry outward, or ſign any ſufferance for ſhipping or exporting any the ſaid tools, or knowingly permit the ſame to be done; he ſhall forfeit 100*l.* and his office, and be incapable of any office under the crown. *id. ſ.* 6.

All which ſaid penalties, on this act, ſhall be half to the king, and half to him that ſhall proſecute. *id. ſ.* 7.

Soldiers. 2. If any ſubject ſhall inliſt or enter himſelf, or ſhall engage to go beyond the ſeas or embark with intent to enliſt and enter himſelf, altho' no inliſting money be actually paid to him; or if any perſon ſhall procure any ſubject to enliſt or enter himſelf, or hire or retain any ſubject, with intent to cauſe him to inliſt or enter himſelf, or retain, engage, or procure any ſubject (tho' no inliſting money be paid) to go beyond the ſeas or imbark with intent and in order to be inliſted to ſerve any foreign prince, ſtate, or potentate, as a ſoldier, without his majeſty's leave; he ſhall be guilty of felony without benefit of clergy. 9 *G.* 2. *c.* 30. *ſ.* 1. 29 *G.* 2. *c.* 17. *ſ.* 4.

And offences committed out of the realm may be tried in any county in England. 9 *G.* 2. *c.* 30. *ſ.* 2.

But if any perſon ſo inliſted, or inticed to go beyond the ſeas in order to be inliſted, as a non-commiſſion officer or private ſoldier, in any foreign ſervice, ſhall in fourteen days voluntarily diſcover upon oath, before any juſtice or other civil magiſtrate, the perſon by whom he was inliſted or enticed, ſo as he be convicted, he ſhall be indemnified. *ſ.* 3.

Foreſtalling, ingroſſing, and regrating.

Derivation. FOre*ſtalling* (*foreſtællan*, or *foreſtallan*) in the Engliſh Saxon ſignifieth properly to *market before the publick*, or to *prevent the publick market*; and metaphorically, to *intercept* in general: and ſeemeth derived from *fore*, which is the ſame as *before*, and *ſtalle* a ſtanding place or department; from whence ſprang the ancient word *ſtallage*, which ſignifieth money paid for erecting a ſtall or ſtand, for the ſelling of goods in a fair or market:

Ingroſſing

Ingroſſing is from *in*, and *groſs*, great or whole:

And *regrating*, from *re*, again, and the French *grater*, to *grate* or ſcrape; and ſignifieth the ſcraping or dreſſing of cloth or other goods, in order for ſelling the ſame again.

I ſhall treat, firſt, concerning theſe offences at the common law; and, ſecondly, concerning the ſame by ſtatute.

I. Concerning theſe offences at common law.

Theſe offences at common law.

1. At the common law, all endeavours whatſoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by ſpreading falſe rumours, or by buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, or by any other ſuch like devices, are highly criminal, and puniſhable by fine and impriſonment. 8 *Haw.* 234, 5.

2. By the common law, a merchant bringing victuals into the realm, may ſell the ſame in groſs; but no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again, without being liable to be indicted for the ſame. 3 *Inſt.* 196.

3. And the bare ingroſſing of a whole commodity, with an intent to ſell it at an unreaſonable price, is an offence indictable at common law, whether any part thereof be ſold by the ingroſſer or not. 1 *Haw.* 235.

4. And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the ſheaf; perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled. 1 *Haw.* 235.

5. Anciently the ingroſſer and regrater were comprehended under the word foreſtaller; but now they are diſtinguiſhed by the following ſtatute.

II. Concerning theſe offences by ſtatute.

By ſtatute:

Foreſtalling, what.

1. *Whoſoever ſhall buy, or cauſe to be bought, any merchandize, victual, or any other thing whatſoever, coming by land or by water toward any market or fair, to be ſold in the ſame, or coming toward any city, port, haven, creek, or road, from any parts beyond the ſea to be ſold; or make any bargain, contract or promiſe, for the having or buying the ſame, or any part thereof ſo coming as is aforeſaid, before the ſaid merchandize, victuals, or other things ſhall be in the market, fair, city, port, haven, creek or road, ready to be ſold; or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon for the inhancing of the price, or dearer ſelling*

of

of any thing abovementioned; or elſe diſſuade, move, or ſtir any perſon coming to the market or fair, to abſtain or forbear to bring or convey any of the things above rehearſed, to any market, fair, city, port haven, creek, or road to be ſold, as aforeſaid,——ſhall be deemed a foreſtaller. (A) 5 & 6 Ed. 6. c. 14. ſ. 1.

Ingroſſing, what. 2. *Whoſoever ſhall ingroſs, or get into his hands by buying, contracting, or promiſe-taking, other than by demiſe, grant, or leaſe of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, to the intent to ſell the ſame again, ſhall be deemed an unlawful ingroſſer.* (B) 5 & 6 Ed. 6. c. 14. ſ. 3.

And it is ſaid not to be ſufficient in an indictment or information, to ſay that the defendant bought ſo much goods, but the words of the ſtatute are to be purſued, which are ——*ſhall ingroſs or get into his hands by buying.* But it is not neceſſary to ſet forth, that the defendant did not come by it, by a demiſe of land, or the like; but the defendant, if he have any ſuch matter to alledge, muſt give it in evidence. 1 *Haw.* 237, 238.

Regrating, what. 3. *Whoſoever ſhall by any means regrate, obtain, or get into his hands or poſſeſſion, in a fair or market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens, chickens, pigeons, conies, or other dead victual whatſoever, that ſhall be brought to any fair or market to be ſold, and do ſell the ſame again in any fair or market holden or kept in the ſame place, or in any other fair or maket within four miles thereof, ſhall be deemed a regrater.* (C) 5 & 6 Ed. 6. c. 14. ſ. 2.

Penalty. 4. And if any ſhall be guilty of any the ſaid offences, he ſhall for the firſt offence be impriſoned two months, and forfeit the value of the goods; for the ſecond offence, be impriſoned half a year, and forfeit double value; and for the third offence, ſhall be ſet on the pillory, forfeit all his goods, and be impriſoned during the king's pleaſure. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 4, 5, 6.

Half the ſaid forfeitures to go to the king, and half to him that will ſue, in two years after the offence. *id. ſ.* 9, 14.

And the ſeſſions may hear and determine the ſame, by inquiſition, preſentment, bill, or information, and by examination of two witneſſes, and may make proceſs thereupon, as tho' they were indicted; and eſtreat the king's moiety, and award execution of the other moiety for the party, by *fieri facias*, or *capias*, as the courts at *Weſtminſter* may do: And if any conviction or attainder ſhall be at the king's ſuit only, then the whole forfeitures ſhall be eſtreated and levied to the king's uſe. *ſ.* 10.

5. From

5. From hence it ſeems clearly to follow, as well as from the general rules of law, that no information for any of the ſaid offences againſt the ſaid ſtatute can be good, without ſhewing in certain the quantity of the thing for which the penalty is ſuppoſed to be incurred, not only becauſe otherwiſe the judgment to be given on ſuch an information can never be pleaded in bar of any other, becauſe it cannot appear that both of them were brought for the ſame thing; but alſo, becauſe it cannot appear to the court what forfeiture the defendant ought to incur, unleſs the extent of the offence be ſpecially ſet forth. 1 *Haw.* 238. Form of the indictment or information.

6. Provided, that the buying of any ſuch barley, bigg, or oats as any perſon (not foreſtalling) ſhall buy to convert into malt or oatmeal, in his own houſe, and ſo ſhall be converted indeed; or the buying of any ſuch thing by any ſuch fiſhmonger, butcher, or poulterer, as concerneth his own faculty, craft, or miſtery (otherwiſe than by foreſtalling) which ſhall ſell the ſame again upon reaſonable prices by retail; or the taking of any cattle, corn, grain, butter, cheeſe, or any other thing abovementioned, reſerved without fraud upon any leaſe for lives or years; or the buying of any wine or other dead victual abovementioned, being apt and meet for man's ſuſtenance, by any innholder or other victualler, to ſell the ſame by retail within his houſe, or to any of his neighbours for their ſuſtenance, for reaſonable prices; or the buying of any dried or ſalted fiſh, herring or ſprats (not foreſtalled) and ſold for reaſonable prices; or the buying of any corn, fiſh, butter or cheeſe, by any badger, lader, kidder, or carrier duly licenſed, who ſhall ſell or deliver in open fair or market, or to any other victualler, or to any other perſon, for the proviſion of his houſe, all ſuch corn, grain, butter and cheeſe as he ſhall buy or cauſe to be bought, and that within one month next after he ſhall ſo buy any ſuch corn, grain, butter or cheeſe, ſo that the ſame ſhall be bought without foreſtalling; or elſe that any common proviſion to be made without fraud, by any perſon, of any the things aboveſaid, for any city, borough, or town corporate, or for proviſion of victualling of any ſhip, caſtle, or fort within the king's dominions, without foreſtalling, which ſhall be employed only to that uſe; —— ſhall not be deemed any offence contrary to this act. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 7. Exceptions and limitations.

And if any perſon, having ſufficient corn and grain for the proviſion of his own houſe and ſowing of his grounds for one year, do buy any corn in any fair or market, for the change of his ſeed, and do not bring to the ſame fair

or market the ſame day ſo much corn as he ſhall fortune to buy for his ſeed, and ſell the ſame if he can as the price of corn then goeth in the ſaid market or fair; every ſuch perſon ſo buying corn for ſeed, ſhall forfeit double the value of the corn ſo bought: to be levied and diſpoſed in manner aforeſaid. *ſ.* 8.

And if any perſon ſhall buy any oxen, ronts, ſteers, kine, heifers, calves, ſheep, lambs, goats, or kids living, and ſell the ſame again alive, unleſs he keep and feed the ſame for five weeks in his own houſe, ground, ferm-ground, or ſuch ground where he hath the herbage or common of paſture by grant or preſcription; he ſhall forfeit double the value of the cattle or things ſo bought and ſold again: to be levied and diſpoſed in manner aforeſaid. *ſ.* 9.

Provided, that it ſhall be lawful to perſons duly licenſed, to buy (otherwiſe than by foreſtalling) corn, grain, or cattle, to be tranſported or carried by water from any port or place within *England* or *Wales*, to any other port or place within the ſaid dominions, if he ſhall without fraud ſhip or embark within 40 days next after he ſhall have bought the ſame, or taken covenant or promiſe for the buying thereof; and with ſuch expedition and diligence as wind and weather will ſerve do carry and tranſport the ſame, to ſuch port or place as his cocket ſhall declare; and there do diſbark, unlade, and ſell the ſame; and bring a certificate thereof from a juſtice of the county, or mayor of the town corporate where the ſame ſhall be unladen, and alſo of the cuſtomer of the port where ſuch unlading ſhall be, of the place and day where the ſaid corn or cattle ſhall be diſbarked, unladen, and ſold, to be directed to the cuſtomer and comptroller of the port where the ſame were embarked. *ſ.* 12.

And provided, that it ſhall be lawful to any perſon dwelling within a mile of the main ſea, to buy all manner of fiſh, freſh or ſalted (not foreſtalling the ſame), and to ſell the ſame again at reaſonable prices. *ſ.* 15.

And provided, that licenſed drovers may buy cattle in ſuch counties where they have been wont to buy the ſame, at their free liberty and pleaſure; and to ſell the ſame, as is aforeſaid, at reaſonable prices in common fairs and markets diſtant from the place where they ſhall buy the ſame 40 miles at the leaſt: ſo that the ſame be not bought by way of foreſtalling. *ſ.* 16.

Alſo the ſaid act ſhall not extend to wines, oils, ſugars, ſpices, currans, nor other foreign victuals; fiſh and ſalt only excepted. 13 *El. c.* 25. *ſ.* 21.

And

And by the 15 *C.* 2. *c.* 7. When the quarter of wheat (*Wincheſter* meaſure) doth not exceed 48*s* rye 32*s*. barley or malt 28*s*. buck wheat 28*s*. oats 13*s*. 4*d*. peaſe or beans 32*s*. any perſon (not foreſtalling, nor ſelling the ſame again in the ſame market in three months may buy ſuch corn, in open market, at or under ſuch price, and lay it up, and ſell the ſame again, without incurring any penalty. *ſ.* 4.

Alſo, it hath been reſolved, that ſuch *victual* only, as is neceſſary for the food of man, is within the aforeſaid ſtatute of 5 & 6 *Ed.* 6. and therefore that apples and cherries, and ſuch like fruit are not: but that ſalt is a victual within the meaning of it. 1 *Haw.* 237.

7. By 31 *El. c.* 5. which ordains that informations for offences againſt penal ſtatutes, muſt be laid in the proper county, it is provided, that nevertheleſs an information on the ſaid ſtatute of *Ed.* 6. againſt foreſtalling, ingroſſing, or regrating, where the penalty ſhall appear to be 20*l.* or above, may be laid out of the proper county, and in any other county at the pleaſure of the informer.

Information may be laid in any county.

A. Indictment for foreſtalling.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, did buy and cauſe to be bought of and from one* A. S. *twenty oxen, for the ſum of* 20*l. of lawful money of* Great Britain, *as he the ſaid* A. S. *then and there was driving the ſaid twenty oxen towards the market of* M. *to ſell the ſaid twenty oxen in the ſaid market, and before the ſaid twenty oxen were brought into the ſaid market, where the ſame ſhould be ſold; in contempt of our ſaid lord the king and his laws; to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, his crown and dignity. and againſt the form of the ſtatute in that caſe made and provided.*

B. Indictment for ingroſſing.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforeſaid, in the county aforeſaid, did ingroſs and get into his hands, by buying of and from one* A. S. 50 *quarters*

of wheat, to the intent to ſell the ſame again; to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, his crown and dignity, and againſt the form of the ſtatute in that caſe made and provided.

C. Indictment for regrating.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and poſſeſſion ten geeſe and twenty chickens, of and from one* A. S. *for the ſum of* 30s. *of lawful money of* Great Britain *(the ſaid geeſe and chickens then being brought to the ſaid market by the ſaid* A. S. *to be ſold); and that afterwards, to wit, on the ſame* ——— *day of* ——— *in the year aforeſaid, he the ſaid* A. O. *at the pariſh aforeſaid, in the county aforeſaid, in the ſaid market there, unlawfully did regrate the ſaid geeſe and chickens, and ſell the ſame again to one* A. B. *for the ſum of* 40s. *of like lawful money of* Great Britain, *in contempt of our ſaid lord the king and his laws, to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in that caſe made and provided.*

Foreſts. See Game.

Forfeiture.

The forfeitures for particular offences may be found under their reſpective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.
II. Of loſs of dower.
III. Of corruption of blood.

I. Of

I. Of forfeiture of lands and goods.

1. IT ſeems agreed, that by the common law, all lands of inheritance, whereof the offender was ſeiſed in his own right, and alſo all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treaſon, and to the lord of whom they are immediately holden, by an attainder of petit treaſon or felony. 2 *Haw.* 448. Forfeiture of lands.

But it ſeems clear, that the lord cannot enter into the lands holden of him, upon an eſcheat for petit treaſon or felony, without a ſpecial grant, till it appear by due proceſs, that the king hath had his prerogative of the year, day, and waſte. 2 *Haw.* 448.

Concerning which year, day, and waſte, it is enacted by the 17 *Ed.* 2. *c.* 16. that the king ſhall have the goods of all felons attainted, and fugitives, whereſoever they be found. And if they have freehold, it ſhall be forthwith taken into the king's hands, and the king ſhall have all profits of the ſame by one year and one day; and the land ſhall be waſted and deſtroyed in the houſes, woods, and gardens, and in all manner of things, belonging to the ſame land. And after the king hath had the year, day, and waſte, the land ſhall be reſtored to the chief lord of the fee, unleſs that he fine before with the king, for the year, day, and waſte.

2. As to forfeiture of goods, it ſeems agreed, that all things whatſoever, which are comprehended under the notion of a perſonal eſtate, whether they be in action or poſſeſſion, which the party hath, or is intitled to, in his own right, and not as executor or adminiſtrator to another, are liable to ſuch forfeiture, in the following caſes: Forfeiture of goods.

(1) Upon a conviction of treaſon or felony. 2 *Haw.* 450.

(2) Upon a flight found before the coroner, upon view of a dead body. *id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *id.*

(4) Alſo a perſon indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in caſe of grand larceny. 1 *H. H.* 530. 2 *Haw.* 451.

But it is certain that the party may in all caſes, except that of the coroner's inqueſt, traverſe the finding of the flight. Alſo it ſeems agreed, that the particulars of the goods found to be forfeited may be alſo traverſed. 2 *Haw.* 451.

(5) Upon a preſentment by the oaths of 12 men, that a perſon arreſted for treaſon or felony, fled from, or reſiſted thoſe who had him in cuſtody, and was killed by them in the purſuit or ſcuffle. 2 *Haw.* 451.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods ſo waived, whether they be his own, or the goods of others ſtolen by him, which ſhall not be reſtored to the right owners but upon a proper proſecution. 2 *Haw.* 451.

(7) Alſo, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchaſing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately reſtored to poſſeſſion of his lands. 2 *H. H.* 389.

Forfeiture upon outlawry.

3. Upon outlawry in treaſon or felony, the offender ſhall loſe and forfeit as much as if he had appeared, and judgment had been given againſt him, as long as the outlawry is in force. *Wood. b.* 4. *c.* 5.

And thoſe that tarry till the exigent, in treaſon, felony, or petit larceny, forfeit their goods, tho' they render themſelves to juſtice, and are acquitted; for it was a flight in law. *Wood. b.* 4. *c.* 5.

Forfeiture in ſe defendendo.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unleſs he fled; for that is a diſtinct forfeiture, altho' the party be not guilty of the fact. 1 *H. H.* 493.

To what time the forfeiture ſhall relate.

5. It ſeems agreed, that the forfeiture, upon an attainder either of treaſon or felony, ſhall have relation to the time of the offence, for the avoiding of all ſubſequent alienations of the *lands*; but to the time of the conviction or flight found only, as to *chattels*; unleſs the party were killed in flying or reſiſting, in which caſe it is ſaid, that the forfeiture of the chattels ſhall relate to the time of the offence. 2 *Haw.* 454.

What is to be done with the offender's goods before forfeiture.

6. But tho' the goods of an offender be not forfeited, till the conviction, or flight found by inqueſt, yet whether they may be ſeized upon the offence committed, hath been controverted; concerning which lord *Hale* ſaith thus:

It ſeemeth clear, that at the common law, if a man had committed felony or treaſon, or tho' poſſibly he had committed none, yet if he had been indicted, the ſheriff, coroner, or other officer, could not ſeize and carry away the goods of the offender or party accuſed:

Again, he could not in that caſe have removed the goods out of the cuſtody of the offender or party accuſed, and delivered them over to the conſtables or to the *villatæ*, to anſwer for them:

But

But if the party were indicted, the ſheriff or other officer might make a ſimple ſeizure of them only to inventory and appraiſe them, and leave them to the cuſtody of the ſervants or bailiff of the party indicted, in caſe he would give ſecurity againſt their being imbezilled, or in default thereof he might deliver them to the conſtable or vill to be anſwerable for them, but yet ſo that the party accuſed and his family have ſufficient out of them for their livelihood and maintenance:

And poſſibly the ſame law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of ſeizure might have been made, whether he committed the felony or not:

But in caſe there were no indictment, then it is at the peril of him that ſeizeth, if he committed not the felony:

And then as to the ſtatute of 1 *R.* 3. *c.* 3. it is as follows; *No ſheriff or other perſon ſhall take or ſeize the goods of any perſon arreſted or impriſoned for ſuſpicion of felony, before he be convicted or attainted, or before the goods be otherwiſe forfeited; on pain of double value to the party grieved:*

Mr. *Stamford* thinks this is but in affirmance of the common law, only that it gives a penalty: but it ſeems to be ſomewhat more than ſo, for this prohibits the ſeizure of the goods of a party impriſoned, tho' he were alſo indicted, but not yet convicted, where unqueſtionably the common law allowed ſuch a ſeizure, if the party or his friends did not ſecure the forthcoming of the goods, where the party was indicted:

But upon this ſtatute theſe things are conſiderable; 1. As to perſons at large, it ſeems to me (ſays he) that if they flie not, there can be no ſeizure at all made, whether they are indicted or not; for the ſtatute did not intend a greater privilege to a party impriſoned, than to him that is at large. 2. That if he be at large, and *fly* for it, yet his goods cannot be ſeized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraiſed, and inventoried, in the houſe or place where they lie:

And yet I know not how it comes to paſs, ſays he, the uſe of ſeizing the goods of perſons accuſed of felony, tho' impriſoned or not impriſoned, hath ſo far obtained notwithſtanding this ſtatute, that it paſſeth for law and common practice, as well by conſtables, ſheriffs, and other the king's officers, as by lords of franchiſes, that there is nothing more uſual:

Upon the whole, he ſays, that the opinion of my lord *Coke*, in his 3 *Inſt.* 228. hath truly ſtated the law, at leaſt

as it ſtands upon the ſtatute of 1 *R.* 3. *viz.* 1. That *before* the indictment, the goods of any perſon cannot be ſearched, inventoried, or in any ſort ſeized. 2. That *after* the indictment, they cannot be ſeized and removed, or taken away, before conviction or attainder:

But then it may be ſaid, to what purpoſe may they be ſearched and inventoried after indictment, if they may not be removed, but are equally liable to imbezilling as before:

I think (he ſays) he is not bound to find ſureties, neither hath the officer at this day any power to remove them in default of ſureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unleſs in caſe of a ſecond *capias* on the 25 *Ed.* 3. *c.* 14.) for the priſoner or party indicted may ſell them *bona fide*; and if he may do ſo, the vendee may take them, and the *villata* cannot refuſe the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraiſing, that thereby the king is aſcertained what the goods are, and may purſue them that take or imbezil them, by information (if the party happen to be convict) and try the property with them, whether they are really ſold, or ſold only fraudulently without valuable conſideration, to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loſs of dower.

Forfeiture of dower in felony.

1. Albeit a perſon ſhall be attainted of felony, yet his wife ſhall not forfeit her dower. 1 *Ed.* 6. *c.* 12. *ſ.* 17.

In treaſon.

2. But on his attainder of any treaſon, ſhe ſhall forfeit her dower. 5 & 6 *Ed.* 6. *c.* 11. *ſ.* 13. But in ſome kinds of treaſon (particularly with regard to the coin) there is a ſpecial ſaving of the wife's dower by ſtatute.

III. Of corruption of blood.

Corruption of blood.

1. It is agreed, that by an attainder of treaſon or felony, the blood is ſo far ſtained or corrupted, that the party loſes all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456.

2. Alſo, that he can neither inherit as heir to an anceſtor, nor have an heir. 2 *Haw.* 456.

3. But the king's pardon, tho' it doth not reſtore the blood, yet as to iſſues born after, hath the effect of a reſtitution. 1 *H. H.* 358.

4. But

4. But reſtitution of blood in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

1. FORGERY is an offence at common law, and an offence alſo by ſtatute.

2. Forgery at the common law, is an offence in falſly and fraudulently making or altering any manner of record, or any other authentick matter of a publick nature; as a pariſh regiſter, or any deed, will, privy ſeal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* 182, 184.

As for writings of an inferior nature, as private letters, and ſuch like, the counterfeiting of them is not properly forgery; therefore in ſome caſes it may be more ſafe to proſecute ſuch offenders for a miſdemeanor, as cheats. For by reaſon of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon ſome of the following ſtatutes, and very few at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and impriſoned. *Wood b.* 3. *c.* 3. 1 *Haw.* 184.

But as to the power of juſtices of the peace in this matter, Mr. *Hawkins* ſays, it hath been ſettled of late, that they have no juriſdiction over forgery at the common law; the principal reaſon of which reſolution (he ſays) as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* ſays nevertheleſs, that it ſeemeth clear, that a juſtice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to priſon in order to abide his trial. *Barl.* 244.

3. The

3. The ſtatutes that make forgery an offence are theſe that follow:

The firſt is that famous ſtatute of the 5 *El. c.* 14. which by an example worthy to be imitated, doth (in order to prevent confuſion) repeal all former ſtatutes againſt forgery. By this it is enacted, that *if any perſon upon his own head and imagination, or by falſe conſpiracy and fraud with others, ſhall wittingly, ſubtilly, and falſly forge or make, or ſubtilly cauſe, or willingly aſſent to be forged or made, any falſe deed, charter, or writing ſealed, court roll, or the will of any perſon in writing, to the intent that the eſtate of freehold or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged; or ſhall pronounce, publiſh, or ſhew forth in evidence the ſame as true, knowing the ſame to be falſe or forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and ſhall be thereof convicted, either upon action at the ſuit of the party, or otherwiſe according to the order and due courſe of the laws of this realm,——he ſhall pay to the party double coſts and damages, and be ſet in the pillory, and have both his ears cut off, and his noſtrils ſlit and ſeared with a hot iron, and ſhall forfeit the profits of his lands during life, and be impriſoned alſo during life.* ſ. 2.

And all juſtices of oyer and terminer, and juſtices of aſſize, ſhall have power to inquire of, hear, and determine all offences in this act. ſ. 10.

Upon his own head] When the proceedings were in latin, *ſuper proprium ſuum caput* was allowed to be good upon an indictment on this ſtatute; the law having more regard that the ſtatute be ſtrictly purſued, than rendred into proper latin. 1 *Haw.* 187.

Forge or make] Making a ſecond deed, and antedating it, with intent to make it take place of a former deed, is forgery within this ſtatute. 3 *Inſt.* 167.

Or ſubtilly cauſe, or willingly aſſent] To *cauſe*, is to procure or counſel one to forge; to *aſſent*, is to give his aſſent or agreement afterwards, to the procurement or counſel of another; to *conſent*, is to agree at the time of the procurement or counſel, and ſuch is in law a procurer. 3 *Inſt.* 169.

But lord *Hale* ſays, that an *aſſent* after the fact is committed, makes not the party aſſenting guilty or principal in the forging; but it muſt be a precedent, or concomitant aſſent. 1 *H. H.* 684.

Falſe

False deed, charter, or writing] It ſeems to be no way material, whether a forged inſtrument be made in ſuch a manner, that if it were in truth ſuch as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Haw.* 184.

Writing ſealed] Theſe are large words; and the making of a falſe cuſtomary of a manor in writing under ſeal, containing divers falſe cuſtoms, to the diſheriſon of the lord of the manor, and that the ſame had been allowed and permitted by the lord of the manor, which was alſo falſe, was reſolved to be within theſe words *a falſe writing ſealed.* 3 Inſt. 171.

Sealed] It is required that the deed, charter, or writing muſt be ſealed, that is, have ſome impreſſion upon the wax; for wax, without an impreſſion is not a ſeal. 3 *Inſt.* 169.

Court roll, or will] Here are two writings which need not be ſealed, becauſe they may take effect without any ſeal, for that they be no deeds; and no writing can have the force of a deed, without a ſeal. 3 *Inſt.* 170.

Will] If any perſon which writeth the will of a ſick man, inſerteth a clauſe therein concerning the deviſe of lands, without any direction of the deviſor, this is forgery, altho' he did not forge the whole will. 3 *Inſt.* 170.

To the intent that the ſtate of freehold or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged] *E.* 4 *G.* 2. *K.* and *Japhet Crooke.* The defendant was convicted on this ſtatute for forging a leaſe and releaſe. And the indictment ſets forth, that *Garbut* and his wife were ſeiſed in fee of certain meſſuages, lands, and tenements called *Jawick* in the pariſh of *Clackton* in *Eſſex*, and that the defendant intending to moleſt them and their intereſt in the premiſſes, forged a leaſe and releaſe as from *Garbut*, and his wife, whereby they are ſuppoſed for a valuable conſideration to convey to him "all that park call-"ed *Jawick* park in the pariſh of *Clackton* in *Eſſex*, con-"taining eight miles in circumference, with all the deer, "woods, &c. thereto belonging." It was moved in arreſt of judgment, that the premiſſes ſuppoſed to be conveyed, were

were ſo materially different from thoſe which were really the eſtate of *Garbut* and his wife, which was houſes, lands, and tenements; that it was impoſſible this conveyance ever could moleſt or diſturb them: if it was a true deed, it could not paſs their lands at law, for want of a proper deſcription; and though where lands are improperly deſcribed, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a ſale, and they do it as carrying that contract into execution. The court for ſeveral terms inclined ſtrongly with the objection; but this term *Raymond* Ch. J. declared that they were all of opinion to over-rule it: for by the words of the act, it is not neceſſary that there ſhould be a charge or a poſſibility of a charge; it is ſufficient that it be done with that intent, and the jury have found that it was done with intent to moleſt *Garbut* and his wife in the poſſeſſion of their lands. Accordingly judgment was given for the King, and the defendant had ſentence to undergo the puniſhment appointed by the act for forging a deed, and the ſame was executed upon him at Charing-croſs. *Str.* 901.

Pronounce or publiſh] That is, when one by words, or writing pronounceth or publiſheth the deed to any other as true. 3 *Inſt.* 171.

Knowing the ſame to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publiſh it afterwards as true, and it prove to be forged indeed, he is in danger of this ſtatute. 3 *Inſt.* 171. 1 *Haw.* 187.

But lord *Hale* ſays, that tho' ſuch a relation may be an evidence of fact to prove his knowledge, yet it is not concluſive; for perchance there might be circumſtances of fact, that might make the perſon relating it, or his relation, not credible: So that the *knowing* muſt be upon the whole matter left to the jury, upon the circumſtances of the caſe. 1 *H. H.* 685.

Juſtices of oyer and terminer] Albeit juſtices of the peace, by their commiſſion, have power to hear and determine felonies and treſpaſſes, yet they are not included under the name of juſtices of oyer and terminer; for juſtices of oyer and terminer are known by one diſtinct name, and juſtices of the peace by another. 3 *Inſt.* 103.

And by the ſame ſtatute it is further enacted, that *if any perſon, upon his own head or imagination, or by falſe conſpiracies or fraud with any other, ſhall wittingly, ſubtilly, and falſly*

falſly forge or make, or cauſe or aſſent to be made and forged any falſe charter, deed or writing, to the intent that any perſon may have or claim any eſtate or intereſt for term of years in any manors, lands, tenements, or hereditamants, not being copyhold, or any annuity in fee-ſimple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, releaſe, or other diſcharge of any debt, account, action, ſuit, demand, or other thing perſonal; or ſhall pronounce, publiſh, or give the ſame in evidence as true, knowing the ſame to be falſe and forged, he ſhall, on conviction in like manner, pay to the party double coſts and damages, and be ſet on the pillory, and have one of his ears cut off, and be impriſoned for a year. ſ. 3.

Obligation or bill obligatory] The forgery of a deed of gift of mere perſonal chattels, is not within this ſtatute. 1 *Haw.* 186.

And *if after verdict, the plaintiff ſhall releaſe the judgment or execution, or ſuffer a diſcontinuance, it ſhall only diſcharge his own coſts and damages, and not the other puniſhments.* ſ. 6.

And by the ſame ſtatute it is further enacted, that *if any perſon ſhall after conviction offend again in any of the ways abovementioned, he ſhall be guilty of felony without benefit of clergy.* ſ. 7, 8.

4. Thus ſtood the matter upon the ſtatute of 5 *El.* Afterwards by many ſubſequent ſtatutes (ſeveral of which were occaſional only, and adapted to the particular juncture and circumſtances of the time in which they were made, but which are referred to and enforced by the ſubſequent ſtatutes on the ſame ſubject) divers other forgeries were made felony without benefit of clergy for the firſt offence; and others had other puniſhments aſſigned them: Which are as follows:

It ſhall be felony without benefit of clergy, to forge or counterfeit.

(1) Any bank bills, or notes, or the ſeal of the governor and company of the bank of *England.* 7 & 8 *W.* c. 31. ſ. 36. 8 & 9 *W.* c. 20. ſ. 36. 11 *G.* c. 9. ſ. 6. 12 *G.* c. 32. ſ. 9.

And in general, any bank note, bill of exchange, dividend warrant, or any bond or obligation under the ſeal of the bank, or indorſement thereon; or knowingly offering to diſpoſe thereof. 15 *G.* 2. c. 13. ſ. 12.

(2) India bonds. 12 *G.* c. 32. ſ. 9.

(3) Bonds, receipts, warrants, or ſeal of the ſouth-ſea company. 9 *An.* c. 21. ſ. 57. 6 *G.* c. 4. ſ. 56. 6 *G.* c. 11. ſ. 50. 12 *G.* c. 32. ſ. 9.

(4) Exchequer bills: by the ſeveral acts which direct the iſſuing the ſame.

(5) Any

(5) Any power to transfer ſtocks. 8 *G. c.* 22. *ſ.* 1. 9 *G. c.* 12. *ſ.* 4.

(6) Lottery tickets and orders: by the ſeveral lottery acts.

(7) Policy of aſſurance. 6 *G. c.* 18. *ſ.* 13.

(8) Mediterranean paſſes. 4 *G.* 2. *c.* 18.

(9) Army debentures. 5 *G. c.* 14. *ſ.* 10. 9 *G. c.* 5. *ſ.* 19.

(10) Marriage licence or regiſtry of a marriage. 26 *G.* 2. *c.* 33.

(11) Stamps on vellum, parchment, and paper, by the ſeveral ſtamp acts.

(12) Stamps on linen imported. 10 *An. c.* 19. *ſ.* 97. And ſelling it knowingly with a counterfeit ſtamp; 100 *l.* and the pillory. *id.*

And by the 9 & 10 *W. c.* 41. Forgers of ſeamens wills, or letters of attorney, ſhall over and above the penalties by former laws, forfeit 200 *l.* with coſts; half to the king, and half to him that will ſue. *ſ.* 3.

5. And beſides theſe particular laws, in the 2 *G.* 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that *if any perſon ſhall falſly make, forge, or counterfeit, or cauſe or procure the ſame to be done, or willingly aid or aſſiſt in the falſe making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promiſſory note, indorſement or aſſignment of any bill of exchange or promiſſory note, acquittance or receipt for money or goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, knowing the ſame to be forged;—he ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, or diſheriſon of heirs.* 2 G. 2. c. 25. ſ. 1, 5.

6. And by the 7 *G.* 2. *c.* 22. it is further enacted, by way of addition to the foregoing, that *if any perſon ſhall falſly make, alter, forge, or counterfeit, or willingly act or aſſiſt in the falſe making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill, or other ſecurity for payment of money, or any warrant or order for payment of money, or delivery of goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, with intent to defraud any perſon, knowing the ſame to be falſe;—he ſhall be guilty of felony without benefit of clergy:* and this, without any ſaving of the corruption of blood, or diſheriſon of heirs.

7. Forgery is excepted out of the act of general pardon; 20 *G.* 2.

Fornication. See Lewdneſs.
Fraud. See Cheat.
Fruit and Fruit-trees. See Wood.

Fuel.

BY the 43 *El. c.* 14. All faggots to be ſold ſhall contain in compaſs, beſides the knot of the bond, 24 inches of aſſize; and every faggot ſtick within the bond, ſhall contain full three foot of aſſize, except only one ſtick to be but one foot long, to ſtop or harden the binding.

By the 9 *An. c.* 15. All billets (except thoſe made of beech, 10 *An. c.* 6.) that lie expoſed in publick places where they are uſually bought or ſold, ſhall be aſſized, and cut or marked in manner following; That is to ſay,

All billets of what ſcantling or denomination ſoever, ſhall contain in length three foot and four inches, and be of the following dimenſions; *viz.*

Name of the billets.	Round		Half round		Quarter cleft		
	in.	qr.	in.	qr.	in.	qr.	
A ſingle	7	2	0	0	0	0	No notch.
A caſt	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
2 caſt	15	0	17	1	17	0	Two notches.
3 caſt	18	1	21	1	21	0	One at each end, and one in the middle.
4 caſt	21	1	24	2	24	0	4 notches.
5 caſt	23	3	27	2	27	0	5 notches.
6 caſt	26	0	30	0	29	2	6 notches.
7 caſt	28	0	32	2	32	0	7 notches.
8 caſt	30	0	34	3	34	0	8 notches.
9 caſt	31	3	36	3	36	1	9 notches.
10 caſt	33	2	38	3	38	0	10 notches.
11 caſt	35	1	———		———		11 notches.
12 caſt	36	3	———		———		12 notches.
13 caſt	38	1	———		———		13 notches.
14 caſt	39	3	———		———		14 notches.
15 caſt	41	0	———		———		15 notches.
16 caſt	42	2	———		———		16 notches.
17 caſt	43	3	———		———		17 notches.
18 caſt	45	0	———		———		18 notches.
19 caſt	46	1	———		———		19 notches.
20 caſt	47	2	———		———		20 notches.

And

And if they ſhall not be thus aſſized and marked, then on information to a juſtice of the peace, mayor, or other head officer, he ſhall call before him ſix good and lawful men of the town, and ſhall ſwear them truly to enquire and preſent, whether the ſame be of good and ſufficient aſſize; and if they ſhall preſent that any of them is not ſufficient, the ſame ſo being deficient ſhall be forfeited, and be delivered to the overſeers, to be by them diſtributed to the poor. *id. ſ.* 2.

And by the 43 *El. c.* 14. The billets ſhall be meaſured within ſix inches of the midſt; and the ſurpluſage which ſhall happen between any two next meaſures, being above the one, and under the other, ſhall be taken for the benefit of the buyer.

Fuller's earth. See Woollen manufacture.
Furze. Burning it in foreſts. See Burning.

Game.

THE ſtatutes relating to this title are very numerous, and the ſenſe ſometimes a little perplexed, ſo that perhaps upon a view of the whole, it may ſeem, that about four or five new acts, comprehending the ſeveral heads here undermentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and uſeful.

After having firſt premiſed (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the ſtatute of the 8 *G. c.* 19. that where any perſon for any offence againſt any law in being at the making of the ſaid act, for the better preſervation of the game, ſhall be liable to pay any pecuniary penalty or ſum of money, on conviction before a juſtice of the peace, the proſecutor may either proceed to recover the ſame in ſuch manner, or he may ſue for the ſame (before the end of the ſecond term after the offence committed, 26 *G.* 2. *c.* 2.) by action of debt, or on the caſe, bill, plaint, or information, in any court of record at *Weſtminſter*, wherein if he recovers he ſhall have double coſts; (This being premiſed) I will treat of this ſubject under the following heads:

I. Origin

I. Origin of the diſtinct property in game.
II. Certain obſervations concerning foreſts, chaſes, parks, and warrens.
III. Concerning gamekeepers.
IV. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.
V. Laws for preſerving the four footed game in particular.
VI. Laws for preſerving the winged game in particular.
VII. Laws for preſerving the game of fiſh in particular.

Under which three laſt heads are comprehended thoſe reſtrictions which ſeem to concern all perſons whatſoever, whether qualified or not: for altho' a man be qualified to kill game, yet he muſt kill it in a lawful manner, and not in ſuch ways as tend utterly to deſtroy it.

I. Origin of the diſtinct property in game.

Before we take notice of the ſtatutes made for the preſervation of the game, it may be requiſite to obſerve how the common law ſtood herein; which depends upon the difference made between tame and wild animals.

The tame animals, ſuch as horſes, cows, ſheep, and the like, are ſuch creatures, as by reaſon of their ſluggiſhneſs and unaptneſs for motion, do not fly the dominion of mankind, but generally keep within the ſame paſtures and limits, and may be eaſily purſued and overtaken, if by accident they ſhould eſcape; and therefore the owner hath the ſame kind of property in them, as he hath in all other inanimate chattels, and for the violation thereof may bring an action of treſpaſs.

The wild animals, ſuch as deer, hares, foxes, and ſuch like, are thoſe, which by reaſon of their ſwiftneſs or fierceneſs fly the dominion of man; and in theſe, no perſon can have a property, unleſs they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own uſe, and the ability that he hath

to apply it to the ſuſtentation of his being; when that power ceaſeth, his property is loſt: and by conſequence an animal of this kind, which after any ſeizure eſcapes into the wild common of nature, and aſſerts its own liberty by its ſwiftneſs, is no more mine than any creature in the *Indies*, becauſe I have it no longer in my power or diſpoſal.

Hence it appears, that by the common law, every man had an equal right to ſuch creatures as were not naturally under the power of man; and that the mere caption or ſeizure created a property in them.

By immediate taking and killing them, they belong to ſuch perſon in the ſame manner as any other chattels, and cannot be taken from him; ſince the firſt ſeizure and caption was ſufficient to veſt the property of them in him.

Alſo by taking and taming them, they belong to the owner, as do the other tame animals, ſo long as they continue in this condition, that is, as long as they can be conſidered to have the mind of returning to their maſters; for while they appear to be in this ſtate, they are plainly the owner's, and ought not to be violated; but when they forſake the houſes and habitations of men, and betake themſelves to the woods, they are then the property of any man.

Another way of gaining property in them is, by incloſure; and then the beaſts muſt be underſtood to be mine, as the profits of the ſoil it ſelf are; and they can no more be taken and carried off, than any other profits of the land: and therefore if deer be incloſed in a park or paddock, or conies in a field or warren, they become ſo much a man's own, that no one ought to kill or take them away. And ſince in this caſe it is the incloſure that retains them (for take away the incloſure, and they are in their natural liberty); and therefore the party is ſaid to have right as he hath to any other profits there incloſed, and a diſtinct and independent right in every animal.

It is a maxim of the common law, that ſuch goods of which no one can claim any property do belong to the king by his prerogative; and hence all thoſe animals *feræ naturæ*, which come under the denomination of *game*, are ſtyled in our laws *his majeſty*'s game: and that which he hath, he may grant to another; and conſequently another may preſcribe to have the ſame, within ſuch a precinct or lordſhip. And from hence cometh the right of lords of manors, or others, unto the game within their reſpective liberties.

And upon this foundation the ſeveral acts of parliament are eſtabliſhed, for the preſervation of theſe ſpecies of animals;

mals; for the recreation and amuſement of perſons of fortune, unto whom the king with the advice and aſſent of parliament hath granted the ſame; and to prevent perſons of inferior rank, from ſquandering that time, which their ſtation of life requireth to be more profitably employed. For theſe reſtrictions do not take from the common people any right which they ever had; but only grant unto ſome perſons thoſe privileges which before reſted ſolely in the king. 2 *Bac. Abr.* 612, 613.

II. Certain obſervations concerning foreſts, chaſes, parks, and warrens.

1. A *foreſt* is a certain territory of woody grounds, and fruitful paſtures, privileged for wild beaſts and fowls of foreſt, chaſe, and warren, to reſt and abide there in the ſafe protection of the king, for his delight and pleaſure: which territory of ground ſo privileged, is meered and bounded with unremovable marks, meers, and boundaries, either known by matter of record, or by preſcription; and alſo repleniſhed with wild beaſts of venary or chaſe, and with great coverts of vert for the ſuccour of the ſaid beaſts there to abide: for the preſervation and continuance of which, there are particular officers, laws, and privileges belonging to the ſame, requiſite for that purpoſe, and proper only to a foreſt, and to no other place. *Manw.* 143. Foreſt, what.

Note; That *vert* comprehends every thing which bears green leaves in the foreſt. *Manw.* 146.

2. Beaſts of foreſt are properly hart, hind, buck, hare, boar and wolf; but legally all wild beaſts of venary. 1 *Inſt.* 233. Beaſts of foreſt.

3. *Purlieu* comes from the French, *pur*, clear, entire, and exempt; and *lieu*, a place: that is, a place, entire, clear, or exempt from the foreſt: and ſignifies thoſe grounds which *Henry* the ſecond, *Richard* the firſt, or king *John* added to their ancient foreſts, over other mens grounds; and were diſafforeſted by the ſtatute of *charta de foreſta*. 4 Inſt. 303. Manw. 242. Purlieu, what.

But nevertheleſs the *purlieu* as to ſome purpoſes is foreſt ſtill, and is only diſafforeſted as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beaſts, and ſpoil the vert. And if thoſe beaſts do eſcape out of the foreſt into the *purlieu*, the king hath a property in them ſtill againſt any man, but againſt the owners of the woods and lands in which they are; and ſuch owners have a ſpecial property in them *ratione loci*, but yet ſo that they hunt them

fairly, and not foreſtall them in their return towards the foreſt. *Manw.* 292.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beaſts of the foreſt in his woods or lands in the *purlieu*, in ſuch caſe he hath a property in them againſt any other man *ratione ſoli* (the king only excepted.) And if he begins the hunting in his own lands, then by reaſon of that property he may purſue his hunting thro' any man's woods or lands, ſo as he doth not enter into any foreſt, chaſe, park, or warren. And if he kill the beaſt in another man's land, and out of ſuch privileged place, he may take and carry away the ſame by reaſon of the firſt property. But if the beaſt recover the foreſt, he muſt call back his dogs, for they are then the king's wild beaſts again. And if he do not call back and rebuke his dogs, and they kill the beaſt in the foreſt, he is a treſpaſſer, tho' himſelf never came within the bounds thereof. But if in hunting towards the foreſt, the dogs faſten on it before it is within the bounds thereof, and the dogs ſtill hanging on are drawn by the deer into the foreſt, and it is killed there, then by reaſon of the firſt property which he had *ratione ſoli*, and alſo by the purſuit and poſſeſſion thereof before it entred the foreſt, he may lawfully enter and take it. *Manw.* 194, ——7.

Chaſe, what.

4. A *chaſe* (from *chaſſer*, to chaſe) is a privileged place for receipt of deer and beaſts of the foreſt, and is of a middle nature betwixt a foreſt and a park. It is commonly leſs than a foreſt, and not endowed with ſo many liberties, as officers, laws, courts; and yet is of a larger compaſs than a park, having more officers and game than a park. Every foreſt is a chaſe, but every chaſe is not a foreſt. It differeth from a park in that it is not incloſed; for if it is incloſed, it is a good cauſe of forfeiture; tho' it muſt have certain metes and bounds, but it may be in other mens grounds as well as in one's own. *Read.* Game. *Manw.* 49.

Beaſts of chaſe.

5. Beaſts of chaſe are the buck, doe, fox, martern, and roe. *Manw.* 50.

Park, what.

6. A *park* (from the French, *parquer*, to incloſe) is a large parcel of ground privileged for wild beaſts of chaſe by the king's grant, or by preſcription. *Read.* Game.

Beaſts of park.

7. The beaſts of park properly extend to the buck, doe, fox; but in a common and legal ſenſe to all the beaſts of the foreſt. *Read.* Game.

Park to be incloſed.

8. A park muſt be incloſed; for if it lies open, it is a good cauſe of ſeizure into the king's hands, as a thing forfeited:

feited: and the owner cannot have an action againſt thoſe that hunt in his park, if it lies open. *Read.* Game.

9. Deer in a park ſhall go to the heir, and not to the executor. 1 *Inſt.* 8. Deer ſhall go to the heir.

10. A *warren* is a place privileged by preſcription or grant of the king, for the preſervation of the beaſts and fowl of the warren; *viz.* hares, conies, partridges, and pheaſants. *Read.* Game. Warren, what.

11. A free warren may lie open, there being no neceſſity of incloſing it. *Read.* Game. Need not to be incloſed.

12. Conies in a warren (as hath been ſaid before of deer in the park) ſhall go to the heir, and not to the executor. 1 *Inſt.* 8. Conies ſhall go to the heir.

13. It is not lawful for any man to erect a park, chaſe, or warren, without a licence under the great ſeal of the king; becauſe the common law gives no way to matters of pleaſure, for that they bring no profit to the commonwealth. 2 *Inſt.* 199. Licence to erect.

But in the caſe of *K.* and *Sir William Lowther*, *M.* 12 *G.* There was a motion for leave to file an information in nature of a *quo warranto*, againſt Sir *William Lowther*, to ſhew by what authority he had made and ſet up a warren. But it was denied by the court; becauſe it was of a private nature, and therefore proper to be proſecuted only in the name of the attorney general by information, if his majeſty thought fit. And the like motion had been denied before in the caſe of the Lord *Liſburn*. L. Raym. 1409. Str. 637.

14. A foreſt is the higheſt franchiſe of princely pleaſure; the next to that is a free chaſe; a chaſe in one degree is the ſame as a park, only a park is incloſed, and a chaſe is always open; the next in degree to a free chaſe, is a park; and next unto a park, is the franchiſe of a free warren. *Manw.* 148. Which of theſe is the higheſt franchiſe.

15. A perſon may have common in a chaſe, as well as in a foreſt; but a foreſt is governed by the foreſt law, and a chaſe and park by the common law. 4 *Inſt.* 314. *Manw.* 49. Common in a chaſe.

16. If I find a pheaſant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reaſon of the firſt property which I had in the pheaſant *ratione ſoli*; and if my hawk kill the pheaſant in another man's land, I may enter and take it, by reaſon of that property and purſuit; and in that caſe, I ſhall not be puniſhed as a treſpaſſer for taking and carrying away the pheaſant, but only for entering the ground. But if the pheaſant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer ſhall not have Treſpaſs, in what caſe.

the pheaſant, but the owner of the warren. And the law is the ſame, in the caſes of all wild beaſts of the foreſt and chaſe. *Manw.* 193, 196.

No treſpaſs in following beaſts of prey.

17. Notwithſtanding the common law allows of the hunting of foxes and badgers, being beaſts of prey, in another man's ground, becauſe the deſtroying of them is looked upon as a publick benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of treſpaſs in that caſe. *Cro. Jac.* 321.

Game eſcaped out of the incloſure, may be retaken on freſh ſuit,

18. If conies are hunted out of the warren, or deer out of the park, and the warrener or parker purſue them, he may retake them; for the park or warren is an eſtabliſhment by the publick, to look after and preſerve the game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the publick: now in parks and warrens, officers are eſtabliſhed by authority, to have an eye over the game, and to keep it within the boundaries; ſo that the property is not altered by driving it out of the incloſures, unleſs it be alſo out of the purſuit of the officers; for as long as he that is thus truſted doth purſue it, it is not in its natural liberty, but is ſtill belonging to the park or warren. 2 *Bac. Abr.* 613.

III. Concerning gamekeepers.

Who may appoint a gamekeeper.

1. All lords of manors, or other royalties, not under the degree of an eſquire, may by writing under their hands and ſeals, (A) authorize one or more gamekeeper or gamekeepers within their reſpective manors or royalties. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

With power to kill game.

2. And may impower him thereby, upon their own manors, to kill hare, pheaſant, partridge, or any other game:

But if the gamekeeper ſhall, under colour thereof, kill or take the ſame for the uſe of the lord, and afterwards ſell and diſpoſe thereof without the lord's conſent; and be convicted, on complaint of ſuch lord, and on oath of one witneſs, before one juſtice; he ſhall be committed to the houſe of correction for three months, to be kept to hard labour, 5 *An. c.* 14. *ſ.* 4.

One gamekeeper in one manor; and to be entred with the clerk of the peace.

3. But no lord of a manor ſhall make above one perſon to be a gamekeeper within any one manor, with power to kill game. And the name of ſuch perſon ſhall be entered with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof ſhall be granted by the clerk of the peace, on payment of one ſhilling;

And

And if any other gamekeeper, whoſe name is not ſo entred, *who ſhall not be otherwiſe qualified* by the laws of this kingdom to kill game, ſhall kill, ſell, or expoſe to ſale any hare, pheaſant, partridge, moor, heath game, or grouſe; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit for every offence 5*l.* half to the informer, and half to the poor, by diſtreſs: for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *An. c.* 25. *ſ.* 1.

Who ſhall not be otherwiſe qualified] From theſe words it ſeemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entered with the clerk of the peace. To be alſo a menial ſervant.

4. And moreover, by the 3 *G. c.* 11. it is further enacted, that no lord of a manor ſhall make any perſon to be a gamekeeper with power to kill game, unleſs ſuch perſon be qualified by the laws of this realm ſo to do; or unleſs ſuch perſon be truly and properly a ſervant to the ſaid lord; or be immediately employed and appointed to take and kill the game for the ſole uſe of the ſaid lord, and not otherwiſe:

And if any perſon, not being qualified by the laws ſo to do, or not being truly and properly a ſervant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the ſole uſe or immediate benefit of the ſaid lord, ſhall under colour or pretence of any power or authority, deputation, or qualification to him granted by any lord of a manor, take and kill any hare, pheaſant, partridge, or other game whatſoever; or ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and deſtroy the game; he ſhall forfeit 5*l.* in like manner. *ſ.* 1.

5. The gamekeeper (ſo authoriſed) may ſearch for dogs and engines, and ſeize the ſame for the uſe of the lord, or deſtroy them. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2. Gamekeeper's power to ſearch.

But it hath been adjudged, that an authority from the lord of the manor is not of itſelf ſufficient for this purpoſe, but that he ought to have a warrant from a juſtice of the peace. *Comb.* 183. *Carpenter* and *Adams.* At leaſt it may be ſafe to have ſuch warrant, eſpecially if any houſes are to be entered and ſearched.

For it would give too great a power to the gamekeepers, to leave it in their diſcretion to ſearch what places they ſhall think proper, as alſo to conſtitute them the judges whether ſuch or ſuch a perſon is or is not qualified to kill

game. Therefore it is beſt to have a warrant from a juſtice of the peace, after information and oath of the offence firſt made.

IV. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.

The qualification by eſtate for killing game, in the reign of K. *Richard* the ſecond, was 40*s.* a year; in the reign of K. *James* the firſt it was advanced to 10*l.* a year, and after that in ſome inſtances to 40*l.* a year; and at laſt in the reign of K. *Charles* the ſecond it was raiſed to 100*l.* a year. Not that the laws have become gradually more ſevere; but as the value of money decreaſed, the qualification was raiſed in proportion, the eſtate continuing nearly the ſame; for an eſtate of 40*s.* a year in the reign of K. *Richard* the ſecond was not much inferior to an eſtate of 100*l.* a year in the reign of K. *Charles* the ſecond. And the penalty for deſtroying the game was even more ſevere then than it is now; as I ſhall ſhew. For as thoſe ancient laws relating to the game are ſtill in force, and are generally enacted ſo to be by the ſubſequent ſtatutes, it will be neceſſary in order to have a thorough knowledge of this matter to inſert them in their order; becauſe the penalties on each being different, the proſecutor or juſtices may chuſe which of them they will convict an offender upon. Thus by the ſtatute of the 5 *An.* hereafter following, if a perſon not having 100*l.* a year ſhall keep dogs or engines to deſtroy the game, he ſhall forfeit 5*l.* but if ſuch perſon have not 40*s.* a year, he may upon the ſtatute of *R.* 2. be puniſhed by a year's impriſonment; and ſo of the reſt: provided that no perſon be proſecuted upon more than one act for one offence.

40*s.* a year.

1. The firſt qualification relating to the game, was in the 13th year of the reign of *R.* 2. by which it is enacted, that no layman which hath not lands or tenements of 40*s.* a year, nor clergyman if he be not advanced to 10*l.* a year, ſhall have or keep any greyhound, hound, nor other dog to hunt; nor ſhall uſe fyrets, heys, nets, harepipes, nor cords, nor other engines for to take or deſtroy deer, hares, nor conies, nor other gentlemens game: on pain of a year's impriſonment. And the juſtices of the peace (that is, in their ſeſſions) ſhall enquire of the offenders in this behalf, and puniſh them by the pain aforeſaid. 13 *R.* 2. *ſt.* 1. *c.* 13.

2. The

2. The next qualification by eſtate or degree to kill game, was by a ſtatute in the 1 *J.* whereby it is enacted, that every perſon who ſhall keep any greyhound for courſing of deer or hare, or ſetting dog or net to take pheaſants or partridges (except he be ſeiſed, in his own right or the right of his wife, of 10 *l.* a year eſtate of inheritance, or 30 *l.* a year of a lives eſtate, or goods to the value of 200 *l.* or be the ſon of a knight or lord, or the ſon and heir apparent of an eſquire) and be thereof convicted, by confeſſion, or oath of two witneſſes, before two juſtices, he ſhall be committed to gaol three months, unleſs upon conviction he pay 20 *s.* to the churchwardens for the uſe of the poor, or after one month after his commitment he become bound by recognizance with two ſureties before two juſtices, in 20 *l.* a piece, not to offend again in like manner. 1 *J. c.* 27. *ſ.* 3. 10 l. a year.

3. The next qualification relates to deer and conies only, in the 3 *J. c.* 13. by which it is enacted, that if any perſon not having hereditaments of 40 *l.* a year, or not worth in goods 200 *l.* ſhall uſe any gun or bow to kill any deer or conies; or ſhall keep any buckſtall, nets, or coney dogs (except he have grounds incloſed, and uſed for the keeping of deer or conies, the increaſing of which ſaid conies ſhall amount to the value of 40 *s.* a year; or keepers or warreners in their parks, warrens, or grounds); in ſuch caſe any perſon having lands or hereditaments of 100 *l.* a year in fee, or for life, in his own right or the right of his wife, may take from ſuch perſon to his own uſe for ever ſuch guns, bows, buckſtalls, nets, and coney dogs. 3 *J. c.* 13. *ſ.* 5. 40 l. a year.

4. The next qualification relates to pheaſants and partridges only, and is as follows: Every free warrener, lord of a manor, or freeholder ſeiſed in his own or his wife's right, of 40 *l.* a year of inheritance, or lives eſtate of 80 *l.* or worth in goods 400 *l.* may take pheaſants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Chriſtmas* yearly. 7 *J. c.* 11. *ſ.* 7. 40 l. a year.

5. The laſt general qualification by eſtate or degree to kill game, and which is now moſt to be regarded, is in 22 & 23 *C.* 2. *c.* 25. by which it is enacted, that *every perſon, not having lands and tenements, or ſome other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100 l. per annum, *or for term of life, or having leaſe or leaſes of* 99 *years, or for any longer term, of the clear yearly value of* 150 l. *(other than the ſon and heir apparent of an eſquire, or other perſon of higher degree, and the owners and keepers of foreſts, parks, chaſes, or warrens, being ſtocked with deer* 100 l.

deer or conies for their neceſſary uſe, in reſpect of the ſaid foreſts, parks, chaſes or warrens) is hereby declared to be a perſon by the laws of this realm, not allowed to have or keep for himſelf or any other perſon, any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, ſnares, or other engines for the taking and killing of game. ſ. 3.

Other than the ſon and heir apparent of an eſquire.] Eſquire, *eſcuyer*, *ſcutarius*, called by the Saxons *ſchilt knaben* or *knapen* (from whence cometh the word *knave*, which anciently ſignified a ſervant), is a name of dignity, next above the common title of gentleman, and below a knight. Heretofore he ſignified one that was attendant, and had his employment as a ſervant, waiting on ſuch as had the order of knighthood, bearing their ſhields, and helping them to horſe, or ſuch like. And this title is of that nature with us now, that to whomſoever either by blood, or place in the ſtate, or other eminency, we conceive ſome higher attribute ſhould be given than that ſole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we uſually ſtyle him an eſquire, in ſuch paſſages as require legally that his degree or ſtate be mentioned. *Seld. Tit. of Hon.* 374, 462, 687.

Searching for dogs and engines.

6. *And the gamekeeper, or any other perſon (authoriſed by warrant* (B) *of a juſtice of the peace) may in the day time ſearch the houſes, outhouſes, or other places of any ſuch perſon prohibited by this act to keep or uſe the ſame, as upon good ground ſhall be ſuſpected to have or keep in his cuſtody any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, or other dogs to deſtroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, ſnares, or other engines aforeſaid, and the ſame to ſeize, and keep, for the uſe of the lord of the manor, or otherwiſe to cut in pieces or deſtroy.* 22 & 23 C. 2. c. 25. ſ. 2.

20 s. penalty for keeping dogs and engines.

7. And if any unqualified perſon ſhall have, keep, or uſe any bows, greyhounds, ſetting dogs, ferrets, coney dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, ſnares, or any other inſtruments for deſtruction of fiſh, fowl, or other game; and ſhall not give a good account before a juſtice, to the ſatisfaction of ſuch juſtice how he came by the ſame, or elſe ſhall not in ſome convenient time (to be ſet by ſuch juſtice) produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof; he ſhall forfeit for every offence not under 5 *s.* nor above 20 *s.* half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, not more than one month, nor

nor leſs than ten days, there to be whipt and kept to hard labour. And if any perſon ſo produced or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. 4 & 5 *W.* c. 23. *ſ.* 3.

And all lords of manors and their gamekeepers may within their manors oppoſe and reſiſt ſuch offender, in the night time, in the ſame manner as if the fact had been committed in any ancient chaſe, park, or warren incloſed. *ſ.* 4.

And no certiorari ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in 50*l.* with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or *procedendo* granted, full of coſts and charges; and in default thereof, the juſtice ſhall proceed to the execution of the conviction. *ſ.* 7.

8. But by a ſubſequent ſtatute 5 *An.* c. 14. *If any perſon, not qualified by the laws of this realm ſo to do, ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engines to kill and deſtroy the game, and ſhall be thereof convicted* (C D) *on the oath of one credible witneſs, before one juſtice, he ſhall forfeit* 5*l. half to the informer, and half to the poor of the pariſh where the offence was committed, to be levied by diſtreſs* (E); *for want of diſtreſs, to be ſent to the houſe of correction* (F) *for three months for the firſt offence, and for every other offence four months:* 5*l.* penalty for keeping dogs and engines; and the ſame to be ſeized.

And any juſtice, and lord within his manor, may take away ſuch dogs, nets, or other engines, which ſhall be in the power or cuſtody of any perſon not qualified. ſ. 4.

Not qualified by the laws of this realm] On a conviction on this ſtatute, exception was taken, that the conviction reciting the defendant not to be a perſon ſo and ſo qualified, and enumerating diſtinctly the ſeveral qualifications in 22 & 23 *C.* 2. omitted a new qualification allowed by this act, namely, that he was not a perſon authoriſed by a lord (or lady) of a manor to kill game for his uſe. And by the court; Had it been generally laid thus, that he not being a perſon qualified according to law, and ſo on, it had been enough; but the qualifications being diſtinctly and ſeverally mentioned, the omiſſion of one is fatal. 10 *Mod.* 26. *T.* 10 *An.* *Q.* and *Matthews.*

But in the caſe of *K.* and *Marriott*, *M.* 4 *G.* There was a conviction for keeping a greyhound; reciting that one

William Toune came and informed, that the defendant being a perſon not qualified to keep a greyhound, did nevertheleſs keep one at ſuch a place, and therewith killed ſeveral hares; and that he being ſummoned did appear, and being aſked what he had to ſay, offered nothing in excuſe, and therefore the juſtice convicted him. It was objected, that the juſtice ſhould ſet out, why the defendant is not a qualified perſon, as that he is not the ſon of an eſquire, nor has 100*l.* a year in his own or his wife's right: For he ought not to make himſelf the ſole judge, but give the reaſons at large. *Parker* Ch. J. ſeemed to think the conviction would be good, having followed the words of the ſtatute, and that if the defendant was qualified, he ought to have ſhewn it before the juſtice, being ſummoned for that purpoſe. *Eyre* J. ſtarted an objection, that it was not the juſtice that had taken upon him to ſay the defendant was not qualified; but only the witneſs: for the conviction runs, that the witneſs being ſworn ſaith, that the defendant *being a perſon no way qualified* did ſuch a day keep a greyhound; ſo that it appears, the witneſs has given the law to the juſtice, and takes upon himſelf to judge of the defendant's qualifications, and the juſtice is only made uſe of as an inſtrument, to reduce the opinion of the witneſs into a conviction. By *Parker* Ch. J. the *being not qualified* ſhould be the concluſion of the juſtice, and not the words of the witneſs; for he ought not to ſwear generally a man is not qualified, and ſuch a general proof will not be good: This is only an invention, to ſupport a conviction in general terms, which would be bad if the particular facts were alledged. *Pratt* J. Where the juſtices have a ſummary juriſdiction, and no appeal lies (as in this caſe), we muſt keep them up ſtrictly to the law; and I ſhould be glad if we could make them ſet out the whole particularly. The caſe was adjourned. And afterwards *Pengelly* ſerjeant mentioned two caſes, *Q.* and *Hayward*, *E.* 12 *An.* There it was, *not being qualified, licenſed, or authorized to keep any engine*: and it was quaſhed. The other was the ſame term, and quaſhed, becauſe no qualifications were mentioned. And towards the end of the term this conviction was quaſhed; and the principal reaſon declared to be, becauſe the witneſſes had taken upon themſelves, to judge of the qualifications. *Str.* 66.

And in the caſe of *K.* and *Hill*, *H.* 12 *G.* the defendant was convicted, for unlawfully keeping a lurcher and a gun to kill and deſtroy the game, *not being qualified by the laws of this realm, ſo to do.* And the conviction being removed into the king's bench by certiorari, was quaſhed; becauſe it was

was only averred generally, that he was not qualified, and did not aver that the defendant had not the particular qualifications mentioned in the ſtatute, as to degree, eſtate, and the reſt. *L. Raym.* 1415.

And in the caſe of *K.* and *Bryan*, *M.* 12 *G.* 2. which was a conviction on the gin act, exception was taken, that there was no averment, that it was not ſold to be uſed in medicine: and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game. On the other hand, it was inſiſted that the reaſon of that was, becauſe thoſe were in the enacting clauſe, whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe was cited *K.* and *Theed*, *M.* 11 *G.* where in a conviction for obſtructing an exciſe officer on the 8 *An. c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but it was held to be well, and that its being in the night ſhould have been ſhewn on the defendant's part. And by the court, This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. And the conviction was confirmed. *Str.* 1101.

Shall keep or uſe] *H.* 8 *G. K.* and *Filer*. Conviction for *keeping* a lurcher to deſtroy game, not being qualified. Exception was taken, that it was not ſhewn he *uſed* the dog to deſtroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, The ſtatute is in the disjunctive, *keep* or *uſe*; ſo that the bare *keeping* a lurcher is an offence; and ſo it was determined in the caſe *K.* and *King*, *E.* 3 *G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be ſhewn, but the only queſtion they made was, whether a gun was ſuch an engine as is within that ſtatute: and in that caſe a difference was taken, as to the keeping a *dog*, which could only be to deſtroy the game; and the keeping a *gun*, which a man might do for the defence of his houſe. And the conviction was confirmed. *Str.* 496.

Uſe] In the caſe of *K.* and *King* aforeſaid, *Parker* Ch. J. ſaid, that walking about with intent to kill game, is evidence of *uſing* the inſtrument for that purpoſe. *Seſſ. C. P.* 1. 88.

Any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engines] *H.* 3 *G.* 2. *Hooker* and *Wilks.* An action of debt was brought on the 8 *G. c.* 19. for the penalty of 30 *l.* for uſing a *hound* to deſtroy game. And after a verdict for the plaintiff, the judgment was arreſted; for the ſtatute of the 5 *An. c.* 14. has not the word *hound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The ſtatute of the 22 & 23 *C.* 2. *c.* 25. has indeed general words, *or any other dogs to deſtroy game*; but this is not a conviction on that ſtatute. *Str.* 1126.

Nor indeed could it have been a conviction on that ſtatute, for any penalty in certain for killing and deſtroying the game; for the ſtatute of the 22 & 23 *C.* 2. doth not inflict a general penalty, upon perſons unqualified who ſhall kill and deſtroy the game; but only declares, who ſhall or ſhall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to ſeize the dogs, nets, and other engines of ſuch unqualified perſons. But if the defendant did kill the game, and had the ſame in his cuſtody; he might have been proſecuted for the penalty of 20 *s.* for ſuch offence, by the ſtatute of the 4 & 5 *W.* hereafter following.—But then the conſequence of all this will be, that it is not penal barely to *keep* a *hound* on this ſtatute of the 5 *An.* but if any unqualified perſon ſhall do ſo, the gamekeepers or others, authorized by a juſtice's warrant, may ſeize and keep or deſtroy the ſame, by the aforeſaid ſtatute of the 22 & 23 *C.* 2.

Any other engines] *T.* 11 *G.* 2. *K.* and *Gardiner.* It was moved to quaſh a conviction, for unlawfully having and keeping a *gun*, being an engine or inſtrument for deſtroying the game. And it was urged, that this is no ſufficient charge within this act, or any other of the laws relating to the game: for it is not ſaid, that the defendant *uſed* the gun for the deſtruction of game; and a gun is not an inſtrument ſo far appropriated to killing game, as that it is criminal for a perſon to have one in his cuſtody only: And it would have been altogether as well, if it had been ſaid, that the defendant had in his cuſtody a *cane* for the deſtruction of the game, which may poſſibly be uſed for that purpoſe. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be uſed in, the deſtroying of game. A gun is an engine, not for killing the game, but for the defence of a man's houſe. And the whole court were clearly

clearly of opinion, that this conviction is not good. For (as they argued) if the ſtatute is to be conſtrued ſo largely, as to extend to the bare having of any inſtrument, that may poſſibly be uſed in deſtroying game, it will be attended with very great inconvenience; there being ſcarce any, though ever ſo uſeful, but what may be applied to that purpoſe. And though a gun may be uſed in deſtroying game, and when it is ſo, doth then fall within the words of the act; yet as it is an inſtrument proper, and frequently neceſſary to be kept and uſed for other purpoſes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the deſtruction of game, that is prohibited by the act: but otherwiſe it is of lurchers, harepipes, and ſuch like, which are peculiarly fitted or diſpoſed for killing game. The bare *keeping* of theſe for the purpoſe of killing game, is ſufficient to convict an offender, and it will be incumbent upon the defendant himſelf to prove, that he kept them for other purpoſes. And the conviction therefore was quaſhed. After which, *Strange* ſolicitor general ſaid, that in the caſe of *K.* and *King*, *E.* 3 *G.* Lord *Macclesfield* ſaid, that he was in the houſe of commons when this act was made, and he himſelf objected to the inſerting of the word *gun* therein, becauſe it might be attended with great inconvenience. *Andr.* 255. *Seſſ. C. V.* 2. 204. *Str.* 1098.

And indeed it was not at all neceſſary to inſert a gun in this act; ſince the carrying of a gun is prohibited under double the penalty, by the ſtatute of *H.* 8. hereafter following.

And ſhall be thereof convicted] *H.* 6 *G. K.* and *Johnſon.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reaſonable *ſummons*; for it was made on the fifth of *October*, to appear the ſame day, which might be impoſſible upon account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then it is to appear *at the pariſh aforeſaid*, whereas there are two pariſhes mentioned before; ſo the man may have gone to one, whilſt they were convicting him at the other. It was anſwered, that the defendant appeared at the time and made defence, ſo that cures all defects in the ſummons. And by the court, The anſwer is right. *Str.* 261.

On the oath of one credible witneſs] *H.* 9 *G. K.* and *Gage.* The defendant was convicted for uſing a greyhound in killing hares. Exception was taken to the conviction, that the

the ſtatute hath only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which it was inſiſted the juſtices had no power to take. But by the court, The conviction muſt be confirmed. The intent of mentioning the oath of one witneſs, was only to direct the juſtices, that they ſhould not convict on leſs evidence: ſuppoſe the confeſſion had not been before the juſtices, but before two witneſſes who had ſworn it; that would be convicting him on the oaths of witneſſes, and yet the evidence would not be ſo ſtrong as this. Here the juſtices had a better evidence, than the oath of any ſingle witneſs; and it is a monſtrous thing to ſay, that a better ſort of evidence ſhall not do. *Str.* 546.

Credible witneſs] *M.* 2 *G.* 2. *K.* and *Stone.* A conviction was quaſhed, becauſe the informer was the witneſs; divers convictions having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. The ſame adjudged in the caſe of *K.* and *Blaney*, *T.* 11 *G.* 2. *Andr.* 240.

Before one juſtice] *H.* 12 *G. K.* and *Buck.* It was moved, to quaſh an *indictment* for killing a hare, this not being a matter indictable, the ſtatute appointing a ſummary proceeding before juſtices of the peace; and a caſe was cited *K.* and *James*, *T.* 1 *G.* where an indictment for keeping an alehouſe was quaſhed, becauſe the ſtatute of the 3 *C. c.* 3. had directed a particular remedy. And by the court, The indictment muſt be quaſhed. *Str.* 679.

Shall forfeit 5 l.] *T.* 10 *Ann. Q.* and *Matthews.* On a conviction, exception was taken, that the perſon was charged with ſo many 5 *l.* as he had killed hares in the ſame day. And the court was of opinion, that the offence for which the ſtatute gave the forfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never ſo many hares on the ſame day, he would forfeit but one 5 *l.* for it is but one offence; but if a man keeps dogs, and goes a hunting ſeveral days, and kills hares, if it was thus laid, that he ſuch a day kept dogs and killed, and then again ſuch a day, by laying thus ſeverally, the offence is ſevered, and he ſhall forfeit 5 *l.* for each offence. 10 *Mod.* 26.

To the poor of the pariſh where the offence was committed] In ſome places a man may ſtand in one pariſh (or county), and ſhoot into two or three: in ſuch caſe, the place where the offence was committed is, where the party ſtood when he

he ſhot, and not where the object was which he ſhot at. *Show.* 339. *M.* 3 *W. & M.* and *Aſſop.*

By diſtreſs] *T.* 9 *G. K.* and *Burchet.* The court ordered an attachment (unleſs cauſe ſhewn) againſt the town clerk of *Guildford*, and a defendant convicted on the game act, for granting and ſuing out a replevin of goods diſtrained for the penalty. But on ſhewing cauſe the next term, when *Eyre* J. only was preſent, he diſcharged the rule, becauſe it was only a contempt to the inferior juriſdiction of the juſtices, and in that caſe the king's bench never interpoſes. *Str.* 567.

For want of diſtreſs, to be ſent to the houſe of correction] *T.* 12 *G. Hill* and *Bateman.* Before *Raymond* Ch. J. at *Weſtminſter.* The defendant *Bateman*, being a juſtice of the peace, had convicted the plaintiff for deſtroying game, and though (as it was proved) the plaintiff had effects of his own, which might have been diſtrained, which were ſufficient to anſwer the penalty he had incurred, yet the defendant ſent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of treſpaſs and falſe impriſonment being brought againſt *Bateman* for this commitment, the chief juſtice was of opinion, that the action well lay. And it was agreed, that where actions of this kind are brought againſt juſtices of the peace, they are obliged to ſhew the regularity of their convictions; and the informations, &c. laid before them, upon which their convictions are grounded, muſt be produced and proved in court. *Str.* 710.

And [*no*] certiorari *ſhall be allowed to remove the conviction or other proceedings on this act, unleſs the party convicted ſhall before the allowance thereof became bound* (G) *to the proſecutor in* 50*l. with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts and charges in* 14 *days after the conviction* [*confirmed*], *or* procedendo *granted. And in default thereof, the juſtice ſhall proceed in execution of the conviction in ſuch manner as if no* certiorari *had been awarded.* 5 Ann. c. 14. ſ. 2.

Note; The word [*no*] is inſerted inſtead of the words [*if any*] which are in the act, ſince that word ſeemeth neceſſary to make up the ſenſe; and the word [*confirmed*] is added for the like reaſon. And indeed there have been too many inadvertencies in the drawing up of this act; for there is falſe grammar in no fewer than ſix places, beſides other miſtakes.

9. *And the conſtable, authorized by a juſtice's warrant, ſhall enter into and ſearch (in ſuch manner and with ſuch power as* Search for game; with 20*s.* penalty for having it.

as in caſe where goods are ſtolen, or ſuſpected to be ſtolen) the houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons not qualified: And if any hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, ſhall (upon ſuch ſearch, or otherwiſe) be found, the offender ſhall be carried before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time, to be ſet by the juſtice, produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and upon ſuch conviction ſhall forfeit for every hare, partridge, pheaſant, fiſh, fowl, or other game, any ſum not under 5s. *and not exceeding* 20s. *half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour.* 4 & 5 W. c. 23. ſ. 3.

Or other game] Rabbets killed in a private warren, are not game within this act. L. *Raym.* 151.

For every hare, fiſh, fowl, or other game] Theſe words are very penal.

And if any perſon ſo produced, or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. id. ſ. 3.

And no certiorari *ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in* 50l. *with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or* procedendo *granted, full coſts and charges; and in default thereof, the juſtice to proceed to the execution of the conviction.* id. ſ. 7.

Carriers having game.

10. *If any higler, chapman, carrier, innkeeper, victualler, or alehouſekeeper, ſhall have in his cuſtody or poſſeſſion, or ſhall buy, ſell, or offer to ſell any hare, pheaſant, partridge, moor, heath game, or grouſe, unleſs ſuch game in the hands of ſuch carrier be ſent up by ſome perſon qualified; (or, if any perſon whatſoever, whether qualified or not, ſhall ſell, expoſe, or offer to ſale any hare, pheaſant, partridge, moore, heath-game, or grouſe,* 28 G. 2. c. 12.) *he ſhall be carried before a juſtice where the offence is committed* (H); *and being convicted thereof (in three months after the offence) on view, or oath of one witneſs, he ſhall forfeit for every hare, pheaſant, partridge, moor, heath-game, or grouſe, the ſum of* 5l. *half to the informer, and half to the poor, by diſtreſs* (I): *for want of diſtreſs, to be committed* (K) *to the houſe of correction for the firſt offence*

offence three months, and for every other offence four months. 5 An. c. 14. ſ. 2.

And no certiorari *ſhall be allowed to remove the conviction or other proceedings, unleſs the party convicted ſhall before the allowance thereof, become bound to the proſecutor in* 50l. *with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts in* 14 *days after the conviction confirmed, or* procedendo *granted And in default thereof, the juſtice ſhall proceed in execution of the conviction, in ſuch manner as if no* certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

And if any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſhall be found in the ſhop, houſe, or poſſeſſion of any poulterer, ſaleſman, fiſhmonger, cook, or paſtry cook, or of any perſon not qualified in his own right to kill game, or intitled thereunto under ſome perſon ſo qualified, it ſhall be deemed an expoſing thereof to ſale. 9 An. c. 25. ſ. 2. 28 G. 2. c. 12.

Found in the ſhop] This muſt be underſtood of proof that it was found. *Q.* and *George*, 6 *Mod.* 57.

And any juſtice of the peace, and lord within his manor, may take away any ſuch hare, pheaſant, partridge, moor, heath-game, or grouſe, or any other game, from any ſuch higler, chapman, innkeeper, victualler, or carrier, or any other perſon not qualified, which ſhall be found in his cuſtody or poſſeſſion. 5 An. c. 14. ſ. 4.

And any perſon that ſhall deſtroy, ſell, or buy any hare, pheaſant, moor, heath-game, or grouſe, and ſhall in three months make diſcovery of any higler, chapman, carrier, innkeeper, alehouſekeeper, or victualler, that hath bought or ſold, or offered to buy or ſell, or had in their poſſeſſion any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſo as any one ſhall be convicted; ſuch diſcoverer ſhall be diſcharged of the pains and penalties hereby enacted for killing or ſelling ſuch game, and ſhall receive the ſame benefit as any other informer. 5 An. c. 14. ſ. 3.

Inferior tradeſmen killing game.

11. And whereas great miſchiefs do enſue by inferior tradeſmen, apprentices and other diſſolute perſons, neglecting their trades and employments, who follow hunting, fiſhing and other game, to the ruin of themſelves, and damage of their neighbours, therefore if any ſuch perſon ſhall preſume to hunt, hawk, fiſh, or fowl (unleſs in company with the maſter of ſuch apprentice duly qualified); he ſhall not only be ſubject to the other penalties, but if he be proſecuted for trepaſs, in coming on any perſon's land, and be found guilty, the plaintiff ſhall not only recover damages againſt him, but full coſts. 4 & 5 *W.* c. 23. ſ. 10.

For no man can come upon another man's ground to kill game, without being liable to an action of treſpaſs. 2 *Bac. Abr.* 613.

But if he is qualified to kill game, and the damage found ſhall be under 40*s.* he ſhall in ſuch caſe pay no more coſts than damages. *id.*

But an unqualified perſon ſo treſpaſſing, ſhall pay full coſts by this ſtatute.

Soldiers.

12. By the yearly mutiny acts, if any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, deſtroy any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof, on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5*l.* to the poor, and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20*s.* in like manner. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion.

The ſtatute of 33 H. 8. concerning guns.

13. Here next followeth the ſtatute of the 33 *H.* 8. *c.* 6. concerning guns: by which it is enacted as follows;

(1) No perſon, except he in his own right, or in the right of his wife, or ſome other to his uſe, have lands, tenements, fees, annuities, or offices, to the yearly value of 100*l.* ſhall ſhoot in any croſs bow, hand gun, hagbut, or demihake, otherwiſe than as hereafter is expreſſed; on pain of 10*l.* to be levied and diſpoſed of in any of the three ways hereafter mentioned.

(2) And no perſon, of what eſtate or degree ſoever, ſhall ſhoot in, carry, keep, uſe, or have in his houſe or elſewhere, any hand-gun, not being in the ſtock and gun of the length of one yard; or any hagbut or demihake, not being in the ſtock and gun of the length of three quarters of a yard; on the like pain of 10*l.*

(3) And every perſon having 100*l.* a year as above, may ſeize every ſuch croſs bow; and every ſuch hand-gun, hagbut, and demihake being ſo deficient in length; and he may keep the croſs bow to his own uſe; but he ſhall in 20 days after ſeizure break and deſtroy the hand-guns, hagbuts, and demihakes, on pain of 40s. in like manner, for every gun ſo ſeized, and not broken and deſtroyed; and the ſame ſo broken and deſtroyed he may keep to his own uſe.

(4) And no perſon not being qualified as above, ſhall carry or have in his journey, going or riding in the king's highways or elſewhere, any croſs bow bent, or gun charged or furniſhed with powder, fire, or touch for the ſame, except

cept in time and ſervice of war; on pain of 10*l.* in like manner.

(5) And no perſon ſhall ſhoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the ſame, except it be at a butt or bank of earth in place convenient, or for defence of his perſon or houſe; on pain of 10*l.* in like manner.

(6) And no perſon ſhall command his ſervant to ſhoot in any croſs bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10*l.* in like manner.

(7) But all gentlemen, yeoman, and ſervingmen of lords, knights, eſquires, and gentelmen; and all inhabitants of cities, boroughs, and market towns, may ſhoot with any hand-gun, demihake, or hagbut of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every ſuch lord, knight, eſquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houſes any ſuch handgun, hagbut, or demihake, of the length aforeſaid, to the intent only to uſe or ſhoot in the ſame at a butt or bank of earth.

And every perſon inhabiting in a houſe two furlongs from any city, borough, or town, may keep and have in his houſe, for the only defence of the ſame, hand-guns, hagbuts, and demihakes, of the length abovementioned; and may uſe and exerciſe to ſhoot in the ſame at any butt or bank of earth near to his houſe, and not otherwiſe.

And except makers and ſellers of the ſame, having them for that purpoſe only, and being of the length above.

Alſo this act ſhall not extend to perſons inhabiting within five miles of the ſea; ſo that they ſhoot not at any deer, heron, ſhovelard, pheaſant, partridge, wild ſwine, or wild elk.

Alſo this act ſhall not extend to ſervants carrying the ſame by their maſters command, ſo that they ſhoot not at any game.

Nor to any owner of a ſhip for having or keeping them, of what length ſoever, to be uſed in the ſhip only.

(Nor to perſons licenſed by the ſeſſions to ſhoot hawks meat, ſo as they ſhoot no game, and ſo that they ſhoot not within 600 paces of a hernery, nor within 100 paces of a pigeon houſe, nor in another man's park, foreſt, or chaſe. 1 *J. c.* 27. *ſ.* 7.

And except the ſheriff, who may carry a gun in the execution of his office. 5 *Co.* 72.)

(8) And if any perſon ſee or find any one offending or doing contrary to this act, he may arreſt, and bring or convey him to the next juſtice of the county where he is found offending; who ſhall upon *due examination and proof* thereof made before him, by his diſcretion have full power to commit (L) the offender to the next gaol, there to remain till ſuch time as the ſaid penalty or forfeiture ſhall be truly contented and paid by the ſaid offender; half to the king, and half to the firſt bringer or conveyor of the ſaid offender to the juſtice.

Which *due examination and proof* aforeſaid, is intended not to be by a jury, but by witneſſes. 1 *Ventr.* 33.

Mr. *Dalton* ſays, foraſmuch as in this caſe the juſtice hath the whole matter committed to himſelf, and the offenders remain convict upon his examination and proof of witneſs made before him; therefore he ought to be circumſpect in his examination, as alſo in his mittimus; and farther to make a record (M) of the matter, in writing under his hand, and alſo to ſend the eſtreat of it into the exchequer, whereby the king's duty may be levied. *Dalt.* c. 47.

In the conviction, it is not ſufficient to ſay generally that he had not 100*l.* a year, but the time muſt be certainly alledged, namely, that the defendant on the day and year aforeſaid (when the offence was committed) had not 100*l.* a year. 3 *Mod.* 280.

And upon ſuch conviction, it hath been adjudged, that a writ of error doth not lie. 1 *Ven.* 33.

(9) Alſo the juſtices in ſeſſions may inquire of, hear and determine the ſaid offences, ſo that no leſs fine than 10*l.* be aſſeſſed upon *preſentment* and conviction, to be levied in ſuch caſe to the king's uſe only.

And this may alſo be upon *indictment*. Dalt. c. 47.

And if the jury ſhall wilfully conceal any the ſaid offences, the court may charge another jury to enquire of ſuch concealment; and if it be ſo found, the firſt jury ſhall forfeit to the king every one 20*s.*

(10) Alſo the leet may inquire of, hear and determine the ſame; in which caſe, half the forfeiture ſhall upon preſentment and conviction be levied to the king's uſe; and one moiety of the other half to the owner of the leet, by diſtreſs or action of debt; and the other moiety to him that will ſue in any of the king's courts.

And if the jury ſhall wilfully conceal an offence, the ſteward may charge another jury to enquire of the concealment;

ment; and if it be found, the firſt jury ſhall forfeit 20*s.* each; half to the owner of the leet, by diſtreſs or action of debt; and half to him that ſhall ſue in any of the king's courts.

(11) But no perſon ſhall be proſecuted but within a year, if it is by the king; and within half a year, if by any other perſon.

V. Laws for preſerving the four footed game in particular.

Which ſaid laws, as hath been ſaid, do ſeem to concern all perſons whatſoever, whether qualified or not.

Now the four footed game, or the game of beaſts, are of three kinds, *viz.*

I. Deer.
II. Hares.
III. Conies.

I. Of deer.

There have been many laws from time to time enacted againſt deer ſtealers; which being not ſo much altered, as inforced by the ſubſequent ſtatutes, except only in increaſing the penalties, it may be proper to inſert them all in their order; and the rather, becauſe an offender, as it ſeemeth, may ſtill be convicted upon any one of them; and it is generally provided, that ſuch conviction upon one ſtatute, ſhall be as a bar to all the reſt.

Three years imprisonment and fine.

1. The firſt ſtatute is in the 3 *Ed.* 1. *c.* 20. which enacts, that if *treſpaſſers in parks* be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof,) and then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: and if they have not whereof to make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit.

Treſpaſſers] This is, when a man either chaſeth in a park, or endeavours to kill ſome of the game thereof. 2 *Inſt.* 199.

In parks] This act, becauſe it is very penal, is to be underſtood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are

required, 1. A liberty, either by grant or preſcription. 2. Incloſure, by pale, wall or hedge. And 3. Beaſts ſavages of the park. 2 *Inſt.* 199.

They may be lawfully reſiſted.

2. The next ſtatute is that intitled *De malefactoribus in parcis*, 21 Ed. 1. ſt. 2. which enacts, that if any foreſter, or parker, ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do continue their malice, and diſobeying the king's peace do flee, or defend themſelves with force and arms; altho' ſuch foreſter, parker, or their aſſiſtants, do kill ſuch offenders, they ſhall not be troubled upon the ſame.

By night, or diſguiſed, and concealing the ſame felony.

3. The next ſtatute makes hunting by night, or in diſguiſe, and concealing the ſame, felony; but within the benefit of clergy; as follows:

When *information* ſhall be made, of any unlawful hunting, in any *foreſt or park*, by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon to be ſuſpected thereof, he may make a warrant to take and arreſt the perſon, and to have him before the maker of the warrant, or any other of the ſaid counſel, or juſtices of the peace: who may by their diſcretion examine him of the ſaid hunting, and of the ſaid doers in that behalf: And if the ſame perſon *wilfully conceal* the ſaid huntings, or any perſon with him defective therein, that then the ſame concealment be, againſt every ſuch perſon ſo concealing, felony. But if he then confeſs the truth, and all that he ſhall be examined of, and knoweth in that behalf, then the ſaid offences of hunting by him done, ſhall be but treſpaſs fineable at the next general ſeſſions. And if any reſcous or diſobeyſance be made to any perſon having authority to execute the warrant, by any perſon the which ſo ſhould be arreſted, ſo that the execution of the warrant thereby be not had, then the ſaid reſcous and diſobeyſance ſhall be felony. And if any perſon ſhall be convict of any ſuch huntings, with painted faces, vizors, or otherwiſe diſguiſed, to the intent they ſhould not be known, or of unlawful hunting in time of night, then the ſame perſon ſo convict, to have like punition as he ſhould have if he were convict of felony. 1 *H.* 7. *c.* 7.

When information ſhall be made] This information muſt ſhew at leaſt juſt cauſe of ſuſpicion; and it muſt be taken in writing, becauſe it is the ground of the warrant. 3 *Inſt.* *c.* 21.

In

In any foreſt or park] This doth not extend to a chaſe, nor to any foreſt or park in uſe or reputation, which are not ſo in law. 3 *Inſt. c.* 21.

Wilfully conceal] Lord *Coke*, who is a lover of the common law, and is jealous of every violation of it, ſeemeth to be out of humour with this act, and calls it an ill-penned law. He obſerves it is the firſt that was made for the making of any hunting felony, againſt that excellent and equal branch of *charta de foreſta*, *nullus de cætero vitam vel membra amittat pro venatione noſtra*; and that this, and other old ſtatutes concerning the foreſt, are called the good old laws and cuſtoms, and commanded to be obſerved; and therefore this new act is too ſevere for wild beaſts, whereof there can be no felony at the common law. And therefore the judges (he ſays) have made a favourable conſtruction of it, as is ſet forth in the following notable report:

M. 19 & 20 *El.* In the king's bench. *Gerrard* the *queen*'s attorney general (who was a grave and reverend man) ſaid openly, that it had been reſolved by the judges upon this ſtatute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon the conſtruction of the whole act no felony. For the firſt clauſe concerning the concealment, and the laſt clauſe concerning the fact it ſelf, muſt be coupled or joined by conſtruction together; that is to ſay, If any perſon be convict of ſuch hunting with painted face, or of unlawful hunting in the night, this conviction muſt be upon not guilty pleaded; which the judges expounded to be the concealment intended in the firſt branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counſel or a juſtice of the peace, which may lie in averment, ſo as before it be felony he muſt be convicted of ſuch hunting upon not guilty pleaded firſt, and after ſuch conviction, then he muſt be indicted again upon the whole matter, that he felonioufly did conceal it, againſt the form of the ſtatute: and if the offender upon the firſt indictment confeſſeth the indictment, then it is ſuch a judicial confeſſion as this act intendeth, and no felony within this ſtatute.

This he ſays, he heard the attorney report, and did then obſerve it; which concurring with his own opinion, he thought good to publiſh, and the rather becauſe in *Lambard*'s juſtice, amongſt his precedents of indictments, there is an erroneous precedent (he ſays) of an indictment of felony

lony for the concealment upon the examination before a juſtice of the peace. And upon the whole he thinks it the cleareſt way to make it treſpaſs, and not felony; which the party may do at his pleaſure. 3 *Inſt. c.* 21.

But lord *Hale* ſays, that this ſeems a difficult expoſition; for upon his arraignment for the hunting, he only anſwers to that indictment, and is not examined touching others; and beſides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convict of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how ſhall there be evidence to convict him of the concealment? 1 *H. H.* 659.

Penalty of keeping nets for deer.

4. The next ſtatute is in the 19th year of the ſame king, by which it is enacted, That no perſon, not having any park, chaſe or foreſt of his own, ſhall keep or cauſe to be kept any net, called deer-hays or buck-ſtalls, on pain of 10*l.* a month; to him who ſhall ſue by action of debt: or, the juſtices in ſeſſions may call before them any perſons ſuſpected, and examine them; and if they be found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of ſuch forfeiture for their labour. 19 *H.* 7. *c.* 11.

Penalty of ſtalking to deer.

5. And by the ſame ſtatute, no perſon ſhall ſtalk, nor cauſe any other to ſtalk, with any buſh, or beaſts, to any deer, except in his own ground, chaſe, foreſt, or park, without licence of the owner, maſter, or keeper; on pain of 10*l.* in like manner.

10 l. or treble damages.

6. The next act is in 5 *El. c.* 21. which is re-enacted with ſome additions by the 3 *J. c.* 13. which is altered and explained by the 7 *J. c.* 13. the ſubſtance of all which put together is as follows;

If any perſon ſhall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other ſeveral grounds incloſed with wall, pale, or hedge, and uſed and kept for the keeping, breeding, and cheriſhing of deer, and wrongfully or unlawfully ſhall hunt, drive, or chaſe out, or take, kill, or ſlay any deer therein; and be thereof convicted at the aſſizes or ſeſſions, upon indictment, bill of complaint, information, or otherwiſe, at the ſuit of the king or of the party, he ſhall for every offence pay 10*l.* to the party grieved, or treble damages and coſts, at the election of the party, to be aſſeſſed by the court; and ſhall find ſufficient ſureties for his good abearing for ſeven years, or continue in priſon till he finds ſuch ſureties.

But

But on ſatisfaction of treble damages, the party may releaſe the ſureties within the ſeven years. Or if the perſon ſhall acknowledge his offence in open ſeſſions, and that he is ſorry therefore, and ſatisfy the party grieved, the court may diſcharge the recognizance.

But this ſhall not extend to any park or incloſed ground, hereafter to be made and uſed for deer, without the king's licence.

Guns, bows, and nets to kill deer, may be ſeized.

7. And by the ſaid ſtatute of the 3 *J. c.* 13. it is alſo enacted, that if any perſon not having lands or hereditaments of 40 *l.* a year, or not worth in goods 200 *l.* ſhall uſe any gun or bow to kill deer; or ſhall keep any buckſtall or engine, unleſs he have grounds incloſed for keeping of deer; any perſon having 100 *l.* a year may ſeize the ſame to his own uſe.

Selling deer.

8. Another ſtatute is 1 *J. c.* 27. which enacts, that every perſon who ſhall ſell, or buy to ſell again, any deer, ſhall, on conviction at the aſſizes, or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every deer 40*s.* half to him that will ſue, and half to the poor.

20 l.

9. The next act is in 13 *C.* 2. *c.* 10. by which it is enacted, that if any perſon ſhall unlawfully courſe, kill, hurt, or take away any red or fallow deer, in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground where deer are or have been uſually kept, without conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; or ſhall be aiding or aſſiſting therein, and ſhall be convicted thereof by confeſſion, or oath of one witneſs, before one juſtice, in ſix months after the offence committed; he ſhall forfeit for every offence 20 *l.* half to the informer, and half to the owner of the deer, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction for ſix months to hard labour, or to the common gaol for one year; and not to be diſcharged thence, till he hath given ſureties for his good behaviour for a year next after his enlargement.

Note; This act doth not appear to be limited to grounds incloſed only; altho' the ſtatute of the 10 *G.* 2. *c.* 32. hereafter following ſeems to ſuppoſe it ſo.

30 l.

10. The next act is the 3 *W. c.* 10. on which moſt of the convictions have been ſince that time; which (together with the alterations and additions made in and to the ſame by the 5 *G. c.* 15. 9 *G. c.* 22. and 10 *G.* 2. *c.* 32.) is as followeth:

If any perſon ſhall unlawfully courſe, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground in-

incloſed where deer are, have, or ſhall be uſually kept, without the conſent of the owner or perſon chiefly intruſted with the cuſtody thereof; or ſhall be aiding or aſſiſting therein; and ſhall be convicted (N) *thereof, in* 12 *months after the offence, by confeſſion, or oath of one credible witneſs, before one juſtice where the offence ſhall be committed, or the party apprehended: every ſuch perſon ſo offending by unlawful courſing or hunting only, when no deer is taken, wounded, or killed, ſhall forfeit for every ſuch offence* 20 l. *and in caſe any deer ſhall by ſuch perſon or perſons be wounded, taken in toyls, or killed, ſuch perſon or perſons ſhall reſpectively forfeit for every ſuch deer* 30 l. *to be levied by diſtreſs* (O) *upon the goods and chattels of the offender by warrant of ſuch juſtice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of ſufficient diſtreſs, ſuch perſon ſhall be impriſoned* (P) *for a year, and ſet in the pillory an hour on ſome market day in the next adjoining town to the place where the offence was committed, by the chief officer of ſuch market town, or his under officer.* ſ. 2.

Unlawfully] Where a man kills deer in purſuance of a ſuppoſed right which he has, he is not within the intent of this, nor of the other acts againſt deer ſtealing. L. *Raym.* 584.

In any foreſt, chaſe, purlieu, paddock, wood, park or other ground incloſed, where deer are, have, or ſhall be uſually kept] *M.* 13 *G.* 2. *K.* againſt *Calcutt* and *Monk.* There was a conviction for deer ſtealing in a *purlieu* of the foreſt. Whereunto exception was taken, that it was not averred, that *deer were uſually kept* in the purlieu, whereas by the ſtatute that ſeems to be required. To this it was anſwered, That ſuch averment could not extend to a purlieu, for a purlieu is a place where by law deer cannot be kept, it being diſafforeſted as well with regard to all others as the owner; and the oath of the ranger is, to drive deer our of the purlieu into the foreſt: Secondly, that the averment as to foreſts, chaſes, and purlieus, is not made neceſſary by the act, for the words *where deer are uſually kept* extend only to ground incloſed; elſe the words *other ground* will make it neceſſary to aver, that the foreſt was incloſed, which is not the caſe in any part of *England.* And by the court, The anſwer is right in both reſpects. Another objection was, that it did not appear, but that the defendant was owner of the purlieu; in which caſe he had a right to chaſe the deer off his ground. But by the court, That would be matter of defence, and ſhould be ſhewn on his part, according to the reſolution (beforementioned) in the caſe of

K.

K. and *Bryan.* So the convictions were confirmed. *Str.* 1119.

Or other ground incloſed, where deer are, have, or ſhall be uſually kept] *T.* 1 *An.* 2. and *Moore.* A conviction for killing deer was quaſhed, becauſe it ſaid only that he killed deer *in a certain place where deer had been uſually kept*, and did not ſay *incloſed.* L. Raym. 791.

Aiding or aſſiſting therein] On a conviction, the queſtion was, whether he who lent dogs to another to hunt, was aiding and aſſiſting therein, to wit, in the hunting: And by the opinion of three judges he was; but *Holt* Ch. J. was of a contrary opinion, for this being a penal law, ſhall be conſtrued ſtrictly; and if ſo, then he who lent the dogs could not be aſſiſting in the act of hunting, and ſo not within the words of the ſtatute, *aiding and aſſiſting therein*, tho' he might be aſſiſting thereunto. 2 *Salk.* 542, 543.

And ſhall be convicted thereof] There ought to be a ſummons in this, and in all other like caſes, to warrant a conviction; and that ought to give a reaſonable time to appear in: but if the defendant hath appeared, it cures the want of a ſummons. 1 *Salk.* 181, 383.

H. 3 *G. K.* and *Simpſon.* The defendant was convicted for deer ſtealing; and the conviction ſet forth, that he had been ſummoned to appear before the juſtices; but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this caſe, the juſtices ſhould not have proceeded in the abſence of the party, eſpecially where it may end in a corporal puniſhment, as it may do here, for want of a diſtreſs. And at another day, on conſideration, *Parker* Ch. J. delivered the reſolution of the court: We are all of opinion, the offender may be convicted, without appearing. The ſtatute is ſilent as to the method of proceeding, and the law of *England*, it is true, in point of natural juſtice, always requires the party charged with any offence to he heard before he be condemned in judgment; but that rule muſt have this exception, unleſs it is through his own default: were it otherwiſe, every criminal might avoid conviction. The law being ſo, the magiſtrate is bound to give ſome opportunity to the party to appear; and if upon ſuch notice, he neither comes, nor ſends a ſufficient excuſe, the magiſtrate may proceed to judgment. If this was not to be allowed, the conſequence would be, that the offender would eſcape unpuniſhed, becauſe he would never appear purpoſely to be convicted; and that would be to make the execution of the law depend on the will of the offender.

There

There was another order of conviction, whereby it appeared, that the defendant made an attorney to defend for him: and by the court; We think that it is certainly good; for the offender may intruſt his defence with another, and the juſtices cannot enforce him to appear in perſon. And the orders were confirmed. *Str.* 44.

In 12 months after the offence] A conviction being returned on a certiorari, the objection was, that the conviction appeared to be a year after the day of the information; but it was held ſufficient that the information be proſecuted within a year after the fact; for that is a good commencement of the ſuit, and it is from that the computation is made in all ſuch caſes. 1 *Salk.* 383.

But by the black act hereafter mentioned, this proſecution may be commenced at any time within three years after the offence. 9 *G. c.* 22. *ſ.* 13.

Oath of one credible witneſs] This muſt not be upon the ſingle oath of the *informer*; and a conviction was quaſhed for that reaſon; divers convictions, as it is ſaid, having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. *Str.* 316.

In the caſe of *K.* againſt *Wilford* and *Savage*, *M.* 5 *G.* The defendants were ſeverally convicted of deer ſtealing on this ſtatute. Exception was taken, that the perſons on whoſe teſtimonies the defendants were convicted, appeared to be of the ſame pariſh where the facts were committed, and ſo might be intitled to part of the penalty. But it was over-ruled by the court; becauſe the juſtice hath averred them to be *credible* witneſſes, and it doth not appear that they were of the poor of the pariſh. *Viner.* Deer ſtealing. A. 24.

Every ſuch perſon ſo offending] A conviction of two perſons was removed, wherein judgment was given, that each ſhould forfeit 30*l.* It was objected, that there ought to be but one 30*l.* forfeited. But not allowed: For the words of the act are, that they ſhall *reſpectively forfeit* 30*l.* and this penalty is not in nature of a ſatisfaction to the party grieved, but a puniſhment on the offender; and crimes are ſeveral, tho' debts be joint. 1 *Salk.* 182. *H.* 10 *An.* 2. againſt *King*.

To be levied by diſtreſs] *Sale* of the goods is not mentioned here in the ſtatute; yet nevertheleſs where the law gives a diſtreſs for a publick benefit, the officer may ſell. 1 *Salk.* 379.

By

By warrant of ſuch juſtice] Altho' the *conſtable* is not appointed to execute this warrant, nor is ſo much as named in the clauſe; yet he is bound to obey the warrant, and is indictable if he does not: but he need not return the warrant it ſelf, for that is not required, and it may be neceſſary to keep it for his own juſtification; but he muſt either return that, or certify what he has done upon it. 1 *Salk.* 381.

One third to the informer, &c.] The penalty need not be diſtributed by the conviction; *viz.* 10*l.* to the informer, 10*l.* to the poor, and 10*l.* to the party grieved; for the judgment in ſuch caſes ſeldom mentions a diſtribution: it is enough to ſay, that he is convicted, and hath forfeited 30*l.* according to the ſtatute. 1 *Salk.* 383.

For want of ſufficient diſtreſs.] If the juſtice finds there is nothing to diſtrain, then he muſt make a record thereof, and make an adjudication for corporal puniſhment; but the offender is not to pay part, and ſuffer corporally for the reſidue. L. *Raym.* 546, 1195, 6.

H. 6 *G. K.* and *Whitlock.* The defendant was committed for want of diſtreſs; and the warrant ſet forth, that it had been certified to the juſtice by the conſtable, that there was not ſufficient diſtreſs. It was objected that there ought to have been a warrant to levy, and a return to that, that there was no diſtreſs; it may be, the conſtable only told him ſo. But by the court, The warrant is well enough; for the word *certified* imports it to be in a legal manner. *Str.* 263.

And then the act goes on thus:

Any owner of deer in any incloſed ground, or any perſon acting under him, may reſiſt ſuch offenders in the ſame manner as if the fact had been committed in an ancient chaſe or park. 3 *W.* *c.* 10. *ſ.* 5.

And as to the caſe of veniſon's being found in a man's poſſeſſion, it is further enacted, that the conſtable, by a juſtice's warrant, ſhall enter into and ſearch (Q.) in ſuch manner and with ſuch power as in caſe where goods are ſtolen or ſuſpected to be ſtolen, the houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons; and if any veniſon or ſkin of any deer, or toyls, ſhall there be found, he ſhall apprehend the offender, and carry him before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time to be ſet by the ſaid juſtice, produce the party of whom he bought the ſame, or ſome other credible witneſs to depoſe upon

upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and thereupon ſhall be ſubject to the forfeitures and penalties hereby inflicted for the killing of one deer. 3 *W.* *c.* 10. *ſ.* 3.

And by the 9 *G.* *c.* 22. commonly called the Black act, any juſtice may iſſue his warrant for this purpoſe; and if any veniſon or ſkin of any deer, ſhall be found in the cuſtody of any perſon, and it ſhall appear that ſuch perſon bought ſuch veniſon or ſkin of any one who might be juſtly ſuſpected to have unlawfully come by the ſame, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of ſuch party, then the perſon who bought the ſame ſhall be convicted of ſuch offence by any juſtice of the peace, and ſhall be ſubject to the penalty above inflicted for killing one deer. 9 *G.* *c.* 22. *ſ.* 11, 17.

After conviction, the conſtable or proſecutor may detain in cuſtody the offender, if he ſhall not preſently pay the money due on conviction, during ſuch reaſonable time as a return may be conveniently made to the warrant of diſtreſs, ſo as ſuch detainer exceed not two days. 3 *W.* *c.* 10. *ſ.* 4.

And moreover, the perſon convicted, before he ſhall be diſcharged out of cuſtody, ſhall become bound to the perſon againſt whom the offence ſhall be committed, in 50*l.* for his future good behaviour, and that he ſhall not offend in like manner; and upon refuſal ſhall be committed to gaol until the bond be given: And if he ſhall be afterwards convicted of any offence in the ſaid ſtatute of 3 *W.* *c.* 10. the bond ſhall be forfeited, and the penalty be recovered with coſts in any court at *Weſtminſter*, over and above the forfeitures, and to be diſtributed as the forfeitures. 5 *G.* *c.* 15. *ſ.* 4.

All this being done, the juſtice ſhall certify a true copy of the conviction under his hand and ſeal, to the next quarter ſeſſions, there to be kept among the records. 10 *G.* 2. *c.* 32. *ſ.* 8.

And no *certiorari* ſhall be allowed to remove any conviction, or other proceeding thereupon, unleſs the party, before the allowance thereof, be bound to the proſecutor in 50*l.* with ſuch ſureties as the juſtice ſhall think fit, to pay in a month after the conviction confirmed, or a *procedendo* granted, full coſts and damages, to be aſcertained upon his oath; and at the ſame time become alſo bound to the juſtice with ſufficient ſureties, in the penalty of 60*l.* with condition to proſecute the *certiorari* with effect, and to pay to the juſtice the forfeitures due by the conviction, or to

render to the juſtice the perſon convicted within a month after the conviction ſhall be confirmed, or a *procedendo* granted: and in default thereof, the juſtice may proceed to the execution of the conviction. 3 *W. c.* 10. *ſ.* 6. 5 *G. c.* 15. *ſ.* 1.

Or, after delivering to the juſtice the rule by which the conviction ſhall be confirmed, he may proceed, as if a *procedendo* had been granted. 5 *G. c.* 15. *ſ.* 2.

H. 6 *G. K.* and *Whitlock.* The defendant being brought up from *Newgate* by *habeas corpus*, it appeared upon the return, that he was committed for deer ſtealing, as the ſtatute of the 3 *W. c.* 10. directeth, not having ſufficient diſtreſs; and that this was done by one juſtice under the ſtatute of the 5 *G.* And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the juſtice, and therefore the juſtice could not proceed to execution: for the ſtatute gives to the juſtice a juriſdiction after confirmation, which he had not before; and therefore he ought to ſhew every thing requiſite to found his juriſdiction upon. But by the court, we take notice of our own records, and by them it appears that the conviction is confirmed: and the ſtatute doth not give the juſtice a new juriſdiction, but only revives his old one, which was ſuſpended by the certiorari. And the defendant was remanded. *Str.* 263.

Moreover, by the ſaid act of 5 *G. c.* 15. it is enacted, that if any keeper or other officer of any park, or place where deer are uſually kept, ſhall be convicted on the ſaid ſtatute of the 3 *W.* for killing or taking away any red or fallow deer, or being aiding therein, without conſent of the owner, or perſon chiefly inſtruſted with the cuſtody thereof; he ſhall forfeit 50*l.* for each dear, to be diſtributed as the other forfeitures; to be levied by diſtreſs: for want of diſtreſs, to be impriſoned for three years, and be ſet in the pillory two hours on ſome market day in the next town to the place where the offence was committed, by the chief officer of ſuch market town, or his under officer. *ſ.* 5.

And it is further enacted, that if any perſon ſhall at any time pull down or deſtroy, or cauſe to be pulled down or deſtroyed, the pale or walls of any park, foreſt, chaſe, purlieu, paddock, wood, or other ground incloſed, where any red or fallow deer ſhall be then kept, without the conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; and ſhall be convicted thereof before one juſtice, by confeſſion, or oath of one witneſs, he ſhall ſuffer the

ſaid forfeitures of the 3 *W.* for killing one deer. 5 *G. c.* 15. *ſ.* 6.

And any perſon ſued for any thing done either on the 3 *W. c.* 10. or on this act, may plead the general iſſue; and if he recovers, ſhall have treble coſts. 5 *G. c.* 15. *ſ.* 3.

Tranſportation for offences in places incloſed.

11. Next follows the ſtatute of the 5 *G. c.* 28. by which it is enacted, that if any perſon ſhall enter into any park, paddock, or other incloſed ground where deer are uſually kept, and wilfully wound or kill any red or fallow deer there, without conſent of the owner of the ground, or of the perſon intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof before the judge of aſſize, upon indictment, by verdict or confeſſion,—he ſhall be tranſported for ſeven years:

But not to be proſecuted likewiſe on any of the former acts, all which nevertheleſs ſhall be of force.

Felony without benefit of clergy.

12. Thus ſtood the laws, till the great inſolencies of the *Waltham Blacks* made a further proviſion neceſſary, by that famous act of the 9 *G. c.* 22. from them uſually called the *Black Act*, which hath created more new felonies than any other ſtatute whatſoever: which with regard to the ſubject before us, doth enact as follows:

If any perſon or perſons, being armed with ſwords, fire arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or follow deer; or if any perſon or perſons (whether armed and diſguiſed or not) ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of the king's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences; or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon, for any the ſaid offences; or ſhall by gift or promiſe of money, or other reward, procure any to join him or them in any ſuch unlawful act: every perſon ſo offending, being thereof lawfully convicted (in any county in *England*) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to juſtice, and other particulars relating thereunto, it is proper to refer from hence to the title *Black act*; where theſe offences,

ſences, together with the other offences in the ſaid act, are treated of more at large.

13. It is to be obſerved, that this act of the 9 *G.* *c.* 22. extends only to killing and wounding deer in places *incloſed* (except the offender be withal armed and diſguiſed); and therefore the ſaid offence in places *unincloſed* remains as it was before the making the ſaid act: But by the ſtatute of 10 *G.* 2. *c.* 32. a ſecond offence againſt the former acts is made tranſportation: Which, after having recited, that whereas the aboveſaid act of the 9 *G.* *c.* 22. extends not to hunting or taking deer in open foreſts or chaſes, but only in ſuch as are incloſed, and offences in unincloſed places are only puniſhable by the 3 *W.* *c.* 10. which inflicts only a pecuniary puniſhment, which is not ſufficient to deter offenders,——doth therefore enact, That if any perſon who ſhall be convicted of unlawfully courſing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer, in any open or unincloſed foreſt or chaſe, where deer are uſually kept, ſhall be guilty of a ſecond offence of the like nature, and ſhall be thereof lawfully convicted on indictment or information; he ſhall be tranſported for ſeven years; and if he returns within the time, he ſhall be guilty of felony without benefit of clergy. And the clerk of the peace ſhall at the requeſt of the proſecutor, or of any perſon on his majeſty's behalf, certify to the aſſizes a tranſcript under his hand and ſeal, briefly and in few words containing the effect and tenor of the firſt conviction (kept amongſt the records); which certificate ſhall be ſufficient proof of the firſt conviction. 10 *G.* 2. *c.* 32. *ſ.* 7, 8. Tranſportation for a ſecond offence in places unincloſed.

14. Moreover, by the ſaid act of the 10 *G.* 2. *c.* 32. If any perſon armed ſhall come into any foreſt, chaſe, or park, wherein deer are uſually kept (whether incloſed or not) with an intent to courſe, hunt, take in toyls, kill, wound, or take away any red or fallow deer, and ſhall there unlawfully beat or wound any keeper or page of any ſuch foreſt, chaſe or park, their ſervants or aſſiſtants in the execution of their office, and be thereof lawfully convicted; he ſhall be tranſported for ſeven years. 10 *G.* 2. *c.* 32. *ſ.* 9. Beating the keeper, tranſportation.

15. Whereas the burning and deſtroying of goſs, furze, and fern in foreſts and chaſes, doth deſtroy the cover neceſſary for the preſervation of the deer and game there; therefore if any perſon not having a right or legal licence to do the ſame, ſhall ſet fire to, burn, or deſtroy (or be aiding therein) any goſs, furze, or fern in any foreſt or chaſe, without conſent of the owner or perſons chiefly intruſted with the cuſtody of ſuch foreſt or chaſe, or of ſome part thereof, and being brought before a juſtice ſhall be thereof Deſtroying covert for deer.

convicted by confeſſion, or oath of one witneſs, or on view of the juſtice, he ſhall forfeit not exceeding 5*l.* nor leſs than 40*s.* half to the informer, and half to the poor; if not forthwith paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be found, the juſtice ſhall commit him to the common gaol, for any time not exceeding three months, nor leſs than one month. 28 *G.* 2. *c.* 19. *ſ.* 3.

II. Of hares.

It is to be remembred, that I have already, under the third part of this title, treated of thoſe particulars, which are common to this with other ſpecies of the game, as to deſtroying the ſame by unqualified perſons; I here take notice of ſuch things as belong to hares only, and which for the moſt part ſeem generally to concern all perſons, whether qualified or not.

Tracing in the ſnow.

1. No perſon of what eſtate, degree, or condition he be, ſhall trace, deſtroy, and kill any hare in the ſnow, with any dog, bitch, bow, nor otherwiſe. And the ſeſſions or leet may enquire hereof; and after inquiſition found, they ſhall for every hare ſo killed, ceſs upon every offender 6*s.* 8*d.* to be forfeited to the king, if in the ſeſſions; and to the lord of the leet, if in the leet. 14 & 15 *H.* 8. *c.* 10.

And by the 1 *J.* *c.* 27. Every perſon who ſhall trace or courſe any hares in the ſnow; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20*s.* for every hare; or after one month after his commitment become bound by recognizance with two ſureties in 20*l.* a peace, before two juſtices, not to offend again in like manner. *ſ.* 2.

Snares and harepipes.

2. And by the ſaid laſt mentioned act, every perſon who ſhall at any time take or deſtroy any hares, with harepipes, cords, or any ſuch inſtruments or other engines; ſhall forfeit for every hare 20*s.* in like manner. 1 *J.* *c.* 27. *ſ.* 2.

And by the 22 & 23 *C.* 2. *c.* 25. *ſ.* 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares, harepipes, or other like engines, and ſhall be thereof convicted, by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; he ſhall give to the party injured ſuch damages, and in ſuch time, as the juſtice ſhall appoint, and ſhall pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10*s.* as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month.

3. If

3. If any perſon whatſoever ſhall take or kill any hare in the night-time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5*l.* half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *Ann. c.* 25. *ſ.* 3. Killing hares in the night.

4. Every perſon who ſhall ſhoot at, kill, or deſtroy any hare, with any gun or bow, ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the church-wardens for the uſe of the poor 20*s.* for every hare; or after one month after his commitment become bound by recognizance with two ſureties before two juſtices, in 20*l.* a piece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2. Shooting hares.

5. Every perſon, who ſhall ſell, or buy to ſell again, any hare, ſhall, on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every hare 10*s.* half to the poor, and half to him that will ſue. 1 *J. c.* 27. *ſ.* 4. Buying and ſelling hares.

6. If any manner of perſons ſhall hunt with ſpaniels in any ground where corn or other grain ſhall then grow (except in his own ground), at ſuch time as any eared corn or grain ſhall be growing thereon, and before it be ſhocked or cocked, and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40*s.* to the owner of the corn; and if not paid in ten days, he ſhall be impriſoned for one month. And any juſtice may examine the offender, and bind him over to appear at the next ſeſſions to anſwer the offence, and to pay the penalty, or receive the puniſhment. 23 *El. c.* 10. *ſ.* 5. Hunting in corn.

7. By the Black act before mentioned, if any perſon, armed and diſguiſed, ſhall appear in any warren or place where hares are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for either of the ſaid offences, or procure any to join with him in any ſuch unlawful act; he ſhall be guilty of felony without benefit of clergy. Taking hares in warrens.

III. Of Conies.

1. If any warrener ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to Treſpaſſers in warrens may be reſiſted.

ſtand unto the peace, but do flee, or defend themſelves; altho' the warrener, or his aſſiſtant, do kill ſuch offenders, they ſhall not be troubled upon the ſame. 21 *Ed.* 1. *ſt.* 2.

Hunting in a warren by night or diſguiſed.

2. When information ſhall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon ſuſpected, he may make a warrant to bring ſuch perſon before himſelf or any other of the ſaid counſel or juſtices; and if ſuch perſon ſhall conceal the ſaid hunting, or any of his accomplices, it ſhall be felony; but if he confeſſeth, it ſhall be but treſpaſs finable at the ſeſſions. 1 *H.* 7. *c.* 7.

Hunting in a warren by night.

3. If any perſon ſhall in the night time enter into any grounds incloſed, and uſed for keeping of conies, and hunt, drive out, take, or kill any conies; he ſhall, on conviction at the ſuit of the king or of the party, at the aſſizes or ſeſſions, on indictment, bill, information, or otherwiſe, forfeit 10*l* to the party grieved, or treble damages and coſts at the election of the party; and find ſureties for his good abearing for ſeven years, or continue in priſon till he does. 3 *J.* *c.* 13. *ſ.* 2.

But this ſhall not extend to any grounds to be incloſed and uſed for conies after the making of this act, without the king's licence. *ſ.* 7.

Killing in the night, on the borders of warrens.

4. No perſon ſhall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully uſed for the breeding or keeping of conies (except the owner or poſſeſſor of the ground, or perſons employed by them); on pain that the offender, on conviction in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs, ſhall give to the party injured ſuch damages and in ſuch time as ſhall be appointed by the juſtice, and over and above pay down preſently to the overſeers for the uſe of the poor ſuch ſum not exceeding 10*s.* as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction for ſuch time as he ſhall think fit, not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 5.

The ſta ute ſaith, *upon the borders of warrens*; but if they are out of the warren, no perſon hath any property in them, and a man may juſtify killing them if they eat up his corn; but no action lies againſt the owner of the warren. 5 *Co.* 104. *Read.* Game.

So a perſon that hath a right of common may kill them, when they are out of the warren and deſtroy the common; but he cannot have an action on the caſe againſt the lord, for

for that would be to create a multiplicity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

For a man cannot have an action for another man's conies breaking into his ground, becauſe they are no longer the other's than while they are in the warren or place where he hath a right to keep them; ſo that no violation hereby ariſes to the property of one man by the beaſts of another: but the conies, being in their natural liberty, may be lawfully killed by the owner of the ſoil. 2 *Bac. Abr.* 614.

Killing in places incloſed or uninclоſed, by night or day.

5. If any perſon ſhall at any time, enter wrongfully into any warren or ground lawfully uſed or kept for the breeding or keeping of conies, whether it be incloſed or not; and there ſhall chaſe, take, or kill any conies; and ſhall be thereof convicted in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs; he ſhall yield to the party grieved treble damages and coſts, and be impriſoned three months, and after till he find ſureties for his good abearing. 22 & 23 *C.* 2. *c.* 25. *ſ.* 4.

Setting ſnares.

6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares or other like engines, and ſhall be thereof in like manner convicted, he ſhall give to the party grieved ſuch damages, and in ſuch time as the juſtice ſhall appoint, and pay down preſently to the overſeer for the uſe of the poor ſuch ſum not exceeding 10*s.* as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 6.

Keeping engines.

7. If any perſon not having lands or hereditaments of 40*l.* a year, or not worth in goods 200*l.* ſhall uſe any gun or bow to kill conies, or ſhall keep any ferrets or coney dogs (except he have grounds incloſed for keeping of conies, the increaſing of which ſhall amount to 40*s.* a year to be let, and except warreners in their warrens); in ſuch caſe, any perſon having 100*l.* a year may ſeize the ſame to his own uſe. 3 *J. c.* 13. *ſ.* 5.

Felony.

8. By the Black act before mentioned, if any perſon being armed and diſguiſed, ſhall appear in any warren or place where conies are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any perſon to join him therein; he ſhall be guilty of felony without benefit of clergy.

VI. Laws concerning the winged game in particular.

I. Of hawks and hawking.
II. Of ſwans.
III. Of partridges and pheaſants.
IV. Of pigeons.
V. Of wild ducks, wild geeſe, and other water fowl.
VI. Of grouſe or moor game.
VII. Of herons.
VIII. Of other fowl.

I. Of hawks and hawking.

What hawks a man ſhall bear.

1. No man ſhall bear any hawk of the breed of *England*, called a nyeſſe, goſhawk, taſſel, laner, laneret, or faulcon; on pain of forfeiting his hawk to the king. And if he bring any of them over ſea, or out of *Scotland*, he ſhall bring a certificate thereof from the officer of the port, or warden of the march; on the like pain of forfeiting the ſame to the king. And the perſon that bringeth any ſuch hawk to the king, ſhall have a reaſonable reward of the king, or elſe the hawk for his labour. 11 *H.* 7. *c.* 17.

Perſons finding a hawk.

2. Every perſon who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is loſt, ſhall preſently bring the ſame to the ſheriff; and the ſheriff ſhall make proclamation in all the good towns in the county, that he hath ſuch an hawk in his cuſtody; and if he is challenged in four months, the owner ſhall have him again, paying the coſts: if he is not challenged in four months, the ſheriff ſhall have him, making gree to him that took him, if he be a ſimple man; but if he be a gentleman, and of eſtate to have the hawk, then the ſheriff ſhall redeliver to him the hawk, taking of him reaſonable coſts for the time that he had him in his cuſtody. 34 *Ed.* 3. *c.* 22.

Stealing a hawk.

3. And if any man ſteal any hawk, and the ſame carry away, not doing the ordinance aforeſaid; it ſhall be done of him as of a thief, that ſtealeth a horſe or other thing. 37 *Ed.* 3. *c.* 19. That is, he ſhall be guilty of felony, but ſhall have his clergy. 3 *Inſt.* 98.

Taking hawks or eggs out of the woods.

4. If any perſon ſhall take away any hawks or their eggs, by any means unlawfully, out of the woods or ground of any perſon; and be thereof convicted at the aſſizes or ſeſſions, on

on indictment, bill, or information, at the ſuit of the king or of the party; he ſhall be impriſoned three months, and ſhall pay treble damages; and after the three months expired, ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El. c.* 21. *ſ.* 3.

The ſame.

5. But by a more ancient ſtatute, no man ſhall take any ayre, faulcon, goſhawk, taſſel, laner, or laneret, in their warren, wood, or other place; nor purpoſely drive them out of their coverts accuſtomed to breed in, to cauſe them to go to other coverts to breed; nor ſlay them for any hurt done by them: on pain of 10*l.* half to him that will ſue before the juſtices of the peace, and half to the king. 11 *H.* 7. *c.* 17.

And no manner of perſon, of what condititon or degree he be, ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any faulcon, goſhawk, or laner, out of the neſt; on pain (being convicted thereof before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. *id.*

Hawking in corn.

6. If any manner of perſon ſhall hawk in another man's corn after it is eared, and before it is ſhocked; and be convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40*s.* to the owner: And if not paid in ten days, he ſhall be impriſoned for a month. 23 *El. c.* 10.

II. Of ſwans.

Qualification to keep ſwans.

1. No perſon (other than the king's ſon) unleſs he have lands of freehold to the value of five marks a year, ſhall have any mark or game of ſwans; on pain of forfeiting the ſwans, half to the king, and half to any perſon (ſo qualified) who ſhall ſeize the ſame. 22 *Ed.* 4. *c.* 6.

Stealing ſwans marked.

2. It is felony to take any ſwans that be lawfully marked, tho' they be at large. *Dalt. c.* 156.

Swans unmarked.

3. And as to ſwans unmarked; if they be domeſtical or tame, that is, kept in a moat, or in a pond near to a dwelling houſe, to ſteal ſuch is alſo felony. *Dalt. c.* 156.

So it ſeemeth of ſwans unmarked, ſo long as they keep within a man's manor, or within his private rivers; or if they happen to eſcape from thence, and be purſued and taken, and brought in again. *id.*

But if ſwans that are unmarked ſhall be abroad, and ſhall attain to their natural liberty, then the property of them is loſt; and ſo long, felony cannot be committed by taking them. *id.*

And yet ſuch unmarked and wild ſwans the king's officers may ſeize (being abroad) for the king's uſe, by his prerogative. Alſo, the king may grant them, and by conſequence another may preſcribe to have them, within a certain precinct or place. *id.*

Swans eggs.

4. Every perſon who ſhall take the eggs of any ſwans out of the neſt, or wilfully ſpoil them in the neſt; and ſhall be convicted thereof before two juſtices, by confeſſion, or oath of two witneſſes; ſhall be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor, 20*s.* for every egg; or after one month of his commitment, become bound by recognizance with two ſureties in 20*l.* a-piece, before two juſtices, never to offend again in like manner: which recognizance ſhall be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

But by a more ancient ſtatute, no perſon ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any ſwan; on pain (on conviction before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the ſwans. 11 *H.* 7. *c.* 17.

III. Of partridges and pheaſants.

Partridges and pheaſants are birds of warren, and the law ſeems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

1. By the 11 *H.* 7. *c.* 17. it is enacted, that no perſon, of what condition he be, ſhall take or cauſe to be taken, any pheaſants or partridges by nets, ſnares, or other engines, out of his own warren, upon the freehold of any other perſon, without the ſpecial licence of the owner or poſſeſſioner of the ſame; on pain of 10*l.* half to him that ſhall ſue, and half to the owner or poſſeſſioner of the ground where they ſhall be taken.

Taking them with dogs, nets, or engines; or their eggs,

2. Every perſon who ſhall ſhoot at, kill, or deſtroy, any pheaſant or partridge, with any gun or bow; or ſhall take, kill, or deſtroy them with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; or ſhall take their eggs out of the neſt, or ſpoil them in the neſt; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay upon conviction to the churchwardens for the uſe of the poor, 20*s.* for every pheaſant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices, in 20*l.* each, not to offend again

again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

And by the 7 *J. c.* 11. Every perſon, who ſhall take, kill, or deſtroy, any pheaſant or partridge, with ſetting dogs and nets, or otherwiſe with any manner of nets, ſnares, or engines; ſhall, on conviction before two juſtices, by confeſſion, or oath of one witneſs, be committed to gaol for three months, unleſs he forthwith pay to the churchwardens, or overſeers 20 *s.* for every pheaſant or partridge; and further to become bound by recognizance of 20 *l.* before one juſtice, that he ſhall not thereafter kill or deſtroy any pheaſant or partridge. The recognizance to be filed at the next ſeſſions.

3. Every perſon who ſhall ſell, or buy to ſell again, any partridge or pheaſant (except they be reared and brought up in houſes, or brought from beyond ſea); ſhall on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every partridge 10 *s.* and for every pheaſant 20 *s.* half to him that will ſue, and half to the poor. 1 *J. c.* 27. *ſ.* 4. Selling or buying.

4. If any perſon, of what eſtate, degree, or condition ſoever, ſhall take, kill, or deſtroy any pheaſants or partridges in the night time; and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit for every pheaſant 20 *s.* and for every partridge 10 *s.* half to him that ſhall ſue, and half to the lord of the manor, unleſs ſuch lord ſhall licenſe or procure the ſaid taking or killing, in which caſe the ſaid half ſhall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he ſhall be impriſoned for one month: And moreover, beſides ſuch forfeiture and impriſonment, he ſhall give bond to ſome juſtice of the peace, with good ſureties, not to offend again in like manner for the ſpace of two years. 23 *El. c.* 10. Taking in the night.

And by the 9 *An. c.* 25. If any perſon whatſoever ſhall take or kill any pheaſant or partridge in the night time; he ſhall, on conviction before one juſtice, on oath of one witneſs, forfeit 5 *l.* half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months.

5. Every free warrener, lord of a manor, or freeholder ſeiſed in his own, or his wife's right, of 40 *l.* a year eſtate of inheritance, or lives eſtate of 80 *l.* or worth in goods 400 *l.* may take pheaſants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Chriſtmas* yearly. 7 *J. c.* 11. *ſ.* 7. Who may take in the day time.

At what time hawking at them ſhall be prohibited.

6. Every perſon whatſoever, who ſhall hawk at, deſtroy, or kill, any pheaſant or partridge, with any kind of hawk, or dog, by colour of hawking, between the firſt of *July*, and the laſt of *Auguſt*; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, in ſix months after the offence, be committed to gaol for one month, unleſs he pay upon conviction to the churchwardens or overſeers for the uſe of the poor, 40*s.* for every ſuch hawking at any pheaſant or partridge, and 20*s.* for every ſuch pheaſant or partridge which he, his hawk, or dog, ſhall take or kill. 7 *J. c.* 11. *ſ.* 2.

It is here obſervable upon the whole, that the killing of partridges and pheaſants is prohibited in almoſt all manner of ways, except hawking only; and that hawking at them is only prohibited in two ſummer months, when the corn is growing, and the brood is very young; from whence it may be conjectured, that the extraordinary reſtrictions under this ſection have been intended in favour of the diverſion of hawking, and to preſerve theſe two ſpecies of game for that purpoſe. Which obſervation (if juſt) will help to explain ſome other reſtrictive clauſes, in this part of the title, concerning the *winged game*.

IV. Of pigeons.

Who may erect a dove-coat.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Dove-coat not a nuſance.

2. And it hath been adjudged, that erecting of a dove-houſe is not a common nuſance, nor preſentable in the leet. *Cro. Ja.* 490, 1.

Killing with dogs, nets, or engines.

3. Every perſon who ſhall ſhoot at, kill, or deſtroy any houſe-dove or pigeon with any gun or bow; or ſhall take, kill, or deſtroy the ſame with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor, 20*s.* or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices, in 20*l.* a-piece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

4. But

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy againſt me; tho' I may be liable to the ſtatutes which make it penal to deſtroy them. *Cro. Ja.* 492. Pigeons treſpaſſing.

5. Doves in a dove-houſe, young and old, ſhall go to the heir, and not to the executor. 1 *Inſt.* 8. Pigeons to go to the heir.

V. Of wild ducks, wild geeſe, and other water fowl.

1. Every perſon who ſhall ſhoot at, kill, or deſtroy with any gun or bow, any mallard, duck, teal, or widgeon; and the ſame be proved by confeſſion, or oath of two witneſſes, before two juſtices;—ſhall be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20 *s.* or after one month after commitment become bound by recognizance with two ſureties, before two juſtices, in 20 *l.* each, not to offend again in like manner: Which recognizance ſhall be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2. Shooting water fowl.

2. No perſon, between the laſt day of *May*, and the laſt day of *Auguſt* yearly, ſhall take, or cauſe to be taken, any wild ducks, mallards, widgeons, teals, or wild geeſe, with nets or other engines; on pain of a year's impriſonment, and to forfeit for every fowl ſo taken 4 *d.* half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may enquire of, hear and determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11. Not to be taken in the moulting ſeaſon.

Nevertheleſs, any gentleman, or any other that may diſpend 40 *s.* a year of freehold, may hunt and take ſuch wild fowl with their ſpaniels only, without uſing a net or other engine except the long bow. *id.*

But by a ſubſequent ſtatute, if any perſon whatſoever (between *June* 1. and *Oct.* 1. yearly, 10 *G.* 2. *c.* 32.) ſhall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of reſort for wild fowl in the moulting ſeaſon; and ſhall be convicted thereof before one juſtice by the oath of one witneſs; he ſhall for every ſuch fowl forfeit 5 *s.* half to the informer, and half to the poor, by diſtreſs; rendring the overplus above the penalty and charges of diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, not exceeding one month, nor leſs than 14 days, to be whipt and kept to hard labour. And the nets to be ſeized and deſtroyed in the preſence of the juſtice. 9 *An. c.* 25. *ſ.* 4.

3. No perſon from *March* 31. to *June* 30. yearly, ſhall take or deſtroy the eggs of any mallard, teal, or other wa- Deſtroying their eggs.

ter

ter fowl; on pain of a year's impriſonment, and of forfeiting for every egg one penny, half to the king, and half to him that will ſue by action of debt; or, the juſtices of the peace may determine the ſame as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.

VI. Of grouſe or moor game.

Killing grouſe in the night.

1. If any perſon whatſoever ſhall take or kill any moor, heath-game, or grouſe, in the night time; he ſhall, on conviction before one juſtice, on oath of one witneſs, forfeit 5*l.* half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction three months for the firſt offence, and for every other offence four months. 9 *An. c.* 25. *ſ.* 3.

Shooting grouſe.

2. Every perſon who ſhall ſhoot at, kill, or deſtroy, with any gun or bow, any grouſe, heath-cock, or moor game; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs upon conviction he pay to the churchwardens for the uſe of the poor, 20*s.* or, after one month after his commitment, become bound by recognizance with two ſureties in 20*l.* each, before two juſtices, not to offend again in like manner: the recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Burning ling.

3. For the better preſerving the red and black game of grouſe commonly called heath-cocks, or heath-polts, no perſon whatſoever on any mountains, hills, heaths, moors, foreſt, chaſes, or other waſtes, ſhall preſume to burn between *Feb.* 2. and *June* 24. any grig, ling, heath, furz, goſs, or fern; on pain of being committed to the houſe of correction, for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 *W. c.* 23. *ſ.* 11.

As here is no method of conviction directed for this offence, the juſtices of the peace ſeem to have no recognizance thereof; but the trial and conviction muſt be at the aſſizes, or in the courts at *Weſtminſter*.

In the 5 *An. c.* 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* foreſt, and other places in *Nottinghamſhire*, which not being of general concern are here omitted.

VII. Of herons.

Shooting herons.

1. Every perſon who ſhall ſhoot at, kill, or deſtroy, any hearn, with gun or bow, ſhall, on conviction before two juſtices,

juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs on conviction he pay to the churchwardens for the uſe of the poor, 20*s.* or, after one month from his commitment, become bound by recognizance with two ſureties in 20*l.* each, before two juſtices, not to offend again in like manner: The recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

2. No perſon, without his own ground, ſhall flea, take, or cauſe to be taken, by mean of craft or engine, any herons, unleſs it be with hawking; on pain of 6*s.* 8*d.* to him who ſhall ſue by action of debt; or the ſeſſions may call before them perſons ſuſpected, and examine them; and if found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of the forfeiture for their labour. 19 *H.* 7. *c.* 11. None ſhall take but by hawking.

3. And no perſon, without his own ground, ſhall take any young herons out of the neſt; on pain of 10*s.* in like manner for every young heron. 19 *H.* 7. *c.* 11. Young herons.

4. And if any perſon from *March* 31. to *June* 30. ſhall take or deſtroy the eggs of any heron; he ſhall be impriſoned for a year, and forfeit for every egg, 8*d.* half to the king, and half to him that will ſue by action of debt, or before the juſtices of the peace. 25 *H.* 8. *c.* 11. Eggs.

VIII. Of other fowl.

In general; No manner of perſon, from the laſt day of *March* to the laſt day of *June* yearly, ſhall by day or night, take, or deſtroy any eggs of any kind of wild fowl, from or in any neſt or place, where they ſhall chance to be laid by any kind of the ſame wild fowl; on pain of impriſonment for a year, and to forfeit for every egg of a buſtard 20*d.* of a bittour or ſhovelard 8*d.* and of other wild fowl (except crows, ravens, boſcards, and other fowl not uſed to be eaten) 1*d.* half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.

VII. Laws for preſerving the game of fiſh in particular.

There are ſome acts relating to this ſubject, of which, being of leſs general concern, it is thought ſufficient to inſert only the titles; *viz.*

(1) An

(1) An act for the preſervation of fiſhing in the river of *Severn*. 30 *C.* 2. *c.* 9.

(2) An act for the increaſe and better preſervation of ſalmon and other fiſh, in the rivers within the counties of *Southampton* and *Wilts*. 4 *An. c.* 21. In which ſome alterations are made by the 1 *G. ſt.* 2. *c.* 18.

(3) An act for the better preſervation and improvement of the fiſhery within the river of *Thames*, and for regulating and governing the company of fiſhermen of the ſaid river. 9 *An. c.* 26.

(4) An act for the more effectual preſervation and improvement of the ſpawn and fry of fiſh in the river of *Thames*, and waters of *Medway*; and for the better regulating the fiſhery thereof. 30 *G.* 2. *c.* 21.

What follows ſeems beſt reducible under theſe heads:

I. The penalty of fiſhing in ponds and other private fiſheries.
II. Rules about the ſize, and preſerving the breed of fiſh.
III. Rules concerning fiſhing in or near the ſea.
IV. Importing fiſh.

I. The penalty of fiſhing in ponds and other private fiſheries.

Who may erect a fiſh pond.

1. Any man may erect a fiſh pond without licence; becauſe it is a matter of profit, and for the increaſe of victuals. 2 *Inſt.* 199.

Three years impriſonment and fine.

2. If any treſpaſſers in ponds be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs; and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof) and then ſhall find good ſurety, that after they ſhall not commit the like treſpaſs: And if they have not whereof to make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit. 3 *Ed.* 1. *c.* 20.

Note; Thoſe are treſpaſſers in ponds, who endeavour to take fiſh therein. 2 *Inſt.* 200.

Three months impriſonment and treble damages.

3. If any perſon ſhall unlawfully break, cut, or deſtroy any head or dam of a fiſh pond, or ſhall wrongfully fiſh therein,

therein, with intent to take or kill fiſh; he ſhall on conviction at the ſuit of the king, or of the party, at the aſſizes or ſeſſions, be impriſoned three months, and pay treble damages; and after the three months expired ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El. c.* 21. *ſ.* 2, 6.

4. If any perſon ſhall uſe any net, angle, hair, nooſe, troll, or ſpear; or ſhall lay any wears, pots, fiſh hooks, or other engines; or ſhall take any fiſh by any means or deviſe whatſoever, or be aiding thereunto, in any river, ſtew, pond, mote, or other water, without the conſent of the lord or owner of the water; and be thereof convicted by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; every ſuch offender in taking or killing fiſh, ſhall pay any ſum not exceeding treble damages, and 10*s.* to the overſeers for the uſe of the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not exceeding one month, unleſs he enter into bond with one ſurety to the party injured, not exceeding 10*l.* never to offend in like manner. 22 & 23 *C.* 2. *c.* 25. *ſ.* 7. Treb'e damages and 10s. to the poor.

And the juſtice may take, cut, and deſtroy all ſuch angles, ſpears, hairs, nooſes, trolls, wears, pots, fiſh hooks, nets or other engines, wherewith ſuch offender ſhall be apprehended. *ſ.* 8.

Perſons aggrieved may appeal to the next ſeſſions, whoſe determination ſhall be final, if no title to any land, royalty, or fiſhery be therein concerned. *ſ.* 9.

5. Whereas divers idle, diſorderly, and mean perſons, have and keep nets, angles, leaps, piches and other engines for the taking and killing of fiſh out of the ponds, waters, rivers, and other fiſheries, to the damage of the owners thereof, therefore no perſon hereafter ſhall have or keep any net, angle, leap, piche, or other engine for the taking of fiſh; other than the makers and ſellers thereof, and other than the owner and occupier of a river or fiſhery; and except fiſhermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fiſhery, and every other perſon by him appointed, may ſeize, detain, and keep to his own uſe, every net, angle, leap, piche, and other engine, which he ſhall find uſed or laid, or in the poſſeſſion of any perſon fiſhing in any river or fiſhery, without the conſent of the owner or occupier thereof. And alſo any perſon, authorized by a juſtice's warrant, may in the day time ſearch the houſes, outhouſes, and other places of any perſon hereby prohibited to have or keep the ſame, who ſhall be ſuſpected to have Seizing gines.

or keep in his cuſtody or poſſeſſion any net, angle, leap, piche, or other engine aforeſaid, and ſeize and keep the ſame to his own uſe, or cut or deſtroy the ſame, as things by this act prohibited to be kept by perſons of their degree. 4 & 5 *W. c.* 23. *ſ.* 5.

Felony. 6. By the Black act before mentioned, if any perſon being armed and diſguiſed, ſhall unlawfully ſteal or take away any fiſh out of any river or pond; or (whether armed and diſguiſed or not) ſhall unlawfully and maliciouſly break down the head or mound of any fiſh pond, whereby the fiſh ſhall be loſt or deſtroyed, or ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any other to join with him therein; he ſhall be guilty of felony without benefit of clergy.

II. Rules concerning the aſſize, and preſerving the breed of fiſh.

Salmon. 1. If any perſon ſhall lay or draw any net, engine, or other device, or cauſe any thing to be done in the *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Merſey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, or *Trent*, whereby the ſpawn or fry of ſalmon, or any kepper or ſhedder ſalmon, or any ſalmon not 18 inches from the eye to the extent of the middle of the tail, ſhall be taken and killed; or ſhall ſet any bank, dam, hedge, ſtank, or net croſs the ſame, whereby the ſalmon may be taken, or hindred from paſſing up to ſpawn; or ſhall between *July* 31. and *Nov.* 12. (except in the *Ribble*, where they may be taken between *Jan.* 1. and *Sept.* 15.) take any ſalmon of any kind in any of the ſaid rivers; or ſhall, after *Nov.* 12. yearly, fiſh there for ſalmon with any net leſs than 2½ inches in the meſh; he ſhall, on conviction, in one month, before one juſtice, on view, confeſſion, or oath of one witneſs, forfeit 5*l.* and the fiſh, nets, and engines; half the ſaid ſum to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction or goal, not more than three months, nor leſs than one, to be kept to hard labour, and ſuffer ſuch other corporal puniſhment as the juſtice ſhall think fit: The nets and engines to be cut or deſtroyed, in preſence of the juſtice: The banks, dams, hedges, and ſtanks, to be demoliſhed at the charge of the offender, to be levied in like manner. 1 *G. ſt.* 2. *c.* 18. *ſ.* 14.

Note; It is not ſaid, who ſhall have the fiſh; ſo that it ſeemeth that they are forfeited to the king.

And no ſalmon out of the ſaid rivers ſhall be ſent to *London*, under ſix pounds weight; on pain that the ſender, buyer, or ſeller, on the like conviction, ſhall forfeit 5 *l.* and the fiſh, half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *id. ſ.* 15.

And perſons aggrieved may appeal to the next ſeſſions. *id. ſ.* 17.

2. No ſalmon ſhall be taken in the *Humber*, *Ouze*, *Trent*, *Done*, *Arre*, *Derwent*, *Wherſe*, *Nid*, *Yore*, *Swale*, *Teſe*, *Tine*, *Eden*, or any other water wherein ſalmon are taken, between *Sep.* 8. and *Nov.* 11. Nor ſhall any young ſalmon be taken at mill-pools (nor in other places, 13 *R.* 2. *ſt.* 1. *c.* 19.) from *Midapril* to *Midſummer*; on pain of having the nets and engines burnt for the firſt offence; for the ſecond impriſonment for a quarter of a year; for the third, a whole year; and as the treſpaſs increaſeth, ſo ſhall the puniſhment. And overſeers ſhall be aſſigned to inquire hereof. 13 *Ed.* 1. *ſt.* 2. *c.* 47. That is, under the great ſeal, and by authority of parliament. 2 *Inſt.* 477. Salmon ſpawn; and melts.

And no perſon ſhall put in the waters of *Thamiſe*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called ſtalkers, nor other nets or engines whatſoever, by which the fry or breed of ſalmons, lampreys, or any other fiſh may in any wiſe be taken or deſtroyed; on the like pain. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the waters of *Lon*, *Wyre*, *Merſee*, *Rybbyl*, and all other waters in *Lancaſhire*, ſhall be put in defence as to taking of ſalmons, from *Michaelmaſs* to *Candlemaſs*, and in no other time of the year. And conſervators ſhall be appointed in like manner. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the juſtices of the peace (and the mayor of *London* on the *Thames* and *Medway*) ſhall ſurvey the offences in both the acts abovementioned; and ſhall ſurvey and ſearch all the wears in ſuch rivers, that they ſhall not be very ſtrait for the deſtruction of ſuch fry and brood, but of reaſonable wideneſs after the old aſſize uſed or accuſtomed; and they ſhall appoint under-conſervators, who ſhall be ſworn to make like ſurvey, ſearch and puniſhment. And they ſhall enquire in ſeſſions, as well by their office, as at the information of the under-conſervators, of all defaults aforeſaid, and ſhall cauſe them which ſhall be thereof indicted, to come before them; and if they be thereof convict, they ſhall have impriſonment, and make fine at the diſcretion of the juſtices: and if the ſame be at the infor-

mation of an under-conſervator, he ſhall have half the fine. 17 *R.* 2. *c.* 9.

Spawn in general and fiſh under ſize and out of ſeaſon.

3. By the 1 *El. c.* 17. No perſon, of what eſtate, degree, and condition ſoever he be, ſhall take and kill any young brood, ſpawn, or fry of fiſh; nor ſhall take and kill any ſalmon or trouts, not being in ſeaſon, being kepper or ſhedder; nor any pike or pickerel not being in length 10 inches fiſh or more; nor any ſalmon not being in length 16 inches fiſh; nor any trout not being in length eight inches fiſh; nor any barbel not being in length 12 inches: and no perſon ſhall fiſh or take fiſh by any device, but only with net or tramel, whereof the meſh ſhall be two inches and a half broad (angling excepted, and except ſmelts, loches, minnies, bulheads, gudgions, and eels): on pain of forfeiting 20*s.* for every offence, and alſo the fiſh, nets, and engines.

(Note, in ſome editions of the ſtatutes it is 20*l.* in others 20*s.* in the record it is not diſtinguiſhable whether it is pounds or ſhillings. The latter ſeems more adequate to the offence.)

And the conſervators of rivers may inquire hereof by a jury; and in ſuch caſe they ſhall have the fines.

The leet alſo may inquire hereof; and then the forfeiture ſhall go to the lord of the leet. And if the ſteward do not charge the jury therewith, he ſhall forfeit 40*s.* half to the king, and half to him that ſhall ſue. And if the jury conceal the offence, he may impanel another jury to inquire of ſuch concealment; and if it is found, the former jury ſhall forfeit every one 20*s.* to the lord of the leet.

And if the offence is not preſented in the leet within a year, then it may be heard and determined at the ſeſſions or aſſizes. (Saving the right of the conſervators.)

And by the 33 *G.* 2. *c.* 27. No perſon ſhall take, or knowingly have in his poſſeſſion either in the water or on ſhore, or ſell or expoſe to ſale, any ſpawn, fry, or brood of fiſh, or any unſizeable fiſh, or fiſh out of ſeaſon, or any ſmelt not five inches long: and any perſon may ſeize the ſame together with the baſkets and package, and charge a conſtable or other peace officer with the offender and with the goods, who ſhall carry them before a juſtice; and on conviction before ſuch juſtice, the ſame ſhall be forfeited and delivered to the proſecutor; and the offender ſhall beſides forfeit 20*s.* to be levied by diſtreſs by warrant of ſuch juſtice, and diſtributed half to the proſecutor and half to the poor of the pariſh where the offence was committed (and any inhabitant of ſuch pariſh, nevertheleſs, may be a witneſs); for want of ſufficient diſtreſs, to be committed to the houſe of correction to be kept to hard labour for any time not exceeding

ceeding three months, unleſs the forfeiture be ſooner paid.—Provided, that the juſtice may mitigate the ſaid penalty, ſo as not to remit above one half. Perſons aggrieved may appeal to the next ſeſſions.—And the form of the conviction may be this:

Be it remembred, that on this ——— day of ——— in the ——— year of the reign of ——— *A. O.* is convicted before me ——— one of his majeſty's juſtices of the peace for the ——— of ——— for ——— and I do adjudge him to pay and forfeit the ſum of ———. Given under my hand and ſeal the day and year aboveſaid. *ſ.* 13, 15, 16, 17, 18, 19.

4. No perſon ſhall faſten any nets over rivers, to ſtand continually day and night; on pain of an hundred ſhillings to the king. 2 *H.* 6. *c.* 15. Nets ſtanding day and night.

III. Rules concerning fiſhing in or near the ſea.

1. No perſon ſhall take, kill, or deſtroy any lobſters on the coaſt of *Scotland*, from *June* 1. to *Sept.* 1. on pain of 5 *l.* to be recovered by any perſon who ſhall inform and ſue for the ſame, on a ſummary complaint before two juſtices of the ſhire on the coaſt where the offence ſhall be committed. 9 *G.* 2. *c.* 33. *ſ.* 4. Lobſters.

2. Every perſon who ſhall ſet up any new wear along the ſea ſhore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, ſhall on conviction before one juſtice, or mayor, forfeit for every offence 10 *l.* half to the king, and half to him that ſhall ſue; to be levied by the conſtables or churchwardens, by diſtreſs. 3 *ſ.* *c.* 12. *ſ.* 2. Erecting a new wear.

3. Every perſon who ſhall willingly take, deſtroy, or ſpoil any ſpawn, fry, or brood of any ſea fiſh, in any wear or other engine or device whatſoever; ſhall forfeit for every offence 10 l. in like manner. 3 *ſ.* *c.* 12. *ſ.* 2. Spawn of ſea fiſh.

4. And every perſon who ſhall fiſh in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the ſea, with any draw-net, or drag-net under three inches meſh, *viz.* 1 ½ inch from knot to knot (except for the taking of ſmoulds in *Norfolk* only), or with any nets with canvas, or other engine or device, whereby the ſpawn, fry, or brood of ſea fiſh may be deſtroyed; ſhall in like manner forfeit ſuch net, and alſo 10*s.* for every offence, half to the poor, and half to him that ſhall ſue. 3 *ſ.* *c.* 12. *ſ.* 2. Size of nets at ſea.

But this act ſhall not extend to any net of leſſer meaſh, only for taking of herrings, pilchards, ſprats, or lavidnian. *id. ſ.* 3.

And by a ſubſequent ſtatute, if any perſon ſhall uſe at ſea, on the *Engliſh* coaſt, any traul-net, drag-net, or ſet net, for catching of any fiſh (except herrings, pilchards, ſprats or lavidnian) which hath the meſh leſs than 3 ½ inches from knot to knot; or which hath a falſe or double bottom; or ſhall put one net behind another; he ſhall, on conviction (after ſummons) before one juſtice where the offender reſides or ſhall be found, on oath of two witneſſes, in one month after the offence, forfeit the ſame, and alſo 20*l.* half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to gaol for twelve months; and the nets to be burnt. 1 *G. ſt.* 2. *c.* 18. Perſons aggrieved may appeal to the next ſeſſions. *id.*

Size of ſea fiſh.

5. By the ſame act of 1 *G. ſt.* 2. if any perſon ſhall bring to ſhore, or expoſe to ſale any fiſh leſs than the following ſizes from the eyes to the extent of the tail, *viz.* bret or turbet 16 inches, brail or pearl 14, codlin 12, whiting 6, baſs and mullet 12, ſole 8, place or dab 8, flounder 7; he ſhall forfeit the fiſh to the poor; and alſo 20*s.* half to the informer, and half to the poor; to be levied in the like manner: for default of payment, or of ſufficient diſtreſs, to be ſent to the next houſe of correction, or other common gaol of the county, to be ſeverely whipt, and kept to hard labour ſix days, and not longer than 14. Perſons aggrieved may appeal to the next ſeſſions.

But by the 33 *G.* 2. *c.* 27. Bret or turbot, brill or pearl, altho' under the ſaid dimenſions, may be expoſed to ſale, ſo as the ſame be not ſold by retail for above 6*d.* a pound. And if any greater price ſhall be demanded or taken, or ſuch fiſh ſhall not be weighed and meaſured if required; the ſame ſhall be forfeited, and the offender ſhall alſo forfeit 20*s.* to be recovered, mitigated, and applied, as the penalties in the ſaid act mentioned under the laſt head, relating to the ſpawn of fiſh, and fiſh under ſize, and out of ſeaſon: and the money paid ſhall be returned to the party who paid the ſame. *ſ.* 11.

IV. Importing fiſh.

May be ſeized.

1. If any ling, herring, cod, or pilchard, ſalmon, eels, or congers, taken by foreigners, ſhall be imported or expoſed to ſale; any perſon may ſeize the ſame, half for himſelf, and half for the poor. 18 *G.* 2. *c.* 2.

Penalty 100*l.*

2. And by the 1 *G. ſt.* 2. *c.* 18. and 9 *G.* 2. *c.* 33. no fiſh taken by, or received of any foreigner, except proteſ-

tants

ants inhabiting in *England*, ſhall be imported (except eels, ſtock fiſh, anchovies, ſturgeon, botarge, or cavear, lobſter and turbet); on pain of 100*l.* and the maſter of the veſſel 50*l.* half to the poor, and half to the informer who ſhall ſue in 12 months in any of the courts at *Weſtminſter*.

For fiſhing, ſo far as the ſalt duties are concerned therein, may be conſulted that part of the title **Exciſe**, which treateth of the duties upon ſalt.

The fiſh markets in *London* and *Weſtminſter* are regulated by the ſtatutes of 22 *G.* 2. *c.* 49. 29 *G.* 2. *c.* 39. and 33 *G.* 2. *c.* 27. which are too large and not general enough to be here inſerted.

A. Appointment of a gamekeeper; on the 22 & 23 *C.* 2. *c.* 25. *ſ.* 2. 5 *An. c.* 14. *ſ.* 4. and 3 *G. c.* 11. *ſ.* 1.

I A. L. *eſquire, lord of the manor of* ——— *do hereby nominate, authoriſe, and appoint* A. G. *of* P. *in the county of* ——— *yeoman, to be my gamekeeper of and within my ſaid manor of* ——— *in the county aforeſaid, with full power, licence, and authority to kill any hare, pheaſant, partridge, or any other game whatſoever, in and upon my ſaid manor of* ——— *for my ſole uſe, and immediate benefit; and alſo to take and ſeize all ſuch guns, bows, greyhounds, ſetting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbells, hays or other nets, harepipes, ſnares or other engines for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of my ſaid manor of* ——— *ſhall be uſed by any perſon or perſons who by law are prohibited to keep or uſe the ſame. Given under my hand and ſeal, this* ——— *day of* ——— *in the* ——— *year*, &c.

B. Warrant to ſearch for dogs and engines; on the 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

Weſtmorland. { To———

WHEREAS *complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that he the ſaid* A. I. *hath good ground*

to ſuſpect and doth ſuſpect that A. O. *of* ——— *aforeſaid in the county aforeſaid, yeoman, being a perſon in no reſpect qualified by the laws of this realm ſo to do, hath and keepeth in his cuſtody a greyhound* [gun, net, &c.] *to kill and deſtroy the game: Theſe are therefore to command you in his majeſty's name to enter into, and ſearch in the day time, the houſes, outhouſes, and other places of him the ſaid* A. O. *at* ——— *aforeſaid, and if you there find any greyhound,* &c. *that you ſeize and keep the ſame for the uſe of* A. L. *eſquire, lord of the manor of* ——— *in which manor the ſaid houſes, outhouſes, and other places, are ſituate and do lie, or otherwiſe that you cut in pieces or deſtroy the ſame. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year,* &c.

C. Warrant againſt a perſon for keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To ———.

WHEREAS *complaint hath this day been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of* ——— *aforeſaid, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that* A. O. *of the pariſh of* ——— *in the ſaid county, ſhoemaker, doth keep,* [or *uſe*] *a greyhound,* &c. *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do, contrary to the ſtatutes in ſuch caſe made and provided: Theſe are therefore in his majeſty's name to command you, that you do forthwith upon ſight hereof apprehend the ſaid* A. O. *and bring him before me to anſwer the premiſſes, and to be further dealt with according to law. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

D. Conviction of keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* ——— *in the county aforeſaid,* A. I. *of* ——— *cometh before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other*

other miſdemeanors in the ſaid county committed, and giveth me the ſaid juſtice to underſtand and be informed, that on the —— day of ——— in the ——— year aforeſaid, at the pariſh of ———in the county aforeſaid, one A. O. *of the pariſh aforeſaid in the county aforeſaid, ſhoemaker, not then having lands and tenements, nor any other eſtate of inheritance, in his own or his wive's right, of the clear yearly value of* 100l. per annum, *nor for term of life, nor any leaſe nor leaſes of* 99 *years, nor for any longer term, of the clear yearly value of* 150l. *nor then being ſon and heir apparent of an eſquire, nor of any other perſon of higher degree, nor the owner nor keeper of any foreſt, park, chaſe, or warren, nor gamekeeper to any lord or lady of a manor, did keep and uſe a certain dog, called a greyhound, to kill and deſtroy the game, againſt the form of the ſtatute in that caſe made and provided: And afterwards upon the aforeſaid day, and in the year firſt abovementioned, he the ſaid* A. O. *being brought before me by my warrant for that purpoſe, is aſked by me the ſaid juſtice, if he can ſay any thing for himſelf, why he the ſaid* A. O. *ſhould not be convicted of the premiſſes above charged upon him in form aforeſaid; who pleadeth that he is not guilty of the ſaid offence: nevertheleſs on the day aforeſaid, in the year aforeſaid, at ——— aforeſaid, in the county aforeſaid, one credible witneſs, to wit,* A. W. *of ——— yeoman, cometh before me the aforeſaid juſtice, and before me the ſame juſtice upon his oath on the holy golpel to him then and there by me the aforeſaid juſtice adminiſtred, depoſeth, ſweareth, and upon his oath aforeſaid affirmeth, and ſaith, that the aforeſaid* A. O. *on the ——— day of ——— aforeſaid, in the year aforeſaid, at the pariſh of ——— aforeſaid, in the county aforeſaid, not then having lands and tenements, nor any other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100l. per annum, *nor for term of life, nor any leaſe nor leaſes of* 99 *years, nor for any longer term, of the clear yearly value of* 150l. *nor then being ſon and heir apparent of an eſquire, nor of any other perſon of higher degree, nor the owner nor keeper of any foreſt, park, chaſe, or warren, nor gamekeeper to any lord or lady of a manor, did keep and uſe a certain dog called a greyhound, to kill and deſtroy the game: And thereupon the aforeſaid* A. O. *the day and year aforeſaid, at ——— aforeſaid, in the county aforeſaid, before me the ſame juſtice, by the oath of one credible witneſs aforeſaid, according to the form of the ſtatute aforeſaid, is convicted: And for his offence aforeſaid hath forfeited the ſum of* 5l. *of lawful money of* Great Britain, *to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof, I the ſaid juſtice to this preſent record of the conviction aforeſaid, have ſet my hand and ſeal at —— aforeſaid, in the county aforeſaid, the day and year firſt abovewritten.*

E. Warrant

E. Warrant to diſtrain 5 *l.* for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To ———.

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, is this day convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *a credible witneſs, for that he the ſaid* A. O. *being a perſon not qualified by the laws of this realm ſo to do, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *did keep and uſe in the pariſh of* ——— *aforeſaid, in the caunty aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *to be diſtributed as herein after is mentioned: Theſe are therefore in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* 5 l. *to* A. I. *of* ——— *in the ſaid county, yeoman, who informed me of the ſaid offence, and the other half of the ſaid ſum of* 5 l. *to the overſeers of the poor of the pariſh of* ——— *aforeſaid, where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; returning the overplus on demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods of the ſaid* A. O. *whereon to levy the ſaid ſum of* 5 l. *that then you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ———.

F. Commitment for want of diſtreſs, for keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, was on the* ——— *day of* ——— *in the* ——— *year*

——— *year of* ——— *convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *not being a perſon by the laws of this realm qualified ſo to do, on the* ——— *day of* ——— *in the year aforeſaid, did keep and uſe in the pariſh of* ——— *aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *of lawful money of* Great Britain; *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 5 l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſtatute in that behalf made; and whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame: Theſe are therefore to command you the ſaid conſtable of* ——— *aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the houſe of correction at* ——— *in the ſaid county, and there deliver him to the ſaid keeper thereof, together with this precept. And I do hereby command you, the ſaid keeper of the ſaid houſe of correction, to receive into your cuſtody in the ſaid houſe of correction the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months: and for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year*, &c.

G. *Certiorari* bond, on a conviction for keeeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 2.

KNOW *all men by theſe preſents*, &c. *Whereas the above-bound* A. O. *was lately convicted before* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of* ——— *aforeſaid, of keeping and uſing at* ——— *aforeſaid in the ſaid county, a greyhound to kill and deſtroy the game; And whereas the ſaid* A. O. *hath ſince his ſaid conviction ſued out his majeſty's writ of* certiorari *to remove the ſame, and the proceedings thereupon, before the king himſelf wherever he ſhall be in* England *on* ——— [the day of the return of the certiorari]: *The condition of the above obligation is ſuch, that if the abovebound* A. O. *do and ſhall (according to the true intent and meaning of the ſtatute in ſuch caſe made) well and truly pay to the ſaid* A. I. *within* 14 *days after the ſame conviction ſhall be confirmed, or a* procedendo

granted

granted thereupon, his full coſts and charges which he ſhall ſuſtain touching or concerning the ſaid conviction and removal thereof by the ſaid writ of certiorari; *then the abovewritten obligation ſhall be void, otherwiſe of force.*

H. Warrant againſt a higler having game in his poſſeſſion; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ——

WHEREAS A. I. *of* —— *hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the* —— *day of* —— *now laſt paſt, he the ſaid* A. I. *did ſee in the poſſeſſion of* A. O. *of* —— *in the pariſh of* —— *in the county aforeſaid, innkeeper, at* —— *aforeſaid, in the pariſh and county aforeſaid, in the houſe of him the ſaid* A. O. *then and there one hare* [or, *did ſee him offer to ſell one hare,* or as the caſe ſhall be] *he the ſaid* A. O. *being no way qualified by the laws of this realm, to have the ſaid hare in his cuſtody or poſſeſſion; againſt the form of the ſtatute in that caſe made and provided: Theſe are therefore to command you, to bring the ſaid* A. O. *before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to anſwer the premiſſes, and to be further dealt withal according to law. Given under my hand and ſeal, the* —— *day of* —— *in the* —— *year,* &c.

I. Warrant to levy 5*l.* on the goods of a higler convicted of having game in his cuſtody; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ——

WHEREAS A. O. *of* —— *in the pariſh of* —— *in the county aforeſaid, higler, is on this preſent* —— *day of* —— *in the* —— *year of the reign of* —— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *on the* —— *day of* —— *in the* —— *year of* —— *at the pariſh of* —— *aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute*

in

in that caſe made, by reaſon whereof, he the ſaid A. O. *hath forfeited the ſum of* 5 l. *Theſe are therefore to require you to levy the ſaid ſum of* 5 l. *by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* 5 l. *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained as aforeſaid, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* 5 l. *to* A. I. *of* ——— *yeoman, who informed me of the ſaid offence, and the other half to the poor of the pariſh of* ——— *aforeſaid, within which pariſh the ſaid offence was committed; returning to him the ſaid* A. O. *the overplus on demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be had of the goods of the ſaid* A. O. *that you certify the ſame to me together with the return of this precept. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ———.

K. Commitment on the ſame for want of diſtreſs; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at —— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, higler, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *of* ——— *a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the pariſh of* ——— *aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* —— *to levy the ſaid ſum of* 5 l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſaid ſtatute: And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* ——— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient*

diſtreſs can be found whereon to levy the ſame; Theſe are therefore to require you the conſtable of ——— *aforeſaid, to carry the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, and deliver him to the ſaid keeper thereof, together with this precept. And you the ſaid keeper are hereby commanded to receive into your cuſtody in the ſaid houſe of correction him the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months, without bail or mainprize; and for your ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the* ——— *day of* ———.

L. Mittimus for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Weſtmorland. { To the keeper of his majeſty's gaol at ——— in the county of ——— aforeſaid, and to his deputy or deputies there, and to every of them.

FORASMUCH *as this preſent day,* A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, did arreſt and bring before me at* ——— *in the ſaid county, one* A. O. *late of* ——— *in the ſaid county, taylor, whom they had ſeen and found the ſame day (as they ſaid) ſhooting in a hand gun, charged with powder and hail ſhot, at a coney, in a certain place in* ——— *within the ſaid county, called* ——— *contrary to the law of the realm, and thereupon prayed that juſtice might be done in that behalf: I* John Moore, *eſquire, being the next juſtice of the peace in the ſaid county to the place aforeſaid, did then at* ——— *aforeſaid, upon the ſaid requeſt, take the examination of the ſaid* A. O. *and did alſo then and there hear the proofs of them the ſaid* A. I. *and* B. I. *touching the ſaid offence; And for that it did then manifeſtly appear unto me, as well by the teſtimonies of them the ſaid* A. I. *and* B. I. *as alſo by the plain confeſſion of him the ſaid* A. O. *that he the ſaid* A. O. *had not then lands, tenements, fees, annuities or offices, to the yearly value of an hundred pounds, and that he had ſhot in the ſaid hand gun in the manner and form as is aforeſaid: I do ſend you herewithal the body of him the ſaid* A. O. *as lawfully convicted of the ſaid offence before me, requiring you in his majeſty's name, to receive him into your ſaid gaol, and him there ſafely to keep, until he ſhall have truly paid the pain and forfeiture of* 10l. *of lawful money of* Great Britain, *laid upon him for his ſaid offence by the ſtatute made in the three and thirtieth year of the reign of king* Henry *the eighth; that is to ſay, the one moiety thereof to our ſoverign lord the king, and the other moiety to them the ſaid* A. I. *and* B. I. *the firſt bringers of him before*

before me. And this ſhall be your ſufficient warrant in this behalf. Hereof fail you not, as you will anſwer for your contempt at your peril. Given under my hand and ſeal at ——— *aforeſaid, in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

M. Record of the conviction for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, one* A. O. *late of* ——— *in the county aforeſaid, taylor, found and ſaw, at* ——— *in the county aforeſaid, the day and year aforeſaid, with a hand gun charged with gunpowder and leaden hail ſhot, ſhooting and diſcharging the ſaid gun, at a certain coney then being in a certain place there, called* ——— *againſt the form of the ſtatute in that caſe made and provided; and therefore, the day and year aforeſaid, him the ſaid* A. O. *at* ——— *aforeſaid, they did arreſt, and at* ——— *aforeſaid before me* ——— *eſquire, one (and next unto the ſaid place called* ———*) of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſame county committed, then with them did bring, requeſting thereupon juſtice to be done; which requeſt being heard, I the ſaid* J. P. *at* ——— *aforeſaid, the day and year aforeſaid, duly thereupon have examined the aforeſaid* A. O. *at* ——— *aforeſaid, and the proofs of the aforeſaid* A. I. *and* B. I. *in this behalf have taken: And becauſe that as well by the proofs aforeſaid, as by the confeſſion of him the ſaid* A. O. *at* ——— *aforeſaid, then and there it hath appeared to me manifeſtly, that the aforeſaid* A. O. *at* ——— *aforeſaid, when he had not in his own right, nor in the right of his wife, to his own uſe, nor any other to the uſe of the ſaid* A. O. *had lands, tenements, fees, annuities or offices to the yearly value of one hundred pounds, in the hand gun aforeſaid, in manner and form aforeſaid, did ſhoot, againſt the form of the ſtatute aforeſaid; I the ſaid* J. P. *the aforenamed* A. O. *at* ——— *aforeſaid, the day and year aforeſaid, to the next gaol of our ſaid lord the king, at* ——— *in the county aforeſaid (of the treſpaſs aforeſaid before me convicted) have committed, there to remain until the penalty and forfeiture of* 10*l. of lawful money of* Great Britain, *he ſhall truly pay or cauſe to be paid, to wit, one moiety thereof to our ſaid lord the king, and the other moiety thereof to the ſaid* A. I. *and* B. I. *the firſt bringers of the ſaid* A. O. *before me as is aforeſaid. In witneſs of all*

which,

which, I the aforeſaid J. P. *to theſe preſents have put my ſeal. Given at* ——— *aforeſaid, the day and year firſt above written.*

N. Conviction for killing deer, from *Tremaine's entries*, 328, 329. which conviction was on the 13 *C.* 2. *c.* 10. but is here altered to grounds incloſed, to bring the offence within the 3 *W. c.* 10. which is done by the addition only of that ſingle word [*incloſed*] with the alteration of the penalty.

Cumberland. BE *it remembred, that on the third day of* September *in the year of the reign of our lord* Charles *the* ſecond *now king of* &c. *the* thirty ſecond, *one* Benjamin Granger *of* ——— *gentleman, cometh before me* John Aglionby, *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county of* C. *at* G. *in the ſame county, and giveth me to underſtand and be informed, that one* James Dobſon, *late of* ——— J. B. *late of* ——— *and* L. M. *late of* ——— *on the 25th day of* Auguſt *in the year of the reign of our ſaid lord the now king, the* 32d *aforeſaid, in a certain park then of the moſt noble* Henry *duke of* Norfolk, *called* Grayſtock *park, in the pariſh of* Grayſtock, *in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully hunted, and a certain fallow deer of the ſaid duke then in the ſame park killed, took, and carried away, without the conſent of the ſaid duke then owner of the ſaid park, or of* Andrew Huddleſton, *eſquire, then being chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided: And afterwards, to wit, on the aforeſaid* third *day of* September *in the* 32d *year aforeſaid, two credible witneſſes, that is to ſay,* J. H. *of* ——— *and* T. B. *of* ——— *come before me the ſaid juſtice aſſigned* &c. *at* G. *aforeſaid, and before me the ſaid juſtice aſſigned* &c. *upon their oath on the holy goſpel of god to them then and there by me the aforeſaid juſtice aſſigned* &c. *by the authority of the ſtatute aforeſaid adminiſtred and given, do depoſe, ſwear, and ſay, and each of them doth depoſe, ſwear, and ſay, upon their oath aforeſaid, that the aforeſaid* J. D. J. B. *and* L. M. *on the aforeſaid 25th day of* Auguſt *in the* 32d *year aforeſaid, in the aforeſaid park and ground incloſed, of the aforeſaid duke of* Norfolk, *in the pariſh of* Grayſtock *aforeſaid, unlawfully hunted, and the aforeſaid fallow deer of him the ſaid duke, then in the ſaid park and ground incloſed, took, killed, and*

and carried away, without the conſent of the ſame duke then owner of the ſaid park and ground incloſed, or of the aforeſaid A. H. *eſquire, then with the cuſtody of the ſame park and ground incloſed as is aforeſaid chiefly intruſted. And thereupon they the aforeſaid* J. D. J. B. *and* L. M. *on the ſaid* 3d *day of* September *in the* 32d *year aforeſaid, before me the ſaid juſtice aſſigned* &c. *by the oath of two credible witneſſes aforeſaid, according to the form of the ſtatute aforeſaid, are, and every of them is, convicted. And for the offence aforeſaid, every of them the aforeſaid* J. D. J. B. *and* L. M. *according to the form of the ſtatute aforeſaid, hath ſeverally forfeited the ſum of* 30l. *one third part thereof to the aforeſaid* R. G. *the informer in this behalf as is aforeſaid, another third part thereof to the uſe of the poor of the ſaid pariſh of* G. *within which pariſh the offence aforeſaid was committed, and the other third part thereof to the duke aforeſaid, owner of the deer aforeſaid. In witneſs whereof I the aforeſaid juſtice to this preſent record of the conviction as aforeſaid, have ſet my hand and ſeal, at* G. *aforeſaid, on the day and year firſt abovementioned.*

John Aglionby.

O. Warrant of diſtreſs for hunting and killing deer; on the 3 *W. c.* 10. *ſ.* 2.

Weſtmorland. { To ——.

WHEREAS A. O. *of* —— *yeoman, is this day duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *of* —— *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the* —— *day of* —— *in the* —— *year of* —— *in a certain park, then of Sir* P. M. *baronet, in the pariſh of* —— *in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully did hunt, and a certain fallow deer of the ſaid Sir* P. M. *baronet, then in the ſame park did kill, take, and carry away, without the conſent of the ſaid Sir* P. M. *baronet, then owner of the ſaid park, or of any other perſon then chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided; by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 30l. *of lawful money of* Great Britain, *to be diſtributed as herein after is mentioned.*

Theſe are therefore in his ſaid majeſty's name to command you

to levy the ſaid ſum by diſtreſs of the goods and chattels of him the ſaid A. O. *And if within the ſpace of* [*ſix*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* 30l. *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained as aforeſaid; and out of the money ariſing by ſuch ſale, that you do pay one third part of the ſaid ſum of* 30l. *to* A. I. *of* ——— *in the ſaid county, yeoman, who informed me of the ſaid offence; and one third part unto the churchwardens or overſeers of the poor of the ſaid pariſh of* ——— *for the uſe of the poor of the ſaid pariſh, and the other third part to the ſaid* ——— *owner of the ſaid deer; returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be had or found, by and on which the ſaid ſum of* 30l. *may be levied, you are hereby required to certify the ſame to me, within two days after the date of this preſent warrant. Given under my hand and ſeal, at* ——— *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

P. Commitment for want of diſtreſs, for hunting and killing deer; on the 3 *W. c.* 10. *ſ.* 2.

Weſtmorland. To the conſtable of ——— in the ſaid county, and to the keeper of the common gaol at ——— in the ſaid county, and to the chief officer of the market town of ——— in the ſaid county, and to every of them.

WHEREAS A. O. *of* ——— *labourer, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *of* ——— *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year* ——— *in a certain park then of* ——— *eſq; in the pariſh of* —— *in the ſaid county, then and long before and yet being ground incloſed wherein deer then were and long before had been uſually kept, unlawfully did hunt, and a certain fallow deer of the ſaid* ——— *eſquire, then in the ſame park did kill, take and carry away, without the conſent of the ſaid* ——— *then owner of the ſaid park, or of any other perſon then chiefly intruſted with the cuſtody of the ſame park, againſt the*

form of the ſtatute in ſuch caſe made and provided; by reaſon whereof he the ſaid A. O. *hath forfeited the ſum of* 30l. *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 30l. *by diſtreſs of the goods and chattels of him the ſaid* A. O. *and to pay over the ſaid ſum of* 30l. *according as is directed by the ſtatute aforeſaid; And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* ——— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum of* 30l. *on the goods and chattels of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame: Therefore in purſuance of the ſtatute aforeſaid, I do hereby command you the ſaid conſtable of* ——— *him the ſaid* A. O. *to apprehend and ſafely to convey to the ſaid common gaol at* ——— *aforeſaid, in the county aforeſaid, and him to deliver to the keeper thereof aforeſaid, together with this precept: And I do hereby command you the ſaid keeper of the gaol aforeſaid, to receive into your cuſtody in the ſaid gaol him the ſaid* A. O. *and him there ſafely to keep for the ſpace of one whole year; ſaving that within the ſaid year you deliver him the ſaid* A. O. *to the chief officer of* ——— *being the next market town next adjoining to the place where the ſaid offence was committed, or to his under officer or officers, together with this precept, who are hereby reſpectively required to ſet the ſaid* A. O. *in the pillory in the ſaid market town by the ſpace of one hour on ſome market day. And hereof fail not, as you will reſpectively anſwer the ſame at your perils. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* ——— *in the year* ———.

Q. Warrant to ſearch for veniſon or ſkins; on the 3 *W. c.* 10. *ſ.* 3.

Weſtmorland. } To the conſtable of ——

WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground incloſed of* ——— *at* ——— *in the ſaid county, and that he the ſaid* A. I. *hath juſt cauſe to ſuſpect, and doth ſuſpect, that veniſon or the ſkins of deer, or toyls whereby to take and kill deer, are concealed in the houſes, outhouſes, or other places belonging to the ſaid houſes of* A. O. *of* ——— *yeoman, and* B.

O. *of* ——— *yeoman, at* ——— *aforeſaid in the county aforeſaid: Theſe are therefore in his ſaid majeſty's name, and by virtue of the ſtatute in that caſe made and provided, to require you that you do forthwith upon ſight hereof, enter into and ſearch the ſaid houſes, outhouſes, and other places belonging to the ſaid houſes, of them the ſaid* A. O. *and* B. O. *at* ——— *aforeſaid; and if on ſuch ſearch you ſhall there find any veniſon, or ſkin of any deer, or toyls aforeſaid, that you do apprehend the perſon or perſons, in whoſe houſes, outhouſes, or other places aforeſaid, ſuch veniſon, ſkin, or toyls ſhall be found, and him or them ſo apprehended do carry before ſome of his ſaid majeſty's juſtices of the peace in and for the ſaid county, to be examined concerning the premiſſes, and further dealt withal according to law. Given under my hand and ſeal, the* ——— *day of* ——— *in the year* ———.

Gaming.

Gaming not an offence at common law.

1. MR. *Dalton* ſays, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in ſe*, of their own nature, but only prohibited by ſtatute. *Dalt. c.* 46.

Gaming houſe a nuſance.

2. But it hath been ſaid, that all common gaming houſes are nuſances in the eye of the law, as being great temptations to idleneſs, and apt to draw together numbers of diſorderly perſons. 1 *Haw.* 198.

Gaming houſes prohibited by the 33 H. 8.

3. By the ſtatute of the 33 *H.* 8. *c.* 9. No perſon ſhall for his gain, lucre, or living, keep any common houſe, alley, or place of bowling, coyting, cloyſh cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40*s.* a day. *ſ.* 11.

But it was reſolved upon this clauſe, in the third year of *J.* 1. that if the gueſts in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, theſe are not within this ſtatute; for altho' the games be uſed in any inn, tavern, or other houſe, yet if the houſe be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the houſe, this is not within the ſtatute, nor is ſuch perſon that plays in ſuch houſe that is not kept for lucre or gain, within the penalty of that law. *Dalt. c.* 46.

And

And moreover, by the ſame ſtatute it is further enacted, that every perſon uſing and haunting any the ſaid houſes and plays, and there playing, ſhall forfeit 6*s.* 8*d.* 33 H. 8. c. 9. ſ. 12.

And all and every juſtices of the peace, mayors, ſheriffs, and other head officers, may enter all ſuch houſes and places, where ſuch games ſhall be ſuſpected to be holden; and as well the keepers of the ſame, as alſo the perſons there reſorting and playing, may take, arreſt, and impriſon, and keep in priſon, until the ſaid keepers have found ſureties to the king's uſe, to be bound by recognizance or otherwiſe, no longer to uſe, keep, or occupy any ſuch houſe, play, game, alley, or place; and alſo that the perſons there ſo found, be in like caſe bound by themſelves, or with ſureties, no more to play, haunt, or exerciſe from thenceforth, in, at, or to any of the ſaid places, or at any of the ſaid games. *id.* ſ. 14.

And the mayors, ſheriffs, bailiffs, conſtables, and other head officers within every city, borough, or town, ſhall make due ſearch weekly, or at the furtheſt once a month, in all places where any ſuch houſes or places ſhall be ſuſpected to be kept; and if they ſhall not make ſuch ſearch at the fartheſt once a month, if the caſe ſo require, every ſuch perſon offending ſhall forfeit 40*s.* for each month. *id.* ſ. 15.

And by the ſame act, no manner of artificer, handicraftſman, huſbandman, apprentice, labourer, ſervant at huſbandry, journeyman, or ſervant of artificer, mariners, fiſhermen, watermen, or any ſerving man, ſhall play at the tables, tennis, dice, cards, bowls, claſh coyting, logating, or any other unlawful game, out of *Chriſtmas*, on pain of 20*s.* and in *Chriſtmas* to play at the ſaid games only in their maſters houſes, or in their maſters preſence; and alſo no perſon ſhall at any time play at bowls in open places out of his garden or orchard, on pain of 6*s.* 8*d.* id. ſ. 16.

But any maſter may licenſe his ſervant to play at cards, dice, or tables with himſelf, or with any other gentleman openly in his houſe, or in his preſence. *id.* ſ. 22.

And any nobleman, or other perſon having 100*l.* a year, may command or licenſe his ſervants, or family of his houſe, to play within the precinct of his houſe, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well among themſelves, as others repairing to the ſame houſe. *id.* ſ. 23.

And all juſtices of the Peace, mayors, bailiffs, ſheriffs, and other head officers, and every of them, *finding or knowing* any perſon uſing unlawful games, contrary to this act,

may commit every ſuch offender to ward, there to remain without bail or mainpriſe, till he be bound by obligation to the king's uſe, in ſuch ſum as by the diſcretion of the ſaid juſtices or other ſuch officers ſhall be thought reaſonable, that they ſhall not from thenceforth uſe ſuch unlawful games. *id. ſ.* 16.

And by the 2 *G.* 2. *c.* 28. Where it ſhall be *proved on the oath of two witneſſes* before any juſtice of the peace, as well as where he ſhall find upon his own view, that any perſon hath uſed any unlawful game contrary to the ſaid ſtatute, the ſaid juſtice ſhall have power to commit him to priſon without bail, unleſs and until he ſhall enter into recognizance, with ſureties or without at the diſcretion of the juſtice, that he ſhall not from thenceforth play at or uſe ſuch unlawful game. *ſ.* 9.

And where any the forfeitures abovementioned ſhall be found within the precincts of any leet, the lord ſhall have one half, and the other half ſhall be to him that ſhall ſue in any of the king's courts; and elſewhere, they ſhall be half to the king, and half to him that ſhall ſue in like manner. 33 *H.* 8. *c.* 9. *ſ.* 18.

But by the 31 *El. c.* 5. All ſuits to be purſued upon any ſtatute (that is, any ſtatute then in force) for uſing any unlawful game, ſhall be ſued and proſecuted, or otherwiſe heard and determined, in the general quarter ſeſſions or aſſizes of the county where the offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the county. *ſ.* 7.

And no privilege of parliament ſhall be allowed to any perſon, againſt whom a proſecution ſhall be commenced, for keeping any common gaming houſe, or place for playing at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 7.

Gaming in publick houſes prohibited by the 30 G. 2. c. 24.

4. By the 30 *G.* 2. *c.* 24. If any perſon licenſed to ſell any ſorts of liquors, or who ſhall ſell or ſuffer the ſame to be ſold in his houſe, outhouſe, ground, or apartment thereto belonging, *ſhall knowingly ſuffer* any gaming with cards, dice, draughts, ſhuffle boards, miſſiſſipi, or billiard tables, ſkittles, nine pins, or with any other implement of gaming, in his houſe, outhouſe, ground, or apartment thereto belonging, by any journeyman, labourers, ſervants, or apprentices; and ſhall be convicted thereof on confeſſion, or oath of one witneſs, before one juſtice, within ſix days after the offence committed; he ſhall forfeit for the firſt offence 40*s.* and for every other offence 10*l.* by diſtreſs by warrant of ſuch juſtice; three fourths of which ſhall be to the churchwardens for the uſe of the poor, and one fourth to the informer. *ſ.* 14.

And

And if any journeyman, labourer, apprentice, or ſervant, *ſhall game* in any houſe, outhouſe, ground, or apartment thereto belonging, wherein any liquors ſhall be ſold; and complaint thereof ſhall be made on oath before one juſtice where the offence ſhall be committed: he ſhall iſſue his warrant to the conſtable or other peace officer of the place wherein the offence is charged to have been committed, or where the offender ſhall reſide, to apprehend and carry the offender before ſome juſtice of the place where the offence ſhall be committed, or where the offender ſhall reſide; and if ſuch perſon ſhall be convicted thereof by the oath of one witneſs or confeſſion, he ſhall forfeit not exceeding 20*s.* nor leſs than 5*s.* as the juſtice ſhall order, every time he ſhall ſo offend and be convicted as aforeſaid, one fourth to the informer, and three fourths to the overſeers for the uſe of the poor; and if he ſhall not forthwith pay down the ſame, ſuch juſtice ſhall commit him to the houſe of correction or ſome other priſon of the place where he ſhall be apprehended, to be kept to hard labour for any time not exceeding one month, or until he ſhall pay the forfeiture. *ſ.* 15.

And any juſtice unto whom complaint upon oath ſhall be made, of any offence committed againſt this act, ſhall iſſue his warrant for bringing before him or ſome other juſtice of ſuch place, the perſon charged with ſuch offence; and the juſtice before whom he is brought ſhall hear and determine the matter, and proceed to judgment and conviction: and if it ſhall appear upon oath to the ſatisfaction of ſuch juſtice, that any perſon within his juriſdiction can give material evidence on behalf of the proſecutor or of the perſon accuſed, and who will not voluntarily appear; he ſhall iſſue his ſummons to convene him to give his evidence; and if he ſhall neglect or refuſe to appear on ſuch ſummons, and no juſt excuſe ſhall be offered, then (on proof upon oath of the ſummons having been duly ſerved upon him) he ſhall iſſue his warrant to bring ſuch witneſs before him; and on his appearance, if he ſhall refuſe to be examined on oath, without offering juſt cauſe for ſuch refuſal, the juſtice ſhall commit him to the publick priſon for any time not exceeding three months. *ſ.* 16.

And in all proceedings on this act, any perſon ſhall be admitted to be a witneſs, notwithſtanding his being an inhabitant of the place wherein the offence ſhall have been committed. *ſ.* 18.

And the juſtice before whom any perſon ſhall be convicted upon this act, ſhall cauſe the conviction to be drawn up in the form or to the effect following;

To wit. BE *it remembred, that on this —— day of ——, in the —— year of his majeſty's reign*, A. B. *is convicted before —— of his majeſty's juſtices of the peace for the ſaid county of ——* [or, *for the —— riding*, or *diviſion, of the ſaid county of ——* or, *for the city, liberty, or town of ——* as the caſe ſhall be] *for —— and —— the ſaid —— do adjudge him*, or her, *to pay and forfeit for the ſame, the ſum of —— Given under —— the day and year aforeſaid.*

The ſame to be written upon parchment, and tranſmitted to the next ſeſſions, to be filed amongſt the records; and if any perſon ſhall appeal to the ſaid ſeſſions, the juſtices there ſhall, upon receiving the ſaid conviction, proceed to hear and determine the matter. *ſ.* 19.

And no certiorari ſhall be granted, to remove any proceedings on this act. *ſ.* 20.

And if any perſon convicted of any offence puniſhable by this act, ſhall think himſelf aggrieved by the judgment of the juſtice before whom he ſhall have been convicted, he may appeal to the next ſeſſions, and the execution of the judgment ſhall in ſuch caſe be ſuſpended, the perſon convicted entring into recognizance at the time of the conviction, with two ſureties in double the ſum he ſhall have been adjudged to pay, upon condition to proſecute ſuch appeal with effect, and to be forthcoming to abide the judgment and determination of the ſaid ſeſſions: and the ſeſſions ſhall award ſuch coſts as ſhall appear juſt and reaſonable to be paid by either party; and if the judgment ſhall be affirmed, the appellant ſhall immediately pay the ſum adjudged to be forfeited together with ſuch coſts as the court ſhall award, or in default thereof ſhall ſuffer the pains and penalties by this act inflicted upon perſons reſpectively who ſhall neglect to pay or ſhall not pay the forfeitures by this act to be paid. *ſ.* 21.

And no perſon puniſhed by this act, ſhall be puniſhed by any other law. *ſ.* 22.

Gaming houſe within London and 20 miles thereof.

5. By the 25 *G.* 2. *c.* 36. any houſe, room, garden, or other place kept for publick dancing, muſick, or other entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as hereafter following (except the theatres of *Drury-Lane*, *Covent-Garden*, the *Hay-Market*, and other entertainments excerciſed by letters patents or licence of the crown, or of the lord chamberlain) ſhall be deemed a diſorderly houſe or place, and the keeper thereof ſhall forfeit 100*l.* with full coſts to him who ſhall ſue (in ſix months) in any of the courts at *Weſtminſter*. And the perſon who ſhall appear to act as maſter, or as having the

the management of ſuch diſorderly houſe, ſhall be deemed the keeper thereof.

Which ſaid licence ſhall be granted at the laſt preceding *Michaelmas* ſeſſions, and ſhall be ſigned and ſealed by four juſtices in open court, and afterwards be publickly read by the clerk of the peace, with the names of the juſtices ſubſcribing the ſame; and no licence ſhall be granted at any adjourned ſeſſions; nor ſhall any fee be taken for the ſame. And there ſhall be inſerted in ſuch licence, and made conditions thereof, that the words following ſhall be affixed in large capital letters over the door or entrance of every ſuch licenſed houſe or place, *viz. Licenſed purſuant to act of parliament of the twenty-fifth of king* George *the ſecond*; and that it ſhall not be opened before five in the afternoon. And in caſe of a breach of either of the ſaid conditions, the licence ſhall be forfeited, and revoked by the juſtices at the next ſeſſions, and ſhall not be renewed.

And to encourage proſecutions againſt perſons keeping bawdy houſes, gaming houſes, or other diſorderly houſes, the conſtable, on notice given him in writing by any two inhabitants of the pariſh, paying ſcot and lot, of any perſon keeping ſuch houſe, ſhall forthwith go with them to a juſtice of the peace; and ſhall (on their making oath that they believe the contents of ſuch notice to be true, and entring into a recognizance of 20*l.* each to produce evidence of the offence,) enter into a recognizance of 30*l.* to proſecute with effect ſuch perſon at the next ſeſſions or aſſizes, as to the juſtice ſhall ſeem meet: and on the conſtable entering into ſuch recognizance, the juſtice ſhall iſſue his warrant for bringing the accuſed perſons before him, and ſhall bind them over to appear at the ſaid ſeſſions or aſſizes, and ſhall alſo, if he thinks fit, demand and take ſurety for their good behaviour in the mean time.

And if the conſtable ſhall neglect or refuſe, upon ſuch notice, to go before a juſtice, or to enter into recognizance, or ſhall be wilfully negligent in carrying on the proſecution, he ſhall forfeit 20*l.* to each of the ſaid inhabitants.

And on trial, any perſon may give evidence againſt the defendant, notwithſtanding his being a pariſhioner, or having entered into ſuch recognizance.

And the conſtable ſhall be allowed all the reaſonable expences of the proſecution, to be aſcertained by two juſtices; and ſhall be paid the ſame by the overſeers of the poor: and if ſuch perſon be convicted, the overſeers ſhall alſo forthwith pay 10*l.* to each of ſuch inhabitants, on pain of forfeiting double to the ſaid perſons.

And no indictment of ſuch offence ſhall be removed by certiorari.

6. By

Loſing 10l. at a time.

6. By the 9 *An. c.* 14. Any perſon who ſhall at any time or ſitting, by playing at cards, dice, tables, or other game whatſoever, or by betting on the ſides of ſuch as do play, loſe to any one or more perſons ſo playing or betting, in the whole the ſum or value of 10*l.* and ſhall pay or deliver the ſame, or any part thereof; the perſon to loſing and paying or delivering the ſame, ſhall be at liberty in three months to ſue for and recover the ſame with coſts, in any court of record: and if he ſhall not ſue in three months, it ſhall be lawful for any perſon to ſue for and recover the ſame and treble value, with coſts; half to ſuch perſon who ſhall ſue, and half to the poor. *ſ.* 2.

And every perſon who ſhall ſo be liable to be ſued for the ſame, ſhall be obliged and compellable to anſwer on oath ſuch bill as ſhall be preferred againſt him, for diſcovering the ſum of money or other thing ſo won. 9 *An. c.* 14. *ſ.* 3. 18 *G.* 2. *c.* 34. *ſ.* 3.

Or other game whatſoever] *M.* 15 *G.* 2. *Goodburn* and *Marley.* It was determined, that *horſe races* are within theſe general words. *Str.* 1159.

Loſing 20l. at a time, or 20l. in 24 hours.

7. And by the 18 *G.* 2. *c.* 34. If any perſon ſhall win or loſe at play, or by betting, at one time, the value of 10*l.* or within the ſpace of 24 hours the value of 20*l.* he ſhall be liable to be indicted for ſuch offence, in ſix months, either in the king's bench or at the aſſizes; and being convicted, ſhall be fined five times the value of the ſum won or loſt, which (after ſuch charges as the court ſhall judge reaſonable, allowed thereout to the proſecutor and evidence) ſhall go to the poor. *ſ.* 8.

And if any offender ſhall diſcover another offender, ſo that he be convicted, the diſcoverer ſhall be diſcharged from all penalties by reaſon of ſuch offence, if not before convicted thereof, and ſhall be admitted as an evidence to prove the ſame. *ſ.* 9.

But nothing in this act ſhall repeal the aforeſaid act of 9 *Ann.* id. *ſ.* 10.

Loſing above 100l. at a time.

8. If any perſon ſhall play at cards, dice, tables, tennis, bowls, kittles, ſhovelboard, or any other paſtime or game whatſoever (other than for ready money) or bet on the ſides of ſuch as ſhall play, and ſhall loſe any ſum or other thing, exceeding 100*l.* at any one time or meeting, upon ticket, or credit, or otherwiſe, and ſhall not pay down the ſame at the time when he ſhall loſe the ſame; in ſuch caſe he ſhall not be bound to make it good, but the contract for the ſame, and for every part thereof, and all aſſurances and ſecurities for the ſame ſhall be void; and the winner ſhall forfeit treble value of all ſuch ſums as he ſhall ſo win above

100*l.*

100*l.* half to the king, and half to him that ſhall ſue in one year in the courts at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 3.

9. And all notes, bills, bonds, judgments, mortgages, or other ſecurities, where the whole or any part of the conſideration ſhall be for money or any other valuable thing, won by playing at cards, dice, tables, tennis, bowls, or other game whatſoever; or by betting on the ſides of ſuch as do game; or for the reimburſing or repaying any money knowingly lent or advanced, at the time and place of ſuch play, to any perſon ſo gaming or betting, or that ſhall (during ſuch play) ſo play or bett,—ſhall be void: And where ſuch ſecurities ſhall be of lands, or ſuch as incumber or affect the ſame; they ſhall enure and be to the ſole uſe and benefit of, and devolve upon ſuch perſon as might have ſuch lands, in caſe the ſaid grantor, or perſon ſo incumbring the ſame, had been dead: And all conveyances to hinder them from devolving on ſuch perſon, ſhall be void. 9 *Ann. c.* 14. *ſ.* 1. Securities to be void.

Securities] *H.* 19 *G.* 2. *Barjeau* and *Walmſley.* The plaintiff and defendant gamed together, at toſſing up for five guineas at a time. And the plaintiff having won all the defendant's ready money lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was inſiſted for the defendant, that by the 9 *An. c.* 14. the plaintiff could maintain no action; for by that act, all *ſecurities* for money lent to game with ſhall be void; and the borrowing on an agreement to pay, is *a ſecurity.* But *Lee* Ch. J. held, that this was not a caſe within the act, for there is not the word *contract*, as in the ſtatute of uſury; and the word *ſecurities*, as it ſtands in this act, muſt mean laſting liens upon the eſtate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written ſecurities. Wherefore the plaintiff obtained a verdict for 126*l.* Stra. 1249.

10. And any two juſtices may cauſe to come, or to be brought before them, every perſon whom they ſhall have juſt cauſe to ſuſpect to have no viſible eſtate, profeſſion, or calling, to maintain themſelves by, but do for the moſt part ſupport themſelves by gaming; and if ſuch perſon ſhall not make it appear to the ſaid juſtices, that the principal part of his expences is not maintained by gaming, they ſhall require of him ſufficient ſecurities for his good behaviour for 12 months, and in default of his finding ſuch ſecurities, Perſons ſuſpected of ſupporting themſelves by gaming.

ſecurities, ſhall commit him to the common gaol, until he ſhall find ſuch ſecurities as aforeſaid. 9 *An. c.* 14. *ſ.* 6.

And if he ſhall, during the time for which he ſhall be bound, at any one time or ſitting, play or bet for any ſums or other thing exceeding in the whole the value of 20*s.* ſuch playing ſhall be deemed a forfeiture of the recognizance. *ſ.* 7.

Cheating. 11. If any perſon ſhall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, ſhovelboard; or by cockfightings, horſe races, dog matches, foot races, or other paſtimes or games; or by bearing a ſhare in the ſtakes; or by betting on the ſides of ſuch as ſhall play, act, ride, or run as aforeſaid, —— win any ſum or other valuable thing; he ſhall forfeit treble the value, half to the king, and half to the party grieved (if he ſhall ſue in ſix months), otherwiſe to any perſon who ſhall ſue in one year next after the ſaid ſix months, in any of the courts at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 2.

And by the 9 *An. c.* 14. If any perſon ſhall by any fraud or ſhift, couſenage, circumvention, deceit, or unlawful device, or ill practice whatſoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforeſaid, or bearing a ſhare in the ſtakes, or betting on the ſides of ſuch as do play, win any ſum of money or other valuable thing, and ſhall be convicted thereof upon indictment or information; he ſhall forfeit five times the value of ſuch money or other thing ſo won, and ſhall be deemed infamous and ſuffer ſuch corporal puniſhment as in caſes of wilful perjury; and ſuch penalty to be recovered by ſuch perſon as ſhall ſue for the ſame, by ſuch action as aforeſaid. *ſ.* 5.

T. 9 *G.* 2. *K.* and *Luckup.* The defendant was convicted on an information upon this act, which ſays, that he ſhall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine ſhould be ſet upon the defendant, if he refuſed to ſpeak with the proſecutor. But by the court, All the judgment we can give is, *that he is convicted*; and a new action muſt be brought upon that judgment for the forfeiture, which was thought ſufficient to deter the offenders. In the caſe of recuſancy, there is no other judgment. And the defendant was diſcharged, without any fine or coſts. *Str.* 1048.

Quarrelling. 12. And for the preventing ſuch quarrels as may happen on the account of gaming; if any perſon ſhall aſſault and beat, or challenge to fight, any other perſon whatſoever, on account of any money won by gaming, playing, or betting, at any the games aforeſaid, he ſhall, on conviction

viction thereof by indictment or information, forfeit to the king all his goods and chattels and perſonal eſtate whatſoever, and ſhall alſo ſuffer impriſonment without bail or mainpriſe, in the common gaol of the county where the conviction ſhall be had, during the term of two years. 9 *An. c.* 14. *ſ.* 8.

13. It is generally provided by the ſeveral ſtatutes, that nothing therein ſhall hinder any perſon from playing at any the games aforeſaid, within any of the king's royal palaces, where he ſhall then reſide. Royal palaces excepted.

14. By the 10 & 11 *W. c.* 17. All lotteries are declared to be publick nuſances; and all grants, patents, and licences, for ſuch lotteries, to be againſt law. *ſ.* 1. Lottery, a nuſance.

15. No perſon ſhall expoſe to be played, drawn, or thrown at, or ſhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatſoever: and every perſon who ſhall expoſe to be played, drawn, or thrown at, any ſuch lottery, play, or device, ſhall forfeit 500*l.* one third to the king, one third to the poor, and one third with double coſts to him that ſhall ſue in the courts at *Weſtminſter*; and the offenders ſhall likewiſe be proſecuted as common rogues, according to the ſtatutes in that caſe made and provided. 10 & 11 *W. c.* 17. *ſ.* 2. Keeping or playing at a lottery.

And every perſon who ſhall play, throw, or draw at any ſuch lottery, play, or device, ſhall forfeit 20*l.* in like manner. *ſ.* 3.

And all juſtices of the peace, mayors, conſtables, and other civil officers ſhall uſe their utmoſt endeavours to prevent the drawing of any ſuch unlawful lottery, by all lawful ways and means; and every perſon who ſhall ſet up, or by writing or printing publiſh the ſetting up any ſuch unlawful lottery, with intent to have ſuch lottery drawn, ſhall forfeit 100*l.* one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue in the courts at Weſtminſter. 9 *Ann. c.* 6. *ſ.* 56.

16. Every perſon who ſhall keep any office or place, for making inſurances on marriages, births, chriſtnings, or ſervice, or any other office or place, under the denominations of ſales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of ſmall ſums of money, ſhall forfeit 500*l.* one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue. And every printer, or other perſon, who ſhall by writing or printing publiſh the ſetting up or keeping any ſuch office or place, ſhall forfeit 100*l.* in like manner. 10 *An. c.* 26. *ſ.* 109. Inſurances.

17. Every

Sales of lands or goods; and chances in publick lotteries.

17. Every perſon who ſhall keep, any office or place, under the denomination of ſales of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things, for the improvement of ſmall ſums of money; or ſhall ſell or expoſe to ſale the ſame or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums of money by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by the chances of the prizes in ſome publick lottery; or ſhall deliver out tickets, to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall make, print, or publiſh, any propoſal or ſcheme of the like nature, under any denomination whatſoever,——and ſhall be thereof convicted, on oath of one witneſs, by two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by any former act made againſt private lotteries, forfeit 500*l.* one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs and ſale by warrant of ſuch juſtices, and ſhall alſo by ſuch juſtices be committed to the county gaol without bail for one whole year, and from thence till the ſaid ſum of 500*l.* ſhall be paid. Provided that perſons aggrieved may appeal to the next quarter ſeſſions. And every perſon who ſhall be adventurer in, or any way contribute on the account of any ſuch ſales, lotteries, propoſals, or ſchemes, ſhall forfeit double the ſum contributed, with coſts, half to the king, and half to him that ſhall ſue in the courts at Weſtminſter. 8 *G. c.* 2. *ſ.* 36, 37.

And by the 12 *G.* 2. *c.* 28. If any perſon ſhall erect, ſet up, continue, or keep, any office or place, under the denomination of a ſale of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by chances of the prizes in ſome publick lottery eſtabliſhed by act of parliament, or ſhall deliver out tickets to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall expoſe to ſale any houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, or other goods, by any game, method, or device whatſoever, depending upon, or to be determined by any lot or drawing,

whether

whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatſoever;——he ſhall, on conviction before any juſtice of the peace (or mayor) on the oath of one witneſs, or view of ſuch juſtice, or confeſſion, forfeit 200*l.* by diſtreſs and ſale, by warrant of one jnſtice of the county or town where the offence ſhall be committed; which ſaid forfeiture (after deducting reaſonable charges of the proſecution) ſhall go one third to the informer, and two thirds to the poor of the pariſh (except in *Bath*, where the ſaid two thirds ſhall go to the poor of the hoſpital there.) *ſ.* 1.

And if the offender ſhall not have ſufficient goods, whereon to levy the penalties, or ſhall not immediately pay or give ſecurity for the ſame; the juſtice before whom he ſhall be convicted, may commit him to the common gaol, not exceeding ſix months. *ſ.* 8.

And if any witneſs ſhall neglect or refuſe to appear, upon ſummons, or ſhall refuſe to give evidence, or give falſe evidence; he ſhall forfeit 50*l.* by diſtreſs, by warrant of the perſon iſſuing ſuch ſummons; and if he have not ſufficient goods whereon to levy the 50*l.* he ſhall be committed to the common gaol for ſix months. 18 *G.* 2. *c.* 34. *ſ.* 4.

But if any perſon think himſelf aggrieved by the judgment of any juſtice or mayor, he may appeal to the next ſeſſions, giving reaſonable notice to the proſecutor, and entring into a recognizance before ſome juſtices of the peace where the conviction was made, with two ſureties, on condition to try ſuch appeal at ſuch next ſeſſions. And if the conviction ſhall be affirmed, the party appealing ſhall pay to the proſecutor treble coſts. 12 *G.* 2. *c.* 28. *ſ.* 5.

And no conviction ſhall be quaſhed by the ſeſſions for want of form; nor ſhall be removed by certiorari, till after determination in the ſeſſions. *id. ſ.* 6.

And if any juſtice, or mayor, ſhall neglect his duty herein; he ſhall forfeit 10*l.* with full coſts, half to him that ſhall ſue in any court of record or at the aſſizes, and half to the poor. *id. ſ.* 9.

Moreover, every ſuch ſale of houſes, lands, advowſons, preſentations, plate, jewels, ſhips, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, ſhall be void; and the ſame being expoſed to ſale in manner aforeſaid, ſhall be forfeited to ſuch perſon as ſhall ſue for the ſame in any court of record, or at the aſſizes. *id. ſ.* 4.

And, finally, every perſon who ſhall be an adventurer in any of the ſaid games, lotteries, or ſales, ſhall forfeit 50*l.* in like manner. *id. ſ.* 3.

18. The

Ace of hearts, faro, baſſet, and hazard.

18. The games of ace of hearts, faro, baſſet, and hazard, ſhall be deemed games or lotteries by cards or dice; and every perſon who ſhall ſet up, or keep theſe games, ſhall be liable to all the abovementioned penalties, for ſetting up or keeping any the games or lotteries in this act mentioned. 12 *G.* 2. *c.* 28. *ſ.* 2.

And every perſon who ſhall play, ſet at, ſtake, or punt at any of the ſaid games, ſhall forfeit 50*l.* in like manner. *ſ.* 3.

Paſſage.

19. Alſo the game of paſſage, and every other game with one or more die or dice, or with any other inſtrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted) ſhall be deemed games or lotteries by dice, within the ſaid act of 12 G. 2. c. 28.—13 *G.* 2. *c.* 19. *ſ.* 9.

Roly poly.

20. Alſo by the 18 *G.* 2. *c.* 34. No perſon ſhall keep any houſe, room, or place for playing, or ſuffer any perſon within ſuch place, to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any perſon ſhall keep ſuch houſe, or ſuffer any perſon to play at roly poly, or other game with cards or dice prohibited by law, he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 G. 2. c. 28. —18 *G.* 2. *c.* 34. *ſ.* 1.

And if any perſon ſhall play at roly poly, or any game with cards or dice prohibited by law; he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 G. 2.—18 *G.* 2. *c.* 34. *ſ.* 2.

Foreign lotteries.

21. If any perſon ſhall, by colour of any grant from any foreign prince or ſtate, ſet up any lottery, or undertaking in the nature of a lottery, under any denomination whatſoever; or ſhall make, print, or publiſh any propoſal for any ſuch lottery or undertaking; or ſhall ſell or diſpoſe of any ticket in any foreign lottery; and ſhall be convicted thereof, on oath of one witneſs, before two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by former acts againſt unlawful lotteries, forfeit 200*l.* one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo by them be committed to the common gaol for one year, and from thence till the ſaid ſum of 200*l.* be paid: provided, that perſons aggrieved may appeal to the next quarter ſeſſions. 9 *G.* *c.* 19. *ſ.* 4, 5.

And by the 6 *G.* 2. *c.* 35. If any perſon ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any

any foreign or pretended foreign lottery, or in any claſs, part, or diviſion thereof, or in any undertaking in the nature of a lottery; or ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or ſhall receive any money for any ſuch ticket, receipt, chance, or number, or in conſideration of any money to be repaid in caſe any ticket or number in any foreign or pretended foreign lottery, or any claſs, part, or diviſion thereof, ſhall prove fortunate; and ſhall be convicted thereof in the courts at *Weſtminſter*, or on the oath of one witneſs before two juſtices where the offence ſhall be committed, or the offender ſhall be found; he ſhall forfeit 200*l.* one third to the king, one third to the informer, and one third to the poor; the ſame (in caſe of conviction before the juſtices) to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo be committed to the common gaol for a year, and from thence till the 200*l.* be paid: provided, that perſons aggrieved may appeal to the next quarter ſeſſions. *J.* 29, 30.

How far an offender may be a witneſs.

22. No perſon, other than the plaintiff and defendant, ſhall be incapacitated from being a witneſs, touching any offence againſt the laws for preventing exceſſive and deceitful gaming, by reaſon of having played, betted, or ſtaked at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 5.

Gaol and gaoler.

For breaking of gaol, ſee Priſon breaking.

I. Building and repairing of gaols.
II. Who ſhall have the keeping of gaols.
III. Gaoler ſhall receive criminals.
IV. How they ſhall be maintained.
V. Selling of ſtrong liquors in gaols.
VI. How priſoners may be ſet on work.
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Gaol and gaoler.

I. Building and repairing of gaols.

THE juſtices, or the greater number of them, within the limits of their commiſſion, upon preſentment of the grand jury at the aſſizes (or ſeſſions, 12 *G.* 2. *c.* 29. *ſ.* 13.) of the inſufficiency or inconveniency of the county gaol, may contract with any perſon for the building, finiſhing, or repairing the ſame. 11 & 12 *W.* *c.* 19. *ſ.* 1, 2. The expence thereof to be paid by the treaſurer, out of the general county rate. 12 *G.* 2. *c.* 29.

But this ſhall not extend to gaols held by inheritance; nor to charge any perſons in any town or liberty which have common gaols for felons, and commiſſioners of aſſize or gaol delivery, for any aſſeſſment to the making the common gaol for the ſhire. 11 & 12 *W.* *c.* 19. *ſ.* 5.

II. Who ſhall have the keeping of gaols.

The gaol it ſelf is the king's, but the keeping thereof is incident to the office of the ſheriff, and inſeparable from it; except ſuch gaols whereof any perſons have the keeping by inheritance or ſucceſſion. 14 *Ed.* 3. *ſt.* 1. *c.* 10. 19 *H.* 7. *c.* 10. 2 *Inſt.* 589.

And therefore the ſheriffs ſhall put in ſuch keepers for whom they will anſwer. 14 *Ed.* 3. *ſt.* 1. *c.* 10.

But by the 3 *G.* *c.* 15. *ſ.* 10. None ſhall buy the office of gaoler, on pain of 500*l.* half to the king, and half to him that ſhall ſue.

And a gaoler in fact, is as much puniſhable for a miſdemeanor in his office, as if he were a rightful gaoler. 2 *Haw.* 134.

III. Gaoler ſhall receive criminals.

All felons ſhall be impriſoned in the common gaol, and not elſewhere. 5 *H.* 4. *c.* 10.

And if the gaoler refuſes to receive a felon, or take any thing for receiving him, he ſhall be puniſhed for the ſame by the juſtices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt.* *c.* 170.

But vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper. 6 *G.* *c.* 19.

IV. How they ſhall be maintained.

Lord *Coke* ſays, the gaoler cannot refuſe the priſoner victuals, for he ought not to ſuffer him to die for want of ſuſtenance. 1 *Inſt.* 295.

But this is denied by others; and as there are ſeveral ſtatutes which provide for the maintenance of priſoners, without ſuppoſing the gaoler any way obliged to it, it ſeemeth that this opinion is not maintainable. *Bac. Abr.* Gaol, gaoler. F.

For by the 14 *El. c.* 5. and 12 *G.* 2. *c.* 29. they are to be provided for by a ſum to be paid out of the general county-rate, by the high conſtables, to ſuch ſufficient perſons dwelling nigh the gaols, as ſhall be appointed by the juſtices in open ſeſſions, who ſhall be there ready to receive it.

V. Selling of ſtrong liquors in gaols.

By the 24 *G.* 2. *c.* 40. No licence ſhall be granted for retailing *ſpirituous liquors* within any gaol or priſon; and if the gaoler ſhall ſell, lend, uſe, or give away, or ſuffer the ſame (except by way of medicine) he ſhall forfeit 100*l.* half to the king, and half with full coſts to him who ſhall ſue. *ſ.* 17.

And any juſtice, on information on oath, that ſpirituous liquors are kept or diſpoſed of in ſuch gaol, may enter and ſearch, or iſſue his warrant to ſearch for, and ſeize, and ſtave, and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall endeavour to bring any ſpirituous liquors into ſuch gaol, the gaoler or his ſervants may apprehend and carry him before a juſtice; and if by the oath of one witneſs or otherwiſe ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine, not exceeding 20*l.* and not leſs than 10*l.* as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch gaol. *ſ.* 19.

And a copy of the three clauſes above, ſhall be hung up in each gaol, on pain of the gaoler forfeiting 40*s.* to be levied by warrant of one juſtice, on conviction on the oath of one witneſs: and any juſtice may enter and demand a ſight of ſuch copy, and if not ſhewn to him, he ſhall immediately convict ſuch gaoler: one half of the ſaid penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of ſuch gaol. *ſ.* 20.

And by the 29 *G.* 2. *c.* 12. No perſon ſhall retail *ale*, *beer*, or other liquors, in any priſon, without being licenſed in like manner as alehouſe-keepers.

VI. How priſoners may be ſet on work.

The juſtices in their general ſeſſions, if they find it needful, may provide a ſtock of ſuch materials as they find convenient for the ſetting poor priſoners on work, to be paid for by the treaſurer out of the general county rate; and may pay and provide fit perſons to overſee and ſet ſuch priſoners on work; and make ſuch orders for accounts concerning the premiſſes, as ſhall be thought needful, and for puniſhment of neglects and other abuſes, and for beſtowing the profits ariſing by the labour of the priſoners for their relief. Provided that the ſum to be ſo paid do not exceed the rate of 6*d.* a week for any one pariſh. 19 *C.* 2. *c.* 4. *ſ.* 1. 12 *G.* 2. *c.* 29.

VII. How they ſhall be reſtrained and kept.

The county gaol is the priſon for malefactors; but priſoners for debt, where eſcape lies againſt the ſheriff for their eſcaping, may be kept in what place the ſheriff pleaſes. *L. Raym.* 136.

By the 31 *C.* 2. *c.* 2. if any perſon ſhall be committed to any priſon, for any criminal or ſuppoſed criminal offence, he ſhall not be removed from thence, unleſs it be by *habeas corpus* or ſome other legal writ; or where he is removed from one priſon or place to another, within the ſame county, in order to his trial or diſcharge; or in caſe of ſudden fire or infection, or other neceſſity: on pain that the perſon ſigning any warrant for ſuch removal, and the perſon executing the ſame, ſhall forfeit for the firſt offence 100*l.* and for the ſecond 200*l.* to the party grieved. *ſ.* 9.

But on emergent occaſions, as in caſe of infectious diſeaſes, the ſheriff or gaoler, with the advice and conſent of three or more juſtices (1 *Q.*) may, if they ſhall find it needful, provide other ſafe places (with the owners conſent) for the removal of ſick or other perſons out of the uſual gaols. 19 *C.* 2. *c.* 4. *ſ.* 2.

By the 22 & 23 *C.* 2. *c.* 20. The gaoler ſhall not put, keep, or lodge priſoners for debt and felons together in one room or chamber; but they ſhall be put, kept, and lodged ſeparate and apart from one another in diſtinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. *ſ.* 13.

Nevertheleſs

Nevertheleſs it ſeemeth generally in all caſes where a man is committed to priſon, eſpecially if it be for felony, or upon an execution, or but for a treſpaſs or other offence, every gaoler, ought to keep ſuch priſoner in ſafe and cloſe cuſtody; ſafe, that he cannot eſcape: and cloſe, without conference with others or intelligence of things abroad. *Dalt. c.* 170.

And therefore if the gaoler ſhall licenſe his priſoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet theſe are eſcapes. *Dalt. c.* 170.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his eſcape. 1 *H. H.* 601. *Dalt. c.* 170. and it is ſaid, that a gaoler is no way puniſhable for keeping even a debtor in irons. 2 *Haw.* 152.

But the learned editor of *Hale's Hiſtory* obſerves, that this liberty even in the caſe of a felon (much more in the caſe of a priſoner for debt) can only be intended, where the officer has juſt reaſon to fear an eſcape; as where the priſoner is unruly, or makes any attempt to that purpoſe; but otherwiſe, notwithſtanding the common practice of gaolers, it ſeems altogether unwarrantable, and contrary to the mildneſs and humanity of the laws of *England*, by which gaolers are forbidden to put their priſoners to any pain or torment. And lord *Coke*, 2 *Inſt.* 381. is expreſs, that by the common law it might not be done. 1 *H. H.* 601.

And if the gaoler keep the priſoner more ſtraitly than he ought of right, whereof the priſoner dieth, this is felony in the gaoler by the common law: and this is the cauſe, that if a priſoner die in gaol, the coroner ought to ſit upon him. 3 *Inſt.* 91.

But if a criminal, endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. 1 *H. H.* 496.

VIII. How they ſhall be delivered.

By the 3 *H.* 7. *c.* 3. Thoſe that have the cuſtody of gaols, muſt certify the names of all priſoners, to the juſtices of gaol delivery, in order to their trial or diſcharge; on pain of 5 *l.*

And if a gaoler detains a priſoner in gaol after his acquittal, unleſs it be for his fees (not for meat, drink, or lodging) this is an unlawful impriſonment. 2 *Inſt.* 53.

And a gaoler muſt not diſobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the priſoner over, till the gaoler be paid all his fees. 2 *Hawk.* 151.

IX. Of gaolers permitting eſcapes.

If the gaoler voluntarily ſuffer a priſoner to eſcape, he ſhall be puniſhed in the ſame manner as the priſoner ought to have been who eſcaped: and if he negligently permit him to eſcape, he ſhall be puniſhed by fine and impriſonment. And the ſheriff ſhall anſwer for him. 2 *Haw.* 134, 5, 6.

But the principal gaoler is only finable for the voluntary eſcape of a felon ſuffered by his deputy; for no one ſhall ſuffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* 135.

But for a negligent eſcape ſuffered by his bailiff, the ſheriff is as much liable to anſwer, as if he had actually ſuffered it himſelf; and the court may charge either the ſheriff or bailiff for it: and if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him. 2 *Haw.* 135.

X. Concerning debtors.

Arreſting and carrying to gaol.

1. By the 32 *G.* 2. *c.* 28. No ſheriff, bailiff, or other officer, ſhall carry any perſon by him arreſted or being in his cuſtody by virtue of any writ or other proceſs, to any tavern, alehouſe, or other publick victualling or drinking houſe, or to the private houſe of any ſuch officer or of any tenant or relation of his without his free conſent; nor charge him for any liquor, victuals, or other thing whatſoever, but what he ſhall call for of his own accord; nor cauſe or procure him to call for any ſuch, but what he ſhall call for voluntarily; nor demand, directly or indirectly, any other or greater fee than is by law allowed; nor take any gratuity for keeping him out of gaol; nor carry him to gaol within 24 hours from the time of the arreſt, unleſs ſuch perſon arreſted ſhall refuſe to be carried to ſome ſafe and convenient dwelling houſe of his own appointment within ſome city or market town (if there arreſted), otherwiſe within 3 miles from the place of arreſt, ſo as ſuch dwelling houſe be not the houſe of the perſon arreſted, and be within the reſpective diviſion or liberty. *ſ.* 1.

And no ſheriff, bailiff, or other officer, ſhall take more for one or more nights lodging, or for a day's diet, or other expences of any perſon under arreſt, than ſhall be allowed by

by order of ſeſſions: which ſeſſions ſhall make order therein, and vary the ſame from time to time as they ſhall ſee occaſion; and ſhall cauſe a copy of every ſuch order, and of every variation or alteration thereof, ſigned by the clerk of the peace, to be put and kept up in ſome conſpicuous place in the ſeſſions houſe or other proper place, that the ſame may be there ſeen and examined. *ſ.* 2.

And every ſheriff, and other perſon intruſted with the execution of proceſs, ſhall deliver a printed copy of the ſeveral clauſes in this act relating to bailiffs and other perſons to be employed under them, to every ſuch bailiff and other perſon; and ſhall alſo make it part of the condition of the bond to be given by ſuch bailiff or other perſon, that he will ſhew and deliver a copy of the ſaid clauſes to every perſon he ſhall arreſt and go with to any publick or other houſe where any liquor ſhall be ſold, and that he will permit every perſon ſo arreſted or any friend of his, to read over the ſame clauſes before any liquor, meat, or victuals ſhall be called for or brought to ſuch perſon: and if any bailiff ſhall offend in the premiſſes; he ſhall, beſides the breach of the condition of the bond, be deemed guilty of a miſdemeanor in the execution of the proceſs, and puniſhable as ſuch by virtue of this act. *ſ.* 3.

Gaoler to ſuffer the priſoner to ſend for neceſſaries.

2. And the ſheriffs and gaolers ſhall ſuffer any priſoner for debt, at his will and pleaſure to ſend for or to have brought unto him at ſeaſonable times in the day, any beer, ale, victuals, or other neceſſary food, from what place he ſhall think fit, or can have the ſame; and alſo to have and uſe ſuch bedding, linnen, and other neceſſaries, as he ſhall have occaſion for and think fit, or ſhall be ſupplied with, without purloining or detaining the ſame, or requiring him to pay for the having or uſing thereof, or putting any manner of reſtraint or difficulty upon him in relation thereunto. *ſ.* 4.

Juſtices to eſtabliſh tables of fees, and rules and orders for the regulation of gaols.

3. The two lords chief juſtices and lord chief baron, or two of them, together with the mayor and two aldermen of London, or with three aldermen without the mayor, in reſpect of the priſons within the ſaid city; and the ſaid lords chief juſtices and chief baron, or two of them, together with three juſtices of the peace of Middleſex and Surry reſpectively, for the priſons within the ſaid counties; and elſewhere, the juſtices in ſeſſions,——ſhall eſtabliſh tables of the rates and *fees* to be taken by gaolers within their reſpective juriſdictions, and vary the ſame from time to time as they ſhall ſee occaſion. The ſame to be ſigned reſpectively by the ſaid judges, mayor, aldermen, and juſtices within London, Middleſex, and Surry; and elſewhere,

to be ſigned by 3 or more juſtices in ſeſſions, and afterwards reviewed and confirmed or moderated by the judges of aſſize (or juſtices of great ſeſſions in Wales and Cheſhire) at the next aſſizes to be held after making or varying the ſame as aforeſaid; the ſame to be afterwards ſigned by the ſaid judges of aſſize and three juſtices of the peace of ſuch diviſion or place reſpectively. *ſ.* 5.

And proper *rules and orders*, for the better government of the reſpective gaols and priſoners therein, ſhall be made, and altered from time to time as there ſhall be occaſion, by the courts of Weſtminſter hall for the ſeveral priſons belonging to the ſaid courts: And by the ſaid lords chief juſtices and chief baron or two of them, together with the mayor of London and two aldermen, or with 3 aldermen without the mayor, for the priſons within the ſaid city: and by the ſaid lords chief juſtices and chief baron or two of them, together with 3 juſtices of the peace, for the priſons within Middleſex and Surry; and elſewhere, by three or more juſtices in ſeſſions, for the priſons within their reſpective diſtricts; the ſame to be afterwards reviewed, and altered if thought neceſſary, by the judges of aſſize at the next aſſizes after making or altering the ſame: And after every making or altering as aforeſaid, the ſame ſhall be ſigned by the ſaid ſeveral perſons authorized to make, review, or alter the ſame. *ſ.* 6.

And duplicates of every ſuch table of fees and of orders which ſhall be made for the priſons belonging to the courts of Weſtminſter hall ſhall be inrolled in ſuch court: and for any other priſons, ſhall be tranſmitted to the clerk of the peace, to be inrolled by him, without fee; and every ſuch clerk of the peace ſhall cauſe another copy thereof to be hung up in the court where the aſſizes or quarter ſeſſions ſhall be held, there to remain and be inſpected; and ſhall cauſe another copy thereof to be tranſmitted to the gaoler; and ſuch gaoler ſhall forthwith cauſe the ſame to be hung up in ſome open place and in a conſpicuous manner in his gaol; and to be there kept up, ſo as that the priſoners may have free reſort thereto, at reaſonable times in the day, without paying any thing for the ſame. *id.*

And the courts of Weſtminſter hall ſhall, in every *Michaelmaſs* term, inquire whether ſuch tables of fees and ſuch rules or orders are there hung in the ſeveral priſons to them belonging, and duly complied with: and the judges of aſſize ſhall make like inquiry, and ſhall ſupply and redreſs whatever they ſhall find neglected or tranſgreſſed relating thereunto; and ſhall expreſsly give in charge to the grand jury, to make inquiries thereof. *ſ.* 7, 8.

And

And no gaoler ſhall take, directly or indirectly, of any priſoner for debt damages coſts or contempt, any other fee for his commitment, or coming into gaol, chamber rent there, releaſe or diſcharge, than ſhall be allowed in the ſaid table of fees: and every ſheriff, gaoler, or other officer, who ſhall in any wiſe offend againſt this act, ſhall for every ſuch offence (over and above ſuch other penalties or puniſhments as he ſhall be liable to by the laws now in force) forfeit to the party grieved 50*l.* with treble coſts. *ſ.* 12.

4. The courts at Weſtminſter, juſtices of aſſize (and great ſeſſions), juſtices of the peace, and commiſſioners for charitable uſes, ſhall from time to time inquire concerning gifts and bequeſts to poor priſoners; who may ſend for papers and witneſſes, and examine perſons upon oath, and order and ſettle the payment thereof in ſuch eaſy and expeditious way as they ſhall think proper. *ſ.* 10. Charities to gaols.

And a table of ſuch benefactions, after every ſuch ſettling thereof, ſhall be tranſmitted to the clerk of the peace, to be regiſtred by him without fee; and another table to the gaoler, to be hung and kept up by him in ſome conſpicuous place in his gaol, where the priſoners may have eaſy reſort thereto without fee. *ſ.* 10.

5. On the petition in term time of any perſon being or having been under arreſt, complaining of any exaction or abuſe by the gaoler or other officer, unto any of the courts of record at Weſtminſter from whence the proceſs iſſued; or, in vacation time, to any of the judges of ſuch court, or to the judges of aſſize or great ſeſſions, or judges of any other court of record from whence ſuch proceſs iſſued; they ſhall hear and determine the ſame in a ſummary way, and make ſuch order thereupon for redreſſing the abuſes, and for puniſhing the offender, and for making reparation to the party injured, as they ſhall think juſt, together with full coſts of the complaint; the ſame to be inforced by attachment, or in any other manner as other orders of the ſaid courts or judges may be inforced. *ſ.* 11. Redreſs of grievances.

6. If any perſon ſhall be charged in execution, for any ſum not exceeding 100*l.* and ſhall be minded to deliver up to his creditors who ſhall ſo charge him in execution, all his eſtate and effects towards the ſatisfaction of the debt wherewith he ſhall ſo ſtand charged; it ſhall be lawful for ſuch priſoner, before the end of the firſt term which ſhall be next after his being ſo charged in execution, to exhibit a petition to any court of law from whence the proceſs iſſued, or to the court into which he ſhall be removed by habeas corpus, or ſhall be charged in cuſtody, and ſhall remain in the priſon thereof; certifying the cauſe of his impriſonment: How priſoners may be diſcharged on delivering up their effects.

And

And ſetting forth therein, not only a juſt and true account of all the real and perſonal eſtate which he or any perſon in truſt for him is intitled to at the time of his petitioning, and of all incumbrances and charges affecting the ſame; but alſo a juſt and true account of all the real and perſonal eſtate which he, or any perſon in truſt for him or for his uſe, was intereſted in or intitled to at the time of his impriſonment, either in poſſeſſion, remainder or expectancy, to the beſt of his belief, and ſo far as his knowledge extends; and likewiſe a juſt and true account of all ſecurities wherein any part of his eſtate conſiſteth, and of all deeds, evidences, writings, books, bonds, notes, and papers concerning the ſame or relating thereto; and the names and places of abode of the witneſſes to all ſecurities, bonds, and notes, and where they are to be met with, ſo far as his knowledge extends:

And before ſuch petition ſhall be received by any ſuch court, he ſhall cauſe to be given or left unto or for all the creditors at whoſe ſuit he ſhall ſtand charged in execution as aforeſaid, their executors or adminiſtrators, and at their uſual place of abode (or to their attorney or agent laſt employed in the cauſe, if ſuch creditors, or their executors or adminiſtrators, cannot be met with, and not otherwiſe) 14 days at leaſt before ſuch petition ſhall be preſented and received, a notice in writing, ſigned with his name or mark, importing, that he doth intend to petition the court from whence the proceſs iſſued upon which he ſtands charged in execution, or into the priſon to which he ſhall have been removed by habeas corpus, or ſhall ſtand charged in execution on any judgment recovered on any bill or declaration filed or delivered in any ſuch court; and alſo ſetting forth in ſuch notice, a true copy of the account or ſchedule of his eſtate which he intends to deliver into court (except the neceſſary wearing apparel and bedding of him and his family, and the tools or inſtruments of his trade or calling, not exceeding the value of 10 *l.* in the whole):

And an affidavit of the due ſervice of ſuch notice ſhall be delivered with the petition, and openly read in the court:

And if the court ſhall be ſatisfied with the regularity of ſuch notice, the petition ſhall be received; and the court ſhall thereupon, by order or rule of the ſaid court, cauſe the priſoner ſo petitioning to be brought up, and the ſaid creditors or their executors or adminiſtrators to be ſummoned to appear perſonally or by their attorney in the ſaid court:

And on their appearance, or if they ſhall not appear, then on affidavit of the due ſervice of the ſaid order on them,

them, or on their attorney if they cannot be met with; ſuch court ſhall, in a ſummary way, examine into the matter of the petition, and tender to the priſoner the oath following;

I A. B. *do ſwear, in the preſence of almighty God, that the account by me ſet forth in my petition preſented to this honourable court, doth contain a full and true account of the real and perſonal eſtate, debts, credits, and effects whatſoever, which I, or any in truſt for me, at the time of my firſt impriſonment in this action, or at any time ſince, had, or was in any reſpect intitled to, in poſſeſſion, reverſion, or remainder (except the wearing apparel and bedding of or for me and my family, and the tools or inſtruments of my trade or calling, not exceeding* 10*l. value in the whole*); *and alſo an account how much of my real and perſonal eſtate, debts, credits, or effects, hath ſince been diſpoſed of, releaſed or diſcharged, and how, to whom, and on what conſideration, and for what purpoſe, and how much thereof, I or any perſon or perſons in truſt for me, have, or at the time of my preſenting my ſaid petition to this honourable court, had, or which I am or was, or any perſon in truſt for me, or for my uſe, is any ways intereſted in, or intitled to, in poſſeſſion, reverſion, remainder, or expectancy; and alſo a true account of all deeds, writings, books, papers, ſecurities, bonds, and notes, relating thereto, and where the ſame reſpectively now are, to the beſt of my knowledge and belief, and what charges are now affecting the real eſtate I am now ſeiſed of, or intitled to* [if ſuch priſoner ſhall be then ſeiſed of any real eſtate]; *and that I have not, at any time before or ſince my impriſonment, directly or indirectly, ſold, leaſed, aſſigned, mortgaged, pawned, or otherwiſe diſpoſed of, or made over in truſt for myſelf, or otherwiſe, than is mentioned in ſuch account, any part of my meſſuages, lands, tenements, eſtates, goods, ſtock, money, debts, or other real or perſonal eſtate, whereby to have or accept any benefit, advantage, or profit, to my ſelf or my family, or with any view, deſign, or intent, to deceive, injure, or defraud, any of my creditors to whom I am indebted: So help me God.*

And thereupon, the court may order the meſſuages, lands, tenements, goods, and effects contained in the account, or ſo much of them as ſhall be ſufficient to ſatisfy the ſaid debts and the fees due to the gaoler, to be (by a ſhort indorſement on the petition, and to be ſigned by the priſoner) aſſigned and conveyed to the ſaid creditors, their heirs, executors, adminiſtrators, and aſſigns, for the benefit of them who ſhall have ſo charged ſuch priſoner in execution (ſubject nevertheleſs to all prior incumbrances affecting the ſame):

And

And the eſtate, intereſt, or property, of all meſſuages, lands, goods, debts, eſtates, and effects which ſhall belong to ſuch priſoner, ſhall by ſuch aſſignment be veſted in the perſons to whom the aſſignment ſhall be made; and they may take poſſeſſion, and ſue for the recovery thereof, in like manner as aſſignees of commiſſioners of bankrupts:

And on ſuch aſſignment and conveyance being executed by ſuch priſoner, he ſhall be diſcharged out of cuſtody by rule or order of ſuch court; which order being produced to, and a copy thereof left with the ſheriff or gaoler, he ſhall forthwith diſcharge him, without taking any fee, or detaining him in reſpect of chamber rent, lodging, or otherwiſe:

And the perſon to whom the eſtate ſhall be aſſigned, ſhall with all convenient ſpeed ſell and diſpoſe thereof, and divide the net produce amongſt the creditors who ſhall have charged ſuch priſoner in execution before the time of preſenting the petition, in proportion to their reſpective debts.

But if any perſon at whoſe ſuit ſuch priſoner ſtood charged in execution, ſhall not be ſatisfied with ſuch priſoner's oath, and ſhall either perſonally, or by his attorney (if he cannot perſonally attend, and proof ſhall be made thereof to the ſatisfaction of ſuch court) deſire further time to inform himſelf of the matters contained therein; ſuch court may remand the priſoner, and direct him, and the perſon diſſatisfied, to appear either in perſon or by his attorney, on ſome other day at fartheſt within the firſt week of the term next following the time of ſuch examination; but ſooner if ſuch court ſhall think fit.

And all objections which ſhall be made as to the inſufficiency in point of form againſt the ſchedule, ſhall be only made the firſt time ſuch priſoner ſhall be brought up.

And if at ſuch ſecond day, the creditor diſſatisfied ſhall not appear, or ſhall be unable to diſcover any eſtate or effects of the priſoner omitted in the account ſet forth in his petition; in ſuch caſe, the court ſhall order the priſoner to be diſcharged, on his executing ſuch aſſignment and conveyance as aforeſaid: unleſs ſuch creditor ſhall inſiſt upon his being detained, and ſhall agree by writing ſigned by him (or by his attorney, in caſe ſuch creditor ſhall be out of *England*) to pay weekly a ſum not exceeding 2*s.* 4*d.* as ſuch court ſhall think fit, to the ſaid priſoner, to be paid weekly every monday; and in ſuch caſe, the priſoner ſhall be remanded: But if any failure ſhall be made in the payment thereof, ſuch priſoner, upon application in term time to ſuch court, or in vacation time to any judge of ſuch court, may by order of ſuch court or judge be diſcharged,

on

on his executing ſuch aſſignment as aforeſaid; proof being made on oath, of the non-payment, for any week, of ſuch ſum.

And if any priſoner ſhall refuſe to take the ſaid oath, or ſhall be detected before ſuch court or judge of falſity therein, or ſhall refuſe to execute ſuch aſſignment; he ſhall preſently be remanded. *ſ.* 13.

Provided, that where more creditors than one ſhall deſire to have ſuch priſoner detained; every of ſuch creditors ſhall only reſpectively pay ſuch ſum, not exceeding 1*s.* 6*d.* a week, as the court ſhall order. *ſ.* 14.

But where any priſoner ſhall be charged in execution in any county gaol, or in any other priſon above 20 miles from Weſtminſter hall or from the court out of which the execution iſſued; then, on the like petition as aforeſaid, to the court from whence ſuch execution iſſued, or in the priſon of which ſuch priſoner is and ſtands charged in execution; and on affidavit in like manner as aforeſaid being made and left with ſuch petition; ſuch court, on being ſatisfied with the truth of ſuch affidavit, ſhall make a rule to cauſe the priſoner to be brought to the next aſſizes (or great ſeſſions in Wales and Cheſhire) to be holden for the place where he ſhall be impriſoned; and the expence of bringing him, not exceeding 1*s.* a mile, ſhall be paid to the gaoler out of the priſoner's eſtate if the ſame ſhall be ſufficient to pay ſuch expence; and if not, then to be paid by the treaſurer of the county or place in which ſuch priſoner ſhall be impriſoned, as ſhall be allowed by the judge; and the creditors, or their executors or adminiſtrators, ſhall by order of the court from whence the proceſs iſſued, be ſummoned to appear at the ſaid aſſizes, if they can be met with; if not, then the attorney laſt employed for ſuch creditors; and a copy of ſuch order ſhall be ſerved on every ſuch creditor, or his executors or adminiſtrators, or left at his dwelling houſe or uſual place of abode, or with his attorney laſt employed, 14 days at leaſt before ſuch aſſizes. And upon affidavit of ſuch ſervice thereof being laid before the judge of aſſize, he ſhall, on being ſatisfied with the truth of ſuch affidavit, appoint a time for hearing the matter of the petition, on ſome certain day and time, on the crown ſide of ſuch court, during ſuch aſſizes. And on the appearance of the ſaid creditors; or, in default of their appearance, either in perſon or by attorney, then on proof of their being duly ſerved with the notice, and of a copy of the ſchedule being compriſed in ſuch notice, and of the rule of ſuch court for their appearance being duly ſerved; the judge ſhall in a ſummary way examine into the matter of the petition, and

adminiſter

adminiſter the oath to the priſoner, and make ſuch order in the premiſſes as to him ſhall ſeem meet, and proceed in manner as aforeſaid concerning the priſoner's diſcharge, and give the ſame judgment, relief, and directions relating thereunto, as any court out of which the proceſs ſhall iſſue is herein before directed to do: And the order of the ſaid judge ſhall ſtand good, and be entered upon record in ſuch aſſizes; and a copy thereof (ſigned by the judge) ſhall be tranſmitted to the court from whence the execution iſſued, to be there alſo entered upon record. *ſ.* 15.

How compellable to deliver up.

7. By the ſaid act of 32 *G.* 2. *c.* 28. If any priſoner ſhall be charged in execution, for any debt or damages not exceeding 100*l.* beſides coſts of ſuit, ſhall not within three months next after his commitment make ſatisfaction to his creditors who charged him in execution; any ſuch creditor or creditors may require him, on giving 20 days notice to him in writing that they deſign to compel him to give in to the court from which the proceſs iſſued, or into the court in the priſon whereof he ſhall be removed by habeas corpus, or ſhall remain or be charged in execution, within the firſt ſeven days of the term next after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to the courts at Weſtminſter; and at the ſecond court which ſhall be held by any ſuch other court of record after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to ſuch other court; and where ſuch priſoner ſhall be charged in execution in any county gaol or other priſon above 20 miles diſtant from Weſtminſter hall or from the court out of which the proceſs iſſued, then to give in upon oath at the aſſizes or great ſeſſions reſpectively, and on the crown ſide thereof, which ſhall be held for ſuch place next after the expiration of ſuch 20 days from the time of giving notice as aforeſaid, a true account in writing, to be ſigned by him, of all his real and perſonal eſtate, and of all incumbrances affecting the ſame, to the beſt of his knowledge and belief, in order that the eſtate and effects of ſuch priſoner may be deveſted out of him, and ordered by the court to be aſſigned and conveyed for the benefit of ſuch his creditors. And every ſuch creditor, requiring ſuch priſoner to be brought up as aforeſaid, ſhall alſo give 20 days like notice in writing of his intention to require ſuch priſoner to be brought up, to every other creditor at whoſe ſuit ſuch priſoner ſhall be detained or charged in cuſtody in ſuch gaol, if they can be found; and if not, then to the ſeveral attornies laſt employed: and ſhall alſo give a like notice in writing to the ſheriff or gaoler of ſuch his intention to have ſuch priſoner brought up, and

to

to require ſuch ſheriff or gaoler to bring him up accordingly, 20 days at leaſt before the time appointed for him to be brought up. And thereupon ſuch ſheriff or gaoler ſhall, at the coſts of ſuch creditor, cauſe ſuch priſoner to be brought to ſuch court as by the notice is required, together with a copy of the cauſe or cauſes of his detainer: and if ſuch ſheriff or gaoler, on ſuch notice given to him as aforeſaid, and tender made to him by ſuch creditor of reaſonable charges not exceeding 1 *s.* a mile, ſhall neglect or refuſe to bring him up as aforeſaid; he ſhall forfeit 20 *l.* to the party grieved, with treble coſts. And the priſoner ſo brought up, ſhall, on proof of ſuch notices being given as aforeſaid, deliver in there in open court, upon oath, a full true and juſt account, diſcloſure, and diſcovery in writing, of the whole of his real and perſonal eſtate, and of all books, papers, writings, and ſecurities relating thereto, and alſo of all incumbrances then affecting the ſame, and the reſpective times when made, to the beſt of his knowledge and belief (except the neceſſary wearing apparel and bedding of him and his family, and the neceſſary tools or inſtruments of his trade or calling, not exceeding the value of 10 *l.* in the whole): which account ſhall be ſubſcribed by him. And on delivering in of ſuch account, the eſtate and effects of ſuch priſoner ſhall be aſſigned and conveyed by him, by a ſhort indorſement on the back of the ſaid account, to ſuch perſons as the court ſhall direct, in truſt and for the benefit of the creditors who ſhall have required ſuch priſoner to be brought up, and of ſuch other creditors (if any there be) at whoſe ſuit ſuch priſoner ſhall be charged in cuſtody or in execution in any ſuch gaol, and who ſhall, by any memorandum or writing ſigned by them before ſuch aſſignment made, conſent to ſuch priſoner's being diſcharged, and to accept a proportionable dividend of ſuch priſoner's effects; and if there be no other ſuch creditor, or being ſuch, if ſuch creditors ſhall not agree in writing to diſcharge ſuch priſoner and to accept ſuch dividend, then in truſt for the creditors only who ſhall require ſuch priſoner to be brought up. And by ſuch aſſignment and conveyance, all the priſoner's eſtate and effects ſhall be veſted in the creditors to whom the ſame ſhall be aſſigned in truſt as aforeſaid. And upon ſuch diſcovery, aſſignment, and conveyance being made, the court ſhall diſcharge the priſoner in the actions and charges of every ſuch creditor, who required the priſoner to be brought up, or who ſigned ſuch conſent as aforeſaid; on paying 2 *s.* 6 *d.* diſcharge fee, and no more, to the officers of the court. And no ſtamp ſhall be neceſſary on ſuch aſſignment, or on any rule or order for ſuch diſcharge.—But all the future

effects

effects of ſuch priſoner (except the neceſſary wearing apparel of him and his family, and the neceſſary tools or inſtruments of his trade or calling) ſhall be liable to ſatisfy his debts, if the ſame ſhall not be fully paid from his eſtate ſo aſſigned as aforeſaid; and no advantage in any ſuit ſhall be taken by him, for that the cauſe of action did not accrue within ſix years next before the commencement of ſuch ſuit, unleſs he was intitled to take ſuch advantage before he ſtood charged in cuſtody by virtue of the original ſuit or action.—And if he ſhall neglect or refuſe to deliver in and ſubſcribe ſuch account as aforeſaid, within the time herein before appointed, or within 60 days then next following, without making appear ſome juſt excuſe to be allowed of by the court; or ſhall refuſe to aſſign or convey his eſtate and effects according to the order of ſuch court; he ſhall, on conviction upon indictment, be tranſported for 7 years: And if he ſhall deliver in a falſe account, or deſignedly conceal and not inſert in the account any books, papers, ſecurities, or writings relating to his eſtate and effects, with intent to defraud his creditors, and ſhall be thereof convicted on indictment, he ſhall ſuffer as for wilful perjury. *ſ.* 16. 17.

[But, more generally, and effectually, by the 1 *G.* 3. *c.* 17. it is enacted as followeth: Whereas many perſons, who are priſoners for debt, chuſe rather to continue in priſon, and ſpend their ſubſtance there, than diſcover and deliver up to their creditors their eſtates or effects towards ſatisfying their juſt debts; it is enacted, that it ſhall be lawful for any creditor of any priſoner committed, or who ſhall hereafter at any time after paſſing this act be committed and charged in execution in any gaol or priſon, on 20 days notice in writing to be given to him and alſo to the gaoler, to require the ſheriff or gaoler to bring him to the next ſeſſions or adjournment thereof, together with a copy of the cauſe of his detainer: And ſuch creditor ſhall alſo give notice of ſuch his intention in the Gazette, if the priſoner is within the bills of mortality; if not, then alſo in ſome news paper publiſhed in or near the place where the gaol is, 20 days at leaſt before the ſaid ſeſſions, to the end the other creditors may be appriſed thereof and come in for their dividend. And at ſuch ſeſſions, ſuch priſoner ſhall, at the deſire of any creditor, at whoſe ſuit he ſhall be detained, be obliged to deliver in and ſubſcribe a ſchedule of his eſtate and effects, and to take and ſubſcribe the oath following; viz. *I* A. B. *upon my corporal oath, in the preſence of almighty God, do ſolemnly ſwear, proteſt, and declare, that the ſchedule now delivered in, and by me ſubſcribed, doth contain, to the beſt*

beſt of my knowledge, remembrance, and belief, a full, juſt, true and perfect account and diſcovery of all my real eſtate, either in poſſeſſion, reverſion, remainder, or expectancy, and of all the goods, chattels, and perſonal eſtate, which I, or any in truſt for me, or for my benefit or advantage, now have, or am intitled to; and of all debts as are to me owing, or to any perſon or perſons in truſt for me; and of all ſecurities and contracts whereby any money now is, or will or may hereafter become payable to, or any benefit or advantage may accrue to me, or to my uſe, or to any perſon or perſons in truſt for me; and the names and places of abode of the ſeveral perſons from whom ſuch debts are due and owing; and of the witneſſes that can prove ſuch debts or contracts; and alſo a true account of all books, papers, decrees, writings, and evidences relating thereto, in my cuſtody or power, and that neither I, nor any perſon or perſons in truſt for me, have, to my knowledge and belief, any lands, money, ſtock, or other eſtate, real or perſonal, in poſſeſſion, reverſion, or remainder, other than what is or are in the ſaid ſchedule contained; except the wearing apparel, bedding for my ſelf and family, working tools, and neceſſary implements for my occupation and calling, and theſe in the whole not exceeding the value of 10l. *and that I have not, nor any body for me hath, directly or indirectly, ſold, leſſened, or otherwiſe conveyed, diſpoſed of in truſt, or concealed, all or any part of my meſſuages, lands, money, goods, chattels, ſtock, debts, ſecurities, contracts, or eſtates, real or perſonal, or any books, papers, or writings, concerning the ſame, whereby to ſecure the ſame, or to receive or expect any profit or advantage to my ſelf or my family, or with any view or deſign to defraud or deceive any creditor or creditors, to whom I am indebted, or was indebted when committed to gaol, in any wiſe howſoever: So help me God.* And he ſhall on taking the ſaid oath, and ſubſcribing ſuch ſchedule, and diſcovering his eſtate to the ſatisfaction of the court, be diſcharged.—And if he ſhall neglect or refuſe to deliver up his eſtate or effects, and to deliver in and ſubſcribe ſuch ſchedule within 40 days after he ſhall be ſo brought up, or ſhall wilfully conceal any of his eſtate or effects to the value of 20*l.* or any books, papers or writings thereto belonging, with intent to defraud his creditors, and ſhall be convicted thereof by *judgment* (ſo it is in the printed ſtatute, probably by miſtake for *indictment*) or information, he ſhall be guilty of felony without benefit of clergy, and his eſtate ſhall be divided amongſt his creditors.—And any perſon who ſhall have accepted of any truſt, and ſhall wilfully conceal or protect any eſtate, real or perſonal, of any ſuch priſoner from his creditors, and ſhall not within 30 days after any aſſignee or aſſignees ſhall be choſen in purſuance of this act, (name-

ly, by the juſtices in ſeſſions, unto whom the clerk of the peace, in whom the eſtate is veſted immediately upon the diſcharge, ſhall make aſſignment) diſcloſe to ſuch aſſignees ſuch truſt and eſtate in writing, and deliver up or make over the ſame to the aſſignees; ſhall forfeit 100*l.* and double value of the eſtate ſo concealed, to the uſe of the creditors, to be recovered in the name of the aſſignees, with treble coſts.—And finally, the eſtate and effects ſhall be diſpoſed of by the aſſignee or aſſignees, with all convenient ſpeed after they ſhall be choſen; and the produce diſtributed amongſt the creditors, who ſhall aſcertain their debts by oath or due proof in writing before ſome juſtice of the peace; and if any creditor is diſſatisfied with the reality or fairneſs of the debt claimed by any other creditor, the ſame ſhall be determined at the next ſeſſions of that place where the gaol is. *ſ.* 46, 47, 48, 50.]

Aſſignees may compound.

8. By the ſaid act of 32 *G.* 2. *c.* 28. the aſſignees may compound with any debtors or accountants to ſuch priſoner, and take ſuch reaſonable part of any debt due, as can upon ſuch compoſition be gotten; and alſo may ſubmit matters to arbitration, relating to the priſoner's eſtate and effects, which ſhall be binding to all the parties. *ſ.* 21.

And where mutual credit hath been given between the priſoner and any other, before the delivery of the ſchedule; the aſſignees may ſtate and allow the account between them, and receive the balance. *ſ.* 23.

Miſbehaviour in the aſſignees.

9. And it ſhall be lawful for the reſpective courts at Weſtminſter from whence the proceſs iſſued; or where the priſoner ſhall have been charged in execution by proceſs iſſued out of any other court, it ſhall be lawful for the judges of the courts of king's bench, common pleas, and exchequer, or any of them, from time to time, on the petition of any creditor who had charged ſuch priſoner in execution, or of ſuch priſoner, complaining of any inſufficiency, fraud, miſmanagement, or other miſbehaviour of any aſſignee, to order the parties to attend thereon; and upon hearing, they ſhall make ſuch order, either for the removal of ſuch aſſignee and appointing a new one, or for the juſt management of the effects, as to them ſhall ſeem meet. *ſ.* 22.

Gaoler to have only his dividend.

10. If the effects aſſigned ſhall not ſatisfy the whole debt, and the gaoler's fees; the gaoler ſhall receive only a proportionable dividend with the other creditors. *ſ.* 19.

Priſoner diſcharged ſhall not be again arreſted.

11. A priſoner diſcharged ſhall never after be arreſted or liable to action for the ſame debt, unleſs convicted of perjury. *ſ.* 20.

But his effects ſhall be liable.

12. But nevertheleſs, the judgment againſt him ſhall continue in force, and execution thereon may be had at any

any time againſt his lands and goods, other than his neceſſary wearing apparel and bedding for himſelf and family, and the neceſſary tools of his trade or occupation, not exceeding 10*l.* value in the whole. *ſ.* 20.

13. If any perſon who ſhall take any oath as by this act required to be taken, ſhall, upon any indictment for perjury be convicted by confeſſion or verdict; he ſhall ſuffer as for wilful perjury; and ſhall alſo be liable to be taken on any proceſs de novo, and ſhall never after have the benefit of this act. *ſ.* 18. Perſons guilty of perjury.

14. No perſon who ſhall have taken the benefit of any act for the relief of inſolvent debtors, ſhall have any benefit under this act; nor ſhall be deemed within the meaning of it, ſo as to gain any diſcharge, unleſs compelled by any creditor to deliver up his eſtate and effects. *ſ.* 24. Perſons not relievable having taken the benefit of any former act.

XI. Concerning the priſons of the king's bench *and* marſhalſea.

The juſtices in *Eaſter* ſeſſions ſhall ſet down what ſums ſhall be ſent out of every county or place corporate, for the relief of the poor priſoners of the *king's bench* and *marſhalſea*, ſo as there be ſent out of every county yearly 20*s.* at the leaſt to each of the ſaid priſons; to be paid by the high conſtables out of the general county rate, to two ſuch treaſurers or one of them, as by the more part of the juſtices of the county ſhall be elected to be treaſurers: which treaſurers, on the firſt day of *Trinity* term yearly, ſhall pay over the ſame to the lord chief juſtice of *England*, and knight marſhal, or to whom they ſhall appoint, taking their acquittance for the ſame, or in default of the chief juſtice, to the next moſt antient juſtice of the *king's bench*, equally to be divided between the priſoners of the *king's bench* and *marſhalſea* priſons. 43 *El. c.* 2. *ſ.* 12, 13, 14. 11 *G.* 2. *c.* 20. *ſ.* 1. 12 *G.* 2. *c.* 29.

And if the treaſurer ſhall neglect or refuſe, the king's bench may make a rule on him, requiring him to pay the ſame; and obedience to ſuch rule may be inforced as other rules of the ſaid court, at the coſt and charges of the treaſurer. 11 *G.* 2. *c.* 20. *ſ.* 2, 4.

And that the treaſurer may be the better amenable to the ſaid court, he ſhall within 30 days after his election or appointment, under the like penalty, tranſmit his name and place of abode to the clerk of the crown in the king's bench, to be entered by him; for which entry no fee ſhall be paid. *ſ.* 3.

Gauger. See Exciſe.
Gin. See Exciſe.
Glaſs. See Exciſe.
Good behaviour. See Surety.
Goſs. Burning of it in foreſts. See Burning.
Grand larceny. See Larceny.
Greyhound. See Game.

Gunpowder.

Who may make gunpowder.

1. BY an act made in the 16 *C.* 1. *c.* 21. (to wit, in 1640, being the laſt ſtatute of force in that king's reign) All ſubjects may make and ſell gunpowder, and bring into the kingdom ſalt petre, brimſtone, or any other materials for the making of it.

And by a ſtatute made in the firſt year of the reign of king *James* the 2d, (which is alſo ſomewhat remarkable) it is enacted, that if any perſon ſhall obtain a grant for the ſole making or importing of gunpowder, he ſhall incur a præmunire. 1 *J.* 2. *c.* 8. *ſ.* 3.

Shipping or landing of gunpowder, or firing of guns on the Thames above Blackwall.

2. By the 5 *G.* 2. *c.* 20. No maſter of any veſſel outward bound, ſhall receive on board any gunpowder, either as merchandize or ſtore for the voyage (except for his majeſty's ſervice) on the *Thames* above *Blackwall*; on pain of 5 *l.* for every 50 *lb.* weight, and ſo in proportion. *ſ.* 2.

And the maſter of every veſſel coming into the *Thames*, ſhall land all the powder on board, either before arrival at *Blackwall*, or within 24 hours (if the weather will permit) after he comes to anchor there, or at the place of unloading; on pain of 5 *l.* for every 100 *lb.* weight. *ſ.* 3.

And if any officer of any ſhip (except the king's) ſhall, between *London bridge* and *Blackwall*, keep any gun loaded with ball, or fire any gun on board above *Blackwall*, before ſunriſing or after ſunſetting; he ſhall forfeit for ſuch gun loaded 5 *s.* and for ſuch gun fired 10 *s.* *ſ.* 4.

And the corporation of *Trinity houſe* at *Deptford ſtrond*, may appoint a perſon to inſpect veſſels; and if any ſuch officer obſtruct him, he ſhall forfeit 5 l. *ſ.* 5.

And the ſaid penalties ſhall go to the poor of the corporation. *ſ.* 6.

And two juſtices of *London*, or the reſpective counties where the offence ſhall be committed, ſhall on complaint in ten days ſummon the offender, or after oath made of the offence may iſſue their warrant for apprehending him, and on appearance or contempt may convict him either by oath of witneſſes, or confeſſion, or his own view, and levy the penalty by diſtreſs, and if not redeemed in five days, by ſale; for want of diſtreſs, he ſhall be impriſoned for three months, or till paid: and perſons aggrieved may appeal to the next ſeſſions. *ſ.* 7.

Keeping gunpowder in London.

3. No perſon, not being a dealer in gunpowder, ſhall keep more than 50 *lb.* or being a dealer, not more than 200 *lb.* longer than 24 hours, at any time in any houſe or place, or in any houſes or other places, either under the ſame roof, or by dividing the ſame, and diſpoſing thereof under different roofs, or in any yard or yards, within *London* and *Weſtminſter*, or the ſuburbs thereof, or within three miles of the tower, or of St. *James*'s; or within two miles of any magazine now erected (that is, in the year 1718,) for keeping gunpowder, belonging to the king for the uſe of the publick; or on the *Thames*, except in veſſels paſſing or detained by tides or bad weather (except carts and other carriages loading or unloading, or paſſing on the highway:) on pain of forfeiting the ſame, and the value thereof, with full coſts, to him who ſhall ſue in any court of record at *Weſtminſter* in 30 days. 5 *G. c.* 26. *ſ.* 1. 11 *G. c.* 23. *ſ.* 1. 15 & 16 *G.* 2. *c.* 32. *ſ.* 1.

And any juſtice of the peace within the ſaid limits, on demand by any inhabitants ſhewing a reaſonable cauſe, may iſſue his warrant to ſearch in the day time, for dangerous quantities of gunpowder, and break open any places if there be occaſion, and the ſearchers may ſeize, and may remove the ſame in 12 hours out of the ſaid limits, and detain the ſame till it be determined in the courts whether it be forfeited or not. 15 & 16 *G.* 2. *c.* 32. *ſ.* 2.

Perſons permitting others to keep it.

4. And perſons permitting others to keep gunpowder, in any places not belonging to the owners of ſuch gunpowder, ſhall forfeit 1 *s.* a pound. 15 & 16 *G.* 2. *c.* 32. *ſ.* 3.

Carrying gunpowder in the ſtreets of London.

5. No perſon ſhall carry in the ſtreets of *London* or *Weſtminſter*, or the ſuburbs thereof, more than 20 hundred weight of gunpowder at one time; and all gunpowder carried in the ſaid ſtreets in any carts or carriages, ſhall be carried in covered carts or carriages, and the barrels cloſe jointed and hooped, and put into caſes of leather or canvaſs; and gunpowder carried by man or horſe, ſhall be put into caſes of leather or canvaſs, and entirely covered therewith: and if any ſhall be carried otherwiſe, it ſhall be for-

feited, and may be ſeiſed by any perſon to his own uſe, the offender being thereof convicted before two juſtices. 5 *G.* *c.* 26. *ſ.* 4.

Keeping gunpowder elſewhere.

6. By the 22 *G.* 2. *c.* 38. No perſon ſhall keep gunpowder for more than 24 hours at any one time, in greater quantity than 400 *lb.* weight, in any houſe or other place, in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any the king's magazines; nor ſhall keep for more than 24 hours at any time, a greater quantity than 3000 *lb.* weight in any houſe or other place. 22 *G.* 2. *c.* 38. *ſ.* 1.

And any two juſtices, on demand made, and a reaſonable cauſe aſſigned, by any pariſh officer or two houſeholders inhabiting where it is kept, ſhall iſſue their warrant for ſearching in the day time any houſe, ſhop, or other place, and breaking open the doors thereof, if there be occaſion; and if upon ſuch ſearch, more than 400 *lb.* weight, or 3000 *lb.* weight reſpectively as above ſhall be found, all exceeding the ſaid quantities ſhall be ſeized, and detained, and forfeited to any perſon who ſhall ſue in three months in any court at *Weſtminſter*; which court ſhall give judgment for recovery of the ſame or the value thereof with full coſts. *ſ.* 2.

But no penalty ſhall be incurred on account of a greater quantity than 30 hundred weight kept within any warehouſe or magazine already built for that purpoſe (that is, in 1749,) unleſs the juſtices at their quarter ſeſſions ſhall on complaint by two inhabitants near, adjudge the ſame to be dangerous, and until ſix months after ſuch adjudication; and provided the ſame be not ſituate in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any of the king's magazines. *ſ.* 7.

Erecting powder mills, a nuſance.

7. And it ſeems that erecting powder mills, or keeping powder magazines near a town, is a nuſance, for which an indictment or information will lie. For in the caſe of *K.* and *Williams*, *E.* 12 *W.* there was an indictment againſt *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K.* and *Taylor*, *T.* 15 *G.* 2. The court granted an information againſt the defendant as for a nuſance, on affidavits of his keeping great quantities of gunpowder near *Malden* in *Surrey*, to the endangering the church and houſes where he lived. *Str.* 1167. It might as well have been ſaid, to the endangering the lives of his majeſty's ſubjects.

8. No perſon ſhall convey at any one time, in any waggon or other carriage, a greater quantity than 2500 pounds weight; or more than 5000 pounds weight in any open veſſel on any river, within one mile of any city or market town: And all ſuch gunpowder ſhall be carried in covered carts and carriages; and the barrels ſhall be cloſe joined and hooped, and ſecured that no part thereof be ſcattered in the paſſage; on pain of being ſeized and forfeited to the informer, on proof of the offence before two juſtices. 22 *G.* 2. *c.* 38. *ſ.* 3. Carrying gunpowder elſewhere than in London.

9. But none of the ſaid acts ſhall extend to any magazine belonging to the crown; or to hinder the trying of gunpowder by his majeſty's officers; or to the carrying of gunpowder to and from the king's magazines; or with forces in their march. 5 *G.* *c.* 26. *ſ.* 5. 11 *G.* *c.* 23. *ſ.* 4. 15 & 16 *G.* 2. *c.* 32. *ſ.* 6. 22 *G.* 2. *c.* 38. *ſ.* 5. Exception.

10. The juſtices in ſeſſions ſhall, on application to them made, appoint convenient plots of ground, two miles diſtant from any city or market town, not exceeding two acres, with the uſe of convenient roads leading thereto, for erecting warehouſes for keeping gunpowder in any quantity, firſt agreeing with the proprietor; and if they cannot agree, the ſaid juſtices ſhall iſſue their warrant to the ſheriff to impanel and return a jury, who ſhall on oath (to be adminiſtred by the ſaid juſtices) inquire into the value of the ground, with the uſe of convenient roads leading thereto: And all ſuch verdicts and inquiſitions ſhall be kept with the records of the ſeſſions, and be concluſive to all parties: And the ſaid juſtices may ſend for perſons intereſted, and examine the parties and witneſſes on oath: And the ſum to be aſſeſſed as aforeſaid, not exceeding 30 years purchaſe, ſhall be paid to the proprietor; and on ſuch payment, or in caſe of refuſal to accept it, on leaving it with the ſaid juſtices for the proprietor, the inheritance of the grounds, and uſe of the roads leading thereto, ſhall be veſted in the purchaſers and their aſſigns, for the purpoſes aforeſaid, and not otherwiſe; And the warehouſes to be built thereon, ſhall be built in ſuch manner, as will moſt effectually render them ſafe and ſecure. 22 *G.* 2. *c.* 38. *ſ.* 6. Seſſions to appoint places for warehouſes.

11. If any perſon ſhall work with any iron hammer, or hammer plaited with iron or ſteel, in any warehouſe or place while any gunpowder is there; he ſhall on conviction within one month, by the oath of one witneſs, before on juſtice, forfeit 20*s.* to the informer; to be levied by diſtreſs by warrant of ſuch juſtice; for want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard Working with hammers in warehouſes.

labour not exceeding one month, nor leſs than 14 days. 11 *G. c.* 23. *ſ.* 3.

Doing any thing to indanger the firing it.

12. Every perſon employed in any ſtorehouſe where gunpowder is kept, or in carrying gunpowder from one place to another, being convicted before one juſtice, of wilfully committing any act, whereby ſuch gunpowder may be in danger of taking fire, ſhall forfeit 5 *l.* to the informer, for every 100 pounds weight of gunpowder contained in ſuch ſtorehouſe, or which he ſhall be employed in conveying; and on non-payment thereof, ſhall be committed to the publick gaol, without bail, not exceeding ſix months. 22 *G.* 2. *c.* 38. *ſ.* 4.

Guns. See Game.

Habeas Corpus. See Bail.

Hackney coaches and chairs.

For the duty on coaches, ſee title Exciſe.

Commiſſioners.

1. THE king may appoint perſons not exceeding five, to be commiſſioners for regulating hackney coaches within the bills of mortality. 9 *An. c.* 23. *ſ.* 1.

Licenſing.

2. Which commiſſioners ſhall under hand and ſeal licenſe hackney coaches within the bills, not exceeding 800; and on every licence ſhall be reſerved 5 *s.* a week, to be paid monthly. 9 *An. c.* 23. *ſ.* 2.

And they ſhall alſo licenſe hackney chairs within the bills aforeſaid, not exceeding 400; reſerving a rent of 10 *s.* a year, to be paid quarterly. 9 *An. c.* 23. *ſ.* 3. 10 *An. c.* 19. *ſ.* 158. 12 *G. c.* 12. *ſ.* 15.

Mark.

3. Every coach and chair ſhall have a diſtinct mark on each ſide; and if any ſhall alter ſuch mark, he ſhall forfeit 5 *l.* half to the informer, and half to the king. 9 *An. c.* 23. *ſ.* 4.

Size of the horſes.

4. No horſe to be uſed with any hackney coach, ſhall be under 14 hands high. 9 *An. c.* 23. *ſ.* 4.

Penalty of driving without licence.

5. No perſon ſhall drive or let to hire any hackney coach without licence; on pain of 5 *l.* nor ſhall carry any perſon for hire in a hackney chair, without licence; on pain of 40 *s.* in like manner. 9 *An. c.* 23. *ſ.* 4.

And

And by the 1 *G. ſt.* 2. *c.* 57. No unlicenſed perſon ſhall ply with any coach or hearſe, or ſhall let to hire any mourning coach, within the bills aforeſaid, on pain of 5*l.* as for driving unlicenſed. *ſ.* 3.

And if any perſon ſhall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the maſter or ſome of his family; on information given to the commiſſioners, they may ſummon the driver, and unleſs he prove an order from the maſter to attend at the funeral, the driver or the undertaker ſhall forfeit 5*l.* *ſ.* 4.

6. And the coachman ſhall not take above the rate of 10*s.* a day, reckoning 12 hours to the day; and by the hour, not above 18*d.* for the firſt hour; and 12*d.* for every hour after: And no perſon ſhall pay from any of the inns of court or thereabouts to any part of St. *James*'s or the city of *Weſtminſter* (except beyond *Tuttle-ſtreet*) above 12*d.* and the ſame prices from the ſame places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the *Royal Exchange* 12*d.* and if to the *Tower*, or *Biſhopſgate-ſtreet*, or *Aldgate*, or thereabouts 18*d.* and ſo from the ſaid places to the ſaid inns of court as aforeſaid: and the like rates from and to any place, at the like diſtance, within the places beforementioned. 9 *An. c.* 23. *ſ.* 6. Rates.

And no perſon ſhall be obliged to pay above 12*d.* for a coach for any diſtance (not above ſpecified) not exceeding one mile and four furlongs; nor above 1*s.* 6*d.* for any diſtance above a mile and four furlongs, and not exceeding two miles: And no chairman ſhall take more than the rate for any hackney coach driven two thirds of the ſame diſtance; on pain of 40*s.* *ſ.* 7, 8.

7. And the commiſſioners may make by-laws, to bind all perſons licenſed, and the renters of ſuch licences, and the drivers. 9 *An. c.* 23. *ſ.* 16. 1 *G. ſt.* 2. *c.* 57. *ſ.* 1. By-laws.

The ſame to be approved by the lord chancellor, commiſſioners of the great ſeal, two chief juſtices, and chief baron, or three of them. 9 *An. c.* 23. *ſ.* 17.

8. And if any hackney coachman ſhall refuſe to go at, or exact more for his hire, than according to the above act, or by-laws; he ſhall forfeit a ſum not exceeding 3*l.* nor under 10*s.* 1 *G. ſt.* 2. *c.* 57. *ſ.* 2. Driver exacting.

9. And if any perſon who ſhall drive a coach, or carry a chair for hire, acting under a perſon licenſed, ſhall be guilty of miſbehaviour, by demanding more than his fare, or giving abuſive language, or other rude behaviour; he ſhall, on conviction on oath, forfeit not exceeding 20*s.* to Miſbehaving.

the

the poor; and if he ſhall not be able, or refuſe to pay, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour ſeven days, and receive the publick correction of the houſe before he be diſcharged. 9 *An. c.* 23. *ſ.* 49.

And on miſbehaviour of a coachman by abuſive language, or otherwiſe, the commiſſioners may revoke his licence, *ſ.* 19.

Perſons refuſing to pay.

10. And if any perſon ſhall refuſe to pay, or ſhall deface any coach or chair, any juſtice may grant his warrant to bring him before him; and on proof upon oath may award ſatisfaction to the party, and on refuſal to pay, may bind him over to the next ſeſſions, who may determine the ſame. 9 *An. c.* 23. *ſ.* 22.

Power of the juſtices.

11. The rents and penalties to be levied by diſtreſs, by warrant of three commiſſioners; which diſtreſs ſhall be ſold in ten days, returning the overplus, charges of the diſtreſs and of the warrant being firſt deducted (if on ſeven days notice they pay not the fine without ſuch warrant); and in default of diſtreſs, to be impriſoned till paid: and if any rent ſhall be unpaid for 14 days, the commiſſioners may withdraw the licence. 9 *An. c.* 23. *ſ.* 12.

And moreover, the breach of the by-laws, and of theſe rules and orders, may be puniſhed by any juſtice of the peace, mayor, or bailiff, where the offence ſhall be committed, in like manner as by the commiſſioners. 9 *An. c.* 23. *ſ.* 17. 1 *G. ſt.* 2. *c.* 57. *ſ.* 7.

Note; The clauſe in the act of the 12 *G. c.* 12. abovementioned, was only to continue for 18 years; but by the 16 *G.* 2. *c.* 26. it was continued to *June* 24, 1760, *&c.* and by the 33 *G.* 2. *c.* 25. is further continued during ſuch time as any former act relating to the licenſing of hackney coaches or chairs, or any part thereof, ſhall be in force.

Which acts, as to the time of their continuance, ſeem to ſtand thus: The 9 *An. c.* 23. ſo far as it relates to this ſubject, was made to continue for 32 years; and the 10 *An. c.* 19. ſo far as it relates to this ſubject, was made to continue for 31 years; the 1 *G. ſt.* 2. *c.* 57. which explains and amends the 9 *An. c.* 23. doth conſequently attend the fate of the ſame act of the 9 *An.* Now the 3 *G. c.* 7. *ſ.* 1. made the ſaid duties perpetual (ſubject to redemption by parliament), and perpetuated in like manner all the clauſes in the ſaid acts for the recovery of the ſaid duties. The 16 *G.* 2. *c.* 26. (by miſtake, as it ſeemeth) recites the ſaid acts as temporary only, and continues them along with the ſaid act of the 12 *G.* to *June* 24, 1760, *&c.* And the

33 *G.*

33 *G.* 2. *c.* 25. reciting the duties as perpetual (ſubject to redemption by parliament as aforeſaid) ſeemeth to ſuppoſe, that nevertheleſs the clauſes in the ſaid acts for the recovery of the ſaid duties are only temporary and near expiring; and therefore enacteth, that the ſeveral clauſes in the ſaid acts, relating to the power of the commiſſioners and juſtices for the recovery of the ſaid duties, ſhall be in force during ſuch time, as any other part of the ſaid acts relating to the licenſing of hackney coaches or chairs ſhall be in force (that is, as it ſeemeth, until the ſaid duties ſhall be redeemed by parliament).

Hares. See Game.
Harepipes. See Game.
Harveſt. See Game.

Hawkers and pedlars.

1. THERE ſhall be paid by every hawker, pedlar, petty chapman, or any other trading perſon going from town to town, or to other mens houſes, and travelling either on foot, or with horſe, horſes, or otherwiſe (except as herein after excepted), carrying to ſell, or expoſing to ſale any goods, wares, or merchandizes, a duty of 4*l.* a year. And every perſon ſo travelling with a horſe, aſs, mule, or other beaſt bearing or drawing burden, ſhall pay 4*l.* a year for each horſe or beaſt, over and above the other 4*l.* 9 & 10 *W. c.* 27. *ſ.* 1. Licence duty.

2. And every ſuch perſon, on receiving his licence, ſhall pay to whom the commiſſioners of the treaſury, or three of them, ſhall appoint for licenſers, or their deputy, half the duty, and give ſecurity by bond, with one or more ſureties, to the king, for payment of the other half at the end of ſix kalendar months, unleſs he ſhall chuſe to pay down the other half, in which caſe he ſhall be allowed after 2*s.* in the pound for prompt payment. 9 & 10 *W. c.* 27. *ſ.* 2. Payment of the duty

3. And the commiſſioners for theſe duties, or two of them, ſhall (on the receipt and ſecurity given as aforeſaid) grant licences to be by them ſubſcribed; for which ſhall be taken only 1*s.* unleſs ſuch perſon travel with a horſe or beaſt, and in that caſe ſhall be paid only 2*s.* above the duties. 9 & 10 *W. c.* 27. *ſ.* 4. Granting the licence.

4. And if any ſuch perſon be found trading as aforeſaid, without, or contrary to ſuch licence; or if on demand made by Trading without a licence, or refuſing to ſhew it.

by any juſtice of the peace, mayor, conſtable, or other peace officer of any town corporate or borough, where he ſhall ſo trade, ſhall not have his licence ready to be produced; *he ſhall forfeit* 12 l. half to the informer, and half to the poor of the pariſh wherein the offender ſhall be diſcovered; and for nonpayment thereof, ſhall ſuffer as a common vagrant, and be committed to the houſe of correction. 9 & 10 *W. c.* 27. *ſ.* 3. 3 & 4 *An. c.* 4. *ſ.* 4.

He ſhall forfeit 12 l.] *M.* 5 *G. K.* and *Beck.* Although the ſtatute here mentions nothing of *conviction*, yet nevertheleſs there ought to be a formal conviction; and a certiorari will lie for the removal of it. *Str.* 127.

And if any conſtable or other officer aforeſaid, ſhall refuſe or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witneſs before one juſtice where the offence ſhall be committed; he ſhall forfeit 40 *s.* by diſtreſs and ſale by warrant of ſuch juſtice, half to the poor, and half to the proſecutor. 9 & 10 *W. c.* 27. *ſ.* 7.

And any perſon may ſeize and detain any ſuch hawker, pedlar, petty chapman, or other trading perſon, till he produce his licence if he have any, or if he be found trading without a licence, for ſuch reaſonable time as he may give notice to the conſtable, churchwarden, overſeer, or ſome other pariſh officer, who ſhall carry ſuch perſon ſo ſeized before a juſtice; who ſhall, either on confeſſion, or proof by witneſs upon oath, convict the offender, and by his warrant cauſe the ſum of 12 *l.* to be forthwith levied by diſtreſs and ſale of the offender's goods, wares, or merchandizes. 9 & 10 *W. c.* 27. *ſ.* 8.

Lending licences.

5. If any perſon ſhall lend or let out to hire his licence, he and alſo the perſon trading under colour thereof, ſhall forfeit each 40 *l.* half to the king, and half to him that ſhall ſue in any court of record. 3 & 4 *An. c.* 4. *ſ.* 4.

Counterfeiting licences.

6. If any perſon ſhall forge or counterfeit, or travel with a forged or counterfeited licence; he ſhall forfeit 50 *l.* half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*, and ſhall alſo be liable to be puniſhed for forgery. 9 & 10 *W. c.* 27. *ſ.* 5.

Exceptions.

7. But nothing herein ſhall probibit any perſon from ſelling acts of parliament, forms of prayer, proclamations, gazettes, licenſed almanacks, or other printed papers licenſed by authority; or any fiſh, fruits, or victuals; nor to hinder any perſon who is the real worker or maker of any goods or wares, or his children, apprentices, ſervants, or agents, from

from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods and wares of his own making, in any publick fair, market, or elſewhere; nor any tinker, cooper, glazier, plummer, harneſs mender, or other perſon uſually trading in mending kettles, tubs, houſhold goods, or harneſs, from going about and carrying with him proper materials for mending the ſame. 9 & 10 *W.* *c.* 27. *ſ.* 9.

Alſo perſons trading in the woollen and linen manufactures, and ſelling the ſame by wholeſale, ſhall not be deemed hawkers, pedlars, or petty chapmen. 3 & 4 *An.* *c.* 4. *ſ.* 14.

Alſo no maker or wholeſale trader in *Engliſh* bone lace, ſhall be deemed a hawker, pedlar, or petty chapman. 4 *G.* *c.* 6.

Alſo nothing herein ſhall extend to hinder any perſon from ſelling any goods in any publick fair or market. 9 & 10 *W.* *c.* 27. *ſ.* 12.

And nothing herein ſhall give any power for the licenſing of ſuch perſons to ſell any goods in cities, boroughs, towns corporate, or market towns, otherwiſe than they might have done before. 9 & 10 *W.* *c.* 27. *ſ.* 15.

8. Perſons ſued for any thing done herein, may plead the general iſſue, and have treble coſts. 9 & 10 *W.* *c.* 27. *ſ.* 6. Treble coſts.

Hawks and hawking. See Game.

Hay.

THE 2 *W.* *ſeſſ.* 2. *c.* 8. and 8 & 9 *W.* *c.* 17. and 31 *G.* 2. *c.* 40. do contain regulations concerning the ſelling of hay, ſtraw, and cattle, within the bills of mortality, which are not general enough to be here inſerted at large.

Hays. See Game.

Heath. See Game.

Hedge breaking. See Wood.

Hemp.

Hemp.

IT ſhall not be lawful to any perſon to water any hemp or flax, in any river, running water, ſtream, brook, or other common pond, where beaſts uſed to be watered; on pain that every perſon offending ſhall forfeit 20*s.* half to the king, and half to the party grieved, or any other who ſhall ſue in any court of record, leet, or law day. 33 *H.* 8. *c.* 17.

Herring fiſhery.

IF any perſon ſhall damnify or deſtroy, without conſent of the ſociety of the free *Britiſh* fiſhery, any of the nets, ſails, cordage, ſtores, or other materials, belonging to the ſaid ſociety; he ſhall, on conviction on the oath of one witneſs before one juſtice, forfeit to the ſociety treble value, by diſtreſs; and for want of ſufficient diſtreſs, to be committed to the houſe of correction to hard labour for any time not exceeding three months, or till ſatisfaction be made. Proſecution to be in ſix kalendar months. 28 *G.* 2. *c.* 14. *ſ.* 9.

Hides and skins. See **Leather.**
High conſtable. See **Conſtable.**
High treaſon. See **Treaſon.**

Highways.

NOTE; Bridges repaired by the pariſh or townſhip, and which conſequently come under the cognizance of the ſurveyor of the highways, are comprehended under this title: County bridges are treated of under title **Bridges.**

For the ordering of ſtreets in cities and market towns, ſee title **Scavengers.**

Moſt

Moſt of the books are remarkably confuſed under this title; occaſioned by a multiplicity of ſtatutes, ſtanding unrepealed, and yet altered perhaps five or ſix times, or oftner, by ſucceeding ſtatutes. In order to extricate the ſubject out of which perplexity, I have endeavoured to make the heads of this title leſs general, ſelecting the law relating to each diſtinct article by itſelf.

But before I deſcend to particulars, it is proper to premiſe a clauſe in the ſtatute of the 24 *G.* 2. *c.* 43. which makes a great alteration in the whole law relating to this title; and is as follows:

Whereas ſeveral acts have been made, as well for repairing and amending divers publick roads, as for puniſhing offences done or committed upon or to the highways, the good intentions whereof have not been anſwered, for want of due execution of the ſaid laws; for remedy, and as a further encouragement to informers, All penalties and forfeitures impoſed by this or any former act, ſhall be wholly given to, and veſted in the informer or perſon who ſhall ſue for the ſame, who may ſue for and recover the ſame in the ſame manner as they are directed to be ſued for and recovered by the ſaid ſtatutes reſpectively; or otherwiſe by action at law, in any of the courts of record at *Weſtminſter*, in manner following, *viz.* Where any perſon ſhall be liable to a pecuniary penalty, the ſame may be ſued for by action of debt, in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of———being forfeited by an act intitled———And where the forfeiture is of any horſe, or other goods, by an action of trover, in which the value of ſuch horſe or other goods liable to the forfeiture ſhall be given in damages, without any ſeizure or demand thereof: And the plaintiff, if he recovers, ſhall have double coſts. Provided, there ſhall not be more than one recovery for the ſame offence, and that no action be brought by virtue of this act, in any of the ſaid courts, unleſs it be brought before the end of ſix kalendar months, after the offence committed. *ſ.* 11.

This being premiſed, I ſhall reduce the other laws concerning highways, under the following heads:

I. What is a highway.
II. Concerning the ſpecial ſeſſions for the highways.
III. Appointment of the ſurveyor.
IV. Surveyor's general duty on acceptance of his office.

V. Who

V. Who ſhall repair.
VI. The proportion of labourers and carriages.
VII. Providing materials.
VIII. Concerning the ſix days work.
IX. Of annoyances in general.
X. Ditches adjoining to the highway.
XI. Water in the highway.
XII. Hedges adjoining to the highway.
XIII. Wood growing in the highway.
XIV. Straw, dung, ſtones, timber, laid in the highway.
XV. Empty carriages left in the highway.
XVI. Gate erected acroſs the highway.
XVII. Nuſance by an unlawful number of horſes or beaſts in carriages.
XVIII. Nuſance by unlawful breadth and tire of wheels.
XIX. Nuſance of riding upon carriages, or the drivers otherwiſe miſbehaving.
XX. Pulling up blocks in the highway.
XXI. Concerning guide poſts.
XXII. Breadth and widening of highways.
XXIII. Lands given to repairing highways.
XXIV. Aſſeſſment for the repair of highways.
XXV. In what caſe the whole pariſh ſhall be contributory.
XXVI. Further proviſion for the ſame by the common law.
XXVII. Preſentment or indictment of the highways in general.
XXVIII. Preſentment by a juſtice on his own view.
XXIX. Power of the leet to puniſh offences.
XXX. Fines and the diſpoſal thereof.
XXXI. Surveyor's account.
XXXII. Appeal.
XXXIII. Certiorari.
XXXIV. Turnpikes.

I. What

I. What is a highway.

1. There are three kinds of ways; 1. A foot way. 2. A foot and horſe way, which is alſo a pack or drift way. 3. A foot, horſe, and cart way. 1 *Inſt.* 56. Three kinds of highways.

2. It ſeemeth that any one of the ſaid ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is alſo a thoroughfare to other towns, may properly be called a highway. 1 *Haw.* 201. Difference between a highway and a private way.

For there were highways before there were market towns. And if it were eſſential to the conſtituting of a highway, that it ſhould expreſly lead from market town to market town; then it would follow, that the lord of a market, by forfeiting or ſurrendring his charter, might cauſe that to ceaſe to be a highway, which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby conſequentially change the way to it from a private way into a highway.

And therefore, the diſtinction which is taken in ſome books, concerning this matter, ſeems to be very reaſonable; that every way from town to town may be called a highway, becauſe it is common to all the king's ſubjects; and conſequently that a nuſance therein is a common nuſance, and puniſhable by indictment: but that a way to a pariſh church, or to the common fields of a town, or to a private houſe, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of ſuch pariſh, houſe, or village only, may be called a private way, but not a highway, becauſe it belongeth not to all the king's ſubjects, but only to ſome particular perſons, each of which, as it ſeems, may have an action on the caſe for a nuſance therein. 1 *Haw.* 201.

So if I have a private way without a gate, and a gate is hung up; an action lies upon the caſe, for I have not my way as I had before *Litt. R.* 267.

So if one grants me a way, and afterwards digs trenches in it to my hindrance; I may fill them up again. *Godb.* 53.

But if a way which a man has, becomes not paſſable, or becomes very bad, by the owner of the land tearing it up with his carts, and ſo the ſame be filled with water; yet he who has the way cannot dig the ground to let out the water, for he has no intereſt in the ſoil. *Godb.* 52.

But in ſuch caſe, he may bring his action againſt the owner of the land for ſpoiling the way; or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is ſpoiled by thoſe who have a right to paſs thereon, and not thro' the default of the owner of the land; it ſeemeth that they who have the uſe and benefit of the way ought to repair it, and not the owner of the ſoil, unleſs he is bound thereto by cuſtom or ſpecial agreement.

How far outlets are part of the highway.

3. It hath been holden, that if there be an highway in an open field, and the people have uſed time out of mind, when the ways are bad, to go by outlets on the land adjoining, ſuch outlets are parcel of the way; for the king's ſubjects ought to have a good paſſage, and the good paſſage is the way, and not only the beaten track; from whence it follows, that if ſuch outlets be ſown with corn, and the beaten track be foundrous, the king's ſubjects may juſtify going upon the corn. 1 *Haw.* 201.

How far a river may be an highway.

4. In books of the beſt authority, a river common to all men is called an highway. 1 *Haw.* 201.

Highway changed.

5. It ſeemeth to be agreed, that an ancient highway cannot be changed, without the king's licence firſt obtained upon a writ of *ad quod damnum*, and an inquiſition thereon found, that ſuch a change will not be prejudicial to the publick; and it is ſaid, that if one change a highway without ſuch authority, he may ſtop the new way whenever he pleaſes; and it ſeemeth that the king's ſubjects have not ſuch an intereſt in ſuch new way, as will make good a general juſtification of their going in it as a common highway, but that in an action of treſpaſs brought by the owner of the land, againſt thoſe who ſhall go over it, they ought to ſhew ſpecially, by way of excuſe, how the old way was obſtructed, and the new one ſet out; alſo it is ſaid, that the inhabitants are not bound to keep watch in ſuch a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw.* 201.

But by the 8 & 9 *W.* *c.* 16. Where any highway ſhall be incloſed after a writ of *ad quod damnum* iſſued, and inquiſition thereupon taken, any perſon aggrieved by ſuch incloſure may complain thereof by appeal to the next quarter ſeſſions, whoſe determination ſhall be final; and if no appeal be made, the inquiſition and return, entred and recorded by the clerk of the peace at the quarter ſeſſions, ſhall be binding to all perſons. *ſ.* 6.

However

However it is certain, that a highway may be changed by the act of god; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old. 1 *Haw.* 202.

6. The freehold of the highway is in him that hath the freehold of the ſoil; but the free paſſage is for all the king's liege people. 2 *Inſt.* 705. To whom the freehold of an highway belongeth.

H. 8 *G.* 2. Sir *John Lade* againſt *Shepherd.* Upon trial of an action of treſpaſs, a caſe was made; that the place where the ſuppoſed treſpaſs was committed, was formerly the property of the plaintiff, who ſome years ſince built a ſtreet upon it, which has ever ſince been uſed as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof reſted on the highway. And it was inſiſted for the defendant, that by the plaintiff's making it a ſtreet, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nuſance, yet the plaintiff could not ſue him as for a treſpaſs on his private property. But by the court; It is certainly a dedication to the publick, ſo far as the publick has occaſion for it, which is only for a right of paſſage: but it never was underſtood to be a transfer of the abſolute property in the ſoil. So the plaintiff had judgment. *Str.* 1004.

II. Concerning the ſpecial ſeſſions for the highways.

1. The juſtices in their reſpective diviſions, ſhall once in four months (on pain of 5*l.*) hold a ſpecial ſeſſions for the highways, and ſhall thereunto ſummon all the ſurveyors, and give them a charge, and declare unto them their duty. 3 *W.* *c.* 12. *ſ.* 9, 11.

2. And one of the ſaid ſeſſions ſhall be holden on *Jan.* 3. yearly, or within 15 days after. 3 *W.* *c.* 12. *ſ.* 3.

III. Appointment of the ſurveyors.

1. On *Dec.* 26. yearly, unleſs it be *ſunday*, and then on the 27th, the conſtables, churchwardens, ſurveyors of the highways, and inhabitants in every pariſh, ſhall aſſemble, and the major part of them ſhall make a liſt of the names of a competent number of the inhabitants in their pariſh, who have an eſtate in lands, tenements, or hereditaments in their own or their wives right, of 10*l.* a year,

or a perſonal eſtate of the value of 100 *l.* or are occupiers or tenants of houſes, lands, tenements, or hereditaments, of 30 *l.* a year, if any ſuch there be, or if there be no ſuch perſons in the pariſh, then the ſaid liſt to be of the moſt ſufficient inhabitants. 3 *W.* *c.* 12, *ſ.* 3.

2. And ſhall return ſuch liſt to the ſpecial ſeſſions to be held for that purpoſe within the diviſion, on *Jan.* 3. or within 15 days after; of the time and place of which ſeſſions ſo to be holden, the ſaid juſtices ſhall give notice (A) to the conſtables, churchwardens, and ſurveyors, at leaſt ten days before. 3 *W.* *c.* 12. *ſ.* 3.

3. And if the conſtables, churchwardens, and ſurveyors ſhall not return ſuch liſt, every of them making default ſhall forfeit 20 *s.* by diſtreſs, by warrant of two of the ſaid juſtices, or in default thereof, of any neighbouring juſtices. 3 *W.* *c.* 12. *ſ.* 4.

4. And the ſaid juſtices ſhall then and there, out of the ſaid liſts, according to their diſcretion, and the largeneſs of the pariſh, by warrant under their hands and ſeals (B), nominate and appoint one, two or more, as they ſhall think fit and approve of, to be ſurveyor or ſurveyors of the highways of every pariſh or town within the diviſion for the year enſuing. 3 *W.* *c.* 12. *ſ.* 3.

5. Which nomination and appointment ſhall by the conſtables or ſurveyors be notified to the perſon ſo nominated, within ſix days after ſuch nomination, by ſerving him with the ſaid warrant, or by leaving the ſame, or a true copy thereof, at his houſe or uſual place of abode; and from thenceforth he ſhall be ſurveyor. 3 *W.* *c.* 12. *ſ.* 3.

6. If he ſhall not take upon him, and execute the office, he ſhall forfeit 5 *l.* in like manner. 3 *W.* *c.* 12. *ſ.* 3.

7. And in caſe of ſuch neglect or refuſal, the ſaid juſtices ſhall appoint others in like manner, who ſhall execute the office, on the like penalty. 3 *W.* *c.* 12. *ſ.* 3.

IV. Surveyor's general duty on acceptance of his office.

Receiving the former ſurveyor's account.

1. He ſhall receive what money remained in his predeceſſor's hands. 3 *W.* *c.* 12. *ſ.* 9.

Making a ſurvey of the roads.

2. He ſhall within 14 days after acceptance of his office, and ſo from time to time every four months, or oftner, if required thereunto by warrant of two juſtices, view all the roads, common highways, bridges, cauſways, pavements, hedges, ditches, and watercourſes appertaining to ſuch highways, together with all nuſances, or incroachments thereupon, and give a particular and true account in writing upon

upon oath, of the ſtate and condition of all ſuch highways, and more eſpecially of ſuch faults and defects as want to be repaired, and of the neglects of labourers, to the next ſpecial ſeſſions, to the end that the ſaid accounts may be carefully preſerved, and that at all future ſeſſions the juſtices of the diviſion may have full information of, and may be able to examine into the particular ſtate and condition thereof; And if he ſhall neglect to give ſuch account, he ſhall forfeit 5*l.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices. 1 *G. ſt.* 2. *c.* 52. *ſ.* 2.

For which oath no fee ſhall be taken. *ſ.* 11.

3. And there is a general penalty of 40*s.* laid on him by the acts of 3 *W. c.* 12. and 1 *G. ſt.* 2. *c.* 52. for any neglect of his duty, on either of the ſaid acts, to be levied in like manner. Penalty for neglect of duty.

V. Who ſhall repair.

It ſeems to be agreed, that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the pariſh wherein they are: But there is no doubt, but particular perſons may be burdened with the general charge of repairing a highway, in two caſes: Pariſh in general to repair.

1. In reſpect of an incloſure of the land wherein it lies; as where the owner of lands not incloſed, next adjoining to the highway, incloſeth his lands on both ſides thereof; in which caſe, he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then any way defective; becauſe before the incloſure, the people uſed, when the way was bad, to go for their better paſſage, over the fields adjoining, out of the common track, which liberty is taken away by the incloſure. 1 *Haw.* 202. Repairing in reſpect of an incloſure.

And if the way is not ſufficient, any paſſenger may break down the incloſure, and go over the land, and juſtify it, till a ſufficient way is made. 3 *Salk.* 182.

Alſo it hath been holden, if one incloſe land on one ſide, which hath been antiently incloſed of the other ſide, he ought to repair all the way; but if there be not ſuch an antient incloſure of the other ſide, he ought to repair but half that way; and it is ſaid, that wherever one is bound to repair a highway, in reſpect of an incloſure, and lays it open again as it was before, he ſhall be freed from the charge of repairing it. 1 *Haw.* 202.

Repairing by preſcription.

2. A particular perſon may be bound to repair a highway, in reſpect of a preſcription; and it is ſaid, that a corporation aggregate may be compelled to do it, by force of a general preſcription, that it ought and hath uſed to do it, without ſhewing that it uſed to do ſo in reſpect of the tenure of certain lands, or for any other conſideration; becauſe ſuch a corporation in judgment of law never dies, and therefore if it were ever bound to ſuch a duty, it muſt needs continue to be always ſo; neither is it any plea, that ſuch corporation hath always done it out of charity, for what it hath always done, it ſhall be preſumed to have been always bound to do: but it is ſaid, that a perſon cannot be charged with ſuch a duty, by a general preſcription from what his anceſtors have done, unleſs it be for ſome ſpecial reaſon, as the having land deſcended from ſuch anceſtors, which are holden by ſuch like ſervice. 1 *Haw.* 202.

Yet it ſeems, that an indictment charging a tenant in fee ſimple, with having uſed of right to repair ſuch a way by reaſon of the tenure of his land, is certain enough, without adding, that his anceſtors or thoſe whoſe eſtate he hath, have always ſo done; for that is implied. 1 *Haw.* 203.

But the indictment muſt ſet forth, where thoſe lands lie. 2 *H. H.* 181.

VI. The proportion of labourers and carriages.

1. Every perſon, for every ploughland in tillage or paſture that he ſhall occupy in the pariſh, ſhall find and ſend at every day and place appointed, one wain or cart, furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and all other neceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

Every perſon] It hath been holden, that perſons in holy orders are within the purview of theſe ſtatutes, in reſpect of their ſpiritual poſſeſſions, as much as any other perſons whatſoever in reſpect of any other poſſeſſions; for the words are general, and there is no kind of intimation that any particular perſons ſhall be exempted more than others. 1 *Haw.* 204. But by the 30 *G.* 2. *c.* 25. perſons ſerving for themſelves as private men in the militia, ſhall during the time of ſuch ſervice be exempted from perſonally doing any highway duty, commonly called ſtatute work. *ſ.* 23.

For

For every ploughland] Therefore if he occupies and keeps in his poſſeſſion ſeveral ploughlands in ſeveral towns, he ſhall be charged to find in each town or pariſh where ſuch ploughlands do lie, one cart or carriage, in like manner as if he were a pariſhioner in the ſeveral pariſhes. 18 *El.* *c.* 10. *ſ.* 4.

Ploughland] A *ploughland* is as much land as one draught can ordinarily plow in a year: Which by the 7 & 8 *W.* *c.* 29. as to repairing highways, is limited to 50 *l.* a year of woodland or other land. *ſ.* 5.

That he ſhall occupy] It hath been holden, that notwithſtanding the words of the ſtatute extend only to the occupiers of land, yet if the owner neither occupy them, nor let them, but ſuffer them to lie freſh, he ſhall be charged as much as if he had occupied them; for there is no reaſon that the publick ſhould ſuffer for his negligence. 1 *Haw.* 204.

In the pariſh] And if he ſhall occupy a ploughland lying in ſeveral pariſhes, he ſhall be chargeable within the pariſh where he dwelleth, in like manner as a perſon having a ploughland in any one pariſh. 18 *El.* *c.* 10. *ſ.* 3.

2. Alſo every other perſon keeping a draught or plough in the pariſh, ſhall find and ſend one wain or cart in like manner, with two able men. 2 & 3 *P.* & *M.* *c.* 8. *ſ.* 2.

And it hath been holden, that he who keeps ſeveral draughts in a pariſh, is bound to ſend a team for each draught, whether he occupy any land in the pariſh or not. 1 *Haw.* 204.

3. And where there is no uſe of carts and teams for amending of highways, but the uſage is to carry materials on horſes backs or any other kind of carriage; the inhabitants ſhall ſend ſuch horſes or carriages, with able perſons to work with the ſame, under the like penalty as for carts and teams. 22 *C.* *c.* 12. *ſ.* 8.

4. And if the ſaid carriages ſhall not be thought needful by the ſurveyor, then the perſon that ſhould have ſent ſuch carriage, ſhall for every carriage ſo ſpared, ſend two able men. 2 & 3 *P.* & *M.* *c.* 8. *ſ.* 2.

5. Moreover, beſides thoſe perſons who are obliged to ſend carriages, every other perſon (except in *London*) that ſhall be aſſeſſed to the payment of any ſubſidy, to 5 *l.* in goods, or 40 *s.* in lands, ſhall find two able men. 18 *El.* *c.* 10. *ſ.* 2.

6. And every other houſholder, and alſo every cottager, and labourer able to labour, and being no hired ſervant by the year, ſhall by themſelves, or one ſufficient labourer for every of them, work on the ſaid days. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

VII. Providing materials.

Surveyor may take and carry away rubbiſh.

1. The ſurveyor may take and carry away of the rubbiſh or ſmalleſt broken ſtones of any quarry within the pariſh, without licence, controulment, or impeachment of the owner, ſo much as he ſhall judge neceſſary for repairing the ways. 5 *El. c.* 13. *ſ.* 3.

But he may not cauſe any rubbiſh to be digged out of a quarry, but only ſhall have ſuch as ſhall be found there ready digged by the owner or his order. *ſ.* 4.

May gather ſtones.

2. And for default of any quarry, not being within his limits, or in default of rubbiſh not to be found there, he may gather ſtones lying upon any grounds within the pariſh, and meet to be uſed for ſuch purpoſe; and thereof take and carry away ſo much as by his diſcretion ſhall be thought neceſſary to be employed in the amendment of the highways. 5 *El. c.* 13. *ſ.* 3.

May dig for gravel.

3. Likewiſe in default of ſuch quarry, or in default of ſuch rubbiſh in any ſuch quarry, he may in the ſeveral ground of any perſon within his limits, and nigh adjoining to the highway, and wherein gravel, ſand, or cinders are likely to be found, dig or cauſe to be digged for them. 5 *El. c.* 13. *ſ.* 3.

But he may not dig for the ſame, in any man's houſe, garden, orchard, or meadow. *id. ſ.* 4.

Nor ſhall he cauſe any more pits to be digged for gravel, in any ſeveral and incloſed ground than one only, nor ſhall the pit be in length or breadth above ten yards over; and he ſhall within a month cauſe the pit to be filled with earth at the coſts of the pariſhioners; on pain of forfeiting to the owner of the ſoil, five marks, to be recovered by action of debt. *id. ſ.* 4.

And by the 26 *G.* 2. *c.* 28. If any perſon ſhall by reaſon of getting any gravel, ſand, ſtones, chalk, or other materials, for repairing any highway, or for any other purpoſe whatſoever, make or cauſe to be made any pit or hole in any common heath, or waſte ground, he ſhall forthwith cauſe the ſame to be ſufficiently fenced off during ſuch time as it ſhall be continued open, and ſhall within 14 days after digging for ſuch materials in ſuch pit or hole, cauſe the ſame to be filled up, ſloped down or fenced off, and ſo continued;

tinued; and if he ſhall not fill up, ſlope down or fence off the ſame, and keep the ſaid fence from time to time in good repair, one juſtice on view, or oath of one witneſs, may order him to fill up, properly ſlope down, or fence off the ſame, and where any fence ſhall be ſet up may order the ſame to be repaired; and if he ſhall not comply with ſuch order in ten days after his receipt thereof, or the ſame being left at his uſual place of abode, and due proof being made upon oath before any one juſtice, of the offence committed, of the ſervice of ſuch order, and of the refuſal or neglect to comply therewith, ſuch perſon ſhall forfeit not exceeding 10 *l.* nor leſs than 40 *s.* to be laid out in filling up, ſloping down, or fencing off the ſame, and towards the repair of the roads in the pariſh or place where the offence ſhall be committed, and in ſuch manner as the juſtice ſhall direct; which, if not forthwith paid, ſhall be levied by diſtreſs, by warrant of ſuch juſtice.

4. And whereas divers pariſhes and townſhips have not any gravel, ſtones, quarries, nor other materials, fit for repairing highways, and the ſurveyor is forced to lay out his own money for buying the ſame, it is enacted, that upon notice given by the ſurveyor to the ſpecial ſeſſions, and oath made of what ſum he hath laid out, the juſtices there, or two of them, ſhall by warrant under their hands and ſeals cauſe an equal rate to be made for reimburſing the ſurveyor, according to the method of the poor rate preſcribed by the 43 *El.* *c.* 2. which rate being confirmed and allowed by the ſaid juſtices in their ſpecial ſeſſions, ſhall be collected by the ſurveyor; and if any perſon refuſe to pay, it ſhall be levied by the ſurveyor by diſtreſs. 3 *W.* *c.* 12. *ſ.* 13. May purchaſe materials.

And if the juſtices refuſe to make a rate, they are compellable by *mandamus* from the king's bench, on affidavit of the money having been laid out; and the *mandamus* ſhall be directed to the juſtices of the county, and ſerved on thoſe of the private ſeſſions. 1 *Haw.* 206.

VIII. Concerning the ſix days work.

1. The ſurveyor ſhall appoint ſix days, for the providing ſtones, gravel, and other materials as aforeſaid, and for working in the highways, having reſpect to the ſeaſon of the year, and the weather, and giving notice publickly ſome convenient time before the ſeveral days. 22 *C.* 2 *c.* 12. *ſ.* 12.

2. And the juſtices at the ſpecial ſeſſions, by writing under their hands and ſeals may order the reparation of thoſe

thoſe great roads which do moſt want repair, to be firſt amended, and at what time, or in what manner, the ſame ſhall be performed; according to which order the ſurveyor ſhall proceed; and if they make no ſuch order, then according as to the ſurveyor ſhall ſeem moſt needful: And he ſhall take care, as far as poſſible, that the work be perfected before the time of harveſt. 1 *G. ſt.* 2. *c.* 52. *ſ.* 3, 4.

3. At the ſaid ſeveral days ſo appointed, all perſons liable ſhall attend and work. 22 *C.* 2. *c.* 12. *ſ.* 12.

4. And every perſon and carriage ſhall have with them ſuch ſhovels, ſpades, picks, mattocks, and other tools and inſtruments, as they make their own ditches and fences with, and ſuch as are neceſſary for the work. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

5. And they ſhall work eight hours each day, unleſs they be otherwiſe licenſed by the ſurveyor. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

6. And if any perſon ſhall fail to make his reſpective days labour, or neglect to ſend his horſes and carriages, the ſurveyor ſhall give an account thereof in writing on oath (C) to the ſpecial ſeſſions (D), and two juſtices there may levy by diſtreſs (E) and ſale of the goods of ſuch defaulter (not having a reaſonable excuſe to be allowed by the ſaid juſtices) for every day labourer 1 *s.* 6 *d.* for a man and horſe 3 *s.* for a cart with two men 10 *s.* each day. 22 *C.* 2. *c.* 12. *ſ.* 9. 1 *G. ſt.* 2. *c.* 52. *ſ.* 2. Or the leet may inquire thereof, by fine and eſtreat. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

IX. Of annoyances in general.

1. There is no doubt, but that all injuries whatſoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act, which will render it leſs commodious to the king's people, are publick nuſances at common law. 1 *Haw.* 212.

2. And by the common law any one may abate a nuſance to a highway, and remove the materials, but not convert them to his own uſe. 1 *Haw.* 214.

3. Alſo it ſeemeth, that an heir may be indicted for continuing an incroachment, or other nuſance to a highway, begun by his anceſtor; becauſe ſuch a continuance thereof amounts in the judgment of law to a new nuſance. 1 *Haw.* 214.

4. And

4. And by the ſtatute of the 3 *W.* *c.* 12. *ſ.* 8. If ſuch annoyances ſhall not be removed and amended within 30 days after notice given in the church immediately after ſermon, by the ſurveyor, he ſhall within 30 days remove and amend the ſame, and diſpoſe thereof for the repair of the highways. And he ſhall be reimburſed what charges he ſhall be at in ſo doing, by the parties who ſhould have done the ſame; and if they ſhall upon demand refuſe or neglect to pay the ſame, the ſurveyor ſhall apply to a juſtice of the diviſion, and in default thereof to a neighbouring juſtice of the county, and upon his making oath before ſuch juſtice of the notice to the defaulter in manner aforeſaid he ſhall be repaid all ſuch his charges as ſhall be allowed to be reaſonable by the ſaid juſtice, to be levied by diſtreſs.

5. And by the 1 *G. ſt.* 2. *c.* 52. If they ſhall not be removed in 30 days, after due notice thereof given by the ſurveyor; the offender ſhall forfeit any ſum not exceeding 5 *l.* nor under 20 *s.* to be levied by warrant of the juſtices at the ſpecial ſeſſions, by diſtreſs. *ſ.* 8.

X. Ditches adjoining to the highway.

1. To ſuffer the ditches adjoining to a highway to be foul, by reaſon whereof it is impaired, is a nuſance at common law. 1 *Haw.* 212.

2. And it is ſaid, that he who hath lands next adjoining to a highway, is bound of common right to ſcour his ditches: But it is ſaid, that he who hath lands next adjoining to ſuch lands, is not bound by the common law ſo to do, without ſome ſpecial preſcription for that purpoſe. 1 *Haw.* 213.

3. And by the ſtatute of the 5 *El.* *c.* 13. *ſ.* 7. The ditches next adjoining to the highway ſhall be ſcoured by the owner of the ſoil which ſhall be incloſed with the ſame.

4. And by the 1 *G. ſt.* 2. *c.* 52. If any perſon who ought to ſcour and keep open ditches, adjoining to the highways, ſhall not amend the ſame in 30 days after due notice from the ſurveyor, or ſhall leave the earth of ditches ſcoured in the highways for the ſpace of eight days, he ſhall (on oath being made thereof at the ſpecial ſeſſions by the ſurveyor) forfeit for every eight yards of ditching not ſcoured and kept open 2 *s.* 6 *d.* by warrant of the juſtices at the ſaid ſpecial ſeſſions, by diſtreſs. And the ſurveyor ſhall ſcour and open the ſaid ditches. *ſ.* 8.

XI. Water

XI. Water in the highway.

1. The ſurveyor may turn any water courſe or ſpring of water, being in the highway, into any ditch of the ſeveral ground of any perſon next adjoining to the highway, as by his diſcretion ſhall be thought meeteſt and moſt convenient. 5 *El. c.* 13. *ſ.* 6.

2. And every perſon that ſhall occupy any lands, adjoining to the ſaid ground ſo adjoining to any highway, where any ditching or ſcouring ought to be, ſhall, as need ſhall require, ditch and ſcour in his ground ſo adjoining, whereby the water conveyed from the highway over the ground next adjoining, may have paſſage over the ſaid ground ſo next adjoining. 18 *El. c.* 10. *ſ.* 6.

3. And if any perſon who ought to ſcour and keep open uſual watercourſes, adjoining or near to the highways, and effectually to amend them, ſhall by the ſpace of 30 days after due notice thereof given by the ſurveyor, neglect or delay to do the ſame, he ſhall (on oath thereof being made by the ſurveyor, before the juſtices at the ſpecial ſeſſions) forfeit for every eight yards ſo not ſcoured and kept open 2*s.* 6*d.* to be levied by warrant of the ſaid juſtices, by diſtreſs. And the ſurveyor ſhall ſcour and keep open ſuch ditches and watercourſes; and where the ditches and drains already made are not ſufficient to carry off the water, the ſurveyor may make new ones in and through the lands next adjoining or near to the highways, and keep them ſcoured, cleanſed, and open, and may come upon the lands with their workmen for that purpoſe. 1 *G. ſt.* 2. *c.* 52. *ſ.* 8. 3 *W. c.* 12. *ſ.* 12.

XII. Hedges adjoining to the highway.

1. It ſeemeth clear, that it is a nuſance at common law, to ſuffer the boughs of trees growing near the highway, to hang over the road in ſuch a manner, as thereby to incommode the paſſage. 1 *Haw.* 212.

2. And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the ſame; and it ſeems clear, that any perſon may juſtify the lopping ſuch trees, ſo far as to avoid the nuſance. 1 *Haw.* 213.

3. And by the ſtatute of the 7 *G.* 2. *c.* 9. it is provided, that if the ſurveyor on his view ſhall find any highway deep and foundrous, and the hedge adjoining to be ſo high as

to

to prevent the benefit of the ſun and wind, he ſhall make a preſentment thereof to the juſtices at their ſpecial ſeſſions; which juſtices, or two of them, may by warrant ſummon the occupier of the lands adjoining to the highway, to appear at the next monthly or other publick meeting of the juſtices, in or near the diviſion, to ſhew cauſe why ſuch hedge ſhould not be new made, or cut low; and if ſuch perſon appear not, nor ſend ſome perſon to appear, or if it ſhall appear upon proof on oath that ſuch way is deep and foundrous, and damaged by the height of ſuch hedge, the ſaid juſtices, or two of them, ſhall iſſue a precept under hand and ſeal to the ſurveyor, to give or leave notice in writing at the uſual place of abode of ſuch perſon whoſe hedge was preſented, that he is thereby required to new make or cut low the ſaid hedge, within 30 days after ſuch notice (provided, that ſuch notice be given between *September* 30. and *Febuary* 1.) and in caſe of his refuſal or neglect to do the ſame within the ſaid 30 days, the ſurveyor ſhall cauſe the hedge to be new made or cut low, as he ſhall think moſt reaſonable, ſo as ſuch hedge be left at leaſt three foot high above the bank. *ſ.* 1.

And ſuch perſon ſhall repay to the ſurveyor ſuch reaſonable expences as he ſhall have been put to on that occaſion; and if he ſhall refuſe or neglect to repay the ſame, within 14 days after demand, the juſtices upon complaint thereof at their monthly or other publick meeting, in or near the diviſion, and due proof upon oath of ſuch expences of the ſurveyor, ſhall iſſue a precept under the hands and ſeals of them, or two of them, to the conſtable or other proper officer of the hundred, pariſh, or place, requiring him to levy the ſaid ſum by diſtreſs. *id. ſ.* 2.

But nothing herein ſhall alter the laws in relation to timber trees, which grow in hedges adjoining to the highways. *id. ſ.* 3.

XIII. Wood growing in the highway.

No tree, buſh, or ſhrub, ſhall be permitted to grow in any highway not full 20 foot broad, but ſhall be cut down, grubbed up, and carried away by the owner of the land or ſoil, in 10 days after notice given to him by the ſurveyor; on pain of 5*s.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices of the county. 3 *W.* *c.* 12. *ſ.* 6.

XIV.

XIV. Straw, dung, ſtones, timber, laid in the highway.

1. There is no boubt, but that all obſtructions by laying ſtraw, dung, ſtones, logs of timber, and the like, in the highway, are nuſances at common law. 1 *Haw.* 212.

2. And it ſeemeth to be clear, that it is no excuſe for one who layeth ſuch logs in the highway, that he laid them only here and there, ſo that the people might have a paſſage by windings and turnings through the logs: yet it is ſaid to be no nuſance for the inhabitants of a town to unlade billets, and the like, in the ſtreet before their houſes, by reaſon of the neceſſity of the caſe, unleſs they ſuffer them to continue there an unreaſonable time after they are unloaded. 1 *Haw.* 212.

3. And by the ſtatute of 3 *W.* *c.* 12. No perſon ſhall lay in any highway not being 20 foot broad, any ſtone, timber, ſtraw, dung, or other matter, whereby the ſame ſhall be any ways obſtructed or annoyed; on pain of 5 *s.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices of the county. *ſ.* 4.

And if any timber, ſtone, hay, ſtraw, ſtubble, or other matter for the making of dung, or on any other pretence, ſhall be laid in any ſuch highway, whereby the ſame ſhall be any ways obſtructed or annoyed; the owner or poſſeſſor of the lands next adjoining, ſhall clear the way by removing the ſame, and ſhall take the ſame to his own uſe: and if he ſhall neglect ſo to do, for ten days after notice given to him by the ſurveyor, he ſhall forfeit 5 *s.* in like manner. *ſ.* 5.

4. And by the 1 *G.* *ſt.* 2. *c.* 52. If any perſon who ought to remove ſuch annoyances, ſhall for 30 days after due notice thereof given by the ſurveyor, neglect or delay to do the ſame; he ſhall forfeit not exceeding 5 *l.* nor under 20 *s.* by warrant of the juſtices at the ſpecial ſeſſions, by diſtreſs: and the ſurveyor ſhall remove the ſame. *ſ.* 8.

XV. Empty carriages left in the highway.

By the 30 *G.* 2. *c.* 22. If any perſon ſhall ſet, place, or leave any empty waggon, cart, or any other carriage, in any publick highway, ſo as in any manner to interrupt or hinder the free paſſage of any other carriage, or of his majeſty's ſubjects, except only during ſuch reaſonable time as the ſame ſhall be loading or unloading; he ſhall, on conviction by confeſſion, or oath of one witneſs before one juſtice, forfeit any ſum not exceeding 20 *s.* by diſtreſs; for want

want of ſufficient diſtreſs, to be committed to the houſe of correction or ſome other priſon of the place in which the offence ſhall be committed, or the offender ſhall be apprehended, to be kept to hard labour for any time not exceeding one kalendar month. *ſ.* 8.

The ſaid penalty to be half to the informer, and half to the ſurveyor of the highways in the pariſh where the offence ſhall be committed, to be by him applied in the repair of the highways within ſuch pariſh. *ſ.* 10.

And any perſon who ſhall ſee any offence committed againſt this act, may by authority of this act, and without any other warrant, apprehend the offender: and ſhall with all convenient ſpeed convey or deliver him to a conſtable or other peace officer of the place where the offence ſhall be committed or the offender ſhall be apprehended, in order to be conveyed before a juſtice, there to be dealt with according to law. *ſ.* 13.

And if he ſhall refuſe to diſcover his name and place of abode, to the juſtice before whom he ſhall be brought; he ſhall be immediately delivered over to a conſtable or other peace officer, and ſhall by him be conveyed to the common gaol or houſe of correction of the place where the offence ſhall be committed, there to remain until he ſhall declare his name and place of abode to the ſaid juſtice, or to ſome other juſtice of ſuch place. *ſ.* 11.

And any perſon ſhall be admitted to be an evidence, notwithſtanding his being an inhabitant of the place where the offence ſhall be committed. *ſ.* 14.

Provided, that perſons puniſhed by this act ſhall not be puniſhed by any former law. *ſ.* 15.

XVI. Gate erected acroſs the highway.

A gate erected in a highway, is a common nuſance, becauſe it interrupts the people in that free and open paſſage which they before enjoyed, and were lawfully intitled to; but where ſuch a gate has continued time out of mind, it ſhall be intended that it was ſet up at firſt by conſent, on a compoſition with the owner of the land on the laying out the road, in which caſe the people had never any right to a freer paſſage than what they ſtill enjoy. 1 *Haw.* 199.

XVII. Nuſance by an unlawful number of horſes or beaſts in carriages.

This is to be underſtood with reſpect to highways in general; what concerneth the number of horſes or beaſts

in carriages upon *turnpike* roads in particular, is treated of hereafter in its place.

Penalty of having above five horſes in length.

1. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed in or about huſbandry and manuring of lands, and in the carrying of hay, ſtraw, corn unthraſhed, coal, chalk, timber for ſhipping, materials for building, ſtones of all ſorts, ammunition or artillery for his majeſty's ſervice) ſhall travel in any highway, with above five horſes at length; on pain of 40*s.* on conviction before one juſtice, on his view, or oath of one witneſs, by diſtreſs. 22 *C.* 2. *c.* 12. *ſ.* 7.

And every conſtable, or ſurveyor, wilfully ſuffering any waggons or carts to paſs through his limits, in other manner than by this act is allowed, ſhall forfeit in like manner 40*s.* *id. ſ.* 1.

Penalty of having above five horſes or oxen in length.

2. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed about huſbandry and manuring of lands, and in the carrying of hay, ſtraw, corn unthraſhed, chalk, timber for ſhipping, materials for building, ſtones of all ſorts, ammunition or artillery for his majeſty's ſervice) ſhall go with above five horſes, oxen, or beaſts in length; on the like pains, and ſubject to the like proviſoes, as by the 6 *An. c.* 29. and 9 *An. c.* 18. hereafter following. 1 *G. c.* 11.

Penalty of having above ſix horſes in length, pairs or ſide ways.

3. No waggon (whether travelling for hire or not, 14 *G.* 2. *c.* 42. *ſ.* 6.) ſhall go or be drawn with more than ſix horſes, either in length, or in pairs, or ſideways; on pain that the owner or driver ſhall forfeit all his horſes above ſix, with all geers, bridles, halters, and accoutrements, to him who ſhall ſeize or diſtrain the ſame. And the perſon who ſhall make ſuch ſeizure or diſtreſs, ſhall deliver the ſame to the conſtable, or ſome pariſh officer, of the ſame or next adjacent pariſh where the ſeizure is made, till the perſon ſeizing ſhall make proof upon oath before ſome juſtice, of the offence committed; and the ſaid juſtice ſhall iſſue his precept to ſuch officer, immediately to deliver the ſame for the ſole uſe of the perſon ſeizing, paying ſuch reaſonable charge for keeping and ſecuring the ſame, as the juſtice ſhall direct. And if any perſon ſhall attempt to obſtruct the execution hereof, he ſhall on conviction by the oath of one witneſs before one juſtice, be committed to gaol for three months, and ſhall alſo forfeit 10*l.* by warrant of ſuch juſtice by diſtreſs, and if not paid in three days, the diſtreſs to be ſold. 5 *G. c.* 12.

But the ſtatute of the 27 *G.* 2. *c.* 20. allows a further time for keeping all ſuch diſtreſſes, *viz.* not leſs than four days, nor more than eight.

Or,

Or, before the goods are ſeized, oath may be made at any time within three days, before any juſtice where the offence was committed, or the offender ſhall happen to be; and the goods ſhall remain for three days after the offence liable to ſeizure and diſtreſs, for the uſe of the informer in like manner as if they had been ſeized in the fact. 14 *G.* 2. *c.* 42. *ſ.* 6.

Or (as hath been ſaid at the beginning of this title) an action of trover may be brought for the ſame, wherein if the plaintiff recovers, he ſhall have double coſts. 24 *G.* 2. *c.* 43. *ſ.* 11.

H. 16 *G.* 2. *K.* and *Thomas Sergiſon*, eſquire. An information was moved for againſt him, for not condemning a horſe taken out of a team under the ſtatute of the 5 *G.* *c.* 12. which requires proof to be made before a juſtice, of the cauſe of forfeiture; and the party who ſeized tendring his own oath, the defendant ſcrupled to take it, or to determine the affair in the abſence of the owner or driver. And by the court, they were both reaſonable objections. Why is not the perſon who ſeized, and is to have the benefit of the forfeiture, within the reaſon of excluding informers where there is a penalty? *Making proof* muſt mean *legal proof*. The other alſo is but natural juſtice: There are exceptions in this act, as to one ſtone, or one piece of timber, though drawn by ever ſo many horſes; and ought not the owner to have an opportunity of ſhewing it? And the rule was diſcharged with coſts. *Str.* 1181.

Or above four horſes in carts.

And moreover, no cart (whether travelling for hire, or not for hire, 14 *G.* 2. *c.* 42. *ſ.* 6.) ſhall be driven with more than (four horſes, 16 *G.* 2. *c.* 29.); on pain that the owner or driver ſhall in like manner forfeit all the horſes above four, with the geers, bridles, halters, and accoutrements. 5 *G. c.* 12. *ſ.* 1.

But nothing in this ſection ſhall extend to ſuch waggons, wains, carts, or carriages, as ſhall be employed about huſbandry or manuring of land, and in the carrying of cheeſe, butter, hay, ſtraw, corn unthraſhed, coals, chalk, or any one tree or piece of timber, or any one ſtone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private uſe, or ſuch timber, ammunition, or artillery as ſhall be for the ſervice of the king, his heirs and ſucceſſors. 5 *G. c.* 12. *ſ.* 5.

Penalty of having above ſix horſes or oxen, in length, pairs, or ſideways.

4. By 6 *An. c.* 29. and 9 *An. c.* 18. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed in and about huſbandry and manuring of land, and in the carrying of hay, braw, (corn unthreſhed, 1 *G. c.* 11) chalk, timber for ſhipping,

ping, materials for building, ſtones of all ſorts, or ammunition or artillery for the ſervice of his majeſty, his heirs or ſucceſſors) ſhall travel or go in any highway, with above ſix horſes, oxen, or beaſts; on pain of 5 *l.* And any perſon may ſeize or diſtrain any or all the horſes, oxen, or beaſts of any perſon offending herein, and forthwith deliver them to the ſurveyor or other pariſh officer, and if the penalty is not paid in three days, ſuch officer ſhall by warrant of one juſtice ſell the ſame; rendring the overplus, charges firſt deducted.

And if any perſon employed by any carrier, drive or aſſiſt in driving ſuch unlawful number, he ſhall forfeit 5 *l.* in like manner.

And the ſurveyor wilfully ſuffering them to travel with more, ſhall alſo in like manner forfeit 5 *l.*

Exceptions of drawing up ſteep hills.

5. But nothing in any of the aforeſaid acts ſhall extend to reſtrain the owners of waggons or other carriages, or their ſervants, drawing with ſo many horſes or beaſts, up any ſuch ſteep hills, as the juſtices at their quarter ſeſſions ſhall from time to time order and direct; which order ſhall be kept by the clerk of the peace amongſt the records of the ſeſſions, to which all perſons at reaſonable times, ſhall have recourſe *gratis*. 24 G. 2. c. 43. ſ. 10.

Exception where the wheels are nine inches broad.

6. Alſo, it ſhall be lawful for any waggon or other four wheel carriage, having the fellies of the wheels nine inches broad, to paſs on any highway, with any number of horſes and beaſts not exceeding eight; and for any cart or two wheel carriage, having the like wheels, with any number not exceeding five; without being ſubject to any penalties for cauſing them to be driven by a greater number. 26 *G.* 2. *c.* 30. *ſ.* 6.

XVIII. Nuſance by unlawful breadth and tire of wheels.

Breadth of wheels.

1. No travelling waggon for hire (other than ſuch as are employed in huſbandry, and in carrying of cheeſe, butter, hay, ſtraw, corn unthraſhed, coals, chalk, or any one tree or piece of timber, or any one ſtone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private uſe, or timber, ammunition, or artillery for the king's ſervice) having the wheels bound with ſtreaks or tire of a leſs breadth than two inches and an half when worn, or being faſtened on with roſeheaded nails, ſhall go or be drawn with more than three horſes, between *Sep.* 29. and *April* 15. yearly; on pain that every owner or driver thereof, ſhall forfeit all the horſes above three, with

with all geers, bridles, halters, and accoutrements; to be ſeized, diſtrained, or otherwiſe recovered, as the number of horſes above ſix in a waggon either in length, pairs, or ſideways, as is particularly ſpecified under the third ſection of the laſt preceding head. 5 *G. c.* 12. 14 *G.* 2. *c.* 42. *ſ.* 2, 6. 15 *G.* 2. *c.* 2. 24 *G.* 2. *c.* 43. *ſ.* 11.

[What belongeth to the breadth of wheels upon turnpike roads in ſpecial, is treated of under the article relating to turnpikes hereafter following.]

2. No perſon in *London* and *Weſtminſter*, or within 10 miles thereof (unleſs it be with broad wheels upon turnpike roads, 26 *G.* 2. *c.* 30. *ſ.* 5.) ſhall carry at any one load, in waggons or carts having their wheels ſhod with iron, more than 12 ſacks of meal of 5 buſhels each, nor more than 12 quarters of malt, nor more than 700 ½ of bricks, nor more than one chalder of coals; on pain of forfeiting any one of the horſes, with the geers, bridles, and halters therewith uſed, on conviction in three days before one juſtice. 6 *G. c.* 6. 5 *G. c.* 12. 14 *G.* 2. *c.* 42. *ſ.* 6. Wheels in London.

And by the 18 *G.* 2. *c.* 33. The wheels of every cart, car, or dray, within the bills of mortality, ſhall be ſix inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horſes, after they are up the hills from the water ſide; on pain of 40 *s.* by warrant of one juſtice, by diſtreſs; and for want of diſtreſs, or non-payment in ſix days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that ſhall bring any goods, or ſhall carry any goods half a mile beyond the paved ſtreets of the ſaid cities and places.

Alſo any perſon, within the ſaid limits, uſing any cart, car, or dray, having the wheels full ſix inches broad, when worn, may have the ſame bound round with tire of iron, provided it be ſix inches broad, and made flat, and not ſet on with roſe-headed nails.

XIX. Nuſance by riding upon carriages, or the drivers otherwiſe miſbehaving.

1. By the 1 *G. ſt.* 2. *c.* 57. If any perſon, driving any cart, dray, or waggon, in the ſtreets of *London*, ſhall ride upon the ſame, not having ſome other perſon on foot to guide the ſame; he ſhall on conviction before the alderman of the ward, or juſtice of the peace, on oath of one witneſs, forfeit 10 *s.* by diſtreſs and ſale; half to the informer, and half to the poor; and in default of payment, to be ſent to the houſe of correction for three days. *ſ.* 8.

2. And by the 24 *G.* 2. *c.* 43. If any carter, drayman carman, waggoner, or other driver ſhall ride upon the ſame in *London* or within ten miles thereof, not having ſome other perſon on foot to guide the ſame, he ſhall on the like conviction, forfeit 10*s.* in caſe ſuch driver ſhall not be the owner of ſuch carriage; and in caſe he be the owner, then any ſum not exceeding 20*s.* To be recovered, levied, and applied, as by the aforeſaid act of the 1 *G. ſt.* 2. *c.* 57. And any perſon, though not a peace officer, may ſtop and apprehend ſuch offender, and carry him as ſoon as conveniently may be before a juſtice; and if any perſon ſhall reſiſt, abuſe, or prevent any perſon endeavouring to apprehend ſuch offender, or when he is apprehended, ſhall reſcue, or endeavour to reſcue him, he ſhall forfeit 20*s.* in like manner. *ſ.* 8, 9.

3. And, more generally, by the 27 *G.* 2. *c.* 16. If the driver of any cart, car, dray, or waggon, ſhall ride upon any ſuch carriage, not having ſome other perſon on foot or on horſeback to guide the ſame (ſuch carts as are reſpectively drawn by one horſe only, or by two horſes abreaſt, and are conducted by ſome perſon holding the reigns of ſuch horſe or horſes, excepted); or if the driver of any carriage whatſoever, on any part of any ſtreet or highway, ſhall by negligence or wilful miſbehaviour, cauſe any hurt or damage to any perſon paſſing or being thereon; every ſuch driver offending in any of the caſes aforeſaid, and being convicted thereof, by confeſſion, or oath of one witneſs, before one juſtice, ſhall forfeit any ſum not exceeding 10*s.* or ſhall be committed to the houſe of correction, for any time not exceeding one month, at the diſcretion of ſuch juſtice. And every ſuch driver, offending in either of the ſaid caſes, may by authority of this act, and without any other warrant, be apprehended by any perſon who ſhall ſee the offence committed, and ſhall be immediately conveyed or delivered to a conſtable, or other peace officer, in order to be conveyed before a juſtice, to be dealt with according to law. *ſ.* 7.

Note; It is not ſaid who ſhall have this penalty, ſo that it ſeemeth that the juſtice ſhall eſtreat the ſame into the exchequer: And here is no power given to levy the ſame by diſtreſs; but if the party ſhall not pay upon conviction, the juſtice (by the act) may commit him to the houſe of correction.

4. And by the 30 *G.* 2. *c.* 22. If the driver of any carriage within *London* or *Weſtminſter*, or in any publick ſtreet or common highway within the bills, ſhall by negligence or wilful miſbehaviour, interrupt the free paſſage of

of his majeſty's ſubjects; he ſhall, on conviction by confeſſion, or oath of one witneſs, before one juſtice, forfeit any ſum not exceeding 20*s.* or be committed to the houſe of correction, or ſome other priſon of the place where the offence ſhall have been committed, or the offender ſhall have been apprehended, to be kept to hard labour for any time not exceeding one kalendar month. The ſaid forfeiture to be levied by diſtreſs by warrant of ſuch juſtice; and to be half to the proſecutor, and half to the overſeers for the uſe of the poor of the pariſh or place where the offence ſhall be committed, or the offender ſhall be apprehended; and if there be no overſeer, then to ſome other officer for the uſe of the poor as aforeſaid. *ſ.* 7, 12.

And furthermore, by the ſame ſtatute, if the driver of any waggon, cart, car, dray, or other carriage, on *any* publick highway, ſhall ride upon any ſuch carriage, not having ſome other perſon on foot or on horſeback to guide the ſame (ſuch carriages as are drawn by one horſe only, or by two horſes abreaſt, and are conducted by ſome perſon holding the reigns, excepted); or if the driver of any carriage whatſoever on any of the ſaid highways, ſhall by negligence or wilful miſbehaviour, interrupt the free paſſage of any other carriage, or of his majeſty's ſubjects on the ſaid highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, ſhall refuſe or neglect to turn aſide, and make way for any coach, chariot, chaiſe, loaded waggon, cart, or other loaded carriage: he ſhall, on conviction by confeſſion, or oath of one witneſs, before one juſtice, forfeit any ſum not exceeding 20*s.* by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction or ſome other priſon of the place where the offence ſhall be committed, or the offender ſhall be apprehended, to be kept to hard labour for any time not exceeding one month. The ſaid penalty to be half to the informer, and half to the ſurveyor of the highways in the pariſh where the offence ſhall be committed, to be by him applied in the repair of the highways within ſuch pariſh. *ſ.* 9, 10.

And any perſon who ſhall ſee any offence committed againſt this act, may by authority of this act and without any other warrant apprehend the offender, and ſhall with all convenient ſpeed convey or deliver him to a conſtable or other peace officer of the place where the offence ſhall be committed or the offender ſhall be apprehended, in order to be conveyed before a juſtice, there to be dealt with according to law. *ſ.* 13.

And if he ſhall refuſe to diſcover his name and place of abode, to the juſtice before whom he ſhall be brought; he ſhall be immediately delivered over to a conſtable or other peace officer, and ſhall by him be conveyed to the common gaol or houſe of correction of the place where the offence ſhall be committed, there to remain until he ſhall declare his name and place of abode to the ſaid juſtice, or to ſome other juſtice of ſuch place. *ſ.* 11.

And any perſon ſhall be admitted to be an evidence, notwithſtanding his being an inhabitant of the place where the offence ſhall be committed. *ſ.* 14.

Provided, that perſons puniſhed by this act ſhall not be puniſhed by any former law. *ſ.* 15.

XX. Pulling up blocks in the highway.

Every perſon who ſhall pull up, cut down, or remove any poſt, block, great ſtone, bank of earth, or other ſecurity, made for ſecuring horſe and foot cauſways from waggons, wains, and carts; ſhall (on conviction before one juſtice of the place or diviſion, on view or oath of one witneſs) forfeit 20*s.* by diſtreſs. 7 & 8 *W. c.* 29. *ſ.* 6.

XXI. Concerning guide poſts.

The juſtices, at the ſpecial ſeſſions, may direct their precept to the ſurveyors, in any place where two or more croſs highways meet, requiring them forthwith to cauſe to be erected or fixed, in the moſt convenient place where ſuch ways join, a ſtone or poſt, with an inſcription thereon in large letters, containing the name of the next market town, to which each of the ſaid joining highways leads; who ſhall be reimburſed in the ſame manner as before is mentioned concerning the providing of materials. And if the ſurveyor ſhall, by the ſpace of three months after ſuch precept to him delivered, neglect or refuſe to cauſe ſuch ſtone or poſt to be fixed; he ſhall forfeit 10*s.* to be levied by warrant of one juſtice by the conſtable, by diſtreſs, who ſhall employ it towards ſuch ſtone or poſt; and if any thing remains, he ſhall employ it in repairing ſuch croſs ways. 8 & 9 *W. c.* 16. *ſ.* 7.

XXII. Breadth and widening of the highways.

1. The ſurveyor ſhall make every cart way leading to any market town, eight foot wide at the leaſt. 3 *W. c.* 12. *ſ.* 15.

2. And

2. And no horſe cauſway ſhall be leſs than three foot broad. 3 *W.* *c.* 12. *ſ.* 21.

3. By the 8 & 9 *W.* *c.* 16. The juſtices, or the major part of them, being five at the leaſt, at the quarter ſeſſions, ſhall have power to enlarge or widen any highways, ſo that the ground to be taken into them do not exceed eight yards in breadth, and ſo that the ſaid power do not extend to pull down any houſe, or to take away the ground of any garden, orchard, court, or yard. *ſ.* 1.

In order whereunto, they ſhall iſſue their precepts to the owners of grounds, or others intereſted in the ſame, that are to be laid into the ſaid highways, to appear at the next quarter ſeſſions, to ſhew cauſe why the ſaid highways ſhould not be enlarged. *ſ.* 3.

And for the ſatisfaction of perſons who are intereſted in the ſaid ground, they are impowered to impanel a jury, and ſwear them, that they will aſſeſs ſuch damages to be given and recompence to be made to the owners and others intereſted in the ſaid ground rent or charge reſpectively, for their reſpective intereſts, as they ſhall think reaſonable, not exceeding 25 years purchaſe for lands ſo laid out; and likewiſe ſuch recompence as they ſhall think reaſonable, for the making a new ditch and fence, to that ſide of the highway that ſhall be ſo enlarged, and alſo ſatisfaction to any perſon that may be otherwiſe injured by inlarging the ſaid highways. *ſ.* 1.

And they ſhall have power to order an aſſeſſment to be made upon all the inhabitants, owners or occupiers of lands, houſes, tenements, or hereditaments, that ought to repair the ſame, in ſuch manner as the ſaid juſtices ſhall appoint. *ſ.* 1.

Provided, that no ſuch aſſeſſment in any one year, for inlarging highways, ſhall exceed 6*d.* in the pound of the yearly income of any lands, houſes, tenements, and hereditaments, nor the rate of 6*d.* in the pound for perſonal eſtates. *ſ.* 2.

And the ſaid aſſeſſment ſhall by order of the ſaid juſtices be levied by the ſurveyor, by diſtreſs, if not paid in 10 days after demand. *ſ.* 1.

And the money thereby raiſed, ſhall be employed and accounted for, according to the order of the ſaid juſtices, towards purchaſing the ſaid lands, and making the ſaid ditches and fences. *ſ.* 1.

And upon payment of the money ſo awarded, or leaving it in the hands of the clerk of the peace for the uſe of the owner, or others intereſted in the ſaid ground, the intereſt

of the ſaid perſons in the ſaid ground rent or charge, ſhall be for ever diveſted out of them. *ſ.* 1.

And the ſaid ground ſhall be eſteemed a publick highway to all intents and purpoſes. *ſ.* 1.

Provided, that if any ſuch order ſhall be made by the ſaid juſtices for the laying out of ground for the enlarging of highways, the owners of the ground ſhall have free liberty, within 8 monhs after ſuch order, to cut down any wood or timber growing thereon; or upon the neglect thereof, the ſame ſhall be ſold by order of the juſtices, and the owners ſhall receive the full of what ſhall be made thereof, the charges of working the ſame being deducted. *ſ.* 4.

And any perſon aggrieved by the order of the juſtices, may appeal to the next aſſizes; and if the judge ſhall affirm the order, he may award coſts againſt the appellant, to be levied by diſtreſs. *ſ.* 5.

4. In order to prevent robberies, it is enacted by the 13 *Ed.* 1. *ſt.* 2. *c.* 5. That highways leading from one market town to another ſhall be enlarged, ſo that there be neither dyke, tree, nor buſh, within 200 foot on each ſide of the way. Except aſhes and great trees. And if by default of the lord that will not avoid the dyke, underwood, or buſhes, any robbery be done therein, the lord ſhall be anſwerable for the felony; and if murder be done, the lord ſhall make a fine at the king's pleaſure. And if the lord be not able to fell the underwoods, the country ſhall aid him. And if a park be taken from the highway, it is requiſite that the lord ſhall ſet his park 200 foot from the highways, or that he make ſuch a wall, dyke, or hedge, that offenders may not paſs nor return to do evil.

XXIII. Lands given to repairing highways.

Where any lands have been, or ſhall be given for the maintenance of cauſeys, pavements, highways, and bridges, the truſtees ſhall let them to farm, at the moſt improved yearly value, without fine, and the juſtices in open ſeſſions ſhall enquire by ſuch ways and means as they think fitting, into the value of ſuch lands; and if the truſtees have been faulty, they may order the improvement and employment of the profits thereof, according to the direction of the donor. (Except lands given for the ſaid uſes to colleges or halls, which have viſitors of their own). 22 *C.* 2. 12. *ſ.* 2.

XXIV. Aſſeſſment for the repair of highways.

Where the juſtices at the general or quarter ſeſſions, ſhall be fully ſatisfied, that the highways within any pariſh, townſhip, or place, cannot otherwiſe be ſufficiently repaired, an aſſeſſment upon all the inhabitants, owners, and occupiers of lands, tenements, and hereditaments, or any perſonal eſtate, uſually rateable to the poor, ſhall be made, levied, collected, and allowed by ſuch perſons, and in ſuch manner, as the ſaid juſtices by their order at ſuch ſeſſions ſhall appoint: And the money thereby raiſed, ſhall be employed and accounted for, according to the orders and directions of the ſaid juſtices, towards repairing and ſupporting the ſame: And the ſaid aſſeſſment ſhall be levied by diſtreſs and ſale of the goods of every perſon ſo aſſeſſed (not paying the ſame within 10 days after demand). Provided, that no ſuch aſſeſſment in any one year, ſhall exceed 6 *d.* in the pound of the yearly value of any lands, houſes, tenements, and hereditaments ſo aſſeſſed, nor the rate of 6 *d.* for 20 *l.* in perſonal eſtate. 3 *W.* *c.* 12. *ſ.* 17, 18.

And on application of the ſurveyor, the ſaid juſtices may, if they ſee fitting, cauſe ſuch aſſeſſment to be made, altho' the ſix days work hath not been performed; but the ſaid aſſeſſment ſhall not excuſe the ſix days labour. 1 *G.* *ſt.* 2. *c.* 52. *ſ.* 6.

T. 6 *G.* *K.* and the inhabitants of *Stroud*. An order for impoſing a rate towards the repairs of the highways, was quaſhed for two exceptions: 1. Becauſe it did not appear but that the ſtatute labour was ſufficient. And, 2. Becauſe only the *occupiers of land* are charged, whereas others are equally liable. *Str.* 315. In all ſuch caſes, it is beſt to purſue the ſtatute; and the order therefore in this caſe ſhould have ſet forth, not that *the ſtatute labour was inſufficient*, but that the court was *fully ſatisfied that the highways could not otherwiſe be ſufficiently repaired*; and they ſhould have ordered an aſſeſſment *upon all the inhabitants, owners, and occupiers of lands, tenements, and hereditaments, or any perſonal eſtate*, uſually rateable to the poor, within the pariſh or diſtrict.

XXV. In

XXV. In what caſe the whole pariſh ſhall be contributory.

If any innſhip, liberty, precinct, or vill, that was to repair its own highways, ſhall have levied 6 *d.* in the pound, and employed the ſame in repairing, and yet the ſaid highways are not ſufficiently repaired, the juſtices at their ſpecial ſeſſions may order the whole pariſh to contribute towards the repairing thereof. 7 & 8 *W.* *c.* 29. *ſ.* 4.

XXVI. Further proviſion for the ſame, by the common law.

It is no excuſe for the inhabitants of a pariſh, being indicted at common law, for not repairing the highways, that they have done all that is required of them by ſtatute; for ſince theſe ſtatutes are wholly in the affirmative, and made in aid of the common law, and to ſupply the defects thereof, they ſhall not be conſtrued to abrogate any proviſion thereby made for theſe purpoſes. 1 *Haw.* 204. So that at all events, the pariſh may be compelled to make their ways good.

XXVII. Preſentment or indictment (F) *of highways in general.*

Indictment to be within the county.

1. All defects of repairs of highways, ſhall be preſented in the county where they lie, and not elſewhere. 22 *C.* 2. *c.* 12. *ſ.* 4.

Muſt ſhew it to be a highway.

2. And the indictment muſt ſhew, that the way is common to all the king's people; for which cauſe it hath been reſolved, that an indictment for a nuſance to a horſeway, without adding that it is a highway, is naught. 1 *Haw.* 220.

Note; The expreſſion for *the king's highway*, when the indictments were in *Latin*, was *alta via regia*; which a modern author, in his form of an indictment, tranſlates *a royal highway*.

Muſt ſhew the places from and to which it leads.

3. It is ſafeſt in the indictment to ſhew both the place from which, and alſo the place to which the way ſuppoſed to be out of repair doth lead; yet exceptions for want of ſuch certainty have ſometimes been diſallowed: however it ſeems certain, that there is no neceſſity to ſhew that a highway leads to a market town, becauſe every highway leads from town to town. 1 *Haw.* 219.

4. It is neceſſary in the indictment expreſly to ſhew, in what place the nuſance complained of was done; for which cauſe an indictment for ſtopping a way at *D.* leading from *D.* to *C.* is not good, for it is impoſſible that a way leading from *D.* ſhould be in *D.* and no other place is mentioned. 1 *Haw.* 219. Place where.

5. It is ſaid, that a preſentment that a highway in ſuch a place is decayed, by the defaults of the inhabitants of ſuch a town, is good, without naming any perſon in certainty. 1 *Haw.* 220. Need not name the inhabitants.

6. But it hath been adjudged, that an indictment againſt particular perſons, muſt ſpecially charge them every one. 1 *Haw.* 220. Indictment againſt particular perſons.

7. It ought alſo certainly to ſhew, to what part of the highway the nuſance did extend, as by ſhewing how many foot in breadth it contained, or otherwiſe the defendant will neither know of the certainty of the charge, againſt which he is to make his defence, neither will the court be able from the record to judge of the greatneſs of the offence, in order to aſſeſs a fine anſwerable thereunto; and it hath been reſolved, that the place is not ſufficiently aſcertained by ſhewing, that it contained ſo many foot in length, and ſo many in breadth, *by eſtimation.* 1 Haw. 220. Muſt ſet forth how much is out of repair.

8. Alſo, the fact muſt be expreſſed in ſuch proper terms, that it may clearly appear to the court to have been a nuſance; and for this cauſe it hath been reſolved, that a preſentment for *diverting* a highway is not good, becauſe a highway cannot be diverted, but muſt always continue in the ſame place where it was, howſoever it may be *obſtructed*, and a new way made in another place. 1 *Haw.* 220. Muſt ſet forth the fact clearly.

9. It ſeems to be implied in the conſtruction of all penal ſtatutes, that no one ought to be convicted of any offence againſt them without having notice of the accuſation made againſt him, and an opportunity of defending himſelf. And therefore it ſeems certain, that generally no one ought to be puniſhed for any of the abovementioned offences, without being called upon to anſwer for himſelf, and having liberty to traverſe the matters alledged againſt him. 1 *Haw.* 219. Perſons indicted to have notice.

10. Upon an indictment againſt a pariſh for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be againſt a particular perſon, he may give evidence that others ought to repair it. 3 *Salk.* 183. *Comb.* 396. Plea of not guilty.

11. And the defendants ought not to plead that they ought not to repair, without ſhewing who ought. 1 *Haw.* 220. Plea to charge others.

12. And

Special plea.

12. And Mr. *Hawkins* ſays, that if a particular perſon be bound to repair a highway, either by incloſure or by preſcription, the pariſh cannot take advantage of it upon the plea of not guilty, but ought to ſet forth their diſcharge in a ſpecial plea. 1 *Haw.* 203.

Exceptions to the form of the indictment.

13. After conviction, or upon a demurrer, or confeſſion, any one may take exceptions to ſuch indictment or preſentment in any court for the want of legal form; but the court in diſcretion will very rarely ſuffer a man to take ſuch exceptions, before ſuch conviction or confeſſion, without a certificate and affidavit that the ways are in good repair. 1 *Haw.* 219.

Fine no diſcharge.

14. And the defendants ſhall not be diſcharged by ſubmitting to a fine, but a *diſtringas* ſhall go *in infinitum* till they repair. 1 *Haw.* 220.

XXVIII. Preſentment of a juſtice on his own view.

By the 5 *El. c.* 13. Every juſtice of the peace ſhall have authority on his own proper knowledge, in the open general ſeſſions, to make preſentment (G) of any highway not well and ſufficiently repaired, or of any other default contrary to the ſtatute of the 2 & 3 *P. & M.* And every ſuch preſentment made by a juſtice upon his own knowledge ſhall be as good, and of the ſame force, ſtrength, and effect in the law, as if the ſame had been preſented, found, and adjudged by the oath of 12 men: And for every ſuch default ſo preſented, the juſtices ſhall immediately at the ſaid general ſeſſions, have authority to aſſeſs ſuch fines as to them ſhall be thought meet: Saving every perſon that ſhall be touched by any ſuch preſentment, to have his lawful traverſe to the ſame preſentment, as they may have upon any indictment of treſpaſs or forcible entry. *ſ.* 9.

Hereupon it hath been obſerved by Mr. *Dalton* and others, that the juſtices at the ſaid ſeſſions may aſſeſs the fine upon ſuch offenders, and that in the abſence of the party, without calling him to anſwer by any proceſs: Which opinion ſeeming contrary to natural juſtice, and to the privilege of an *Engliſhman* as eſtabliſhed by the great charter, perhaps hath not been ſufficiently weighed by all the authors who have adopted it; and there ſeems to be the more ground for this ſuſpicion, in that moſt of them do quote Mr. *Crompton* for this opinion, one after another, in a wrong page; and in fact Mr. *Crompton* ſaith no ſuch thing, but rather ſeems to incline to the contrary opinion; his words are theſe,—— A preſentment at the ſeſſions by a juſtice of the peace, upon his own knowledge, of ſuch a highway not repaired, is as a preſentment

preſentment of 12 men, upon which the juſtices may aſſeſs a fine by 5 *El. c.* 13. and 3 *P. & M. c.* 8. but the party may have a traverſe to the preſentment by the ſaid ſtatute of 5 *El.* Cromp. 110.

And Mr. *Hawkins*, obſerving upon this opinion, ſaith thus: It hath been holden, in the expoſition of this clauſe, that the party againſt whom ſuch a preſentment ſhall be made, cannot take any traverſe to the want of repair of ſuch highway; but it is agreed, that he may plead that ſome other perſon ought to repair the ſame, and traverſe his own obligation to do it. Neither can I ſee upon what reaſon the former opinion is grounded, that he cannot traverſe the want of repair of ſuch highway; for ſince the ſtatute expreſly ſaves to every perſon who ſhall be touched by any ſuch preſentment, his lawful traverſe to the ſame, as he might have to an indictment of treſpaſs or forcible entry; and ſince it ſeems clear, that every defendant to any ſuch indictment (*viz.* of treſpaſs or forcible entry) may traverſe the whole matter alledged againſt him, why may he not as well have the ſame benefit in the preſent caſe? And tho' the record of a juſtice of the peace, acting by force of any ſtatute, as a judge be not traverſable, yet it ſeems hard by ſuch a general rule, to make any record not traverſable, which by the expreſs words of the ſtatute which authorizes the making of it is allowed to be traverſable. 1 *Haw.* 217.

To which may be added, that the ſtatute doth not ſay, that ſuch preſentment ſhall be of like force as if found by the oaths of both juries (that is to ſay, both of the grand and traverſe jury), but only that it ſhall be of the like force, as if it had been preſented, found and adjudged, by the oath of 12 men; which can only intend, that it ſhall be of equal force with the preſentment of a grand jury.

So that the ſenſe of the ſtatute perhaps may be no more than this; that if the party is preſent in court, and ſubmits to the preſentment, the juſtices may immediately aſſeſs a fine: but he may traverſe the preſentment if he will; and if upon the traverſe he ſhall be acquitted, then there can be no foundation for fining him. But if he is abſent, it is reaſonable that he be firſt ſummoned to anſwer for himſelf; and if he ſhall afterwards be convicted either by confeſſion, or by verdict, then will be the time to ſet the fine. Otherwiſe, the aſſeſſing of a fine, in this and the like caſes, ſeemeth to be premature; beginning where the court ſhould end; being in effect the giving of judgment before they have heard the parties; and it is poſſible the defendant may be acquitted, and then the fining of him is ridiculous.——

Beſides,

Beſides, that the court cannot ſo well judge beforehand of the *quantum* of the fine, which ought to be proportioned according to the demerits of the offence; of which they can by no means judge, until the matter hath come before them in a legal courſe of proceeding.

XXIX. Power of the leet to puniſh offences.

1. The ſteward of the leet hath power given him, to inquire by the oaths of the ſuitors, of offences againſt the aboveſaid ſtatutes of 2 & 3 *P. & M. c.* 8. and 18 *El. c.* 10. and to aſſeſs fines and amerciaments for the ſame.

2. And he who is preſented in a court leet, for any offence relating to the highways, can only traverſe it ſo far as it concerns his freehold; as by charging him with being bound to ſuch repairs in reſpect of the tenure of his lands; for which purpoſe he may remove it by certiorari into the king's bench, and there traverſe it. 1 *Haw.* 219.

XXX. Fines and the diſpoſal thereof.

1. All the *penalties and forfeitures* by any ſtatute (as hath been obſerved in the preamble to this title) are veſted in the informer, by the 24 *G.* 2. *c.* 43. But the *fines* upon an *indictment or preſentment* ſeem to continue as before.

2. Concerning which it is enacted, by the 3 *W. c.* 12. that no fine ſhall be returned into the exchequer, but ſhall be levied and paid into the hands of the ſurveyors, to be applied towards the repair of the highways. *ſ.* 14.

3. And if any fine impoſed for not repairing, ſhall be levied on any one inhabitant, or more; ſuch inhabitant ſhall make complaint to the juſtices at the ſpecial ſeſſions, and the ſaid juſtices or any two of them may by warrant under their hands and ſeals cauſe a rate to be made for reimburſing him; which rate ſo made, and confirmed by two juſtices, ſhall be collected and levied by the ſurveyor, by diſtreſs; who ſhall within one month after confirming the rate pay the ſame to ſuch inhabitant. 3 *W. c.* 12. *ſ.* 14.

4. And if any fine ſhall be miſapplied by any perſon, he ſhall on conviction thereof at the ſpecial ſeſſions, by proof upon oath, forfeit 5 *l.* to the informer, by diſtreſs. 1 *G. ſt.* 2. *c.* 52. *ſ.* 5.

XXXI. Surveyor's account.

The ſurveyor before he ſhall be diſcharged from his office, ſhall at ſome ſpecial ſeſſions give an account upon oath of all money that has come to his hands, which ought to be

be employed in amending of the highways, and how he hath diſpoſed thereof; and if any ſhall remain in his hands, he ſhall deliver the ſame to his ſucceſſor, and in caſe of failure, he ſhall forfeit double value of what ſhall be adjudged to be in his hands by the ſaid juſtices, to be levied by diſtreſs, by warrant of two juſtices of the diviſion, and in default thereof, of any neighbouring juſtices. 3 *W.* *c.* 12. *ſ.* 9.

For which account or oath no fee ſhall be taken. 1 *G.* *ſt.* 2. *c.* 52. *ſ.* 11.

XXXII. Appeal.

1. If any perſon is aggrieved with any aſſeſſment, or other act by the juſtices, done on the ſtatute of 3 *W.* *c.* 12. he may appeal to the ſeſſions, whoſe order therein ſhall bind all parties. *ſ.* 19.

2. And perſons aggrieved by any thing done on the act of 1 *G.* *ſt.* 2. *c.* 52. (except thoſe who ſhall neglect to ſcour their ditches, and carry away the earth taken out of them, or who ſhall not carry away ſtone, timber, ſtraw, or dung left in the highways, or who ſhall not remove any other annoyances by watercourſes) may appeal to the next ſeſſions, whoſe order ſhall conclude and bind all perſons. *ſ.* 12.

3. Other appeals, where the law admits of them, are annexed to the particular offences.

XXXIII. Certiorari.

By the 22 *C.* 2. *c.* 12. it is provided, that no preſentment or indictment for the defect of repairs of highways, ſhall be removed by certiorari or otherwiſe, till after traverſe and judgment. *ſ.* 4.

And by the ſtatute of the 3 *W.* *c.* 12. No preſentment, indictment, or order made upon that act, ſhall be removed at all by certiorari, into any other court. *ſ.* 23.

But by the 5 *W.* *c.* 11. If the right or title to repair come in queſtion, a certiorari (upon affidavit made of the truth thereof) may be granted to remove the ſame into the king's bench; provided that the party proſecuting the certiorari, ſhall (before the allowance thereof) find two manucaptors who ſhall enter into recognizance of 20 *l.* before a juſtice of the peace, that he ſhall at his own coſts and charges procure the iſſue to be tried at the next aſſizes, as in the caſe of other certioraries. *ſ.* 6.

And

And it hath been reſolved, that if the quarter ſeſſions, under pretence of the juriſdiction given them by theſe ſtatutes, take upon them to do a thing manifeſtly exceeding their authority, as to make an order on ſurveyors to make up their accounts before a ſpecial ſeſſions, their proceedings may be removed by certiorari into the king's bench, and there quaſhed; for the quarter ſeſſions have no manner of power given them, to intermeddle originally with ſuch accounts, but only by way of appeal. 1 *Haw.* 218.

And, *M.* 3 *G.* 2. *K.* and *Greenhaw.* A certiorari, for the like reaſon, was granted to remove an indictment for not doing the ſtatute labour; for the ſtatute hath appointed another method of proceeding againſt ſuch offender, and not by indictment. *Str.* 849.

M. 6 *G.* 2. *K.* and *Eckerſhall.* An order was made on the 7 & 8 *W. c.* 29. for the pariſh at large to repair the highways, the 6 *d.* in the pound levied on the townſhip not being ſufficient. And a certiorari being moved for, it was objected, that the 3 *W. c.* 12. had taken it away. To which it was anſwered, that this is an order founded on a ſubſequent law. But by the court, They muſt both be taken together: the rate muſt be made in aid of the townſhip, by virtue of the former law. So a certiorari was denied. *Str.* 944.

E. 4 *G.* 2. *K.* and the inhabitants of *Hamworth.* Upon motion to quaſh a certiorari to remove an indictment againſt the defendants at ſeſſions, for not repairing a bridge; it was inſiſted, that by the 1 *An. c.* 18. the certiorari is taken away. To which it was anſwered, and reſolved by the court, that this act extended only to bridges where the county is charged to repair; and that where a private perſon or pariſh is charged, and the right will come in queſtion, the 5 *W. c.* 11. had allowed the granting a certiorari. And therefore they refuſed to quaſh. *Str.* 900.

E. 17 *G.* 2. *K.* and *Farewell.* The proſecutor of an indictment for a nuſance in the highway, took out a certiorari; and the defendant moved to quaſh it, there being no affidavit made according to the 5 *W. c.* 11. nor any recognizance given according to former ſtatutes concerning certioraries. But the court, on conſidering theſe acts, held, that they related only to certioraries applied for by defendants, and not to one for the king, as this was. And many precedents were ſhewed of certioraries for a proſecutor taken out in the manner this was. And the certiorari was allowed. *Str.* 1209.

XXXIV. Turnpikes.

After having firſt premiſed, that by the 28 *G.* 2. *c.* 17. it is provided, that every proſecutor or informer may ſue for any forfeiture or penalty impoſed by any act relating to turnpike roads, in the manner directed by ſuch act, or in any of the courts at *Weſtminſter* in manner following, *viz.* if it is a pecuniary penalty, by action of debt, in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of ——— being forfeited by an act intituled, *An act to amend an act made in the 26th year of the reign of his preſent majeſty* intituled, *An act for the amendment and preſervation of the publick highways and turnpike roads of this kingdom; and for the more effectual execution of the laws relating thereto*; and if it is a horſe, beaſt, or other goods, by an action of trover, in which the value thereof ſhall be given in damages, without any proof of any ſeizure or demand: But only that there ſhall be one recovery for one offence *bona fide*; and no action by this act to be brought in the courts at *Weſtminſter*, but in ſix months: *ſ.* 15, 16. It is judged proper under this head (which is at length become a little perplexed) to proceed in the following manner.

Qualification of turnpike truſtees.

1. No perſon ſhall be qualified to act as a turnpike truſtee, unleſs he ſhall be in his own right, or in right of his wife, in the actual poſſeſſion or receipt of the rents and profits of lands of the clear yearly value of 40*l.* or poſſeſſed of or intitled to perſonal eſtate alone, or real and perſonal eſtate together, to the value of 800*l.* or ſhall be heir apparent of a perſon poſſeſſed of an eſtate in land of the clear yearly value of 80*l.* and unleſs he ſhall (not being ſuch heir apparent) before he acts as truſtee, take and ſubſcribe the oath following before two truſtees, *viz.* I A. B. *do ſwear, that I truly and* bona fide *am in my own right, or in right of my wife, in the actual poſſeſſion and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of* 40*l. or poſſeſſed of, or entitled to a perſonal eſtate alone, or real and perſonal eſtate together, to the value of* 800*l. So help me god.* And if any perſon ſhall act contrary hereto, he ſhall forfeit 50*l.* to him who ſhall ſue. 28 *G.* 2. *c.* 17. *ſ.* 13.

Note; This is one general qualification for all turnpike truſtees. By the ſeveral particular turnpike acts, other qualifications are uſually appointed, all which ſhall ſtand, where the eſtate is limited above what is here directed;

only this clauſe provides, that no turnpike truſtee whatſoever ſhall have leſs eſtate than is here limited.

Alehouſekeepers not to be turnpike officers.

2. No perſon keeping a victualling houſe, alehouſe, or other houſe of publick entertainment, ſhall be capable of any place of truſt or profit under turnpike truſtees, or of farming the tolls. 26 *G.* 2. *c.* 30. *ſ.* 20.

Erecting a turnpike gate without lawful power.

3. If the truſtees ſhall erect or continue any turnpike-gate, where they have no power ſo to do; the juſtices in ſeſſions, on complaint thereof, may finally determine the ſame in a ſummary way, and order the ſheriff to remove it. 5 *G.* 2. *c.* 33. *ſ.* 4. 8 *G.* 2. *c.* 20. *ſ.* 17.

Pulling down turnpike gates.

4. By the 8 *G.* 2. *c.* 20. If any perſon ſhall either by day or night, wilfully or maliciouſly pull down, cut down, pluck up, throw down, level, or otherwiſe deſtroy any turnpike gate, poſt, rail, wall, chain, bar, or other fence, belonging to any turnpike-gate, or any other chain, bar, or fence ſet up to prevent paſſengers from paſſing by without paying toll, or any houſe erected for the uſe of any turnpike-gate, or forcibly reſcue any perſon in cuſtody for any the ſaid offences, he ſhall be guilty of felony without benefit of clergy: *ſ.* 1.

And the ſaid offences may be tried in any adjacent county. *ſ.* 3.

And by the 5 *G.* 2. *c.* 33. which made the like offences felony and tranſportation, the charges of proſecution ſhall be paid out of the tolls.

But the attainder ſhall not work corruption of blood, nor forfeiture of lands or goods. 8 *G.* 2. *c.* 20. *ſ.* 4.

And if any perſon, guilty of any the ſaid offences, and being out of priſon, ſhall diſcover and cauſe to be apprehended, one or more perſons who ſhall have committed any of the ſaid felonies, ſo as he ſhall be convicted, he ſhall have a pardon. *ſ.* 5.

And the hundred ſhall anſwer damages, not exceeding 20*l.* as in caſes of robbery; to be ſued for in the name of the clerk of the peace, without naming him; the ſaid damages to be applied as the tolls are. *ſ.* 6, 8.

But if an offender is convicted in 12 months, the hundred ſhall not be liable, but if they have paid ſuch damages, the ſame ſhall be repaid to them out of the tolls. *ſ.* 7.

Alſo no action for ſuch damages ſhall be brought, unleſs information on oath be made thereof within ſix days, before a juſtice in or near the hundred *ſ.* 9.

Nor unleſs the ſuit be commenced in ſix months. *ſ.* 10.

Miſuſing the collector of the tolls.

5. If any perſon ſhall aſſault or threaten the collector of the toll, or forcibly paſs through without paying toll, or

or ſhall forcibly carry away or detain him ſo as he ſhall not be able to return to his duty for three days; he ſhall, on conviction (after ſummons) by oath of one witneſs, before two juſtices near the diviſion, forfeit 5 *l.* by warrant of the ſaid juſtices, by diſtreſs; for want of diſtreſs, to be committed by them to gaol for ſix months, unleſs he ſhall be ſooner diſcharged by the quarter ſeſſions; and for the ſecond or third offence, he ſhall forfeit 10 *l.* in like manner, and for want of diſtreſs ſhall be impriſoned for a year, and before he is diſcharged ſhall give ſecurity at the general quarter ſeſſions for his behaviour for ſeven years. 8 *G.* 2. *c.* 20. *ſ.* 11.

And the collector of the toll may ſeize and detain any perſon guilty of the offences before mentioned, and carry him before a juſtice without a warrant; who ſhall bind him over to appear at the next petty ſeſſions for the diviſion, or commit him till he finds ſecurity to appear. *ſ.* 12.

But perſons aggrieved by any order of two juſtices as aforeſaid, may appeal to the next general quarter ſeſſions; and if the court ſhall think that reaſonable time of notice was not given, they may adjourn the appeal to the next quarter ſeſſions; and may award coſts to either party. *ſ.* 15.

And no certiorari ſhall be granted to remove any thing on this act, out of the county, into any other court. *ſ.* 16.

And if an action is brought againſt any on this act, it ſhall be laid in the proper county; and the defendant, if he recovers, ſhall have treble coſts. *ſ.* 18.

Breadth of the wheels on turnpike roads.

6. It ſhall not be lawful, for any waggon, wain, cart, or wheel carriage, to be drawn on any turnpike road, unleſs the fellies of the wheels be nine inches broad (except as hereafter excepted); on pain that the owner thereof ſhall forfeit 5 *l.* half to him who ſhall inform and ſue, and half to the truſtees for repairing the turnpike road; to be recovered in the courts at *Weſtminſter* with treble coſts; or before two juſtices where the offence ſhall be committed, who may on complaint in ten days, ſummon the party, and the witneſſes on either ſide; and if the party ſhall not appear on ſuch ſummons, then on oath of the fact committed they may iſſue their warrant for apprehending him within their juriſdiction; and upon his appearance or contempt (on proof of notice given) they may proceed; and if he ſhall be convicted, either by view of the juſtices, or any of them, or on ſuch information, or confeſſion, they may iſſue their warrants to levy the penalty with coſts of proſecution, by diſtreſs, and if not redeemed in five days, by ſale; and where goods of the offender cannot be found, may commit him to

priſon for three months, or till payment. Perſons aggrieved may appeal to the next general ſeſſions, giving 14 days notice; and in five days after ſuch notice, entering into recognizance with two ſureties before one juſtice, to try the appeal: and the ſeſſions may mitigate the penalty; and may give coſts, and by their order or warrant cauſe the coſts to be levied by diſtreſs of the goods of the party appealing, and for want of ſufficient diſtreſs may commit him to the common gaol, not exceeding two months, or till payment of ſuch coſts; and if the party ſhall live in another diſtrict, any juſtice there, on a copy of the order proved upon oath, may by his warrant cauſe the ſame to be levied by diſtreſs, and if no ſufficient diſtreſs can be had, ſhall commit him to the common gaol not exceeding two months, or till payment. 26 *G.* 2. *c.* 30. *ſ.* 1, 16, 17.

Or otherwiſe ſuch owner ſhall forfeit any one of the horſes or beaſts, not being the thill horſe, together with the accoutrements, to the ſole uſe of him who ſhall ſeize or diſtrain the ſame. And the perſon ſeizing ſhall deliver ſuch diſtreſs to the conſtable or ſome other pariſh officer in or near the place where the ſeizure ſhall be; who ſhall receive and keep the ſame, till the perſon ſeizing ſhall make proof on oath before a juſtice of the offence; which juſtice ſhall thereupon iſſue his precept to ſuch conſtable or pariſh officer immediately to deliver the ſame to the ſeizor, to and for his own uſe and benefit, paying ſuch reaſonable charges for keeping and ſecuring the ſame, as the juſtice ſhall direct; but if no ſuch proof be made in three days, the diſtreſs ſhall be returned to the owner, he paying reaſonable charges for the keeping and ſecuring the ſame. And if any perſon ſhall attempt to obſtruct the diſtraining thereof, he ſhall forfeit 10*l.* to be recovered and diſpoſed as above. *ſ.* 2, 13.

And if any perſon ſhall *drive* with wheels of leſs gage, or with more than the number of eight horſes in four wheel carriages, or more than five in two wheel carriages (except ſuch as are carrying one piece of timber, or one ſtone, or block of marble); the conſtable, or ſurveyor of the highways, or any other inhabitant of the pariſh or place where the offence ſhall be committed, and the ſurveyor of the turnpike, or any perſon appointed by five truſtees, may apprehend and take ſuch driver before a juſtice; and on conviction by confeſſion, or oath of one witneſs, he ſhall forfeit 5*l.* and if he have no goods whereon immediate diſtreſs may be had, the juſtice may commit him to the houſe of correction for one month, or till paid. *ſ.* 14.

By the wheel being nine inches broad is to be underſtood, that the ſole or bottom of the fellies ſhall be nine inches broad, from ſide to ſide, at the leaſt, and flat and even from ſide to ſide, as near as may be. 28 *G.* 2. *c.* 17. *ſ.* 5.

And any two turnpike truſtees, by writing under their hands, may order the fellies to be meaſured at the turnpike gate; and if any perſon ſhall attempt to obſtruct the meaſuring thereof, he ſhall forfeit 10*l.* in like manner. 26 *G.* 2. *c.* 30. *ſ.* 11, 13.

But if it ſhall appear that the fellies when firſt made were of nine inches, and are narrowed by wearing, no penalty ſhall be incurred if they meaſure full eight inches. *ſ.* 12.

And the truſtees, or five of them, ſhall from time to time, cauſe turnpike roads to be levelled, and put in condition for the uſe of travellers and carriages. 28 *G.* 2. *c.* 17. *ſ.* 6.

And no greater toll on turnpike roads ſhall be demanded for carriages having wheels nine inches broad, than is required by the reſpective turnpike acts to be paid for waggons or other four wheel carriages, drawn by five or four horſes or beaſts. 26 *G.* 2. *c.* 30. *ſ.* 7.

Moreover by the 28 *G.* 2. *c.* 17. For three years from *June* 24. 1755, but no longer, all waggons, wains, carts, and carriages, for all goods and merchandize, loaden or unloaden, having the fellies nine inches broad, may paſs thro' any turnpike gate without paying toll. *ſ.* 1.

And alſo the horſes drawing the ſame ſhall for the ſaid three years be exempted from tolls, as the carriages are. *ſ.* 10.

But this ſhall not extend to any chaiſe marine, coach, landau, berlin, chaiſe, or calaſh; nor to any waggon drawn by leſs than five horſes or beaſts; nor wain, cart, or other two wheel carriages, drawn by leſs than four. 26 *G.* 2. *c.* 30. *ſ.* 3.

And by the 30 *G.* 2. *c.* 28. For ſeven years after the end of the ſaid three years, that is, after *June* 24. 1758, ſhall be taken for every waggon, wain, cart, or carriage, having the fellies leſs than nine inches broad, or for the horſes or beaſts drawing the ſame, one half more than the tolls payable for the ſame reſpectively by any act for making or repairing turnpike roads. *ſ.* 1.

Provided, that nothing in this act ſhall extend to carts or carriages drawn by one horſe, or two oxen, and no more. *ſ.* 2.

And provided that during the term aforeſaid, carts or carriages drawn by two horſes or four oxen, and no more,

having the fellies of the wheels ſix inches broad, may paſs on paying the uſual tolls. *ſ.* 3.

And during the ſaid ſeven years, all carriages having the fellies nine inches broad ſhall be ſuffered to paſs through any turnpike gate within 100 miles from *London*, paying only half toll required by any act for the ſame to be paid. *ſ.* 5.

And during the ſaid ſeven years, it ſhall not be lawful for any waggon or wain, having the fellies nine inches broad, to paſs upon any turnpike road or through any turnpike gate, unleſs the ſame be drawn by horſes or beaſts in pairs; provided that where there is an odd horſe or beaſt, it ſhall be lawful for the ſame to draw together with the others drawing in pairs; provided that they do not exceed the whole number of horſes or beaſts of draught allowed by law. *ſ.* 6.

By the 28 *G.* 2. *c.* 17. any waggon, wain, or other four wheel carriage, not having the fellies nine inches broad, may paſs on any turnpike road, provided it be not drawn by more than ſix oxen or neat cattle in pairs, and two horſes; or eight oxen in pairs, with one horſe; And any cart or other two wheel carriage, not having the fellies of the breadth aforeſaid, may paſs, provided it be not drawn by more than ſix oxen or neat cattle in pairs, and one horſe; or four oxen in pairs, and two horſes. *ſ.* 9.

And by the 30 *G.* 2. *c.* 28. for the ſpace of ſeven years from *June* 24. 1758. it ſhall not be lawful for any waggon or wain having the fellies leſs than nine inches broad, to paſs upon any turnpike road, or thro' any turnpike gate, if the ſame be drawn by horſes or beaſts of draught in pairs, and not by oxen (*i. e.* unleſs it be by oxen). *ſ.* 7.

And if any perſon ſhall, during the ſaid ſeven years, drive or cauſe to be driven on any turnpike road, any common ſtage waggon prohibited by this act to paſs along any turnpike road; or ſhall drive or cauſe to be driven any carriage on any turnpike road, with any greater number of horſes or beaſts than is allowed by law, or in any wiſe contrary to the true intent and meaning of this act; every perſon ſo offending, and every maſter or owner of ſuch waggon, wain, cart or carriage ſo driven, ſhall be deemed to be guilty of a common nuſance and miſdemeanor, and ſhall be puniſhed for the ſame by indictment or information; or ſhall, at the election of the proſecutor, be ſubject to the ſame penalties and forfeitures, as the owners of waggons and carriages having the fellies leſs than nine inches broad are ſubject to by the 26 *G.* 2. *c.* 30. to be levied and applied as therein mentioned. *ſ.* 8.

And

And to prevent the tolls from being diminiſhed by the exemption of nine inch wheels, it is enacted, that for three years from *June* 24. 1755. and no longer, the turnpike truſtees, or five of them, may cauſe to be taken an additional toll, if they ſhall find the ſame neceſſary on conſidering the ſtate of their reſpective tolls, not exceeding one fourth part more than the tolls payable by the reſpective acts, for every coach, caravan, chaiſe marine, landau, berlin, chariot, chaiſe, chair, and calaſh, and for all waggons, wains, carts, and other carriages, not having the fellies nine inches or ſix inches broad reſpectively. 28 *G.* 2. *c.* 17. *ſ.* 3.

And that the ſaid leſſening of the tolls may not be prejudicial to perſons who have lent money on the tolls; every turnpike act made this ſeſſion of parliament or before, ſhall continue for five years from its expiration. *ſ.* 4.

And where the toll on horſes or other beaſts drawing or paſſing through any turnpike gate, doth not amount to more than ½ *d.* for every horſe drawing any wheel carriage, not having the fellies of nine inches or ſix inches, or to more than 1 *d.* for two horſes, or to more than 1 ½ *d.* for three horſes drawing ſuch carriage; the truſtees, or five of them, may if they find it neceſſary on conſidering the ſtate of their tolls, collect double the former tolls in caſe they do not exceed ½ *d.* and 1 ½ *d.* in caſe they do not exceed 1 *d.* and 2 *d.* in caſe they do not exceed 1 ½ *d*; and may collect the additional toll directed to be taken by this act, in caſes where the preſent toll amounts to 2 *d.* or more upon the horſes drawing any carriage, in ſuch manner as if ſuch toll were laid upon the carriage; any thing in this or in any former act notwithſtanding. *ſ.* 11.

And by the 30 *G.* 2. *c.* 28. From and after the 24th day of *June* 1758, no waggon having the fellies nine inches broad, ſhall paſs on any turnpike road, which ſhall be wider than five feet ſix inches from the middle of the fellies of the wheels on one ſide, to the middle of the fellies of the wheels on the other ſide of ſuch waggon; and the ſurveyor or gate keeper ſhall meaſure the ſame: and if any maſter or driver ſhall hinder or refuſe to permit ſuch ſurveyor or gate keeper to meaſure the ſame; it ſhall be unlawful for ſuch waggon to paſs along any turnpike road. *ſ.* 11.

And whereas there are in ſeveral acts of parliament made concerning turnpike roads, exemptions allowed from payment of tolls, in particular caſes therein mentioned, and liberties are allowed in particular caſes to pay leſſer tolls than are charged upon other waggons, carts, and carriages; and whereas it will tend to the preſervation of turnpike roads, to

confine ſuch exemptions, liberties, and privileges to carriages with wheels nine inches broad; it is therefore enacted, that during the ſaid term of ſeven years, no perſon ſhall by virtue of any of the ſaid acts have any ſuch exemption, unleſs ſuch waggon, wain, cart, or carriage, have the fellies nine inches broad; other than and except carts and carriages drawn by one horſe or two oxen, and no more; and except carts and carriages drawn by two horſes or four oxen, and no more, having the fellies ſix inches broad: but that the toll, together with the additional toll by this ſtatute enacted (except as before excepted) ſhall be paid in the ſame manner as if no exemption or leſſer toll had been allowed by any of the ſaid acts, and as fully as any other waggon, wain, cart, or carriage, not exempted. *ſ.* 4.

And during the time aforeſaid, it ſhall not be lawful for any truſtees of turnpike roads, to make any compoſition for tolls in reſpect of any waggon, wain, cart, or carriage, or horſes or beaſts drawing the ſame (except as before excepted) unleſs the wheels be nine inches broad. *ſ.* 9.

Weighing engines, with the additional toll for over weight.

7. The turnpike truſtees, or any five of them, *may* cauſe to be erected (on any part of the turnpike road, 21 *G.* 2. *c.* 28. *ſ.* 1.) a crane, machine, or engine, for the weighing of carts, waggons, or other carriages, for the conveying of goods; and by writing ſigned by them, may order ſuch carriages which paſs through ſuch gate (except as hereafter excepted) to be weighed with their loading; and impower any perſon to take, over and above the other toll, 20*s.* for every hundred weight above 60, to be levied as the other tolls. 14 *G.* 2. *c.* 42. *ſ.* 1, 3.

And if it is within 30 miles of *London*, and the tolls amount to 150*l.* a year, they *ſhall* in ſome convenient place, cauſe ſuch crane or engine to be erected. 24 *G.* 2. *c.* 43. *ſ.* 6, 7.

But this ſhall not extend to carts, waggons, or other carriages, employed only about huſbandry, or carrying of only cheeſe, butter, hay, ſtraw, corn unthraſhed, or chalk, or any one ſtone, block of marble, or piece of timber, nor to caravans, or the covered carriages of noblemen and gentlemen for their private uſe, or ſuch timber, ammunition, or artillery, as ſhall be for his majeſty's ſervice. 14 *G.* 2. *c.* 42. *ſ.* 5.

Alſo it ſhall notwithſtanding, be lawful for any carriage loaden with or carrying one tree or piece of timber, or one ſtone, or block of marble only, having the fellies of the wheels nine inches broad, to paſs on any turnpike road with any number of horſes or beaſts; and for any waggon, or other four wheel carriage, having the fellies nine inches broad,

broad, to paſs on any turnpike road, with any number of horſes or beaſts, not exceeding eight; and for any cart or other two wheel carriage, having the fellies nine inches broad, with any number not exceeding five; without being liable to be weighed, or to pay the additional toll of 20s. 26 *G.* 2. *c.* 30. *ſ.* 4.

And by the aforeſaid clauſe of the 28 *G.* 2. abovementioned, All waggons, wains, carts, and carriages, for all goods and merchandize, loaden or unloaden, having the fellies nine inches broad, may for the ſpace of three years from *June* 24. 1755. paſs through any turnpike gate without paying any tolls at all. *ſ.* 1.

And if any collector of the tolls, at any gate where or near to which any engine for weighing of carriages ſhall be erected, ſhall ſuffer any cart, waggon, or carriage aforeſaid, not having the fellies nine inches broad to paſs without weighing, (except empty carts, waggons, or other carriages, 30 *G.* 2. *c.* 28. *ſ.* 14.) he ſhall, on conviction before three truſtees, or one juſtice, on the oath of one witneſs, be committed to the houſe of correction to hard labour for one month. 28 *G.* 2. *c.* 17. *ſ.* 7.

And if any perſon ſhall hinder, or attempt to hinder, the weighing, or ſeizing any diſtreſs for ſuch additional toll, or ſhall reſcue the ſame, or uſe any violence to any perſon concerned in ſuch weighing or ſeizure; he ſhall, on oath of one witneſs, before one juſtice where the offence ſhall be committed, or the offender ſhall dwell, be committed to gaol for three months, and forfeit 10*l.* by diſtreſs; and if not paid in three days, to be ſold. 14 *G.* 2. *c.* 42. *ſ.* 4.

Unloading goods to avoid the toll.

8. If any perſon ſhall unload any goods, before the ſame ſhall come to the weighing engine, in order to avoid paying the 20*s.* or ſhall after it has paſſed the engine, load thereon any goods taken from any horſe or other carriage belonging to ſuch waggoner, he ſhall forfeit 20*l.* in like manner. 21 *G.* 2. *c.* 28. *ſ.* 2.

And more generally, by the 28 *G.* 2. *c.* 17. If any perſon ſhall unload any goods from any carriage before they come to the turnpike gate, in order to avoid payment of the toll; ſuch perſon, being the *owner*, on conviction before three truſtees or one juſtice, on the oath of one witneſs, ſhall forfeit 5*l*; if not forthwith paid, to be levied by diſtreſs, rendering the overplus on demand, after deducting the reaſonable charges of making the diſtreſs and ſale, to be ſettled by ſuch truſtees or juſtice: and every *driver* offending, ſhall on like conviction be committed to the houſe of correction for one month. *ſ.* 7.

9. And

Waggon turned out of the road to avoid the tolls.

9. And no waggon, or other carriage, travelling for hire, upon any turnpike road, ſhall be turned out of the ſame, into any of the roads adjacent not being turnpike, in order to avoid, and thereby avoiding paying the tolls; on pain of forfeiting any one of the horſes drawing (not being the thill or ſhaft horſe) with all his geers and accoutrements, to the ſole benefit of any perſon who ſhall ſeize the ſame; and the perſon making ſuch diſtreſs, ſhall proceed in like manner, and be intitled to the like remedies, as is before directed in caſes of ſeizures of horſes, by the ſtatute of the 5 G. c. 12. 24 G. 2. *c.* 43. *ſ.* 4.

What inſcription ſhall be on the waggon.

10. If any owner of any waggon, wain, or cart, travelling for hire, ſhall drive or cauſe the ſame to be driven, on any turnpike road, not having his chriſtian and ſurname and place of abode, in large letters on the tilt or other conſpicuous part of ſuch waggon; he ſhall forfeit as for having the fellies under nine inches broad: and if he ſhall have any fictitious name thereon, he ſhall forfeit 50*l.* to be recovered in the courts at *Weſtminſter*, or before two juſtices as is aforeſaid. 26 G. 2. *c.* 30. *ſ.* 15.

And moreover, every owner of a common ſtage waggon or cart, having the fellies under nine inches or ſix inches, ſhall over and above cauſe to be painted on the tilt of ſuch as hath a tilt, otherwiſe on the moſt conſpicuous part, the following words in large and legible characters [COMMON STAGE WAGGON or CART] on pain of forfeiting one of the horſes or beaſts (not being the ſhaft or thill horſe) with the accoutrements, to him who ſhall ſeize the ſame; the ſeizor to have like remedy as before is ſpecified in the caſe of drawing with wheels under nine inches broad, by the 26 G. 2. c. 30. ſ. 2, 13. 28 G. 2. *c.* 17. *ſ.* 14.

And by the 30 G. 2. *c.* 28. *ſ.* 13. Every waggon, wain, cart, or carriage, travelling with or carrying goods for hire, ſhall be deemed a *common ſtage waggon*, within the ſaid ſtatute of the 28 G. 2. c. 17.

Proſecution how to be ordered for offences againſt turnpike laws.

11. The turnpike truſtees, or five of them, ſhall appoint perſons to carry on proſecutions, for offences againſt any acts relating to turnpike roads; and charge the ſurveyors to be diligent in inquiring after ſuch offences: and all turnpike officers ſhall (on pain of removal and diſability) as often as any offence ſhall come to their knowledge, give immediate notice to a truſtee, who ſhall forthwith procure a meeting of the truſtees or five of them, who ſhall give immediate directions for the proſecution. 26 G. 2. *c.* 30. *ſ.* 18, 19.

Provided, that they ſhall not be obliged to proſecute, unleſs on confeſſion of the offender, or unleſs one witneſs can be produced to prove the offence. *ſ.* 22.

And the truſtees, or five of them, ſhall out of the tolls pay to the proſecutor, ſo much as the coſts allowed by law ſhall fall ſhort of reimburſing him his reaſonable expences. *ſ.* 21.

And every turnpike ſurveyor and toll gatherer, and all ſuch perſons employed by the truſtees as receive ſalaries, who ſhall wilfully neglect to ſeize any ſupernumerary horſe drawing contrary to the acts of the 26 *G.* 2. *c.* 30. and 28 *G.* 2. *c.* 17. and to lay ſuch information upon oath before a juſtice, or before the truſtees at their meetings, as by the ſaid act of the 26 *G.* 2. is directed,—ſhall upon information on oath before one juſtice, forfeit 10*l.* half to the informer, and half to repairing the roads as the truſtees ſhall think fit. 28 *G.* 2. *c.* 17. *ſ.* 17.

And to prevent fraudulent ſeizures to evade the penalties, it ſhall be lawful for all courts, and every juſtice of the peace before whom any proceeding ſhall be, for any penalty or forfeiture inflicted by any act for repairing turnpike roads, or any way concerning the ſame, and they are required, where any prior ſeizure, action, information, or conviction ſhall be ſet up by way of defence,—to examine into the real merits thereof; and if it ſhall appear that the ſame was not done to recover ſuch penalty or forfeiture for the real purpoſes for which they were enacted, but to favour the offender, ſuch prior proceeding ſhall be deemed fraudulent and void; and ſuch court or juſtice ſhall proceed as if no ſuch prior proceeding had been. 28 *G.* 2. *c.* 17. *ſ.* 12.

Conſtable to execute the warrants of the truſtees.

12. The conſtable ſhall execute all warrants on the act of the 8 *G.* 2. *c.* 20. abovementioned, and on any former act concerning turnpikes; on pain of 5*l.* to be levied by diſtreſs, by warrant of two juſtices directed to the high conſtable, in like manner as the penalties for aſſaulting the collector of the toll. 8 *G.* 2. *c.* 20. *ſ.* 13.

HAVING thus gone through the great number of laws relating to the highways, I ſhall add one obſervation upon the whole, which is this;—Notwithſtanding that the wiſdom of the nation hath been employed for above 200 years in redreſſing the great evil of bad roads, yet excepting in ſome caſes where turnpikes have been erected, the roads are as bad now, as they were in the days of *Philip* and *Mary*. And the defect is in many places, not ſo much the want of hands as of proper direction. The ſame multitudes which will aſſemble to demoliſh a turnpike, at the hazard of their liberty and lives, are able, and (I doubt not) would be willing, if rightly inſtructed, to make the roads good, without paying

paying turnpike tolls. But the misfortune is this; although the laws have provided that the ſurveyors ſhall be choſen out of the more ſubſtantial inhabitants, yet when that is done, ſcarce one of them in 500 knows how to make a good road, and if he does, his power continues in effect but for ſix days; and his ſucceſſor probably hath other ſchemes and notions, and the road is never the better. Hence it is, that when the people aſſemble to repair the highways (if indeed they do aſſemble), they ſpend their time in diverſions, and making bargains, and other idle amuſements. And why ſhould they not? They may as well meet and no nothing, as work hard, and to no purpoſe. And from ſo many years experience, the caſe will never be otherwiſe, unleſs the juſtices of the peace, or others (in like manner as the turnpike truſtees,) ſhall have power given to them by act of parliament, to appoint general ſurveyors, within proper diſtricts, with ſalaries, to lay out the roads, and attend and direct the work, and ſee the ſtatute labour well performed. And this may be effected without any new aſſeſſment or charge; half the preſent aſſeſſment of 6*d.* in the pound, or even leſs than half, would be ſufficient in many places both to find ſalaries, and to widen and purchaſe roads where needful. And the people, when they ſhould find the benefit of their labour, would work with chearfulneſs.

A. Warrant for the returning new ſurveyors; on 3 *W.* *c.* 12. *ſ.* 3, 9.

Weſtmorland. { To *Edward Cooke*, gentleman, high conſtable of *Lonſdale* ward within the ſaid county.

BY *virtue of the ſtatute in that behalf made, we—of his majeſty's juſtices of the peace for the ſaid county, do hereby require you forthwith to iſſue your warrants to all the petty conſtables within your ſaid ward in the form or to the effect following; that is to ſay,*

Weſtmorland, Lonſdale ward. { To the conſtable of ——.

BY *virtue of a precept from his majeſty's juſtices of the peace acting in and for the ſaid ward within the ſaid county, at their ſpecial ſeſſions for the highways within the ſaid ward aſſembled, you are hereby required to give due notice to the churchwardens, ſurveyors of the highways and other inhabitants, within your pariſh, that they do aſſemble together with you the ſaid conſtable on the* 26th *day of* December *next,*

and

and make a liſt of the names of a competent number of the inhabitants within your ſaid pariſh, who have an eſtate in lands, tenements, or hereditaments in their own right or of their wives, of the yearly value of 10l. *or a perſonal eſtate of the value of* 100l. *or are occupiers or tenants of houſes, lands, tenements, or hereditaments of the yearly value of* 30l. *if any ſuch there be; or if there be no ſuch perſons in your ſaid pariſh, then the ſaid liſt to be of the moſt ſufficient inhabitants within your ſaid pariſh: With which ſaid liſt you are perſonally to appear before the ſaid juſtices at their ſpecial ſeſſions to be holden at* ——— *within the ſaid ward in the county aforeſaid, on the* ——— *day of* ——— *now next enſuing, at the hour of* ——— *in the forenoon of the ſame day; that out of the ſaid liſt the ſaid juſtices then and there may nominate and appoint ſuch perſons to be ſurveyors of the highways within your ſaid pariſh for the year then next enſuing, as they the ſaid juſtices ſhall think fit and approve of.* [*And you are likewiſe to give notice to the preſent ſurveyors, that they do appear at the ſame time and place, and give an account upon oath before the ſaid juſtices, of all money that hath come to their hands, which ought to be employed in amending of the highways, and how they have diſpoſed of the ſame.*] *Given under my hand at* Hall Beck *in the ſaid county, the* ——— *day of* ———

Edward Cooke,
High conſtable.

And this you the ſaid high conſtable are in no wiſe to omit, on the peril that ſhall enſue thereof. Given under our hands and ſeals at our ſpecial ſeſſions at ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

B. Appointment of the ſurveyor.

Weſtmorland, Lonſdale ward. { At a ſpecial ſeſſions of the peace for the ſaid ward, held at ——— in the ſaid ward, within the county aforeſaid, the —— day of ——— in the —— year of the reign of ——— by and before ——— eſquires, juſtices aſſigned to keep the peace of our ſaid lord the king in the ſaid county:

WE *the ſaid juſtices do hereby nominate and appoint* A. S. *of* —— *in the pariſh of* ——— *in the county aforeſaid Yeoman, to be ſurveyor of the highways within the ſaid pariſh,*

[or

[or, *within the townſhip of* ——— *within the ſaid pariſh*,] *for one whole year next enſuing the date hereof, and until he ſhall have given an account of his receipts and diſburſements and other matters relating to his ſaid office, according to law. Given under our hands and ſeals the day and year firſt abovewritten.*

C. Information of the default of labourers; on the 2 & 3 *P. & M. c.* 8. *ſ.* 2. 22 *C.* 2. *c.* 12. *ſ.* 9. & 1 *G. ſt.* 2. *c.* 52. *ſ.* 2.

Weſtmorland. BE *it remembered, that this* ——— *day of* ——— A. S. *ſurveyor of the highways of the pariſh of* ——— *in the ſaid county, complaineth and maketh oath, that* A. O. *of the pariſh aforeſaid in the county aforeſaid, labourer, being a perſon able to labour, and being no hired ſervant by the year,* [or *being an houſholder, or cottager,* as the caſe ſhall be] *was duly ſummoned by him the ſaid* A. S. *by himſelf or one ſufficient labourer, to work and travel, on the* ——— *day of* ——— *now laſt paſt in the amendment of the highways at* ——— *in the pariſh aforeſaid in the county aforeſaid, but that he the ſaid* A. O. *did neglect and make default, and did not by himſelf nor by one ſufficient labourer, work and travel on the ſaid* ——— *day of* ——— *in the amendment of the ſaid highways as aforeſaid.*

Or if he is a perſon liable to find a wain or cart, then ſay, ——— *that* A. O. *of* ——— *yeoman, occupying a plough-land in tillage* (or *paſture*) *in the ſaid pariſh* (or as the caſe ſhall be ;) *was duly ſummoned by him the ſaid* A. S. *to find and ſend, on the* ——— *day of* ——— *now laſt paſt, to work and travel in the highways at* ——— *in the pariſh aforeſaid in the county aforeſaid, one wain or cart furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and other neceſſaries, meet to carry things convenient for that purpoſe, and alſo two able men with the ſame; but that he the ſaid* A. O. *his duty in that behalf not regarding, did neglect and make default, and did not find and ſend one wain or cart furniſhed as aforeſaid with two able men as aforeſaid, to work and travel on the ſaid* ——— *day of* ——— *in the amendment of the ſaid highways as aforeſaid.* A. S.

Taken in writing and upon oath before us ——— *two of his majeſty's juſtices of the peace for the ſaid county, at our ſpecial ſeſſions for the amendment of the highways holden at* ——— *in the ſaid county, the* ——— *day of* ——— *aforeſaid in the year aforeſaid.*

D. Summons

D. Summons on the aforegoing information.

Weſtmorland. { To the conſtable of ——

WHEREAS *complaint in writing and upon oath hath this* ——— *day of* ——— *in the year* ——— *been made before us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, at our ſpecial ſeſſions for the amendment of the highways holden at* ——— *in the ſaid county, by* A. S. *ſurveyor of the highways of the pariſh of* ——— *in the ſaid county, that* A. O. *of* ——— *yeoman, occupying a ploughland in tillage* (or *paſture*) *in the ſaid pariſh,* (or *keeping a draught or plough in the ſaid pariſh,* or as the caſe ſhall be ;) *was duly ſummoned by him the ſaid* A. S. *to find and ſend on the* ——— *day of* ——— *now laſt paſt, to work and travel in the amendment of the highways at* ——— *in the pariſh aforeſaid in the county aforeſaid, one wain or cart furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and other neceſſaries, meet to carry things convenient for that purpoſe, and alſo two able men with the ſame; but that he the ſaid* A. O. *did neglect and make default, and did not find and ſend one wain or cart furniſhed as aforeſaid with two able men as aforeſaid, to work and travel on the ſaid* ——— *day of* ——— *in the amendment of the ſaid highways as aforeſaid: Theſe are therefore to command you forthwith to ſummon the ſaid* A. O. *to appear before us at our ſpecial ſeſſions for the amendment of the highways to be holden at* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *to anſwer unto the ſaid complaint; And alſo that you do ſummon* A. W. *of* ——— *then and there to appear and teſtify before us his knowledge concerning the premiſſes. And be you then there to certify what you ſhall have done in the execution hereof. Herein fail you not. Given under our hands and ſeals the* ——— *day of* ——— *aforeſaid, in the year aforeſaid.*

E. Warrant of diſtreſs thereupon.

Weſtmorland. { To the conſtable of ——

WHEREAS A. O. *of* ——— *in the county aforeſaid, yeoman, is duly convicted before us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, by the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *occupying a ploughland in tillage* (or *paſture*) *in the ſaid pariſh* [or, *keeping*

keeping a draught or plough in the ſaid pariſh, or otherwiſe as the caſe ſhall be] *was duly ſummoned by* A. S. *ſurveyor, of the highways of the pariſh of* ——— *in the ſaid county, to find and ſend on the* ——— *day of* ——— *now laſt paſt, to work and travel in the amendment of the highways at* ——— *in the pariſh aforeſaid in the county aforeſaid, one wain or cart furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and other neceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame; but that he the ſaid* A. O. *did neglect and make default, and did not find and ſend one wain or cart furniſhed as aforeſaid, with two able men as aforeſaid, to work and travel on the ſaid* ——— *day of* ——— *in the amendment of the ſaid highways as aforeſaid, whereby he hath forfeited the ſum of* 10s. *Theſe are therefore in his ſaid majeſty's name to command you, to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *And if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* 10s. *together with reaſonable charges of taking and keeping the ſaid diſtreſs ſhall not be paid; that then you do ſell the ſaid goods ſo by you diſtrained as aforeſaid, and out of the money, ariſing by ſuch ſale, that you do pay the ſaid ſum of* 10s. *to him the ſaid* A. S. *who informed us of the ſaid offence, and ſueth before us for the forfeiture aforeſaid; returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking keeping, and ſelling the ſaid diſtreſs being firſt deducted: Herein fail you not. Given under our hands and ſeals at our ſpecial ſeſſions for the amendment of the highways, holden at* ——— *in the ſaid county the* ——— *day of* ——— *in the* ——— *year of* ———

Note, As the forfeiture by the 24 *G.* 2. *c.* 43. ſeems to be now veſted in the informer, who in this caſe is the ſurveyor, it ſeemeth that his ſingle teſtimony is therefore not ſufficient to convict the offender, but there muſt be other evidence (not intereſted).

F. Indictment for not repairing a common highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and antient king's highway leading from the town of* —— *in the county of* —— *towards and unto the market town of* —— *in the county of* ——, *uſed for all the liege ſubjects of our ſaid lord the king, and of his predeceſſors, with*

with their horſes, coaches, carts, and carriages to go, return, paſs, ride, and labour at their will and pleaſure, and that a certain part of the ſame king's common highway called —— ſituate, lying and being in the pariſh of ——— in the county of —— aforeſaid, containing in length —— feet, and in breadth —— feet, on the —— day of —— in the —— year of the reign of —— and continually afterwards, until the day of the taking of this inquiſition, was and yet is in great decay, for the want of due reparation and amendment of the ſame; ſo that the ſubjects of our ſaid lord the king, paſſing and travelling through the ſame, with their horſes, coaches, carts and carriages, could not during the time aforeſaid, nor yet can, go, return, paſs, ride, and labour, without great danger; to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, paſſing through that way, and againſt the peace of our ſaid lord the king, his crown, and dignity; And that A. O. *of —— aforeſaid, gentleman, ought by reaſon of the tenure of his lands and tenements, ſituate, lying and being at —— aforeſaid in the county aforeſaid, to repair and amend the ſaid highway, when and ſo often as it ſhall be neceſſary.*

Or, *that the inhabitants of the ſaid pariſh of —— in the ſaid county of —— the common highway aforeſaid (ſo as aforeſaid being in decay) ought to repair and amend, when and ſo often as it ſhall be neceſſary.*

Indictment for not repairing an ancient horſe and foot way.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that from the time of which the memory of man is not to the contrary, there was, and yet is, a certain common and antient highway, leading from———in the county of———to———in the county of ———for all the liege ſubjects of our now lord the king, and his anceſtors, on horſeback and on foot, to go, return, paſs, ride, labour, and drive their cattle at their will, and that a certain part of the ſame common highway, ſituate, lying, and being within the pariſh of———in the county of———aforeſaid, containing in length——feet, and in breadth——feet, on the———day of———in the———year of the reign of ———and continually afterwards, until the day of the taking of this inquiſition, at the pariſh of———aforeſaid, in the county aforeſaid, was, and yet is, very ruinous, miry, deep, broken,*

broken, and in ſuch decay, for want of due reparation and amendment of the ſame, that the liege ſubjects of our ſaid lord the king, by and through the ſame way, with their horſes and cattle, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour, as they ought and were wont to do, without great danger of themſelves and of their goods, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding, and labouring, and againſt the peace of our ſaid lord the king. And that the inhabitants of the ſame pariſh of———in the county aforeſaid, the ſame common highway, ſo as aforeſaid being in decay, ought to repair and amend, when, and ſo often as it ſhall be neceſſary.

Indictment for incroaching upon a highway, by building thereupon.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of———carpenter, the———day of———in the———year———with force and arms, at———in and upon a common highway, in a certain place commonly called———there leading from——— to——— by a certain building there, containing in length———feet, and in breadth——feet, by him the ſaid* A. O. *erected and built, hath unlawfully and unjuſtly incroached, and doth yet incroach, and the building aforeſaid ſo as is aforeſaid erected and built by him the ſaid* A. O. *from the aforeſaid———day of———in the year aforeſaid, unto the day of exhibiting this information, at———aforeſaid in the county aforeſaid, with force and arms, unlawfully and unjuſtly hath continued, and doth yet continue, by reaſon whereof the common highway aforeſaid hath become and is greatly ſtraitned, ſo that the lieges and ſubjects of the ſaid lord the king upon and through the ſame common highway aforeſaid, with their horſes, carts, and carriages, cannot go, paſs, ride, and labour as they ought and were wont to do, to the great and common nuſance of all the lieges and ſubjects of the ſaid lord the king in and through the ſaid common highway going, paſſing, riding, and labouring, and againſt the peace of the ſaid lord the king.* Trem. 196.

Indictment

Indictment for incloſing the highway.

Weſtmorland. THE *jurors of our lord the king upon their oath preſent, That whereas from the time whereof the memory of man is not to the contrary, it was uſed, that the liege ſubjects of our ſaid lord the king had and lawfully uſed a certain common highway at ——— in the ſaid county, in a certain place there called ——— leading from the town of ——— aforeſaid, to the town of ——— for themſelves and their goods, without any ſtoppage or hindrance by any ditches, hedges, or other obſtacles whatſoever; nevertheleſs one* A. O. *of ——— aforeſaid, in the county of ——— aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms at ——— aforeſaid, in the county of ——— aforeſaid, in the place aforeſaid called ——— upon the common highway aforeſaid, a certain ditch and quickſet hedge did caſt up, ſet, and erect, and the ſaid ditch and quickſet hedge ſo as is aforeſaid caſt up, ſet, and erected, doth yet continue and keep; to the great ſtoppage and hindrance of the liege ſubjects of our ſaid lord the king, paſſing in and thro' the ſaid common highway, and againſt the peace of our ſaid lord the king.*

Indictment for laying timber or other obſtructions in the highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of ——— in the county aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— and on divers other days and times as well before as afterwards, with force and arms, at ——— in the ſaid county, in and upon the king's common highway there, leading from ——— unto the town of ——— divers great pieces of timber put and placed, and cauſed to be put and placed, and the ſame great pieces of timber ſo as aforeſaid put and placed from the aforeſaid ——— day of ——— in the ——— year aforeſaid, until the day of exhibiting this information, in and upon the king's common highway aforeſaid to be, lie, and remain, hath permitted and doth ſtill permit, to the grievous and common nuſance of all the lieges and ſubjects of the ſaid lord the king, upon and through the king's common highway aforeſaid going, paſſing, riding and travelling, and againſt the peace of our ſaid lord the king, his crown and dignity.* Trem. 197.

Or,——— *great quantity of dung and other filth, by reaſon whereof, divers hurtful and unwholeſome ſmells from the ſaid dung and other filth did then and there ariſe, and thereby the air there became, was, and is corrupted and infected*——.

Or,—— *cart loads of rubbiſh — by reaſon whereof the ſaid highway for the whole time aforeſaid was ſtraitened and obſtructed, ſo that the liege ſubjects of our ſaid lord the king could not ſo freely paſs and repaſs about their lawful buſineſs, through the ſaid common highway there, as they ought and have been accuſtomed*——.

Indictment for ſtopping up a watercourſe, whereby the highway is overflowed.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at the pariſh aforeſaid, in the county aforeſaid, a certain antient watercourſe adjoining to the king's common highway, within the ſame pariſh, leading from the town of* ——— *in the county aforeſaid, towards and unto* ——— *with gravel and other materials, unlawfully and injuriouſly did obſtruct and ſtop up; and the ſaid watercourſe, ſo as aforeſaid obſtructed and ſtopped up from the ſaid* ——— *day of* ——— *in the year aforeſaid until the day of the taking of this inquiſition, at the pariſh aforeſaid in the county aforeſaid, unlawfully and injuriouſly hath continued and ſtill doth continue, by reaſon whereof the rain and waters that were wont and ought to flow and paſs through the ſaid watercourſe, on the ſame day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquiſition, did overflow and remain, in the king's common highway aforeſaid, and thereby the ſame was, and yet is greatly hurt and ſpoiled; ſo that the liege ſubjects of our ſaid lord the king, through the ſame way with their horſes, coaches, carts and carriages, then and on the ſaid other days and times, could not nor yet can go, return, paſs, ride, and labour, as they ought, and were wont to do, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding and labouring, and againſt the peace of our ſaid lord the king.*

G. Preſentment by a juſtice on his view.

Weſtmorland. AT *the general quarter ſeſſions of the peace of our lord the king, held for the county of———aforeſaid, at———in the ſaid county, on* Monday *the———day of———in the———year of the reign of———befo e———eſquires, and others their companions, juſtices of o r ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed,* Thomas Carleton, *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by virtue of the ſtatute in ſuch caſe made and provided, upon his own proper knowledge doth preſent, That from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient king's highway, leading from the town of——— in the county of——— towards and unto ——— uſed for all the liege ſubjects of our ſaid lord the king and his predeceſſors, with their horſes, coaches, carts, and carriages, to go, return, paſs, ride, and labour at their will; and that a certain part of the ſame king's common highway, commonly called——— ſituate, lying, and being in the pariſh of———in the ſame county, containing in length——— yards, and in breadth——— feet, on the———day of———in the———year of the reign of———and continually afterward, until this preſent day, at the ſaid pariſh of——— in the county aforeſaid, was and yet is very ruinous, miry, deep, broken and in great decay for want of due reparation and amendment of the ſame, ſo that the liege ſubjects of our ſaid lord the king, through the ſame way, with their horſes, coaches, carts, and carriages, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour as they ought and were wont to do, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding, and labouring, and againſt the peace of our ſaid lord the king; and that the inhabitants of the pariſh of——— aforeſaid, in the county aforeſaid, the common highway aforeſaid (ſo as aforeſaid being in decay) ou ht to repair and amend, when and ſo often as it ſhall be neceſſary. In teſtimony whereof, the ſaid* Thomas Carleton, *to theſe preſents hath ſet his hand and ſeal, this———day of ——— in the year aforeſaid.*

Highwaymen. See Robbery.

Homicide.

HOMICIDE in law ſignifies the killing of a man by a man. 1 *Haw.* 66.

And it includes in it, not only petit treaſon, concerning which ſee title Treaſon; but alſo the ſeveral offences which are treated of in the following ſections.

There is alſo another kind of untimely death of a man, not properly homicide: when he is killed by a horſe, a cart, a tree, or the like, and not by a man; which is called Caſual death: for which ſee title Deodand.

I. Juſtifiable homicide.
II. Homicide by miſadventure.
III. Homicide by ſelf defence.
IV. Manſlaughter.
V. Murder.
VI. Self-murder.

I. Juſtifiable homicide.

On a real neceſſity.

1. To make homicide juſtifiable, it muſt be owing to ſome unavoidable neceſſity, to which the perſon who kills another muſt be reduced, without any manner of fault in himſelf. 1 *Haw.* 69.

And there muſt be no malice coloured under pretence of neceſſity; for wherever a perſon who kills another, acts in truth upon malice, and takes occaſion from the appearance of neceſſity to execute his own private revenge, he is guilty of murder. 1 *Haw.* 69.

Killing robbers and burglars.

2. If any evil diſpoſed perſon ſhall attempt felonioufly to rob or murder any perſon in any dwelling houſe or highway, or felonioufly attempt to break any dwelling houſe in the night time, and ſhall happen in ſuch felonious intent to be ſlain; the ſlayer ſhall be diſcharged, and ſhall forfeit no lands nor goods. 24 *H.* 8. *c.* 5.

Treſpaſſers in parks.

3. If treſpaſſers in a foreſt, chaſe, park, or warren, or any incloſed ground wherein deer are kept, will not render themſelves to the keepers, upon a hue and cry made to ſtand to the king's peace, but fly from, or defend themſelves againſt them, they may be ſlain by them. 1 *Haw.* 71.

4. If

4. If rioters, or forcible enterers or detainers, ſtand in oppoſition to the juſtices lawful warrant, and any of them is ſlain; it is no felony. *Hale's Pl.* 37. Rioters.

5. If a man come to burn my houſe, and I ſhoot out of my houſe, or iſſue out of my houſe, and kill him; it is no felony. *Hale's Pl.* 39. Houſeburners.

6. If a woman kill him that aſſaulteth to raviſh her; it is no felony. *Hale's Pl.* 39. Raviſhers.

7. If a perſon having actually committed a felony, will not ſuffer himſelf to be arreſted, but ſtand on his own defence, or fly, ſo that he cannot poſſibly be apprehended alive by thoſe who purſue him, whether private perſons, or publick officers, with or without a warrant from a magiſtrate; he may be lawfully ſlain by them. 1 *Haw.* 70. Felons refuſing to be arreſted.

8. So if a felony hath actually been committed, and an officer or miniſter of juſtice, having lawful warrant ſo to do, arreſt an innocent perſon, and ſuch perſon aſſault the officer or miniſter of juſtice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwiſe avoid it, but in ſtriving kill him, it is no felony. And in that caſe, the officer or miniſter of juſtice ſhall forfeit nothing; but the party ſo aſſaulting, or offering to fly away, and is killed, ſhall forfeit his goods. 3 *Inſt.* 56. Suſpected felons refuſing to be arreſted.

9. Alſo if a perſon arreſted for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwiſe take him. But in this caſe likewiſe, there muſt have been a felony actually committed. *Hale's Pl.* 36, 37. Felon eſcaping.

10. Alſo if a criminal endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. Felon breaking gaol.

11. In civil cauſes; Altho' the ſheriff cannot kill a man who flies from the execution of a civil proceſs; yet if he reſiſt the arreſt, the ſheriff or his officer need not give back, but may kill the aſſailant. *Hale's Pl.* 37. Reſiſting a civil proceſs.

So if in the arreſt and ſtriving together, the officer kill him, it is no felony. *Hale's Pl.* 37.

12. In all theſe caſes the party upon arraignment having pleaded not guilty, the ſpecial matter muſt be found; whereupon the party ſhall be diſmiſſed, without any forfeiture, or pardon purchaſed. *Hale's Pl.* 38. Trial and diſcharge.

II. Homicide by miſadventure.

Chancemedley.

1. I have purpoſely avoided the word *chancemedley* in this place, becauſe authors do not ſeem to be agreed whether it is to be applied to homicide *by miſadventure*, or to *manſlaughter*. Ld. *Coke* and Mr. *Hawkins* ſeem to underſtand it of *manſlaughter*; Ld. *Hale*, and others, of homicide *by miſadventure*. The original meaning of the word ſeems to favour the former opinion, as it ſignifies a ſudden or caſual meddling or contention; whereas homicide *by miſadventure* ſuppoſeth no previous meddling or falling out. But the ſame author ſometimes, in different places, applies it to both of them promiſcuouſly.

What is homicide by miſadventure.

2. Homicide by miſadventure is, where a man is doing a lawful act, without intent of hurt to another, and death caſually enſues. *Hale's Pl.* 31.

Caſes of homicide by miſadventure.

3. As where a labourer being at work with a hatchet, the head flies off, and kills one who ſtands by. 1 *Haw.* 73.

4. Or where a third perſon whips a horſe, on which a man is riding, whereupon he ſprings out, and runs over a child, and kills him; in which caſe the rider is guilty of homicide by miſadventure, and he who gave the blow of manſlaughter. 1 *Haw.* 73.

5. But if a perſon, riding in the ſtreet, whip his horſe to put him into ſpeed, and run over a child and kill him, it is homicide and not by miſadventure; and if he ride ſo, in a preſs of people, with intent to do hurt, and the horſe killeth another, it is murder in the rider. 1 *H. H.* 476.

6. If a perſon drives his cart careleſsly, and it runs over a child in the ſtreet, if he have ſeen the child, and yet drives on upon him, it is murder; but if he ſaw not the child, yet it is manſlaughter; but if the child had run croſs the way, and the cart ran over the child before it was poſſible for the carter to make a ſtop, it is by miſadventure. 1 *H. H.* 476.

7. It is ſaid before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. As if a perſon, meaning to ſteal a deer, in another man's park, ſhooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a buſh; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had ſhot at his own deer, and without any ill intent had killed the boy by the

the glance of his arrow, this had been homicide by miſadventure, and no felony. 3 *Inſt.* 56.

8. So if any one ſhoot at any wild fowl upon a tree, and the arrow killeth any reaſonable creature afar off, without any evil intent in him, this is by miſadventure; for it was not unlawful to ſhoot at the wild fowl: But if he had ſhot at a cock or a hen, or any tame fowl of another man's, and the arrow by miſchance had killed a man, this had been murder; for the act was unlawful. 3 *Inſt.* 56.

9. Alſo, if there be an evil intent, it is murder. Thus, if a man, knowing that many people are in the ſtreet, throw a ſtone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party ſlain. 3 *Inſt.* 57.

10. And it is a general rule, in caſe of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

11. But in all the caſes above, if it doth only hurt a man, by ſuch an accident, it is nevertheleſs a treſpaſs; and the perſon hurt ſhall recover his damages; for tho' the chance excuſe from felony, yet it excuſeth not from treſpaſs. 1 *H. H.* 472.

12. If a perſon eſcape that hath killed another by miſadventure, the town ſhall be amerced. 2 *Inſt.* 149. Eſcape.

13. This homicide is not felony, becauſe it is not accompanied with a felonious intent, which is neceſſary in every felony. 1 *Haw.* 75. This kind of homicide no felony.

14. But yet a perſon guilty thereof is not bailable by juſtices of the peace, but muſt be committed to the aſſizes. 1 *Haw.* 75. Bail.

But if he is taken only on a ſlight ſuſpicion, the juſtices of the peace may bail him. 2 *Haw.* 105.

15. Altho' this homicide is not properly a man's crime, but his misfortune; yet becauſe the king hath loſt his ſubject, and in reſpect of the great favour the law hath to the life of man, and to the end that men ſhould uſe all care, diligence, and circumſpection in all they do, that no hurt ſhould come of their actions, a perſon convicted hereof ſhall forfeit his goods, and ſhall not preſently be diſcharged of his impriſonment, but bailed, that he may ſue out his pardon, which he ſhall have out of the chancery of courſe. 1 *H. H.* 477, 492. 1 *Haw.* 76. Forfeiture.

III. Homicide

III. Homicide by ſelf defence.

Se defendendo, what.

1. Homicide in a man's own defence ſeems to be, where one who hath no other poſſible means of preſerving his life from one who combats with him on a ſudden quarrel, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 1 *Haw.* 75.

Caſes of ſe defendendo.

2. And not only he, who upon an aſſault retreats to a wall, or ſome ſuch ſtrait, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable neceſſity; but alſo he, who being aſſaulted in ſuch a manner, and in ſuch a place, that he cannot go back without manifeſtly indangering his life, kills the other without retreating at all. 1 *Haw.* 75.

3. And notwithſtanding a perſon who retreats from an aſſault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *ſe defendendo* only. 1 *Haw.* 75.

4. But if the mortal wound was firſt given, then it is manſlaughter. *Hale's Pl.* 42.

5. And an officer who kills one that reſiſts him in the execution of his office, and even a private perſon that kills one who feloniouſly aſſaults him in the highway, may juſtify the fact, without ever giving back at all. 1 *Haw.* 75.

6. But if a perſon upon malice *prepenſe* ſtrike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42.

Acceſſaries.

7. Hereof there can be no acceſſaries, either before or after the fact; becauſe it is not done with a felonious intent, but upon inevitable neceſſity. 3 *Inſt.* 56.

Eſcape.

8. If a man eſcape, that hath killed another in his own defence, the town ſhall be amerced. 2 *Inſt.* 315.

Bail.

9. A perſon guilty hereof is not bailable by juſtices of the peace; but they muſt commit him till the aſſizes. 1 *Haw.* 76.

But otherwiſe it is, if he is taken only on ſlight ſuſpicion. 2 *Haw.* 105.

Power of juſtices of the peace.

10. Lord *Coke* (2 *Inſt.* 316.) ſays, that the juſtices of the peace cannot take an indictment of killing a man *ſe defendendo*; becauſe their commiſſion is not general, as is that of the juſtices of gaol delivery, but limited: But lord *Hale* (2 *H. H.* 46.) holds the contrary.

Forfeiture.

11. A perſon convicted hereof, ſhall not be diſcharged out of priſon but upon bail, and ſhall forfeit all his goods,

altho' the cauſe was inevitable. And this, becauſe of the great regard which the law hath for the life of man; and alſo, by reaſon that the law intends it had a beginning upon an unlawful cauſe: for quarrels are not preſumed to grow without ſome wrongs in words or deeds, and ſo malice on both ſides. But he ſhall have his pardon out of the chancery of courſe. 3 *Inſt.* 56. 1 *Haw.* 76.

12. If a man be indicted for homicide *ſe defendendo*, and is found not guilty, yet if it be found that he fled for the ſame, he ſhall forfeit his goods for ſuch flight, in not ſtanding to the law of the land. 1 *H. H.* 493. Flight.

IV. Manſlaughter.

1. By manſlaughter is to be underſtood ſuch killing of a man as happens either on a ſudden quarrel, or in the commiſſion of an unlawful act, without any deliberate intention of doing any miſchief at all. 1 *Haw.* 76. Manſlaughter, what.

2. There is no difference between murder and manſlaughter, but that murder is upon malice forethought, and manſlaughter upon a ſudden occaſion. As if two meet together, and ſtriving for the wall, the one kill the other, this is manſlaughter and felony. And ſo it is, if they had upon that ſudden occaſion gone into the field and fought, and the one had killed the other, this had been but manſlaughter, and no murder; becauſe all that followed was but a continuance of the firſt ſudden occaſion, and the blood was never cooled, till the blow was given. 3 *Inſt.* 55. Without malice.

3. There can be no acceſſaries to this offence before the fact, becauſe it muſt be done without premeditation. 1 *Haw.* 76. Acceſſaries.

But there may be acceſſaries after the fact. 3 *Inſt.* 55.

4. This offence is not bailable by juſtices of the peace. 3 *Ed.* 1. *c.* 15. Bail.

5. It is within the benefit of clergy; but the offender ſhall forfeit as in other felonies. 2 *H. H.* 344. Clergy.

6. But there is one kind of manſlaughter, which by the ſtatute of the 1 *J.* *c.* 8. is excluded the benefit of clergy; *viz.* He who ſhall ſtab or thruſt any perſon that hath not then any weapon drawn, or hath not then ſtricken firſt, ſo as the perſon ſo ſtabbed or thruſt ſhall die thereof in ſix months, altho' it cannot be proved that the ſame was done of malice forethought, ſhall be guilty of felony without benefit of clergy. Stabbing.

V. Murder.

V. Murder.

Murder, what.

1. Murder is, when a man of ſound memory, and of the age of diſcretion, unlawfully killeth any perſon under the king's peace, with malice forethought, either expreſſed by the party, or implied by law; ſo as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 *Inſt.* 47.

Caſes of murder.

2. By *malice expreſſed*, is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a perſon is not authorized. 1 *H. H.* 451.

And the evidences of ſuch a malice muſt ariſe from external circumſtances diſcovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compaſſings, and the like; which are various, according to variety of circumſtances. 1 *H. H.* 451.

3. *Malice implied* is in ſeveral caſes: as when one voluntarily kills another, without any provocation; for in this caſe the law preſumes it to be malicious, and that he is a publick enemy of mankind. 1 *H. H.* 455, 456.

4. Poiſoning alſo implies malice, becauſe it is an act of deliberation. 1 *H. H.* 455.

5. Alſo when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *H. H.* 457.

6. Alſo where a priſoner dieth by dureſs of the gaoler, the law implies malice, by reaſon of the cruelty. 3 *Inſt.* 52.

7. And in general, any formed deſign of doing miſchief may be called malice, and therefore not ſuch killing only as proceeds from premeditated hatred or revenge againſt the perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be perverſely wicked, is adjudged to be of malice *prepenſe*, and conſequently murder. 2 *Haw.* 80. *Strange* 766. *Oneby*'s caſe.

8. And wherever it appears that a man killed another, it ſhall be intended *prima facie* that he did it maliciouſly, unleſs he can make out the contrary, by ſhewing that he did it on a ſudden provocation, or the like. 1 *Haw.* 82.

9. Alſo wherever a perſon in cool blood, by way of revenge, beats another in ſuch a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone ſo far. 1 *Haw.* 83.

10. And it ſeems to be agreed, that no breach of a man's word or promiſe, no treſpaſs either to lands or goods, no affront

affront by bare words or geſtures, however falſe or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends him, in ſuch a manner as manifeſtly endangers his life, without giving him time to put himſelf upon his guard, if he kills him in purſuance of ſuch aſſault, whether the perſon ſlain did at all fight in his defence or not. 1 *Haw.* 82.

11. If a man by harſh and unkind uſage put another into ſuch a paſſion of grief or fear, that the party either die ſuddenly, or contract ſome diſeaſe whereof he dies, though this may be murder or manſlaughter in the ſight of god, yet in a human judicature it cannot come under the judgment of felony, becauſe no external act of violence was offered, whereof the law can take notice. 1 *H. H.* 429.

12. If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed; for the fetching of the weapon, and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay though it were the ſame day, if there were ſuch a competent diſtance of time, that in common preſumption, they had time of deliberation, then it is murder. 3 *Inſt.* 51. 1 *H. H.* 453.

13. And the law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party ſlain are likewiſe guilty as acceſſaries. 1 *Haw.* 82.

14. If a phyſician or ſurgeon gives a perſon a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a diſeaſe, and contrary to the phyſician or ſurgeon's expectation it kills him, this is no homicide. And lord *Hale* ſays, he holds their opinion to be erroneous, who think that if he be no licenſed ſurgeon or phyſician, that occaſioneth this miſchance, that then it is felony. Theſe opinions (he ſays) may caution ignorant people not to be too buſy in this kind with tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429.

15. But if a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe take it, and it works ſo ſtrongly that it kills her, this is murder; for

it

it was not given to cure her of a diſeaſe, but unlawfully to deſtroy the child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother it is murder. 1 *H. H.* 430.

16. Alſo if a woman be quick with child, and by a potion or otherwiſe, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and ſhe is delivered of a dead child, this is a great miſpriſion, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cauſe, this is murder. 3 *Inſt.* 50.

Lord *Hale* ſays, that in this caſe it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the ſtroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. *Dalton* ſays, whether it die within her body, or ſhortly after her delivery, it maketh no difference. *Dalt.* 332. But Mr. *Hawkins* ſays, that (in this latter caſe) it ſeems clearly to be murder, notwithſtanding ſome opinions to the contrary. 1 *Haw.* 80.

17. Alſo it ſeems agreed, that where one counſels a woman to kill her child when it ſhall be born, who afterwards doth kill it in purſuance of ſuch advice, he is an acceſſary to the murder. 1 *Haw.* 80.

18. By the 21 *J. c.* 27. If a woman be delivered of a baſtard child, and ſhe endeavour privately, either by drowning or ſecret burying thereof, or any other way, either by herſelf, or the procuring of others, ſo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; ſhe ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs that it was born dead.

19. Lord *Hale* ſays, if a man have a beaſt, as a bull, cow, horſe, or dog, uſed to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it:

If he have no particular notice that it did any ſuch thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape or a monkey, if it get looſe and do harm to any perſon, the owner is liable to an action for the damage:

If he have notice of the quality of any ſuch his beaſt, and uſe all due diligence to keep him up, yet he breaks looſe and kills a man, this is no felony in the owner, but the beaſt is a deodand:

But if he did not uſe that due diligence, but through negligence the beaſt goes abroad, after warning or notice of his

his condition, and kills a man, he thinks it is manſlaughter in the owner:

But if he did purpoſely let him looſe or wander abroad, with deſign to do miſchief, nay though it were with deſign only to fright people and make ſport, and it kills a man, it is murder in the owner. 1 *H. H.* 431.

Perſons preſent when murder is committed.

20. They that are preſent when any man is ſlain, and do not their beſt endeavour to apprehend the murderer or manſlayer, ſhall be fined and impriſoned. 3 *Inſt.* 53.

Eſcape.

21. If a murder be committed in the day time, in a town not incloſed, and the murderer eſcape, the townſhip ſhall be amerced: but if incloſed, whether the murder be in the night or day, the town ſhall be amerced. 3 *Inſt.* 53.

Where the ſtroke is in one county, and the death in another.

22. Where any perſon ſhall be feloniouſly ſtricken or poiſoned in one county, and die in another county; the offender may be indicted in the county where the party dies, before the coroner, juſtices of the peace, or other juſtices. 2 & 3 *Ed.* 6. *c.* 24. *ſ.* 2.

Where the principal committeth the offence in one county, and the acceſſary in another.

23. Where a murder is committed in one county, and a perſon is acceſſary in another county, he may be indicted in the county where he was acceſſary, on certificate of the conviction of the principal in the county where he committed the murder. 2 & 3 *Ed.* 6. *c.* 24.

Where the ſtroke is in England, and the death out of England; and vice verſa.

24. If any perſon be feloniouſly ſtricken or poiſoned upon the ſea, or out of *England*, and ſhall die of the ſame in *England*; or ſhall be feloniouſly ſtricken or poiſoned in *England*, and ſhall die of the ſame on the ſea, or out of *England*; the offenders and acceſſaries may be indicted in the county where any ſuch death, ſtroke, or poiſoning ſhall happen, before the coroner, juſtices of the peace, or other juſtices; and the judges of aſſize, or any ſuperior court, to which the indictment ſhall be removed, ſhall proceed thereon accordingly. 2 *G.* 2. *c.* 21.

Trial, when.

25. If any man be ſlain or murdered, and the ſlayers, murderers, and acceſſaries be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they ſhall not be ſuffered to go at large, but be committed or bailed, till the year and day be paſt: and an appeal may be brought, notwithſtanding ſuch acquittal on indictment, if he hath not had his clergy. 3 *H.* 7. *c.* 1.

Judgment.

26. Sentence, in caſe of murder, ſhall be pronounced in open court immediately after conviction, unleſs the court ſhall ſee reaſonable cauſe for poſtponing the ſame; in which ſhall be expreſſed not only the uſual judgment of death, but alſo the time appointed for execution, and the marks of

of infamy directed for ſuch offenders. 25 *G.* 2. *c.* 37. *ſ.* 3.

How to be demeaned after judgment.

27. And after conviction and judgment, the gaoler ſhall confine the priſoner to ſome cell, or other proper and ſafe place in the priſon, apart from the other priſoners; and no perſon, except the gaoler, or his ſervants, ſhall have acceſs to him, without a licence from the judge, ſheriff, or under ſheriff. But if the judge ſhall ſee cauſe to reſpite the execution, he may during the time of ſuch ſtay, relax, or releaſe, by licence under his hand, any or all of the reſtraints or regulations before directed to be obſerved by the gaoler. 25 *G.* 2. *c.* 37. *ſ.* 6, 7.

And after ſentence, and until execution, the offender ſhall be fed with bread and water only (except in caſe of receiving the ſacrament; or of any violent ſickneſs or wound, in which caſe ſome known phyſician, ſurgeon, or apothecary may be admitted by the gaoler to adminiſter neceſſaries, his name and place of abode being firſt entred in the books of ſuch priſon). And if the gaoler ſhall offend againſt, or neglect to put in execution, any of the ſaid directions; he ſhall forfeit his office, and be fined 20*l.* and impriſoned till paid. *id. ſ.* 8.

Execution.

28. The execution of perſons found guilty of wilful murder, ſhall be on the day next but one after ſentence paſſed, unleſs it be *ſunday*, and in that caſe on the *monday* following. 25 *G.* 2. *c.* 37. *ſ.* 1.

But if there ſhall appear reaſonable cauſe, the judge after ſentence pronounced, may ſtay the execution at his diſcretion. *id. ſ.* 4.

Reſcue.

29. And if any perſon ſhall by force ſet at liberty or reſcue, or attempt to ſet at liberty, or reſcue, any perſon out of priſon, committed for, or found guilty of murder; or reſcue, or attempt to reſcue any ſuch perſon going to, or during execution; he ſhall be guilty of felony without benefit of clergy. 25 *G.* 2. *c.* 37. *ſ.* 9.

Body not to be buried.

30. The body, if in *London* or *Middleſex*, ſhall be immediately conveyed by the ſheriff, to the ſurgeons hall, or ſuch other place as the ſurgeons company ſhall appoint, to be by them diſſected and anatomized; and if elſewhere, ſhall be delivered to ſuch ſurgeon as the judge ſhall direct, for the purpoſe aforeſaid. 25 *G.* 2. *c.* 37. *ſ.* 2.

And the judge may direct the body to be hung in chains, or anatomized; but in no caſe whatſoever to be buried, unleſs after the ſame ſhall have been diſſected and anatomized. *ſ.* 5.

Reſcuing the body.

31. And if after execution, any perſon ſhall by force reſcue, or attempt to reſcue the body; he ſhall be guilty of

of felony, and tranſported for ſeven years. 25 *G.* 2. *c.* 37. *ſ.* 10.

32. The principal in murder is ouſted of clergy in all caſes, and the acceſſary before is alſo ouſted of clergy in all caſes, but the acceſſary after is in no caſe ouſted of clergy. 2 *H. H.* 344. How far the acceſſary ſhall have his clergy.

33. All voluntary murders, wilful poiſonings, and all ſlaughters of forethought felony, are excepted out of the general pardon of the 20 *G.* 2. *c.* 52. Pardon.

34. All murders committed by any perſon in the fleet, ſhall be puniſhed with death, by the ſentence of a court martial. 22 *G.* 2. *c.* 33. *art.* 28. Navy.

VI. Self-murder.

1. A *felo de ſe*, or felon of himſelf, is a perſon, who being of ſound mind, and of the age of diſcretion, voluntarily killeth himſelf. 3 *Inſt.* 54. 1 *H. H.* 411. Felo de ſe.

2. If a man give himſelf a wound, intending to be *felo de ſe*, and dieth not within the year and day after the wound, he is not *felo de ſe*. 3 Inſt. 54. Year and day.

3. Mr. *Hawkins* ſpeaks with ſome warmth againſt an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himſelf muſt be *non compos* of courſe; becauſe it is ſaid to be impoſſible, that a man in his ſenſes ſhould do a thing ſo contrary to nature, and all ſenſe and reaſon. But he argues, that if this doctrine were allowable, it might be applied in excuſe of many other crimes as well as this; as for inſtance that of a mother murdering her child, which is alſo againſt nature and reaſon: and this conſideration, inſtead of being the higheſt aggravation of a crime, would make it no crime at all; for it is certain a perſon *non compos mentis* can be guilty of no crime. 1 *Haw.* 67. Non compos.

And lord *Hale* ſays, it is not every melancholy or hypochondriacal diſtemper, that denominates a man *non compos*, for there are few who commit this offence, but are under ſuch infirmities; but it muſt be ſuch an alienation of mind, as renders a perſon to be a madman, or frantick, or deſtitute of the uſe of reaſon, which will denominate him *non compos*. 1 H. H. 412.

4. The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, without an attainder by courſe of law. 3 *Inſt.* 54. Forfeiture.

Nor ſhall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot

be viewed, the juſtices in ſeſſions may inquire thereof; for they have power by their commiſſion to inquire of all felonies: and a preſentment thereof found before them, intitles the king to the forfeiture. 3 *Inſt.* 54, 55. *Dalt. c.* 144.

But nevertheleſs, the forfeiture ſhall relate to the time of the wound given, and not to the time of the death, or of the inquiſition. 3 *Inſt.* 55. *Dalt. c.* 144. 1 *Hale's Pl.* 29. 1 *Haw.* 68.

But lord *Hale*, in his hiſtory of the pleas of the crown, ſeemeth to doubt, whether it ſhall not relate to the time of the death only, and not to the time of the wound given. 1 *H. H.* 414.

Corruption of blood. 5. Nor doth the offence work any corruption of blood, or loſs of dower. 1 *Haw.* 68.

Burial. 6. By the rubrick in the common prayer, before the burial office (confirmed by act of parliament, 13 & 14 *C.* 2. *c.* 4.) perſons who have laid violent hands upon themſelves, ſhall not have that office uſed at their interment.

Hops. See **Exciſe.**

Horſes.

Stealing of horſes belongs to title **Larceny.**

I. Buying of ſtolen horſes.
II. Killing or maiming horſes in the night.
III. Putting ſtoned horſes on commons.
IV. Putting ſcabbed horſes on commons.

I. Buying of ſtolen horſes.

BY the 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. it is enacted as follows:

Horſe fair. 1. The keeper of every fair and market ſhall yearly appoint a certain ſpecial and open place, where horſes ſhall be ſold in any fair or market overt.

Toll taker. 2. And ſhall appoint one or more perſons to take toll there, and to keep the ſame place from ten in the forenoon till ſun-ſet.

Horſe to be ſhewed one hour. 3. And the ſale or exchange in any fair or market overt, of any ſtolen horſe, ſhall not alter the property, unleſs the ſame ſhall be, in the time of the ſaid fair or market, openly ridden,

ridden, led, walked, driven, or kept ſtanding, for one hour together at leaſt, between ten of the clock and ſun-ſet, in the open place of the fair or market, wherein horſes are commonly uſed to be ſold, and not within any houſe, yard, backſide, or other privy or ſecret place.

Seller and buyer to go to the toll taker.

4. Nor unleſs all the parties to the bargain ſhall come together, and bring the horſe to the open place appointed for the toll taker, or for the book keeper where no toll is due.

Sale to be entred.

5. Nor unleſs ſuch toll taker there, or (where no toll is paid) the book keeper or chief officer of the fair or market, ſhall take upon him perfect knowledge of the ſeller, and of his true chriſtian name and ſurname and place of abode, and ſhall enter all the ſame his knowledge in a book to be kept for that purpoſe, or elſe that the ſeller ſhall bring to the toll taker, or other officer aforeſaid, one credible perſon, that ſhall teſtify that he knoweth the ſeller, and his true name, ſurname, miſtery, and dwelling place, and there enter the ſame, and alſo the name, ſurname, miſtery, and dwelling place of him that ſo avoucheth his knowledge.

And the price.

6. Nor unleſs he alſo cauſe to be entered, the very true price.

And marks.

7. And alſo the colour, and one ſpecial mark at leaſt.

Toll to be paid.

8. And alſo the buyer to pay the toll, if any is due; if not, then to give 1 *d.* for the entry.

Certificate of entry.

9. Which done, the perſon entring the ſame ſhall give to the buyer requiring and paying 2 *d.* for the ſame, a note in writing of all the contents of ſuch entry ſubſcribed with his hand.

Penalties.

10. Every perſon offending in any of the premiſſes ſhall forfeit 5 *l.* half to the king, and half to him that ſhall ſue before the juſtices in ſeſſions, or in any ordinary court of record; and the ſale ſhall be void: and the owner may ſeize and take his horſe again, or have an action of detinue or replevin for the ſame.

Caſe where the horſe ſhall have been duly entred.

11. And if any horſe ſhall be ſtolen, and after ſhall be ſold in open fair or market, and the ſale ſhall be uſed in all points as aforeſaid, yet nevertheleſs ſuch ſale in ſix months after the felony done, ſhall not take away the owner's property, ſo as claim be made in ſix months, where the horſe ſhall be found, before the mayor, if in a town corporate, or elſe before a juſtice near the place where found, and ſo as proof be made before ſuch magiſtrate in 40 days next enſuing by two witneſſes, that the property of ſuch horſe was in the party claiming, and was ſtolen from him within ſix months next before ſuch claim; but the party from whom the ſame was ſtolen, may at all times

after, notwithſtanding ſuch ſale, take again the ſaid horſe, on payment, or readineſs to offer to the party who hath poſſeſſion, ſo much as he ſhall ſwear before ſuch magiſtrate, that he paid for the ſame.

II. Killing or maiming horſes in the night.

Killing. 1. By the 22 & 23 *C.* 2. *c.* 7. Where any perſon ſhall in the night time maliciouſly kill or deſtroy any horſes; he ſhall be guilty of felony, and may be tranſported, by three juſtices in ſeſſions, for ſeven years.

Maiming. 2. And if any perſon ſhall in the night time maliciouſly wound or hurt any horſes; he ſhall forfeit to the party grieved treble damages, on the like conviction.

III. Putting ſtoned horſes on commons.

Size. 1. No perſon ſhall put in any foreſt, chaſe, moor, heath, common, or waſte (where mares or fillies are uſed to be kept) any ſtoned horſe above the age of two years, not being 15 hands high, within the ſhires and territories of *Norfolk*, *Suffolk*, *Cambridge*, *Buckingham*, *Huntingdon*, *Eſſex*, *Kent*, *South-Hampſhire*, *North-Wiltſhire*, *Oxford*, *Berkſhire*, *Worceſter*, *Gloceſter*, *Somerſet*, *North Wales*, *South Wales*, *Bedford*, *Warwick*, *Northampton*, *Yorkſhire*, *Cheſhire*, *Staffordſhire*, *Lancaſhire*, *Salop*, *Leiceſter*, *Hereford*, and *Lincoln*; nor under 14 hands in any other county (except *Cornwall*, 21 *J.* *c.* 28. *ſ.* 12.); on pain of forfeiting the ſame. 32 *H.* 8. *c.* 13. *ſ.* 2, 10.

But this ſhall not extend to the *marſhes* in the counties of *Cambridge*, *Huntington*, *Suffolk*, *Northampton*, *Lincoln*, and *Norfolk*; provided that the horſes be of 13 hands. 8 *El.* *c.* 8. *ſ.* 3.

Alſo nothing herein ſhall extend to any ſtoned horſe, that ſhall happen once in a year to break out of any paſture into ſuch common, ſo that he do not ſtay there above four days after notice given at the dwelling houſe of the owner, or after publication thereof on a *ſunday* or other feſtival, in the pariſh church where the owner or poſſeſſor of ſuch horſe dwelleth. 32 *H.* 8. *c.* 13. *ſ.* 5.

Seizing the ſame. 2. And any perſon may ſeize any ſuch horſe ſo being under ſize, in manner following: He ſhall go to the keeper of ſuch foreſt, or (out of ſuch foreſt) to the conſtable of the next town; and require him to go with him, to bring ſuch horſe to the next pound; and there to be meaſured by ſuch officer, in the preſence of three other honeſt men to be appointed by the officer; and if he ſhall be found contrary

trary to what is above expreſſed, ſuch perſon may take him for his own uſe. 32 *H.* 8. *c.* 13. *ſ.* 3.

And if ſuch keeper, or conſtable, or other of the three perſons ſhall refuſe to do as is aforeſaid; he ſhall forfeit 40 *s.* *ſ.* 4.

3. And all ſuch commons and other places ſhall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or conſtables reſpectively, on pain of 40 *s.* and they may alſo drive the ſame at any other time when they ſhall think meet. 32 *H.* 8. *c.* 13. *ſ.* 6. Driving the common.

And if in any of the ſaid drifts, there ſhall be found any mare, filly, fole, or gelding, that ſhall then be thought not able, nor like to grow to be able to bear foles of reaſonable ſtature, or to do profitable labours, by the diſcretion of the drivers, or of the more number of them; they may kill and bury them. *ſ.* 7.

4. All which ſaid forfeitures ſhall be half to the king, and half to him that ſhall ſue: and the juſtices in ſeſſions, and ſtewards of leets, may inquire thereof; and the ſteward ſhall certify his preſentments to the next ſeſſions. 32 *H.* 8. *c.* 13. *ſ.* 8. Penalties.

IV. Putting ſcabbed horſes on commons.

No perſon ſhall have, or put to paſture, any horſe, gelding, or mare, infected with ſcab or mange, in any common, or common fields; on pain of 10 *s.* which offence ſhall be inquirable in the leet, as other common annoyances be, and the forfeiture ſhall be to the lord of the leet. 32 *H.* 8. *c.* 13. *ſ.* 9. Scabbed.

Houſes (duty on). See **Windows.**
Houſebreaking. See **Burglary and Larceny.**

Houſe of correction.

1. BY the 7 *J.* *c.* 4. It was enacted, that before *Michaelmas* 1611. there ſhould be built or provided within every county, one or more fit and convenient houſes of correction, with convenient backſide thereunto adjoining, together with mills, turns, cards, and ſuch like neceſſary implements, to ſet rogues, vagabonds, or other Building or repairing houſes of correction.

idle, vagrant, and diſorderly perſons on work; which houſes were to be purchaſed, conveyed, or aſſured unto ſuch perſons, as by the juſtices in ſeſſions ſhould be directed, upon truſt, that the ſame ſhould be employed for the keeping, correcting, and ſetting to work the ſaid rogues, vagabonds, or ſturdy beggars, and other idle and diſorderly perſons. *ſ.* 2.

And by the 17 *G.* 2. *c.* 5. On preſentment of the grand jury, at the aſſizes, great ſeſſion, or general gaol delivery, held for any county or liberty (or at the general ſeſſions, or general quarter ſeſſions of the peace, where there ſhall be no aſſizes, great ſeſſion, or general gaol delivery held, 14 *G.* 2. *c.* 33. *ſ.* 2.) that there is no houſe of correction, and that it will be neceſſary to provide one or more; or that the houſes of correction already provided are not ſufficient or convenient, or want to be enlarged; the juſtices in ſeſſions ſhall have power to build or enlarge one or more fit houſes of correction, or to buy or hire houſes for that purpoſe, with convenient backſides or outlets thereto adjoining, or to purchaſe land, and to erect ſuch houſe or houſes upon part thereof, and to lay out the reſt of ſuch land for ſuch backſides or outlets: and to conclude and agree upon raiſing ſuch ſums of money, as on examination of able and ſufficient workmen, or others, ſhall appear to be neceſſary for that purpoſe: And if houſes or lands are to be purchaſed, they ſhall be conveyed to ſuch perſons as the ſaid juſtices in ſeſſions ſhall direct, in truſt and for the uſes and purpoſes aforeſaid. *ſ.* 30.

Appointing the maſter.

2. And the juſtices in ſeſſions ſhall appoint at their will and pleaſure, fit perſons to be governors or maſters of ſuch houſes ſo to be provided. 7 *J.* *c.* 4. *ſ.* 4. 17 *G.* 2. *c.* 5. *ſ.* 32.

His ſalary.

3. And for the ſaid maſter or governor's travel and care to be had in the ſaid ſervice, and for the relieving of ſuch as ſhall be weak and ſick in his cuſtody, the juſtices in ſeſſions ſhall appoint ſuch ſums yearly as they ſhall think meet, to be paid quarterly beforehand by the treaſurer (the ſaid maſter or governor giving ſufficient ſecurity for the continuance and performance of the ſaid ſervice.) 7 *J.* *c.* 4. *ſ.* 6. 17 *G.* 2. *c.* 5. *ſ.* 33.

Which ſums ſhall be paid out of the general county rate, by the 12 *G.* 2. *c.* 29.

Fitting up the houſe.

4. And the juſtices in ſeſſions ſhall take care, that the houſes of correction (except thoſe erected or maintained by particular founders) ſhall be duly fitted up and ſupplied with implements, materials, and furniture, for keeping, relieving, employing, and correcting, all idle and diſorderly perſons,

ſons, rogues, vagabonds, incorrigible rogues, and others, who ſhall be ſent to, confined, or continued in the ſame; and ſhall make ſuch orders and regulations as they ſhall think fit, for the better governing and regulating the ſaid houſes, and for employing, relieving, and puniſhing the perſons therein, or for ſending them to or from thence; which orders ſhall not be removed by any certiorari. 17 *G.* 2. *c.* 5. *ſ.* 31.

5. And whereas doubts may ariſe, where authority is given to any juſtice or juſtices, to commit offenders to the houſe of correction, for offences cognizable before them out of ſeſſions, how long offenders may be there detained, and in what manner treated, where the time and manner of their puniſhment is not by law expreſly limited; it is enacted, that where any offenders ſhall be committed as aforeſaid, by virtue of any law in being or to be made, and the time and manner of their puniſhment is not expreſly limited, the ſaid juſtice or juſtices ſhall commit ſuch offenders to the houſe of correction, there to be kept to hard labour until the next general or quarter ſeſſions, or until diſcharged by due courſe of law: And two juſtices (of which the juſtice who committed him to be one) may diſcharge the ſaid offender before the ſeſſions, if they ſee cauſe; and if he ſhall not be ſo diſcharged, the ſaid ſeſſions may either diſcharge him, or continue him further not exceeding three months. 17 *G.* 2. *c.* 5. *ſ.* 32. Commitment thither.

And where any perſon liable by law to be committed to the houſe of correction, ſhall be apprehended within any liberty, city, or town corporate, whoſe inhabitants are contributory to the houſe of correction of the county, the juſtices of ſuch liberty may commit ſuch perſon to the houſe of correction for the county. 15 *G.* 2. *c.* 24.

6. The ſaid maſter or governor ſhall have power to ſet ſuch rogues, vagabonds, idle and diſorderly perſons, as ſhall be brought or ſent to the ſaid houſe, to work and labour (being able), for ſuch time as they ſhall continue therein, and to puniſh them by putting fetters or gives upon them, and by moderate whipping: And the ſaid rogues, vagabonds, and idle perſons, during ſuch time as they ſh ll continue in the ſaid houſe of correction, ſhall in no ſort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there, but ſhall have ſuch and ſo much allowance as they ſhall deſerve by their own labour and work. 7 *J.* *c.* 4. *ſ.* 4. The maſter's duty.

And if the maſter ſhall not, at every quarter ſeſſions, yield a true account of all ſuch perſons as have been committed to his cuſtody: or if any perſon committed to his

cuſtody, ſhall be troubleſome to the country, by going abroad; or otherwiſe ſhall eſcape away from the houſe of correction, before he ſhall be from thence lawfully delivered; then the ſaid juſtices ſhall ſet down ſuch fines and penalties upon the ſaid maſter or governor, as they ſhall think fit; and all fines and penalties ſhall be paid to the treaſurer, and accounted for by him. 7 *J.* *c.* 4. *ſ.* 9.

And two juſtices within the reſpective hundreds, diviſions, or juriſdictions, where there ſhall be any houſe of correction, or any two juſtices appointed by the ſeſſions, ſhall viſit the ſame twice a year, or oftner if need be, and report the ſtate thereof to the next ſeſſions. And if the governors thereof ſhall not ſet or keep the ſaid idle and diſorderly perſons, rogues, vagabonds, and incorrigible rogues, to hard labour, and puniſh and correct them according to the directions of their warrants of commitment, or ſhall otherwiſe miſbehave themſelves, the ſaid juſtices in ſeſſions ſhall fine them, as by the 7 *J.* *c.* 4. the fines to be paid to the treaſurer, and accounted for by him as part of the county ſtock. 17 *G.* 2. *c.* 5. *ſ.* 31.

Removing the maſter.

7. The juſtices in ſeſſions may remove the ſaid governor or maſter; and if any perſon removed by order of ſeſſions, ſhall refuſe or neglect to quit poſſeſſion, for ten days after notice given him in writing by the clerk of the peace, any two juſtices (on producing to them ſuch order of ſeſſions, or an atteſted copy thereof, and on oath of one witneſs of ſuch notice having been given, and of his having refuſed or neglected to quit poſſeſſion) may by their warrant direct the ſheriff to remove him, who ſhall thereupon clear the poſſeſſion as in caſe of a writ of *habere facias poſſeſſionem.* 17 G. 2. c. 5. ſ. 31.

Spirituous liquors not to be drank therein.

8. By the 24 *G.* 2. *c.* 40. No ſpirituous liquors ſhall be ſold or uſed in any houſe of correction; as may be ſeen more at large, under the article relating to ſpirituous liquors, in the title **Exciſe**.

Expences of the

9. And to defray the expences of erecting, purchaſing, hiring, enlarging, altering, and repairing houſes of correction, and of purchaſing land to erect them upon, and for backſides and outlets, and of fitting up and furniſhing ſuch houſes, and of ſending perſons to and from the ſame, and employing them there, the juſtices in ſeſſions may cauſe ſuch ſums as ſhall be neceſſary, to be raiſed in the ſame manner as rates are to be raiſed by the 12 G. 2. c. 29. 17 G. 2. *c.* 5. *ſ.* 33.

General form of a commitment to the houſe of correction.

Weſtmorland. { *J. P.* eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, to the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

THESE *are to command you the ſaid conſtable in his ſaid majeſty's name, forthwith to convey and deliver into the cuſtody of the ſaid keeper of the ſaid houſe of correction the body of* A. O. *being charged before me* [or, *convicted before me*, or otherwiſe as the caſe ſhall be: And here ſet forth the offence.] *And you the ſaid keeper are hereby required to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep, until* ——— [or, *for the ſpace of* ———. And here ſet forth the time, and the manner of puniſhment.] *Herein fail you not. Given under my hand and ſeal the* ——— *day of* ———*in the* ——— *year of* ———.

Hue and Cry.

1. LORD *Coke* ſaith, that hue and cry (called in ancient records *hutefium & clamor*) do mean the ſame thing; for that *huer* in *French* is to hoot or ſhout, in *Engliſh* to cry. 2 *Inſt.* 173. 3 *Inſt.* 116. Meaning of the words.

But ſince it appeareth by the old books (of which alſo lord *Coke* maketh obſervation, 2 *Inſt.* 173.) that hue and cry was anciently both by horn and by voice, it may ſeem that theſe two words are not ſynonymous, but that this *hutefium* or *hooting* is by the *horn*, and *crying* by the *voice*; with which alſo accordeth the *French* word *huchet*, which ſignifieth a huntſman's horn: So that hue and cry in this ſenſe will properly ſignify a purſuit by horn and by voice. Which kind of purſuit of robbers by blowing a horn, and by making an outcry is ſaid to be practiſed alſo in *Scotland*.

And this blowing of a horn, by way of notice or intelligence, in other caſes as well as in the purſuit of felons, ſeemeth to have been in uſe of very ancient time: for amongſt the laws of *Wihtred* king of *Kent*, in the year 696, this

this is one; that "if a ſtranger go out of the road, and "neither ſhout nor blow a horn, he ſhall be taken for a "thief."

Hue and cry, what.

2. Hue and cry is the old common law proceſs after felons, and ſuch as have dangerouſly wounded any perſon: And this hath received great countenance and authority by ſeveral acts of parliament. 2 *H. H.* 98.

Watches to be kept.

3. To prevent felonies; In walled towns the gates ſhall be ſhut from ſun ſetting to ſun riſing: and none ſhall lodge without the town, from nine of the clock till day, unleſs his hoſt will anſwer for him. In other towns, watches ſhall be kept: and if a watchman arreſt a night walker, and he diſobey and fly, the watchman may make hue and cry. 13 *Ed.* 1. *ſt.* 2. *c.* 4.

Application to the conſtable.

4. When any felony is committed, or any perſon is grievouſly and dangerouſly wounded, or any perſon aſſaulted and offered to be robbed, either in the day or night; the party grieved, or any other, may reſort to the conſtable of the vill; and, 1. Give him ſuch reaſonable aſſurance thereof, as the nature of the caſe will bear. 2. If he knows the name of him that did it, he muſt tell the conſtable the ſame. 3. If he know it not, but can deſcribe him, he muſt deſcribe his perſon, or his habit, or his horſe, or ſuch circumſtances as he knows, which may conduce to his diſcovery. 4. If the thing be done in the night, ſo that he knows none of theſe circumſtances, he muſt mention the number of the perſons, or the way they took. 5. If none of all theſe can be diſcovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the conſtable with the fact, and deſire him to ſearch in his town for ſuſpected perſons, and to make hue and cry after ſuch as may be probably ſuſpected, as being perſons vagrant in the ſame night; for many circumſtances may *ex poſt facto* be uſeful for diſcovering a malefactor, which cannot be at firſt found. 2 *H. H.* 100, 101. 3 *Inſt.* 116.

Juſtice's warrant.

5. For levying hue and cry, altho' it is a good courſe to have the warrant (A) of a juſtice of the peace, when time will permit, in order to prevent cauſeleſs hue and cry; yet by the frame of the ſtatutes it is by no means neceſſary, nor is it always convenient; for the felon may eſcape before the warrant be obtained: and hue and cry was part of the law, before juſtices of the peace were firſt inſtituted. 2 *H. H.* 99.

Conſtable to raiſe the town.

6. And the duty of the conſtable is, to raiſe the power of the town, as well in the night as in the day, for the proſecution of the offender. 3 *Inſt.* 116.

7. And

7. And upon hue and cry levied againſt any perſon, or where any hue and cry comes to a conſtable, whether the perſon be certain or uncertain, the conſtable may ſearch ſuſpected places within his vill, for the apprehending of the felons. 2 *H. H.* 103. And to ſearch.

8. But tho' he may ſearch ſuſpected places or houſes, yet his entry muſt be by the doors being open; for he cannot break open doors barely to ſearch, unleſs the perſon againſt whom the hue and cry is levied be there, and then it is true he may; therefore in caſe of ſuch a ſearch, the breaking open the door is at his peril, namely, juſtifiable, if he be there; not juſtifiable, if he be not there: But it muſt be always remembred, that in caſe of breaking open a door, there muſt be firſt a notice given to them within of his buſineſs, and a demand of entrance, and a refuſal, before the doors can be broken. 2 *H. H.* 103. 2 *Haw.* 86. Breaking doors to ſearch.

9. If the perſon, againſt whom the hue and cry is raiſed, be not found in the conſtablewick, then the conſtable ſhall give notice to the next conſtable, and he to the next, until the offender be found, or till they come to the ſea ſide. And this was the law before the conqueſt. 3 *Inſt.* 116. Notice to the next conſtable.

10. And the officer of the town where the felony was done, as alſo every officer to whom the hue and cry ſhall afterwards come, ought to ſend to every other town round about him, and not to one next town only. And in ſuch caſes it is needful to give notice in writing (to the purſuers) of the things ſtolen, and of the colour and marks thereof, as alſo to deſcribe the perſon of the felon, his apparel, horſe, and the like, and which way he is gone, if it may be. *Dalt. c.* 54. And to the next.

11. But if the hue and cry be upon a robbery, burglary, manſlaughter, or other felony committed, but the perſon that did the fact is neither known nor deſcribable by perſon, clothes, or the like, yet ſuch a hue and cry is good, as hath been ſaid, and muſt be purſued, tho' no perſon certain be named or deſcribed. 2 *H. H.* 103. What ſhall be done where the perſon cannot be deſcribed.

And therefore in this caſe, all that can be done is, for thoſe that purſue the hue and cry, to take ſuch perſons as they have probable cauſe to ſuſpect; as for inſtance, ſuch perſons as are vagrants, or ſuch ſuſpicious perſons as come late into their inn or lodgings, and give no reaſonable account where they had been, and the like. *id.*

12. By the ſtatute of the 3 *Ed.* 1. *c.* 9. All ſhall be ready, and apparelled, at the commandment and ſummons of ſheriffs (or conſtables, 2 *Inſt.* 171.) and at the cry of the country, to ſue and arreſt felons; on pain of a grievous fine. And if default be found in the lord of the franchiſe, the king ſhall All perſons ſhall follow the hue and cry.

ſhall take the franchiſe to himſelf; and if in the ſheriff or other officer, they ſhall have one year's impriſonment, and ſhall make a grievous fine.

And by the ſtatute of the 13 *Ed.* 1. *ſt.* 2. *c.* 1. it is likewiſe enacted, that immediately upon robberies and felonies committed, freſh ſuit ſhall be made, from town to town, and from county to county.

And no hue and cry ſhall be lawful, except it be by horſemen and footmen. 27 *El. c.* 13. *ſ.* 10.

And the life of hue and cry is freſh ſuit. 3 *Inſt.* 117.

Breaking doors to arreſt upon purſuit.

13. If the perſon purſued by hue and cry be in a houſe, and the doors are ſhut, and refuſed to be opened on demand of the conſtable, and notification of his buſineſs, he may break open the doors; and this he may do in any caſe, where he may arreſt, though it be only a ſuſpicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the caſe: and the ſame law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *H. H.* 102.

Killing in the purſuit.

14. And it ſeems in this caſe, that if he cannot be otherwiſe taken, he may be killed; and the neceſſity excuſeth the conſtable. 2 *H. H.* 102.

Arreſting an innocent perſon.

15. If hue and cry be raiſed againſt a perſon certain for felony, though poſſibly he is innocent; yet the conſtables, and thoſe that follow the hue and cry, may arreſt and impriſon him in the common gaol, or carry him to a juſtice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 *H. H.* 102.

Arreſting a perſon by deſcription.

16. If the hue and cry be not againſt a perſon certain, but by deſcription of his ſtature, perſon, clothes, horſe, and the like; yet the hue and cry doth juſtify the conſtable, or other perſon following it, in apprehending the perſon ſo deſcribed, whether innocent or guilty: for that is his warrant; it is a kind of proceſs that the law allows of, not uſual in other caſes, namely, to arreſt a perſon by deſcription. 2 *H. H.* 103.

Caſe of arreſting upon hue and cry levied without cauſe.

17. In caſe of hue and cry once raiſed and levied, on ſuppoſal of a felony committed, though in truth there was no felony committed, yet thoſe that purſue hue and cry, may arreſt and proceed, as if ſo be a felony had been really committed.

And therefore the juſtification of an impriſonment by a perſon upon ſuſpicion, and by a perſon (eſpecially a conſtable) upon hue and cry levied, do extremely differ; for in the former caſe, there muſt be a felony averred to be done, and it is iſſuable; but in the latter, to wit, upon hue and cry, it need not be averred, but the hue and cry levied upon

infor-

information of a felony is ſufficient, though perchance the information were falſe.

And the reaſons hereof are theſe; 1. Becauſe the conſtable cannot examine the truth or falſhood of the ſuggeſtion of him that firſt levied it, for he cannot adminiſter to him an oath; and if he ſhould forbear his purſuit of the hue and cry till it be examined by a juſtice of the peace, the felon might eſcape, and the purſuit would be loſt and fruitleſs. 2. Becauſe the conſtable is by the ſeveral acts of parliament compellable to purſue hue and cry; and he is puniſhable, and ſo are thoſe of the vill, if they do it not. 3. Becauſe he that firſt raiſeth a hue and cry, where no felony is committed, that is, he who giveth the falſe information, is ſeverely puniſhable by fine and impriſonment, if the information be falſe.

And therefore if he raiſe hue and cry upon a perſon that is innocent, yet they that purſue the hue and cry may juſtify the impriſonment of that innocent perſon; and the raiſer is puniſhable: and by the ſame reaſon, if he give notice of a felony committed, where there was in truth none.

And here the juſtification of the impriſonment is mixed, partly upon the hue and cry, and partly upon their own ſuſpicion; and therefore, 1. In reſpect that it is upon hue and cry, there needs no averment, that the felony was done, if the arreſt be by that conſtable that firſt received the information, and ſo raiſed the hue and cry; or if the arreſt were made by that conſtable, or thoſe vills, to whom the hue and cry came at the ſecond hand, it muſt be averred, that ſuch a hue and cry came to them, purporting ſuch a felony to be done. 2. But alſo inaſmuch as the hue and cry neither names nor deſcribes the perſon of the felon, but only the felony committed, and therefore the arreſt of this or that particular perſon is left to the ſuſpicion and diſcretion of the conſtable, or of the people of the ſecond or third vill, he that arreſts any perſon upon ſuch general hue and cry, muſt aver that he ſuſpected, and ſhew a reaſonable cauſe of ſuſpicion.

But now by the ſtatute of 7 *J. c.* 5. the conſtable, or any that come to his aſſiſtance, even in this caſe of hue and cry, may plead the general iſſue, and give the whole matter of the juſtification in evidence; for the purſuit of hue and cry, though performed by others as well as the conſtable, is principally the act of the conſtable of the vill, and the others are but as his deputies or aſſiſtants, within the precincts of their conſtablewick. 2 *H. H.* 101, 2, 3, 4.

Perſons taken on hue and cry, how far bailable.

18. It ſeems that they whu are taken upon freſh hue and cry, are not bailable, as being to be accounted amongſt thoſe perſons, who are under a violent preſumption of guilt. 2 *Haw.* 98.

High Conſtables to preſent thoſe who purſue not hue and cry.

19. By the 13 *Ed.* 1. *ſt.* 2. *c.* 6. Conſtables of hundreds ſhall be choſen, who ſhall preſent before juſtices aſſigned, defaults of the ſuits of towns, and all ſuch as lodge ſtrangers in uplandiſh towns, for whom they will not anſwer.

Puniſhment of thoſe who follow not hue and cry.

20. And they which levy not hue and cry, or purſue not upon hue and cry, may be indicted, fined, and impriſoned. 3 *Inſt.* 117.

Power of the leet to inquire thereof.

21. And it is an article of the leet, to inquire of hues and cries levied and not purſued. 18 *Ed.* 2.

A Warrant to levy hue and cry on a robbery having been committed.

Weſtmorland. { To all conſtables and other officers, as well in the ſaid county of *Weſtmorland*, as elſewhere, to whom the execution hereof doth or ſhall belong.

WHEREAS A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *that on this preſent* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *betwixt the hours of three and four in the afternoon of the ſame day, at a place called* ——— *in the ſaid county of* W. *in the king's highway there, two malefactors and felons to him the ſaid* A. I. *unknown, in and upon him the ſaid* A. I. *then and there being in the peace of god and of our lord the king, feloniouſly did make an aſſault, and him the ſaid* A. I. *then and there feloniouſly did put in great fear and danger of his life, and the ſum of* ——— *of lawful money of* Great Britain, *of the goods and chattels of him the ſaid* A. I. *from the perſon, and againſt the will of him the ſaid* A. I. *then and there violently and feloniouſly did ſteal, take, and carry away; and that one of the ſaid malefactors and felons, to him the ſaid* A. I. *unknown, is a tall, ſtrong man, and ſeemeth to be about the age of* ——— *years, is pitted in his face with the ſmall pox, and hath the ſcar of a wound under his left eye, and had then on a dark brown riding coat,* &c. *and did ride upon a bay gelding with a ſtar on his forehead; and the other* &c. *And that after the ſaid felony and robbery committed, they the ſaid malefactors and felons to him the ſaid* A. I. *unknown, did fly, and withdraw themſelves to places unknown, and are*

not yet apprehended: Theſe are therefore to command you forthwith to raiſe the power of the towns within your ſeveral precincts, and to make diligent ſearch therein, for the perſons above deſcribed, and to make freſh purſuit and hue and cry after them from town to town, and from county to county, as well by horſemen as by footmen; and to give due notice hereof in writing, deſcribing in ſuch notice the perſons and the offence aforeſaid, unto every next conſtable on every ſide, until they ſhall come to the ſea ſhore, or until the ſaid malefactors and felons ſhall be apprehended; and all perſons whom you or any of you ſhall, as well upon ſuch ſearch and purſuit, as otherwiſe, apprehend or cauſe to be apprehended, as juſtly ſuſpected for having committed the ſaid robbery and felony, that you do carry forthwith before ſome one of his ſaid majeſty's juſtices of the peace in and for the county where he or they ſhall be ſo apprehended, to be by ſuch juſtice examined, and dealt withal according to law. And hereof fail you not reſpectively, upon the peril that ſhall enſue thereon. Given under my hand and ſeal, at———in the ſaid county of W. *the————day of————aforeſaid, in the year aforeſaid.*

Hundred.

Hundred whence ſo called.

1. IN ancient times, before the conqueſt, it was ordained for the more ſure keeping of the peace, that all free born men ſhould caſt themſelves into ſeveral companies, by ten in each company; and that every of thoſe ten men ſhould be ſurety and pledge for the forthcoming of his fellows. For which cauſe, theſe companies in ſome places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, ſo becauſe it was then alſo appointed, that ten of theſe companies ſhould at certain times meet together for their matters of greater weight, therefore that general aſſembly was, and yet is, called an hundred. *Lamb. Conſt.*

Hundred to be amerced for an eſcape.

2. If any homicide be committed, or dangerous wound given, in the day time, and the offender eſcape, the town ſhall be amerced; and if out of town, the hundred ſhall be amerced. 2 *Haw.* 74.

Hundred anſwerable in divers other caſes.

3. The hundred ſhall make good the damages, in the caſes of robbery; cutting banks; cutting hop binds; burning houſes, barns, outhouſes, hovels, cocks, mows, or ſtacks of corn, ſtraw, hay, or wood; mines or pits of coal; deſtroying granaries, or corn intended for exportation;

tion; deſtroying turnpikes; or works of navigable rivers; and the like: as may be ſeen under their proper titles.

Damages how to be levied.

4. Writs of execution which ſhall be ſued out againſt the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, ſhall by the ſheriff on receipt thereof be produced to two juſtices (1 Q.) in or near the hundred; who ſhall cauſe a taxation to be made and levied by the conſtables in 30 days, for paying the plaintiff's coſts and damages, and alſo all ſuch neceſſary expences as any inhabitants ſhall have been at in defending ſuch action; the ſame being firſt proved on oath before the ſaid juſtices, and the attorney's bill taxed. And the ſaid ſums ſhall be paid to the ſheriff by the conſtables in ten days after the time is expired for collecting; and by the ſheriff, to the perſons intitled to receive the ſame, without any deduction or fee; all in the ſame manner, as is directed by the ſtatute of the 8 *Geo.* 2. *c.* 16. in caſes of robbery. 22 *G.* 2. *c.* 46. *ſ.* 34.

Hunting. See **Game.**
Huſband. See **Wife.**

Ideots. See **Lunaticks,**
Impriſonment. See **Arreſt, Commitment.**
Inceſt. See **Lewdneſs.**
Incloſures pulling down. See **Wood.**

Indictment.

I. Indictment, what.
II. What offences are indictable.
III. Within what time an indictment ſhall be brought.
IV. How far ſeveral offenders or ſeveral offences may be joined in one indictment.
V. Whether the grand jury may examine witneſſes againſt the king.
VI. How many witneſſes are requiſite to an indictment.

VII.

VII. Whether a grand jury may find an indictment ſpecially.
VIII. Indictment to be in Engliſh.
IX. Form of an Indictment.
X. Charges of an Indictment.

I. Indictment, what.

INDICTMENT cometh of the *French* word *enditer*, and ſignifieth in law, an accuſation found by an inqueſt of twelve or more upon their oath. And as the *appeal* is ever the ſuit of the party, ſo the indictment is always the ſuit of the king, and as it were his declaration; and the party who proſecutes it, is a good witneſs to prove it. And when ſuch accuſation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *preſentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquiſition*. 1 Inſt. 126. 2 Haw. 209.

II. What offences are indictable.

There can be no doubt, but that all capital crimes whatſoever, and alſo all kinds of inferior crimes of a publick nature, as miſpriſions, contempts, diſturbances of the peace, oppreſſions, and all other miſdemeanors whatſoever of a publick evil example againſt the *common law*, may be indicted; but no injuries of a private nature, unleſs they ſome way concern the king. 2 *Haw.* 210.

Alſo it ſeems to be a good general ground, that wherever a *ſtatute* prohibits a matter of a publick grievance to the liberties and ſecurity of a ſubject; or commands a matter of publick convenience, as the repairing of the common ſtreets of a town; an offender againſt ſuch ſtatute is puniſhable, not only at the ſuit of the party grieved, but alſo by way of indictment for his contempt of the ſtatute, unleſs ſuch method of proceeding do manifeſtly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party (as it is ſaid that he may in every action for doing a thing prohibited by ſtatute); it ſeems queſtionable, whether he may afterwards be indicted, becauſe that would make him liable to a ſecond fine for the ſame offence. 2 *Haw.* 210.

But if a ſtatute extend only to *private* perſons, or if it extend to all perſons in general, but chiefly concern diſputes

of a private nature, as thoſe relating to diſtreſſes made by lords on their tenants; it is ſaid that offences againſt ſuch ſtatute will hardly bear an indictment. 2 *Haw.* 211.

Alſo where a ſtatute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it ſeemeth to be ſettled at this day, that it will not maintain an indictment. 2 *Haw.* 211. *Str.* 679.

But lord *Hale* diſtinguiſhes upon this, and ſays, that if a ſtatute prohibit any act to be done, and by a ſubſtantive clauſe gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the *prohibitory clauſe*, and thereupon fined, but not to recover the penalty; but then it ſeems the fine ought not to exceed the penalty; but if the act be not prohibitory, but only that if any perſon ſhall do ſuch a thing, he ſhall forfeit ſo much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding muſt be by action, bill, plaint, or information. 2 *H. H.* 171.

Alſo, where a ſtatute adds a farther penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be ſtill indicted, if the proſecutor thinks fit, at the common law. And if the indictment for ſuch offence conclude *againſt the form of the ſtatute*, and cannot be made good as an indictment upon the ſtatute, it ſeems to be now ſettled, that it may be maintained as an indictment at common law. 2 *Haw.* 211.

A fact amounting to a felony, is not indictable as a treſpaſs. L. *Raym.* 712.

III. Within what time an indictment ſhall be brought.

By the 31 *El. c.* 5. All indictments upon any ſtatute penal, whereby the forfeiture is limited to the king, ſhall be ſued within two years after the offence committed: if the forfeiture is limited to the king and proſecutor, the ſuit ſhall be in one year; and in default thereof, the ſame ſhall be ſued for the king, within two years after that year ended. But where a ſtatute limits a ſhorter time, the ſuit ſhall be brought within ſuch time limited.

But for indictments of felonies, and other miſdemeanors where there is no forfeiture to the king, or to the king and proſecutor, no time is limited by any ſtatute; but the ſeveral acts of general pardon have the effect of a like limitation. The laſt act of which kind was that of the 20 *G.* 2. *c.* 52. for certain offences committed before *June* 15. 1747.

IV. How

IV. How far ſeveral offenders or ſeveral offences may be joined in one indictment.

1. If there be *one offender*, and *ſeveral offences* committed by him, as burglary and larceny, they may be contained in one indictment. 2 *H. H.* 173.

But in the caſe of *K.* and *Clendon*, *T.* 4 *G.* 2. There was an indictment ſetting forth, that the defendant made an aſſault upon *Sarah Beatniff* and *Elizabeth Cooper*, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arreſt of judgment, that theſe were two diſtinct offences, and therefore could not be laid in the ſame indictment; and of that opinion was the court, and the judgment was arreſted. *Str.* 870.

2. If there be *ſeveral offenders* that commit the *ſame offence*, though in law they are ſeveral offences in relation to the ſeveral offenders, yet they may be joined in one indictment; as if ſeveral commit a robbery, or burglary, or murder. 2 *H. H.* 173.

3. And ſo it is, though the offences are of *ſeveral degrees*, but dependant one upon another, as the principal in the firſt degree, and the principal in the ſecond degree, to wit, preſent, aiding and abetting the principal, and acceſſary before or after. 2 *H. H.* 173.

4. Alſo ſeveral perſons may be indicted in the ſame indictment for *ſeveral offences of the ſame nature*, as for keeping diſorderly houſes; but the indictment ought to ſet forth that they ſeverally did ſo. 2 *H. H.* 173.

And this is only to be underſtood where the offences may be joint, as in extortion, maintenance, receiving ſtolen goods, and the like; and not where the offence is a ſeparate act in each, as in the caſe of *K.* againſt *Philips* and others, *M.* 5 *G.* 2. Six were indicted in one indictment for *perjury*, and four of them pleading, were convicted. It was moved in arreſt of judgment, that the crime of perjury is in its nature ſeveral, and two cannot be indicted together. And by the court, There may be great inconveniencies if this is allowed; one may be deſirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence againſt one: And they cited a caſe, *T.* 6 *An. Q.* againſt *Hodgſon* and others, where two were indicted for being ſcolds, and compared to barratry, and it was held not to lie. And in the principal caſe judgment was arreſted. *Str.* 921.

In like manner, *E.* 11 *G. K.* againſt *Weſton* and others. There was an indictment againſt ſix jointly and ſeverally for exerciſing a trade; and quaſhed, becauſe there ought to be diſtinct indictments. *Str.* 623.

5. Larcenies committed of ſeveral things, though *at ſeveral times*, and *from ſeveral perſons*, may be joined in one indictment. 2 *H. H.* 173.

V. Whether the grand jury may examine witneſſes againſt the king.

Lord *Hale* ſays, that the grand jury at the aſſizes or ſeſſions ought only to hear the evidence for the king, and in caſe there be probable evidence, they ought to find the bill, becauſe it is but an accuſation, and the party is to be put on his trial afterwards. 2 *H. H.* 157.

Which doctrine is alſo laid down by chief juſtice *Pemberton* in the caſe of the earl of *Shafiſbury*, St. Tr. V. 3. p. 415.

But the learned Editor of *Hale's Hiſtory* obſerves upon this, that Sir *John Hawles* in his remarks on the ſaid caſe, *St. Tr. V.* 4. *p.* 183. unanſwerably ſhews, that a grand jury ought to have the ſame perſuaſion of the truth of the indictment as a petty jury, or a coroner's inqueſt; for they are ſworn to preſent the truth, and nothing but the truth.

And lord *Coke* ſays, that ſeeing indictments are the foundation of all, and are commonly found in the abſence of the party accuſed, it is neceſſary there ſhould be ſubſtantial proof. 3 *Inſt.* 25.

VI. How many witneſſes are requiſite to an indictment.

An indictment may be found upon the oath of one witneſs only, unleſs it be for high treaſon, which requires two witneſs. 2 *Haw.* 256. And unleſs, in any inſtance, it be otherwiſe ſpecially directed by act of parliament.

VII. Whether the grand jury may find an indictment ſpecially.

It ſeems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part falſe; but muſt either find a true bill or *ignoramus* for the whole; and that if they take upon them to find it ſpecially, or conditionally, or to be true for part only, and not for the reſt, the whole is void, and the party cannot be,

tried

tried upon it, but ought to be indicted anew. 2 *Haw.* 210.

VIII. Indictment to be in Engliſh.

All indictments, informations, inquiſitions and preſentments, ſhall be in *Engliſh*, and be written in a common legible hand, and not court hand; on pain of 50*l.* to him that ſhall ſue in three months. 4 *G.* 2. *c.* 26. 6 *G.* 2. *c.* 14.

IX. Form of an indictment.

In order to underſtand this matter rightly, it is judged requiſite firſt to inſert the intire form of an indictment, and then to take it in pieces, and explain the ſeveral parts of it in their order.

The inſtance which is choſen is on the ſtatute of ſtabbing. 1 *J.* *c.* 8.

The *caption* of the indictment is no part of the indictment itſelf, but is the ſtyle or preamble, or return that is made from an inferior court to a ſuperior, from whence a certiorari iſſues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it ſtands upon the file in the court where it is taken, is only thus, *The jurors for our lord the king upon their oath preſent*; when this comes to be returned upon a certiorari, it is more full and explicit, as follows: 2 *H. H.* 166.

Weſtmorland. AT *the general quarter ſeſſions of the peace holden at* Appleby *in and for the county aforeſaid, the ſeventh day of* April *in the firſt year of the reign of our ſovereign lord* George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, Before* J. P. *and* K. P. *eſquires, and others their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by the oath of* ——— *good and lawful men of the county aforeſaid, ſworn and charged to inquire for our ſaid lord the king, and for the body of the county aforeſaid, it is preſented*;

That John Armſtrong *late of* Appleby *in the county aforeſaid, yeoman, not having god before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the thirtieth*

day of March *in the firſt year of the reign of our ſaid ſovereign lord* George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at the hour of nine in the afternoon of the ſame day, with force and arms, at* Appleby *aforeſaid in the county aforeſaid, in and upon one* George Harriſon *in the peace of god and of our ſaid lord the king then and there being (the aforeſaid* George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong) *feloniouſly did make an aſſault; and that the aforeſaid* John Armſtrong, *with a certain drawn ſword, of the value of five ſhillings, which he the ſaid* John Armſtrong *in his right hand then and there had and held, the ſaid* George Harriſon *in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon (*the aforeſaid* George Harriſon *as is aforeſaid then and there not having any weapon drawn, nor the aforeſaid* George Harriſon *then and there having firſt ſtricken the ſaid* John Armſtrong) *then and there feloniouſly did ſtab and thruſt, giving unto the ſaid* George Harriſon *then and there with the ſword aforeſaid, in form aforeſaid, in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon, *one mortal wound of the breadth of one inch, and of the depth of nine inches; of which ſaid mortal wound, he the ſaid* George Harriſon *then and there inſtantly died: And ſo the jurors aforeſaid upon their oath aforeſaid do ſay, that the ſaid* John Armſtrong *him the ſaid* George Harriſon *on the aforeſaid thirtieth day of* March *in the year aforeſaid, at* Appleby *aforeſaid in the county aforeſaid, in manner and form aforeſaid, feloniouſly did kill; againſt the peace of our ſaid lord the now king, his crown and dignity, and againſt the form of the ſtatute in ſuch caſe made and provided.*

Weſtmorland] The name of the county muſt be in the margin, or repeated in the body of the caption. 2 *H. H.* 166.

At the general quarter ſeſſions of [*the peace*] The court where the indictment is made, muſt be expreſſed; otherwiſe the caption is erroneous. 1 *H. H.* 166. 2 *Haw.* 252.

Holden at Appleby *in and for the county aforeſaid*] It muſt appear where the ſeſſions was held; and that the place, where it was held, is within the extent of the commiſſion. 2 *H. H.* 166.

The ſeventh day of April *in the firſt year of the reign of our ſovereign lord* George *the third*] It hath been adjudged,

judged, that if the caption of the indictment deſcribe the ſeſſions holden in the time paſt, and not in the time preſent; or as holden on ſuch a day in ſuch a year of the king, without aſcertaining what king, it is inſufficient. But it ſeems to be agreed, that it is ſufficient to expreſs the year of the king, without adding that of our lord. 2 *Haw.* 255.

The ſeventh day] Figures to expreſs numbers are not allowable in an indictment; but numbers muſt be expreſſed in words. 2 *H. H.* 170. *Cr. Cir.* 109. *Andr.* 137. *H.* 11 *G.* 2. *K.* and *Haddock*. Or at leaſt in *Roman* numerals. *Str.* 261. *H.* 6 *G. K.* and *Philips*.

Before J. P. *and* K. P. *eſquires, and others their aſſociates*] It is not neceſſary to name all the juſtices, but only ſo many as are enabled to hold a ſeſſions, and the reſt may be ſupplied by the words *and others their aſſociates*. 2 H. H. 166.

And altho' no ſeſſions can be held without one of the juſtices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*, for it is ſufficient if *de facto* the ſeſſions be held before him or them that are of the *quorum*, altho' not ſo mentioned, and ſo is the uſual courſe. 2 *H. H.* 167.

And alſo to hear and determine, &c.] Theſe words are neceſſary, becauſe without this clauſe (by the commiſſion) they cannot proceed by indictment. 2 *H. H.* 166. *Str.* 442.

By the oath] If the caption concludes that *it is preſented* without ſaying *on their oath*, it ſhall be quaſhed; for their preſentment muſt be upon oath, and ſo returned. 2 *H. H.* 168.

By the oath of ———] It muſt name the jurors that preſented the offence; and therefore by the oath of *A. B. C. D.* and others, is not good; for it may be the preſentment was by a leſs number than 12, or that ſome one of them was incapacitated who might influence all the reſt, as for inſtance a perſon outlawed; in which caſe the indictment may be quaſhed by plea. 2 *H. H.* 167.

Good and lawful men of the county aforeſaid] Theſe words alſo, lord *Hale* ſaith, are neceſſary. 2 *H. H.* 167. But Mr. *Hawkins* ſays, they have been often over-ruled; becauſe all men ſhall be intended to be honeſt and lawful, till the contrary appear. 2 *Haw.* 215.

Sworn and charged to inquire for our ſaid lord the king, and for the body of the county aforeſaid.] Theſe words alſo

ſeem requiſite to be inſerted. 2 *H. H.* 1670 But yet do not ſeem to be abſolutely neceſſary. L. *Raym.* 710.

It is preſented; that John Armſtrong, *late of* Appleby *in the county aforeſaid, yeoman*] The name of the party indicted regularly ought to be inſerted, and inſerted truly in every indictment. 2 *H. H.* 175.

But the inhabitants of a pariſh, may be indicted for not repairing the highway, although no perſon is particularly named. *Wood b.* 4. *c.* 5.

It is ſaid that no perſon indicted can take any advantage of a miſtaken ſurname in the indictment, notwithſtanding ſuch ſurname hath no manner of affinity with its true one, and he was never known by it. 2 *Haw.* 230, 1, 2, 3. 2 *H. H.* 176.

But the miſtake of the chriſtian name is pleadable, and the party ſhall be diſmiſſed from that indictment. 2 *H. H.* 176.

But the ſafeſt way is to allow his plea of *miſnomer*, both as to his ſurname and as to his chriſtian name, for he that pleads *miſnomer* of either, muſt in the ſame plea ſet forth what his true name is, and then he concludes himſelf, and if the grand jury be not diſcharged, the indictment may preſently be amended by the grand jury, and returned according to the name he gives himſelf. 2 *H. H.* 176.

Alſo an indictment naming the defendant by two chriſtian names is not good. L. *Raym.* 562.

If the *county* is in the margin, and the indictment ſets forth the fact to be done at ſuch a place *in the county aforeſaid*, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at ſuch a place in the county aforeſaid, vitiates the indictment, becauſe two counties are named before, and therefore it is uncertain to which it refers. *Crown Cir.* 115, 116.

By the 1 *H.* 5. *c.* 5. In all indictments on which proceſs of outlawry lieth, to the names of the defendants *additions* ſhall be made of their eſtate, or degree, or miſtery, and of the towns, or hamlets, or places, and counties where they were or be converſant.

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he ſhall never alledge the *miſnomer* or want of addition to ſtop his trial or judgment; for by ſuch his appearance, and pleading

pleading to iſſue, the indictment is affirmed, and the *miſnomer* or want of addition ſalved. 2 *H. H.* 176.

And if ſeveral perſons be indicted for one offence, *miſnomer* or want of addition of one, quaſheth the indictment only againſt him, and the reſt ſhall be put to anſwer; for they are in law as ſeveral indictments. 2 *H. H.* 179.

And it is the common practice, where an indictment is inſufficient, while the grand jury is before the court, to amend it by their conſent, in a matter of form, as the name or addition of the party, or the like. 2 *Haw.* 245.

Not having god before his eyes, but being moved and ſeduced by the inſtigation of the devil] I do not find it aſſerted by any authority, that theſe words are neceſſary in an indictment.

On the thirtieth day of March *in the firſt year of the reign*, &c.] No indictment can be good, without preciſely ſhewing a certain *day* of the material facts alledged in it. 2 *Haw.* 235.

And if the offence be done in the night, before midnight, the indictment ſhall ſuppoſe it to be done in the day before; and if it happen after midnight, then it muſt ſay, it was done that day after. *Lamb.* 492.

And altho' the day be inſerted, yet if the *year* is not likewiſe inſerted, the indictment is inſufficient. 2 *H. H.* 177.

But where an indictment charges a man with a bare omiſſion, as the not ſcouring ſuch a ditch, it is ſaid, that it needs not ſhew at any time. 2 *Haw.* 236.

It is moſt regular to ſet forth the year, by ſhewing the year of the king; yet this may be diſpenſed with for ſpecial reaſons, if the very year be otherwiſe ſufficiently expreſſed. 2 *Haw.* 236.

And if it ſay, on ſuch a day laſt paſt, without ſhewing in what year, that is good enough; for the certainty may be found out by the ſtyle of the ſeſſions. *Lamb.* 491.

But tho' the day or year be miſtaken in the indictment, yet if the offence were committed in the ſame county, tho' at another time, the offender ought to be found guilty; but then it may be requiſite, if any eſcheat or forfeiture of land be conceived in the caſe, for the petit jury to find the true time of the offence committed; and therefore it is beſt in the indictments to ſet down the times as truly as can be, tho' it be not of abſolute neceſſity to the defendant's conviction. 2 *H. H.* 179.

And this the rather, becauſe the jury are to find the indictment upon their oaths. *Dalt. c.* 184.

Upon which ground, namely, becauſe the jury are ſworn to preſent the truth, it is beſt to lay all the facts in the indictment as near to the truth as may be; and not to ſay, in an indictment for a ſmall aſſault (for inſtance), wherein the perſon aſſaulted received little or no bodily hurt, that ſuch a one *with ſwords, ſtaves, and piſtols, beat, bruiſed, and wounded him, ſo that his life was greatly deſpaired of*; nor to ſay in an indictment for an highway being obſtructed, that the king's ſubjects cannot go thereon, *without manifeſt danger of their lives*; and the like. Which kind of words, as they are not at all neceſſary, ſo they may ſtagger an honeſt man upon his oath, to find the fact as ſo laid.

At the hour of nine in the afternoon of the ſame day.] It is not neceſſary to mention the *hour*, in an indictment. 2 *Haw.* 235.

With force and arms.] By the 37 *H.* 8. *c.* 8. it is enacted, that whereas it had been commonly uſed in indictments, to put in the ſame the words *vi & armis*, and in divers of the ſame indictments to declare the manner of the force and arms, *viz. baculis, cultellis, arcubus, & ſagittis*, or ſuch like, where in truth the parties had no manner of ſuch weapons at the time of the offence committed; therefore for the future, theſe words, or ſuch like, ſhall not of neceſſity be put in any inquiſition or indictment.

But yet where ſuch words are proper and pertinent, it is ſafe and adviſable to inſert them, if it be to no other purpoſe than to aggravate the offence. 2 *Haw.* 242.

At Appleby *aforeſaid, in the county aforeſaid*] No indictment can be good, without expreſly ſhewing ſome *place* wherein the offence was committed, which muſt appear to have been within the juriſdiction of the court. 2 *Haw.* 236.

But a miſtake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at ſome other place in the ſame county. 2 *Haw.* 237.

And it is not ſufficient that the county be expreſſed in the margent, but the vill where the offence was committed muſt be alledged to be in the county named in the margent, or, *in the county aforeſaid*, which ſeems to be ſufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 *Haw.* 220. 2 *H. H.* 180.

In and upon one George Harriſon] Wherever the perſon injured is known to the jurors, his name ought to be put in the indictment. 2 *Haw.* 232.

But if they know not his name, an indictment for the murder of a perſon unknown, or for ſtealing the goods of a perſon unknown, is good. 2 *H. H.* 181.

Alſo there is no need of an addition of the perſon upon whom the offence is committed, unleſs there be a plurality of perſons of the ſame name; neither then is it eſſential to the indictment, tho' ſometimes it may be convenient for diſtinction ſake to add it. 2 *H. H.* 182.

In the peace of god, and of our ſaid lord the king, then and there being] It is uſual to alledge this, but not neceſſary, and poſſibly not true, for he might be breaking the peace at the time. 2 *H. H.* 186.

The aforeſaid George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong] An indictment grounded upon an offence made by act of parliament, muſt by expreſs words bring the offence within the ſubſtantial deſcription made in the act of parliament; and thoſe circumſtances mentioned in the ſtatute to make up the offence, ſhall not be ſupplied by the general concluſion *againſt the form of the ſtatute.* 2 H. H. 170.

And ſo it is, if an act of parliament ouſt clergy in certain caſes, as murder *of malice forethought*, robbery *in or near the highway*, though the offences themſelves were at common law, yet becauſe at common law within clergy, they ſhall not be ouſted of clergy, though convicted, unleſs theſe circumſtances, as *of malice forethought*, or *near the highway*, be expreſſed in the indictment. 2 *H. H.* 170.

But there is no neceſſity in an indictment on a publick ſtatute, to recite ſuch ſtatute; for the judges are bound *ex officio* to take notice of all publick ſtatutes. 2 *Haw.* 245.

Yet if the proſecutor take upon him to recite it, and materially vary from a ſubſtantial part of the purveiw of the ſtatute, and conclude *againſt the form of the ſtatute aforeſaid*, he vitiates the indictment. 2 *Haw.* 246.

Alſo it ſeems to be generally agreed, that a miſrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 *Haw.* 246.

And it hath been adjudged, that a miſrecital of the title of a ſtatute is fatal. 2 *Haw.* 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the proviſoes of the

the ſtatute; although the ſame may be neceſſary in a *conviction*: for ſince no plea can be admitted to a conviction, and the defendant can have no remedy againſt it, but from an exception to ſome defect appearing in the face of it, and all the proceedings are in a ſummary manner, it is but reaſonable that ſuch a conviction ſhould have the higheſt certainty. 2 *Haw.* 250. 2 *H. H.* 170, 1.

Feloniouſly did make an aſſault] There are ſeveral words of art which the law hath appropriated for the deſcription of the offence, which no circumlocution will ſupply; as *feloniouſly*, in the indictment of any felony; *burglariouſly*, in an indictment of burglary; and the like. 2 *H. H.* 184.

And if a man be indicted that he *ſtole*, and it is not ſaid *feloniouſly*, this indictment imports but a treſpaſs. 2 *H. H.* 172.

With a certain drawn ſword] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poiſoning, or ſtrangling, it doth not maintain the indictment upon evidence. 2 *H. H.* 185.

Of the value of five ſhillings] Regularly it ought to ſet forth the price of the ſword or weapon, or elſe ſay of no value; for the weapon is a deodand forfeited to the king, and the townſhip ſhall be charged for the value, if delivered to them; but this ſeems not to be eſſential to the indictment. 2 *H. H.* 185.

Which he the ſaid John Armſtrong *in his right hand then and there had and held*] It muſt ſhew in what hand he held his ſword. 2 *H. H.* 185.

In and upon the right ſide of the belly near the ſhort ribs of him the ſaid George Harriſon] There muſt be a *certainty* of the offence committed, and nothing material ſhall be taken by intendment or implication; but the ſpecial manner of the whole fact ought to be ſet forth with certainty. 2 *Haw.* 225, 227.

And therefore in the caſe of murder, it ought to ſhew in what part of the body the perſon was wounded: and therefore if it be on his arm, or hand, or ſide, without ſaying whether right or left, it is not good. 2 *H. H.* 185.

If theft be alledged in any thing, the indictment muſt ſet forth the value of the thing ſtolen; that it may appear, whether it be grand or petty larceny. 2 *H. H.* 183.

In like manner, an indictment that the defendant took and carried away ſuch a perſon's goods and chattels, without

out ſhewing what in certain, as one horſe, one cow, is not good. 2 *H. H.* 182.

An indictment that the defendant is a common highwayman, a common defamer, a common diſturber of the peace, and the like, is not good; becauſe it is too general, and contains not the particular matter wherein the offence was committed. 2 *H. H.* 182.

In like manner an indictment for divers ſcandalous, threatning, and contemptuous words, ſpoken of a juſtice of the peace, is not good, but ought to ſet forth the words in ſpecial. *Str.* 699.

An indictment for diſobeying an order of juſtices, muſt find poſitively, that ſuch an order was made, and not by way of recital, *that whereas*——L. Raym. 1363.

But in an indictment on a conviction, it is not neceſſary to ſet forth the conviction at large, but only ſhortly, that ſuch a one was before ſuch and ſuch juſtices convicted, according to the form of the ſtatute, and thereupon a warrant was iſſued, *&c.* L. Raym. 1196.

Then and there feloniouſly did ſtab and thruſt] In an indictment it is beſt, and often neceſſary, to repeat the time and place, to the ſeveral parts of the fact. 2 *H. H.* 178.

Thus in an indictment of murder or manſlaughter, as well the day and place of the ſtroke, or other act done, as of the death, muſt be expreſſed; the former, becauſe the eſcheat or forfeiture of lands relates thereto; the latter, becauſe it muſt appear, that the death was within the year and day after the ſtroke. 2 *H. H.* 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to be ſhewed; but this is not neceſſary in all caſes, as namely, where a limb is cut off; ſo it may be alſo a dry blow. 2 *H. H.* 186.

But though the manner and place of the hurt and its nature be requiſite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is ſufficient to maintain the indictment. 2 *H. H.* 186.

Againſt the peace of our ſaid lord the now king] An indictment without concluding againſt the peace, is inſufficient, though it be but for uſing a trade not having been an apprentice; for every offence againſt a ſtatute is againſt the peace, and ought ſo to be laid. 2 *H. H.* 188.

Alſo

Alſo an indictment that concludes againſt the peace, and ſaith not *of our lord the king*, is inſufficient. 2 *H. H.* 188.

His crown and dignity] An indictment need not conclude *againſt his crown and dignity*, though it be uſual in many indictments. 2 *H. H.* 188.

And againſt the form of the ſtatute in ſuch caſe made and provided] Regularly, if a ſtatute only make an offence, or alter an offence from one crime to another, as making a bare miſdemeanor to become a felony, the indictment for ſuch new made offence, or new made felony, muſt conclude againſt the form of the ſtatute, or otherwiſe it is inſufficient. 2 *H. H.* 192.

But if a man be indicted for an offence, which was at common law, and concludes againſt the form of the ſtatute, but in truth it is not brought by the indictment within the ſtatute, it ſhall be quaſhed, and the party ſhall not be put to anſwer it as an offence at common law. 2 *H. H.* 171.

And if an offence were felony at common law, but a ſpecial act of parliament ouſts the offender of ſome benefit that the common law allowed him, when certain circumſtances are in the fact; though the body of ſuch indictment muſt expreſs thoſe circumſtances, according as they are preſcribed in the ſtatute, yet the indictment need not conclude againſt the form of the ſtatute: Thus on the ſtatute of the 8 *El. c.* 4. in caſe of pick-pockets, the body of the indictment muſt bring them within the expreſs purview of the ſtatute, or otherwiſe they ſhall have the benefit of clergy; but it need not conclude againſt the form of the ſtatute, neither is it uſual in ſuch caſes, for it was felony before, and the ſtatute doth not give a new puniſhment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it ſhould conclude in ſuch caſe againſt the form of the ſtatute, it would not vitiate the indictment, but would be only ſurpluſage. 2 *H. H.* 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another ſtatute, the indictment concluding againſt the form of the *ſtatute*, is good. 2 *H. H.* 173.

If the former ſtatute be diſcontinued, and revived by another ſtatute, the beſt way is to conclude againſt the form of the *ſtatutes*; though there is good opinion, that it is good enough to conclude againſt the form of the firſt ſtatute. 2 *H. H.* 173.

If one ſtatute be relative to another, as where the former makes the offence, the latter adds a penalty; the indict-

ment

ment ought to conclude againſt the form of the ſtatutes. 2 *H. H.* 173.

X. Charges of an indictment.

By the 10 & 11 *W. c.* 23. No clerk of aſſize, clerk of the peace, or other perſon, ſhall take any fee of any perſon bound over to give evidence againſt a traytor or felon, for the diſcharge of his recognizance; nor ſhall take more than 2*s.* for drawing any bill of indictment againſt any ſuch felon: on pain of 5*l.* to the party grieved, with full coſts. And if he draw a bill defective, he ſhall draw a new one *gratis*, on the like pain.

For the drawing of indictments for other miſdemeanors, not being treaſon or felony, no fee is limited by any ſtatute: and therefore the ſame dependeth upon the cuſtom and ancient uſage.

Condition of a recognizance to prefer a bill of indictment.

THE *condition of this recognizance is ſuch, That if the abovebound* A. I. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, and then and there prefer a bill of indictment againſt* A. O. *late of* ——— *yeoman, for the felonious taking and carrying away of* ——— *the property of* ——— *and ſhall then and there give evidence concerning the ſame, to the jurors who ſhall inquire thereof on the part of our ſaid lord the king: And in caſe the ſame be found a true bill, Then if the ſaid* A. I. *ſhall perſonally appear before the jurors who ſhall paſs upon the trial of the ſaid* A. O. *and give evidence upon the ſaid indictment, and not depart without leave of the court, Then this recognizance to be void.*

Condition of a recognizance to anſwer to an indictment.

THE *condition of this recognizance is ſuch, That if the abovebound* A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, then and there to anſwer to an indictment to be preferred againſt him by* A. I. *of* ——— *yeoman, for aſſaulting and beating him the ſaid* A. I. *and not depart without leave of the court, Then this recognizance to be void.*

Infants.

Infant, who.

1. BY an infant, or minor, is meant any one who is under the age of 21 years. 1 *Inſt.* 2.

Committing a crime under 14.

2. Thoſe who are under a natural diſability of diſtinguiſhing between good and evil, as infants under the age of 14 years, which is called the age of diſcretion, are not puniſhable by any criminal proſecution whatſoever. But this muſt be underſtood with ſome allowance; for if it appear by the circumſtances, that an infant under the age of diſcretion, could diſtinguiſh between good and evil, as if one of the age of nine or ten years, kill another and hide the body, or make excuſes, or hide himſelf, he may be convicted and condemned, and forfeit as much as if he were of full age: but in ſuch caſe, the judges will in prudence reſpite the execution, in order to get a pardon; and it is ſaid, that if an infant apparently wanting diſcretion, be indicted and found guilty of felony, the juſtices themſelves may diſmiſs him, without a pardon. And in general it muſt be left to the diſcretion of the judge, upon the circumſtances of the caſe, how far an infant, under that age, is *capax doli*, or hath knowledge to diſcern betwixt good and evil. *Hale's Pl.* 43. 1 *Haw.* 2. 1 *H. H.* 18.

Under ſeven.

3. But within ſeven years of age, there can be no guilt whatſoever of any capital offence: the infant may be chaſtized by his parents or tutors, but cannot be capitally puniſhed, becauſe he cannot be guilty; and if he be indicted for ſuch an offence as is in its nature capital, he muſt be acquitted. 1 *H. H.* 19, 20.

Committing a rape.

4. An infant under 14, is preſumed by law unable to commit a rape, and therefore it ſeems cannot be guilty of it; and though in other felonies *malitia ſupplet ætatem* in ſome caſes, yet it ſeems as to this fact the law preſumes him impotent, as well as wanting diſcretion. 1 *H. H.* 630.

Forcible entry.

5. An infant may be guilty of forcible entry, in reſpect of perſonal actual violence. 1 *Haw.* 147. And the juſtices may fine him therefore: But yet it ſhall be good diſcretion in the juſtices of the peace, to forbear the impriſonment of ſuch infant. *Dalt. c.* 126.

Becauſe it is ſaid, that he ſhall not be ſubject to corporal puniſhment, by force of the general words of any ſtatute, wherein he is not expreſly named. 1 *Haw.* 147.

Shall be liable to damages for treſpaſs.

6. But if one, who wants diſcretion, commit a treſpaſs, againſt the perſon or poſſeſſion of another, he ſhall nevertheleſs

theleſs be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2. 1 *H. H.* 15, 16.

7. An infant may bring an appeal, although it take from the defendant the benefit of waging battle; but he muſt proſecute ſuch appeal by a guardian. 2 *Haw.* 161, 162. May bring an appeal.

An Appeal likewiſe may be brought againſt him. 2 *Haw.* 168.

8. An infant under the age of diſcretion cannot be an approver; becauſe he cannot take the oath requiſite in that caſe. 2 *Haw.* 205. Cannot be an approver.

9. In caſe of rape, committed upon a child of 12 years old, ſuch child may be ſworn as evidence; yea if ſhe be under that age, if it appear to the court that ſhe knows and conſiders the obligation of an oath, ſhe may be ſworn. And in caſe of evidence againſt witches, an infant of nine years old was ſworn. 1 *H. H.* 634. *Dalt.* 378. How far he may be a witneſs.

10. An infant before 21 years of age, ſhall not be ſworn in an inqueſt. 7 *W. c.* 32. *ſ.* 4. 1 *Inſt.* 172. Whether he may be a juror.

11. A woman at 9 years of age may have dower; at 12 may conſent to marriage; and at 14 is of age of diſcretion, and may chuſe a guardian. 1 *Inſt.* 78. Woman's age of dower, marriage, and chuſing guardian.

12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of diſcretion, may conſent to marriage, and chuſe his guardian. 1 *Inſt.* 78. Man's age of allegiance, marriage, and chuſing guardian.

13. At 21, and not before, perſons may bind themſelves by any deed, and alien lands, goods, and chattels. 1 *Inſt.* 171. Cannot make a deed.

14. Upon which ground, infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their ſureties only. Nor enter into recognizance.

15. But an anfant may hind himſelf to pay for his neceſſary meat, drink, apparel, phyſick, and ſuch like; and alſo for his good teaching or inſtruction, whereby he may profit himſelf afterwards: but if he binds himſelf in an obligation, or other writing, with a penalty for the payment of any of theſe, that obligation ſhall not bind him. 1 *Inſt.* 172. May contract for neceſſaries.

And in *Earl's* caſe, 1 *Salk.* 387. it is ſaid, that an infant may buy neceſſaries, but cannot borrow money to buy; for he may miſapply the money, and therefore the law will not truſt him, but at the peril of the lender, who muſt lay it out for him, or ſee it laid out.

16. Alſo other things of neceſſity ſhall bind him, as a preſentation to a benefice; for otherwiſe the lapſe ſhall incur againſt him. 1 *Inſt.* 172. May preſent to a benefice.

May convey in a court of equity.

17. And infants ſeiſed of eſtates in truſt, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer ſhall direct. 7 *Ann. c.* 19.

May ſurrender in a court of equity.

18. And they may ſurrender leaſes in the courts of chancery or exchequer, in order to renew the ſame. 29 *G.* 2. *c.* 31.

May purchaſe.

19. Alſo, an infant hath, without conſent of any other, capacity to purchaſe, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cauſe to be alledged, waive, or diſagree to the purchaſe: and ſo may his heirs after him, if he agree not thereunto after his full age. 1 *Inſt.* 2.

May make a will.

20. The common law ſeems not to have determined preciſely, at what age one may make a teſtament of a perſonal eſtate: it is generally allowed, that it may be made at the age of 18, and ſome ſay under, for the common law will not prohibit the ſpiritual court in ſuch caſes. 1 *Inſt.* 89. 1 *H. H.* 17.

May be an executor.

21. A perſon is of age to be an executor at 17; and an adminiſtration of any one during the minority of an infant, ceaſeth when the infant comes to that age. 5 *Co. Pigot's* caſe. 1 *H. H.* 17.

May bequeath the tuition of his children.

22. Any perſon having child or children, under 21 years of age, and not married, may by deed or will atteſted by two witneſſes, diſpoſe of the cuſtody and tuition of ſuch child or children, until they ſhall be of the age of 21, or for a leſſer time; and this, whether ſuch parent be within or above the age of 21. 12 *C.* 2. *c.* 24. *ſ.* 8.

May ſue by prochein amy.

23. An infant cannot anſwer but by guardian; but he may ſue either by his next friend or by guardian. 3 *Salk.* 196.

In what caſe he may releaſe a debt.

24. If an infant of the age of 17 years releaſe a debt, this is void; but if an infant make the debtor his executor, this is a good releaſe in law of the action. 1 *Inſt.* 264.

At what age he may be bound apprentice.

25. By the 5 *El. c.* 4. Perſons above the age of 10 years, by their own conſent and agreement, may be bound apprentices.

And by the 5 *El. c.* 5. Any perſon, above ſeven years old, may be bound apprentice to the ſea ſervice.

By the 43 *El. c.* 2. No age is limited for the binding of pariſh apprentices; ſo that it ſeemeth they may be bound at the age of ſeven, when they ceaſe to be nurſe children, and conſequently may be taken from the mother.

Infant apprentice embezzling goods.

26. It ſhall be felony without benefit of clergy, to ſteal goods to the value of 40 *s.* out of an houſe, though the houſe be not broken open; but this ſhall not extend to apprentices under 15 years of age. 12 *An. ſt.* 1. *c.* 7.

27. Servants above the age of 18, embezilling their master's goods to the value of 40 *s.* ſhall be puniſhed as felons. 21 *H.* 8. *c.* 7. Infant ſervant embezilling goods.

Information.

1. INformations are of two kinds; 1. Such as are merely at the ſuit of the king: And, 2. Such as are partly the ſuit of the king, and partly the ſuit of the party; which are commonly called informations *qui tam*, from thoſe words in the information when the proceedings were in *latin*, *qui tam pro domino rege quam pro ſeipſo*, &c. 2 Haw. 259. Information at the ſuit of the king. At the ſuit of the party.

2. Of near affinity to an information *qui tam*, is an action upon a ſtatute: which is either a *private* action, which is, when an action is given upon a ſtatute to the king, and to the *party grieved* only; or, a *popular* action, which is, where the action is given to the king, or to any one that will ſue for the king and himſelf. *Wood b.* 4. *c.* 4. Private action upon a ſtatute. Action popular.

3. But if the king commenceth his ſuit before the informer, the king ſhall have the whole forfeiture (becauſe in ſuch caſe he alſo is the informer); and he may, before the informer begins his ſuit, releaſe the penalty to the offender, and bar all others; but if, after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult proſequi*, the informer may proſecute for his part. *Wood b.* 4. *c.* 4. In what caſe the king may have the whole penalty.

4. Where a matter concerns the publick government, and no particular perſon is intitled to an action, there an information will lie. 18 *El. c.* 5. *ſ.* 1. 1 *Salk.* 374. In what caſes an information will lie.

5. An information lies, at the *common law*, for a great variety of crimes leſs than capital, as batteries, cheats, perjuries, riots, extortions, nuſances, contempts, and ſuch like; and alſo it lies in very many caſes by *ſtatute*, wherein the offender is liable to a fine or other penalty. *Finch* 340. 2 *Haw.* 260.

6. And in general, it ſeems that of common right an information *at the ſuit of the king*, or an action in the nature thereof, may be brought for offences againſt ſtatutes, whether they be mentioned by ſuch ſtatutes or not, unleſs other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Haw.* 260.

7. But an information or action *qui tam* will not lie on any ſtatute, which prohibits a thing as being an immediate offence againſt the publick good in general, under a cer-

tain penalty, unleſs the whole or part of ſuch penalty be expreſly given to him who will ſue for it; becauſe otherwiſe it goes to the king, and nothing can be demanded by the party: But where ſuch ſtatute gives any part of ſuch penalty to him who will ſue for it by action or information, any one may bring ſuch action or information, and lay his demand *as well for our lord the king, as for himſelf.* 2 Haw. 265.

8. Alſo where a ſtatute prohibits or commands a thing, the doing or omiſſion whereof is an immediate danger to the party, and alſo highly concerns the peace, ſafety, or good government of the publick, or the honour of the king, or of his ſupreme courts of juſtice, it ſeems to be the general opinion, that the party grieved may bring his action *qui tam* on ſuch ſtatute. 2 *Haw.* 265.

In what time it ſhall be brought.

9. By the 31 El. c. 5. *All actions, ſuits, bills, indictments, or informations on any penal ſtatute, whereby the forfeiture is limited to the king, ſhall be brought within two years after the offence committed; if limited to the king, and to any other who ſhall proſecute, then within one year; and in default of ſuch proſecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by ſtatute to be brought within ſhorter time, then they ſhall be brought within ſuch time limited.* ſ. 5, 6.

On any penal ſtatute] But if an offence prohibited by a penal ſtatute, be alſo an offence at common law; the proſecution of it, as of an offence at common law, is no way reſtrained hereby. 2 *Haw.* 272.

To any other who ſhall proſecute] That is, to a common informer; and therefore the *party grieved* is not within the reſtraint of this ſtatute, but may ſue in the ſame manner as before. 2 *Haw.* 272.

Two informations on the ſame day.

10. If two informations be exhibited on the ſame day, for the ſame offence, they mutually abate one another. 2 *Haw.* 275.

In what county it ſhall be laid.

11. By the 21 J. c. 4. *All offences againſt any penal ſtatute, for which any common informer may ground a popular action, bill, plaint, ſuit, or information, before the judges of aſſize, or juſtices of the peace in their general or quarter ſeſſions (having power to hear and determine the ſame), ſhall be proſecuted in the county where they were committed, and not elſewhere: and if the offence is not proved to have been committed in the ſame county, the defendant ſhall be found not guilty.* ſ. 1, 2.

Provided, that informations, ſuits, or actions, againſt popiſh recuſants, or perſons charged with maintenance, champerty, or buying of titles, may be laid in any county. ſ. 5.

Againſt

Againſt any penal ſtatute] *H.* 8 *W. K.* and *Gaul. Holt* Ch. J. ſaid, ten judges had agreed that this ſtatute doth not extend to any offence created ſince; ſo that proſecutions on ſubſequent penal ſtatutes are not reſtrained thereby; but this ſtatute is as to them, as it were, repealed *pro tanto*. 1 Salk. 372.

For which any common informer may ground a popular action] Therefore this extends not to any ſuit by a party grieved, or by the attorney general; but only to thoſe brought by common informers. 2 *Haw.* 269, 270.

General or quarter ſeſſions, having power to hear and determine the ſame] Yet this gives no juriſdiction to juſtices of peace, which they had not before; but only appoints, that where informations might have been brought in the courts at *Weſtminſter* or before juſtices of the peace, ſuch informations ſhall be now brought before juſtices of the peace only. *Cro. Car.* 112.

In the county where they were committed] *H.* 7 *G. Smith* and *Potter*. In the king's bench. In a *qui tam* on the 5 *Eliz.* for exerciſing a trade, without an apprenticeſhip, it was moved to ſtay the proceedings, becauſe the nominal plaintiff had releaſed, and the fact was laid at *Cambridge*, whereas the juriſdiction of the king's bench is at laſt ſettled to be reſtrained by the 21 *J. c.* 4. to actions ariſing in the county where the king's bench ſits, ſo that if they were to go on to trial, the plaintiff could have no effect of his ſuit. And of this opinion was the court, and they made a rule that proceedings ſhould be ſtayed. *Str.* 415.

And not elſewhere] But where a ſubſequent ſtatute gives a remedy for the recovery of a penalty in any court of record generally, it ſo far impliedly repeals this reſtraint, and conſequently leaves the informer at his liberty to ſue in the courts at Weſtminſter. 2 *Haw.* 270.

Alſo, where a ſtatute limits ſuits by an informer *qui tam*, to other courts than thoſe of *Weſtminſter hall*; yet any one may, by conſtruction of law, exhibit an information in the exchequer, for the whole penalty, for the uſe of the king. 2 *Haw.* 268.

12. If juriſdiction be given to the ſeſſions to hear and determine, and it is not ſaid by information; this ſhall be by indictment, and not information. *Cro. Car.* 112. Seſſions hath not power without expreſs words.

13. By the 18 El. c. 5. *Upon every information which ſhall be exhibited by a* (common) *informer, except for maintenance, champerty, buying of titles, or embracery; a note ſhall be made of the day, month, and year of the exhibiting thereof*; Time of exhibiting the information to be entred.

thereof; and it ſhall be taken to be of record from that time forward, and not before: and no proceſs ſhall be iſſued on ſuch information, till it be exhibited in form aforeſaid. ſ. 1.

Oath to be made on exhibiting the information.

14. And by the 21 J. c. 4. *No officer ſhall enter any information, bill or plaint, count or declaration, till the informer hath made oath before ſome of the judges of the court, that the offence was not committed in any other county, and that he believeth in his conſcience, that the offence was committed within a year before the information or ſuit; the oath to be there entered of record.* ſ. 3.

Recognizance to be given.

15. And, in the court of king's bench, *the clerk of the crown ſhall not (except by order of court) exhibit or receive any information in the name of the maſter of the crown office, for treſpaſſes, batteries, or other miſdemeanors, or iſſue any proceſs thereupon, before he ſhall have taken, or ſhall have delivered to him, a recognizance from the proſecutor, with his place of abode, title, or profeſſion, to be entred,—to the perſon againſt whom the information is exhibited, in the penalty of* 20l. *that he will effectually proſecute ſuch information, and abide by and obſerve ſuch orders as the ſaid court ſhall direct; which recognizance the ſaid clerk of the crown, and alſo every juſtice of the peace where the cauſe of ſuch information ſhall ariſe, are empowered to take; after the taking or receipt whereof, he ſhall make an entry thereof upon record, and ſhall file a memorandum thereof in ſome publick place in his office, to which all perſons may reſort without fee.* 21 J. c. 4. ſ. 2, 6.

In the name of the maſter of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 *Haw.* 262.

Rule to ſhew cauſe.

16. And the general practice of the court of king's bench is, not to order an information to be filed, without firſt making a rule upon the defendant to ſhew cauſe to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of ſome offence of an enormous kind, or dangerous tendency. The defendant muſt be perſonally ſerved with the rule, and if he do not at the day given for that purpoſe ſatisfy the court by affidavits, that the ſubſtance of the charge is falſe or frivolous, or other reaſonable cauſe againſt the proſecution, the court uſually grants the information. *Barl.* Inform.

Proceſs on an information.

17. By the 21 J. c. 4. *The like proceſs ſhall be awarded, upon an information by a common informer, as in an action of treſpaſs* vi & armis *at the common law.* ſ. 1.

And

And conſequently, the proceſs in all ſuch ſuits muſt be by attachment, or *pone per vadios*, and after by diſtreſs infinite, where by the return the party appears to be ſufficient, otherwiſe by *capias*. 2 Haw. 284.

Proceſs to be indorſed.

18. And *on every proceſs upon an information by a common informer, ſhall be indorſed as well the party's name that purſueth the proceſs, as alſo the ſtatute upon which the information is grounded.* 18 El. c. 5. ſ. 1.

Proceſs on a criminal information.

19. But on a *criminal* information, it is the uſual practice of the crown office, firſt, to award a *ſubpœna*; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the ſervice of the *ſubpœna*, to make out a *capias* of courſe, where the defendants are informed againſt in their private capacity, and a *diſtringas*, where they are ſued as a corporation aggregate. 2 *Haw.* 284.

General iſſue.

20. *If any information, ſuit, or action, ſhall be brought againſt any perſon on a penal ſtatute, the defendant may plead the general iſſue, and give the ſpecial matter in evidence.* 21 J. c. 4. ſ. 4.

Information not quaſhed upon motion.

21. The court will not generally quaſh an information upon motion, but the party muſt either plead, demur, or move in arreſt of judgment. 1 *Salk.* 372. *Str.* 185, 953.

Certainty required in an information.

22. But ſeeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not ſo found, but is only the allegation of the officer or perſon who exhibits it; whatſoever certainty is required in an indictment, the ſame at leaſt is neceſſary alſo in an information; and conſequently as all the material parts of the crime muſt be preciſely found in the one, ſo muſt they be preciſely alledged in the other, and not by way of argument or recital. 2 *Haw.* 260, 1.

Not aided by the ſtatutes of jeofails.

23. And therefore the ſtatutes of jeofails (from *J' ay faillé*, I have failed), or the ſtatutes that do remedy overſights in pleading, extend not to informations. *Wood b.* 4. *c.* 4.

Information good as to part.

24. If an information contain ſeveral offences againſt a ſtatute, and be well laid as to ſome of them, but defective as to the reſt, the informer may have judgment for ſo much as is well laid. 2 *Haw.* 266.

Coſts againſt the plaintiff.

25. Generally, *if a* (common) *informer ſhall willingly delay his ſuit, or diſcontinue, or be nonſuit, or ſhall have a verdict or judgment againſt him, he ſhall pay coſts to the defendant.* 18 El. c. 5. ſ. 3.

And in the court of king's bench particularly, *if the defendant ſhall appear and plead to iſſue, and the proſecutor ſhall not at his own coſts, within a year after iſſue joined, procure the ſame to be tried, or if a verdict paſſes for the defendant, or the informer procure a* noli proſequi *to be entred, the ſaid court of king's bench may award the defendant his coſts, unleſs the judge ſhall certify that there was a reaſonable cauſe for exhibiting ſuch information. And if the informer ſhall not, in three months after ſuch coſts taxed, and demand made, pay the ſame, the defendant ſhall have the benefit of the recognizance abovementioned, to compel him thereunto.* 4 & 5 W. c. 18. ſ. 2.

Unleſs the judge ſhall certify] *E.* 13 *G.* 2. *K.* and *Woodfall.* Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for coſts on this ſtatute, which provides, that in caſes where the defendant is acquitted, the court is authorized to award coſts to the defendant, unleſs the judge ſhall at the trial certify there was a reaſonable cauſe. In this caſe, no ſuch certificate was aſked; but it was inſiſted on for the proſecutor, that it was diſcretionary in the court. The chief juſtice certified *ore tenus*, that it was a verdict againſt evidence; but then he and all the others held, that it was now too late to inquire into the probable cauſe; and that it was not diſcretionary, but compulſory upon them, where there was no certificate. So the defendant had his coſts. *Str.* 1131.

Coſts againſt the defendant.

26. But it ſeems to be in a great meaſure ſettled, that an *informer* upon a popular ſtatute ſhall in no caſe whatſoever have his coſts, unleſs they be expreſly given him by ſuch ſtatute; for it is certain, that he cannot recover them by the common law, for that doth not give coſts in any caſe: neither can he recover them by the ſtatute of *Glouceſter*, which gives the demandant his coſts in all caſes wherein he ſhall recover his damages; for this ſeems to ſuppoſe ſome damage to have been done to the demandant in particular, which cannot be ſaid in any popular action. But it ſeems agreed, that an action on a ſtatute *by the party grieved*, for a certain penalty given by ſuch ſtatute, is within the ſtatute of *Glouceſter*, becauſe ſuch penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of coſts, it would be in moſt caſes in vain for him to ſue for it, ſince the coſts of ſuit would exceed it. But it is ſaid, that no coſts ſhall be recovered in an action

action on a ſtatute, which gives no *certain* penalty to the party grieved, but only his *damages* in general, if ſuch a ſtatute be introductive of a new law, and give a remedy in a point not remediable at the common law; but there is not that inconvenience in this caſe, as in the former; becauſe no certain ſum being ſpecified, the jury may give the plaintiff a full ſatisfaction by way of damages. 2 *Haw.* 274.

27. *No* (common) *informer ſhall compound or agree with the defendant, but after anſwer made in court, nor after anſwer, but by the order or conſent of the court; on pain of being ſet in the pillory, in ſome market town next adjoining, in open market, for two hours, and of being diſabled to be informer on any penal ſtatute, and alſo of forfeiting* 10l. *half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all offences againſt this act.* 18 El. c. 5. ſ. 4. Informer compounding.

28. *And if the defendant plead a recovery by a former action, which former action ſhall be found to have been colluſive; the plaintiff ſhall recover, as tho' no ſuch action before had been had: and if the defendant ſhall be convicted of ſuch colluſion, he ſhall be impriſoned two years, by proceſs of* capias *and outlawry, and that as well at the king's ſuit, as of every other that will ſue.* 4 H. 7. c. 20. Colluſive action.

And no releaſe of any common perſon, to any ſuch party, whether before or after any action popular, or indictment of the ſame commenced or made, hanging the ſame action, ſhall be available to ſurceaſe the ſaid action, indictment, proceſs, or execution. id.

Form of an information *qui tam.*

Weſtmorland. BE *it remembred, that* A. I. *of——in the county of——gentleman, who as well for our lord the now king, as for himſelf doth proſecute, cometh before the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at their general quarter ſeſſions of the peace holden at——in and for the ſaid county, the——day of——in the——year of the reign of——in his proper perſon; and as well for the ſame lord the king, as for himſelf, giveth the court here to underſtand and be informed, That* A. O. *late of——in the county aforeſaid, yeoman, on the——day of——in the year aforeſaid, at——aforeſaid, in the county aforeſaid, not regarding the laws and ſtatutes of our ſaid lord the king, but*

but intending to——with force and arms [Here inſert the offence with the ſame preciſion as in an indictment] *againſt the form of the ſtatute in that caſe made and provided: Whereupon the aforeſaid* A. I. *as well for the ſaid lord the king, as for himſelf, prayeth the advice of this court in the premiſſes; and that the aforeſaid* A. O. *may forfeit the ſum of——according to the form of the ſtatute aforeſaid; and that he the ſame* A. I. *may have one moiety thereof, according to the form of the ſtatute aforeſaid; and alſo that the aforeſaid* A. O. *may come here into this court, to anſwer concerning the premiſſes; and there are pledges of proſecuting,* John Doe *and* Richard Roe. *And hereupon it is commanded to the ſaid* A. O. *that all other things omitted, and all excuſes laid aſide, he be in his proper perſon at the next general quarter ſeſſions of the peace to be holden for the ſaid county, to anſwer as well to our ſaid lord the king, as to the ſaid* A. I. *who as well for the ſaid lord the king, as for himſelf, doth proſecute, of and concerning the premiſſes, and further to do and receive what the ſaid court ſhall conſider in this behalf.*

Ingroſſing. See **Foreſtalling.**
Inmates. See **Cottages.**
Inns, Innkeepers. See **Alehouſes.**
Inſolvent debtors. See **Debtors.**

Inrollment.

NO manors, lands, tenements, or hereditaments, ſhall paſs from one to another, whereby any eſtate of inheritance or freehold ſhall be made or take any effect in any perſon, or any uſe thereof to be made by reaſon only of any bargain and ſale thereof, except the ſame bargain and ſale be made by writing indented, ſealed, and inrolled in one of the king's courts of record at *Weſtminſter*; or elſe within the county where the lands lie, before the *cuſtos rotulorum*, and two juſtices, and the clerk of the peace, or two of them at the leaſt, whereof the clerk of the peace to be one: The ſame inrollment to be made in ſix months after date of the writings: Paying, where the land exceeds not 40*s.* a year, 2*s.* to wit, 12*d.* to the juſtices, and 12*d.* to the clerk; and where it exceeds 40*s.* a year, then paying 5*s.* half to the juſtices, and half to the clerk: And the clerk

clerk of the peace ſhall inroll and ingroſs the ſame in parchment: The ſame to be kept amongſt the records of the county. 27 *H.* 8. *c.* 16.

In the counties of *Lancaſter*, *Cheſter*, and *Durham*, they may be inrolled in the reſpective courts there, or at the aſſizes. 5 *El. c.* 26.

The inrolling of deeds and wills of papiſts, belongs to title Popery.

Journeymen. See Servants, and Apprentices.

Iſſues. See Eſtreats, Juroys.

Judgment.

1. OF judgments, ſome are fixed and ſtated; as in caſes of treaſon, felony, præmunire, and miſpriſions; the particular forms of which may be ſeen under their reſpective titles. Judgments certain.

2. Others are diſcretionary and variable, according to the different circumſtances of each caſe; Thus for crimes of an infamous nature, ſuch as petit larceny, perjury, or forgery at common law, groſs cheats, conſpiracy not requiring a villainous judgment, keeping a bawdy houſe, bribing witneſſes to ſtifle their evidence, and other offences of the like nature; it ſeems to be in a great meaſure left to the prudence of the court to inflict ſuch corporal puniſhment, and alſo ſuch fine, and binding to the good behaviour for a certain time, as ſhall ſeem moſt proper and adequate to the offence. 1 *Haw.* 445. Judgments variable.

3. The court may aſſeſs a fine, but cannot award any corporal puniſhment againſt a defendant, unleſs he be actually preſent in court. 2 *Haw.* 446. Judgment in the offender's abſence.

4. Where there are ſeveral defendants, a joint award of one fine againſt them all, is erroneous; for it ought to be ſeveral againſt each defendant; for otherwiſe, one who hath paid his proportionab e part, might be continued in priſon till all the others have alſo paid theirs, which would be in effect to puniſh him for the offence of another. 2 *Haw.* 446. Judgment of a joint fine.

5. A fine is under the power of the court, during the term in which it is ſet; and may be mitigated as ſhall be thought Judgment in mitigation of fines.

thought proper: but after the term, it admits of no alteration. 2 *Haw.* 446.

Judgment againſt the verdict.

6. A judgment contrary to the verdict, is void. *Read.* Judgm.

Judgment by particular ſtatutes.

7. By many ſtatutes, peculiar puniſhments are appointed for ſeveral offences, as pillory, ſtocks, impriſonment and the like; and in all theſe caſes, no room is left for the juſtices diſcretion, for they ought to give judgment, and to inflict the puniſhment in all the circumſtances thereof, as ſuch ſtatutes do direct. *Dalt. c.* 188.

Jurors.

NOTE; The ſtatutes of the 4 & 5 *W. c.* 24. and 7 & 8 *W. c.* 32. hereafter following, were at firſt but temporary; but are referred to, and as it were adopted by the 3 *G.* 2. *c.* 25. Which act of the 3 *G.* 2. *c.* 25. is made perpetual by the 6 *G.* 2. *c.* 37. And all the ſaid three acts of 4 & 5 *W.* 7 & 8 *W.* and 3 *G.* 2. are required to be read at every *Midſummer* ſeſſions.

Trial by juries is the *Engliſhman*'s birth right, and is that happy way of trial, which notwithſtanding all revolutions of times, hath been continued beyond all memory to this preſent day; the beginning whereof no hiſtory ſpecifies, it being contemporary with the foundation of this ſtate, and one of the pillars of it, both as to age and conſequence. *Tr. p. pais* 3. *Dalt. c.* 186.

Concerning which, I will treat in the order following:

I. Who may or may not be jurors.
II. Of making and returning liſts of jurors.
III. Of the ſheriff's ſummoning and returning jurors.
IV. Of the challenge of jurors.
V. Of the demeanor of jurors in giving their verdict.
VI. Of the indemnity and puniſhment of jurors.

I. Who may or may not be jurors.

Qualification of grand jurymen.

1. Mr. *Hawkins* ſays, it doth not ſeem to be any where holden, that none but freeholders ought to be returned on a grand jury. 2 *Haw.* 216, 217.

But in another place he ſays, that by the common law, every grand juryman ought to be a freeman. 1 *Haw.* 215.

And L. *Hale* ſays, touching the yearly value of the eſtate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 *H. H.* 155.

But in *Yorkſhire*, they are to have 80 *l.* a year, freehold or copyhold. 7 & 8 *W.* *c.* 32. *ſ.* 8.

Alſo a grand juryman muſt be a lawful liege ſubject; and conſequently, neither under an attainder of any treaſon or felony, nor an alien, nor outlawed, whether for a criminal matter, or as ſome ſay, in a perſonal action; and from hence it ſeems, that any one who is under a proſecution for any crime, may by the common law, before he is indicted, challenge any of the perſons returned on the grand jury, for the defect of any of the qualifications aboveſaid. 1 *Haw.* 215.

Jurymen in the courts at Weſtminſter.

2. In the courts at *Weſtminſter*, and city of *London*, the jurors ſhall be houſholders within the city, and have lands, tenements, or perſonal eſtate, to the value of 100 l. 3 *G.* 2. *c.* 25. *ſ.* 19, 20.

And by the 4 *G.* 2. *c.* 7. *ſ.* 3. Leaſeholders in the county of *Middleſex*, where the improved rents amount to 50 *l.* a year, ſhall be liable to ſerve on juries.

At the aſſizes or ſeſſions.

3. At the aſſizes or ſeſſions in the country, every juror, other than ſtrangers *per medietatem linguæ* in *England*, ſhall have in his own name, or in truſt for him, within the county, 10 *l.* a year, and in *Wales* 6 *l.* a year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail, or for the life of themſelves, or ſome other perſon: and if any of a leſſer eſtate be returned, he may be diſcharged upon challenge, or on his own oath. 4 & 5 *W.* *c.* 24. *ſ.* 15. 3 *G.* 2. *c.* 25. *ſ.* 20.

And by the 3 *G.* 2. *c.* 25. *ſ.* 18. Perſons having an eſtate in poſſeſſion in land in their own right, of 20 *l.* a year above the reſerved rent, being held by leaſe for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, ſhall be liable to ſerve on juries.

From

From hence it appears, that lands *freehold*, *copyhold*, *antient demeſne*, or *leaſehold*, do render perſons liable to ſerve on juries. And ſome have thought that all lands are included under theſe denominations. And in *Coke's copyholder*, *p.* 14. it is ſaid, that what land ſoever is not copyhold, is freehold. And in *Calthr.* 41. it is ſaid, that copyhold lands may differ in name, but not in nature; for although copyhold lands be ſpecially ſo called, becauſe holden by copy of court roll, and cuſtomary lands by ſome ſpecial cuſtom; yet they are all holden in one general kind, that is, by cuſtom, and the diverſity of their names doth not alter the nature of their tenure. Nevertheleſs, although all copyhold lands are cuſtomary, yet all cuſtomary lands are not copyhold, and conſequently, as ſuch, do not qualify a man to ſerve on juries. Of which kind of cuſtomary lands, not being copyhold, the greater part of the county of *Weſtmorland* in particular doth conſiſt. For which cauſe (and by reaſon of the number of perſons diſqualified by being quakers) the jurors in that county are in compariſon but few. To remedy which inconvenience, it ſeemeth not unreaſonable, that in the ſtatutes limiting the qualification of jurors, amongſt other denominations of tenure, the word *cuſtomary* ſhould be inſerted; for why ſhould a copyholder of 10*l.* a year be obliged to ſerve, and a cuſtomary tenant of 100*l.* a year be exempted?

Jurors on trials of foreigners.

4. As to the ſtrangers *per medietatem linguæ* abovementioned, it is enacted by the 28 *Ed.* 3. *c.* 13. that in inqueſts to be taken amongſt aliens and denizens, before any judges, one half of the inqueſt ſhall be denizens, and the other half aliens, if ſo many there be in the place who are not parties; if not, then ſo many as there are.

And by the 27 *Ed.* 3. *ſt.* 2. *c.* 8. Before the mayor of the ſtaple, if both parties be ſtrangers, the inqueſts ſhall be taken by ſtrangers; if both be denizens, by denizens; if one party be denizen, and the other alien, half of the jury ſhall be denizens, and half aliens.

And theſe aliens need not have any qualification by their eſtate. 8 *H.* 6. *c.* 29.

But it ſeems that the *Engliſh* half of the jury ought to have eſtates of the ſame value as in other caſes. 2 *Haw.* 419.

But by the 13 & 14 *C.* 2. *c.* 11. *ſ.* 11. In actions concerning tonnage and poundage, or ſhips or goods to be forfeited by reaſon of unlawful importation or exportation, there ſhall not be any party jury, but ſuch only as are natural born ſubjects.

5. In

5. In towns corporate: Trials of felons ſhall be by men worth 40 *l.* in goods, though they have no freehold. 23 *H.* 8. *c.* 13. Jurors in towns corporate.

And in 3 *Salk.* 81. it is ſaid, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the ſtatutes which require jurors to be of ſuch and ſuch ſufficiency, do generally exempt cities, boroughs, and towns corporate.

6. In the torn: Jurors ſhall have 20*s.* a year freehold; or 26*s.* 8*d.* copyhold. 1 *R.* 3. *c.* 4. In the torn.

7. In the leet: It is ſaid by ſome books, that any perſon happening to be preſent at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the ſteward to be ſworn, whether he be reſident within the precincts of the leet, or not: by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Haw.* 69. In the leet.

8. The coroner's jury, upon inqueſts taken before him, are to be of the neighbouring towns; but no qualification by eſtate is required by any ſtatute. 2 *H. H.* 152. On the coroner's inqueſt.

9. Jurors to inquire of the concealments of other inqueſts, ſhall have lands of 40*s.* a year. 3 *H.* 7. *c.* 1. On other jurors concealing preſentments.

10. Jurors to inquire of forcible entry or detainer, ſhall have lands or tenements of 40*s.* a year. 8 *H.* 6. *c.* 9. On inquiries of forcible entry.

11. Jurors to inquire of riots, ſhall have 20*s.* a year, charter land, or freehold; or 26*s.* 8*d.* copyhold. 19 *H.* 7. *c.* 13. On inquiries of riots.

12. In *Yorkſhire:* No perſon having 150*l.* a year, of ſuch eſtate as will qualify him to ſerve on juries, ſhall be ſummoned to the ſeſſions; but only perſons leſs able to bear the expence of attending the aſſizes. 1 *An. ſt.* 2. *c.* 13. *ſ.* 3. And if he doth ſerve at the ſeſſions, it ſhall not ſatisfy his turn, but he ſhall attend the aſſizes nevertheleſs. 10 *An. c.* 14. *ſ.* 6. In Yorkſhire.

13. Young men, under 21 years of age, ſhall not ſerve upon juries. 7 *W. c.* 32. *ſ.* 4. Perſons under age.

14. Old men above 70, perſons continually ſick, or being diſeaſed at the time of the ſummons, or not dwelling in the county, ſhall not be put in juries of petit aſſizes; on pain of the ſheriff paying damages to the party grieved, and being amerced to the king. 13 *Ed.* 1. *ſt.* 1. *c.* 38. Perſons above age, infirm, abſent.

And the equity of this ſtatute, and alſo the reaſon of the thing, ſeem plainly ſo far to extend to grand juries, that if it ſhall appear, that any of the perſons abovementioned be returned on a grand jury, the court will eaſily

excuſe

excuſe their non-appearance. But it ſeems clear, that any ſuch perſons being returned on a grand jury, may lawfully ſerve upon it if they think fit. 2 *Haw.* 216.

In what caſe women ſhall be jurors.

15. The jury ought to be men; yet there ſhall be a jury of women, to try if a woman be enſient, upon the writ *de ventre inſpiciendo*. Tr. p. pais 86.

Apothecaries exempted.

16. Apothecaries, within *London* and ſeven miles thereof, being free of the company; and country apothecaries, who have ſerved ſeven years apprenticeſhip,—ſhall be exempted from ſerving on juries, and their return ſhall be void, unleſs they ſhall voluntarily conſent to ſerve. 6 & 7 *W. c.* 4.

Clergymen.

17. Clergymen cannot be impanelled upon juries. *Lamb.* 396.

Diſſenting teachers.

18. Diſſenting teachers, qualified under the toleration act, are exempted from ſerving on juries. 1 *W. c.* 18. *ſ.* 11.

Quakers.

19. Alſo quakers. 7 & 8 *W. c.* 34. *ſ.* 6.

Writs of exemption.

20. By the 4 & 5 *W. c.* 24. *ſ.* 21. No writ *de non ponendis in aſſiſis & juratis*, ſhall be granted, unleſs upon oath made, that the ſuggeſtions upon which it is granted, are true.

And the jurors ought to come in perſon and claim their privilege; for the ſheriff cannot return it. *Tr. p. pais* 87.

II. Of making and returning liſts of jurors.

Precepts to the high and petty conſtables.

1. The juſtices at *Midſummer* ſeſſions, ſhall iſſue forth their warrants (A) under the hands and ſeals of two or more of them, to the high conſtables, requiring them to iſſue forth their precept to the petty conſtables, thereby directing and requiring them to make and return true liſts in writing, of the names and places of abode, of all perſons within their reſpective conſtablewicks, qualified to ſerve on juries, with their titles and additions, between the ages of 21 and 70. High conſtable failing to iſſue his precept, ſhall forfeit 10 *l.* on conviction at the aſſizes or ſeſſions. 7 & 8 *W. c.* 32. *ſ.* 4. 8 & 9 *W. c.* 10. 3 & 4 *An. c.* 18. *ſ.* 5.

Petty conſtables may inſpect the rates.

2. The petty conſtables, on requeſt to any pariſh officer who ſhall have in his cuſtody any of the rates for the poor or land tax, ſhall have free liberty to inſpect ſuch rates, and take from thence the names of freeholders, copyholders, or other perſons qualified to ſerve on juries, dwelling within their reſpective precincts. 3 *G.* 2. *c.* 25. *ſ.* 1.

Liſts to be put up on the church door.

3. And ſhall yearly, 20 days at leaſt before *Michaelmas*, upon two or more *ſundays*, fix on the door of the church, chapel, and every other publick place of religious worſhip, an exact liſt of perſons intended to be returned; and ſhall leave

leave at the ſame time a duplicate thereof, with a churchwarden or overſeer, to be peruſed by the pariſhioners without fee, to the end that notice may be given of perſons qualified who are omitted, or of perſons inſerted by miſtake who ought to be omitted. 3 *G.* 2. *c.* 25. *ſ.* 1.

4. And if ſuch petty conſtable ſhall wilfully omit any perſon who ought to be inſerted, or inſert any one who ought to be omitted, or ſhall take any reward for omitting or inſerting any perſon; he ſhall forfeit 20*s.* on conviction before one juſtice, on confeſſion, or oath of one witneſs; half to the informer, and half to the poor of the pariſh or place, for which the liſt is returned: if not paid in five days, to be levied by diſtreſs. And ſuch juſtice ſhall, in writing under his hand, certify the ſame to the next ſeſſions; who ſhall direct the clerk of the peace to inſert or ſtrike out the name of ſuch perſon ſo inſerted or omitted wrongfully. 3 *G.* 2. *c.* 25. *ſ.* 2. Penalty on the petty conſtable, for inſerting perſons wrongfully.

5. The ſaid petty conſtables, at *Michaelmas* ſeſſions, ſhall deliver in the liſts in open court. 7 & 8 *W.* *c.* 32. *ſ.* 4. Liſts to be delivered in at the ſeſſions.

Or, inſtead of this, after they have compleated their liſts, it ſhall be ſufficient if they ſubſcribe the ſame in the preſence of one juſtice, and at the ſame time atteſt the truth thereof upon oath to the beſt of their knowledge or belief: And then the ſaid liſts, being firſt ſigned by the juſtice, and ſubſcribed as aforeſaid, ſhall be delivered by the ſaid petty conſtables to the high conſtables, who ſhall deliver in the ſame at the ſaid ſeſſions in open court, atteſting at the ſame time upon oath their receipt of ſuch liſts from the petty conſtables, and that no alteration hath been made therein ſince their receipt thereof. 3 *G.* 2. *c.* 25. *ſ.* 7.

6. The conſtable failing to make return, ſhall forfeit 5 *l.* to the king, to be recovered by bill, plaint, or information. 7 & 8 *W.* *c.* 32. *ſ.* 4. Penalty on petty conſtables for not returning liſts.

7. And if any perſon, not qualified, ſhall find his name mentioned in ſuch liſt, and the perſon required to make ſuch liſt ſhall refuſe to omit him, or think it doubtful whether he ought to be omitted; the juſtices at the ſeſſions to which the liſts ſhall be returned, on ſatisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be ſtruck out, or omitted to be entred in the book. 3 *G.* 2. *c.* 25. *ſ.* 1. Perſons not qualified, how diſcharged.

8. The juſtices ſhall then cauſe the liſts to be fairly entred in a book by the clerk of the peace, to be by him provided and kept for that purpoſe amongſt the records of the ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 4. Liſts to be entred by the clerk of the peace;

9. Clerk of the peace neglecting his duty herein, ſhall forfeit 20 *l.* to him who ſhall ſue by indictment at the ſeſ- on pain of 20*l.*

ſions. 3 *G.* 2. *c.* 25. *ſ.* 2. (*Quære*, Whether he may be compelled to draw the indictment?)

Duplicates thereof to be delivered to the ſheriff.

10. Duplicates of the ſaid liſts, when delivered in at the ſeſſions, and entred in ſuch book to be kept by the clerk of the peace for that purpoſe, ſhall during the ſaid ſeſſions, or within ten days after, be delivered by the clerk of the peace to the ſheriff. 3 *G.* 2. *c.* 25. *ſ.* 2.

The ſame to be entred by the ſheriff.

11. And the ſheriff ſhall immediately take care, that the names ſhall be entred alphabetically, with their additions and places of abode, in a book to be kept by him for that purpoſe. 3 *G.* 2. *c.* 25. *ſ.* 2.

Sheriff ſhall return none but thoſe in the duplicates.

12. And if the ſheriff ſhall ſummon and return any perſon to the aſſizes, whoſe name is not in the duplicates; the judge may, on examination in a ſummary way, fine him not exceeding 10 *l.* nor leſs than 40s. 3 *G.* 2. *c.* 25. *ſ.* 3.

III. Of the ſheriff's ſummoning and returning jurors.

Sheriff to ſummon jurors to the ſeſſions.

1. By a clauſe in the commiſſion of the peace, it is ſaid, —We command our ſheriff, that at certain days, which you (the juſtices) ſhall make known to him, he cauſe to come before you, ſo many and ſuch good and lawful men of his bailiwick (as well within liberties as without) by whom the truth ſhall be the better known and inquired into.

Whether the ſeſſions may order a jury to be returned immediately.

2. It ſeems that juſtices of the peace may not order a jury to be returned immediately, nor on the ſame day, for the trial of a priſoner arraigned before them, as juſtices of gaol delivery may, unleſs the crime amount to felony, or the party conſent to be tried immediately. 2 *Haw.* 406.

Whether by award of the court without precept.

3. Alſo it ſeems that a jury may not regularly be returned before juſtices of the peace in their ſeſſions, by a bare award of the court, as before juſtices of gaol delivery; but that there ought to be a particular precept to the ſheriff for that purpoſe. 2 *Haw.* 405, 406.

How they may do the ſame in caſes of felony.

4. But in caſes of felony, it is agreed (4 *Inſt.* 164.) and is the uſual practice, after the priſoners are arraigned and have pleaded to the country, for the juſtices to iſſue a precept to the ſheriff, in nature of a *venire facias*, which may bear teſte the ſame day that the priſoners plead, commanding the ſheriff to return 24 jurors, to try the iſſue upon ſuch a day; or they may make it returnable the ſame day that the priſoner pleads, as at one of the clock in the afternoon, or the like: and this precept muſt be in the name, and under the ſeals of the juſtices, or two of them (1 *Q.*)

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and not barely by an award upon the roll. 2 *H. H.* 261, 262.

5. The writ of *venire facias* by the ſtatute of the 4 & 5 *W. c.* 24. ſhall be after this form: *The king*, &c. *We command*, &c. *that you cauſe to come before*, &c. *twelve free and lawful men of the vicinage of* A. *every of whom ſhall have* 10 l. *of land, tenements, or rents, by the year, at leaſt; by whom*, &c. *and who neither*, &c. ſ. 15. (B) Form of the venire facias.

6. The reaſon why they are required to come from the vicinage is, for that the neighbours are preſumed to know what is done in the neighbourhood. 1 *Inſt.* 158. Why the jurors ſhall be returned of the neighbourhood.

But yet this is not neceſſarily required; for they of one ſide of the county, are by law of the neighbourhood, to try an offence of the other ſide of the county. 2 *H. H.* 264.

And by the 4 *An. c.* 16. *ſ.* 6, 7. and 24 *G.* 2. *c.* 18. *ſ.* 3. to prevent challenges for default of hundredors, every *venire facias* for the trial of an iſſue in any action in the courts at *Weſtminſter*, or in an action or information on a penal ſtatute, ſhall be awarded of the body of the county where ſuch iſſue is triable.

7. And although the words of the writ be twelve, yet by the ancient courſe, the ſheriff muſt return 24, for the expedition of juſtice; for if 12 only ſhould be returned, a man would ſeldom have a full jury appear; and in this caſe uſage and cuſtom makes the law. 2 *H. H.* 263. *Read.* Jur. How many ſhall be returned and ſerve.

But the general precept that iſſues before a ſeſſions is, to return 24, and commonly the ſheriff returns upon that precept 48. 2 *H. H.* 263.

But in iſſues of *niſi prius*, the ſheriff ſhall, upon his return of the writ of *venire facias juratores* (unleſs in cauſes intended to be tried at bar, or where a ſpecial jury ſhall be appointed) annex a panel to the ſaid writ, containing the chriſtian and ſurname, additions, and places of abode, of a competent number of jurors, the names of the ſame perſons to be inſerted in the panel annexed to every *venire facias*, for the trial of all iſſues at the ſame aſſizes: which number of jurors ſhall be not leſs than 48 in any county, nor more than 72, unleſs the judges ſhall order otherwiſe. And the writs of *habeas corpora juratorum*, or *diſtringas*, ſubſequent to ſuch writ of *venire facias juratores*, need not have inſerted in the bodies of ſuch writs the names of all the perſons contained in ſuch panel, but it ſhall be ſufficient to inſert in the mandatory parts of ſuch writs reſpectively, *the ſeveral bodies of the perſons named in the panel annexed to this writ*, or words of the like import,

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and to annex to ſuch writs reſpectively panels, containing the ſame names as were returned in the panel to ſuch *venire facias*, with their additions and places of abode, that the parties concerned in any ſuch trials may have timely notice of the jurors who are to ſerve at the next aſſizes, in order to make their challenges to them, if there be cauſe; and the perſons named in ſuch panels ſhall be ſummoned at the next aſſizes, and no other. 3 *G.* 2. *c.* 25. *ſ.* 8. It is true, this gives them an opportunity of knowing how to make their challenges; but it alſo gives them an opportunity to another purpoſe, namely, of labouring the jurors,——— a practice which cannot be too much diſcouraged.

In *Wales*; The ſheriff ſhall ſummon out of every hundred or commote, not leſs than ten, nor more than fifteen; unleſs the judges ſhall order otherwiſe. 3 *G.* 2. *c.* 25. *ſ.* 9.

And in the counties palatine; The ſheriff ſhall ſummon not leſs than 48, nor more than 72 (unleſs the judges order otherwiſe); and ſhall eight days before the courts be held, cauſe a liſt to be made of the perſons ſummoned, which ſhall be hung up in the ſheriff's office, to be inſpected by any perſon. 3 *G.* 2. *c.* 25. *ſ.* 10.

Upon the grand jury; there may be, and uſually are, more than 12: but if there be 12 aſſenting, tho' others diſſent, it is not neceſſary for the reſt to agree. 2 *H. H.* 161.

But upon a trial by a petit jury; it can be by no more nor leſs than 12, and all aſſenting to the verdict. 2 *H. H.* 161.

In the county of *York*; only one panel of 48 freeholders and copyholders, and no more, ſhall be returned to ſerve on the grand inqueſt at the aſſizes; and at the ſeſſions, not above 40, either upon the grand inqueſt, or other ſervice there. 7 & 8 *W.* *c.* 32. *ſ.* 8.

Time and manner of ſummons.

8. Every ſummons of jurors ſhall be made by the ſheriff, his officer, or lawful deputy, ſix days before at the leaſt (and in *Wales* eight days before, and in the counties *Palatine* 14 days before, 3 *G.* 2. *c.* 25. *ſ.* 9, 10.) ſhewing to every perſon ſo ſummoned the warrant under the ſeal of the office wherein they are appointed to ſerve; and if ſuch juror be abſent from the place of his habitation, notice of the ſummons ſhall be given by leaving a note in writing, under the hand of ſuch officer, containing the contents thereof, at the dwelling houſe of ſuch juror, with ſome perſon there inhabiting in the ſame. 7 & 8 *W.* *c.* 32. *ſ.* 5.

Penalty on the ſheriff or bailiff neglecting.

9. If the ſheriff, his deputy, or bailiff, neglect their duty herein, or excuſe any perſon for favour or reward; he ſhall forfeit 20 *l.* to him who ſhall ſue. 7 & 8 *W.* *c.* 32.

c. 32. *ſ.* 6. Or, he may be fined 10 *l.* or under, by the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6.

And no bailiff, or other officer, ſhall ſummon any perſon, other than ſuch whoſe name is ſpecified in a mandate ſigned by the ſheriff or under ſheriff, and directed to ſuch bailiff or other officer; on pain of 10 *l.* on a ſummary conviction before the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6.

How often they ſhall be ſummoned and ſerve.

10. No perſons ſhall be returned as jurors at the aſſizes; who have ſerved within one year before in the county of *Rutland*, or two years before in any other county (not being a county of a city or town, and except the counties of *York*, and of *Middleſex*); on pain that the ſheriff, on examination and proof in a ſummary way, ſhall be fined by the judge not exceeding 5 l. 3 *G.* 2. *c.* 25. *ſ.* 4.

And the ſheriff ſhall enter in a book, the names of ſuch perſons as ſhall be ſummoned and ſhall ſerve at the aſſizes, with their additions and places of abode alphabetically, and the times of their ſervices; and every perſon who hath ſerved, ſhall (on application by him made to the ſheriff) have a certificate *gratis*, teſtifying his attendance: and the ſaid book ſhall be tranſmitted to the ſucceeding ſheriff. 3 *G.* 2. *c.* 25. *ſ.* 5.

In the county of *York*; They ſhall not be returned above once in four years, at the aſſizes or ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 7. 10 *An.* *c.* 14. *ſ.* 5.

And if the ſheriff of the county of *York*, neglect to keep ſuch book as above, or to enter the names, or to deliver over to his ſucceſſor the entries made for four years next before, or to deliver the certificate *gratis*; he ſhall forfeit 100 *l.* half to the king, and half to him that ſhall ſue. 3 & 4 *An.* *c.* 18. *ſ.* 3.

And if he ſhall ſummon or return any juror, who ſhall have ſerved within four years, and ſhall not on producing the certificate diſcharge the ſummons or return, and thereof give notice to the party ſummoned, ſix days before the aſſizes or ſeſſions; he ſhall forfeit 20 *l.* to the party, with full coſts. 3 & 4 *An.* *c.* 18. *ſ.* 4.

In the county of *Middleſex*: No perſon ſhall be returned to ſerve as a juror, at any ſeſſions of *niſi prius*, who hath been returned at the two terms or vacations next before; on pain of the ſheriff being fined by the judge 5 *l.* or under. 4 *G.* 2. *c.* 7. *ſ.* 2.

And by the 7 & 8 *W.* *c.* 32. *ſ.* 9. The inhabitants of the city and liberty of *Weſtminſter*, ſhall be exempted from ſerving in any jury at the ſeſſions for *Middleſex*, by reaſon of their attendance at the courts of *Weſtminſter hall*.

Jury of view.

11. In any actions brought in the courts at *Weſtminſter*, where it ſhall appear to the court, that it is neceſſary that the jurors ſhould have the view of the place in queſtion, they may order ſpecial writs of *diſtringas* or *habeas corpora* to iſſue, by which the ſheriff ſhall be commanded, to have ſix out of the firſt 12 of the jurors, or ſome greater number of them, at the place in queſtion ſome convenient time before the trial; who ſhall have the matters in queſtion ſhewn to them by two perſons in the ſaid writs named; and the ſheriff by a ſpecial return upon the ſame, ſhall certify that the view hath been had according to the command of the ſaid writ. 4 *An. c.* 16. *ſ.* 8.

And by the 3 *G.* 2. *c.* 25. *ſ.* 14. Where a view ſhall be allowed, ſix or more of the jurors in the panel, who ſhall be conſented to by the parties on both ſides, or their agents, or if they cannot agree, by the proper officer or judges of the court,———ſhall have the view, and ſhall be firſt ſworn, or ſuch of them as appear, before any drawing, and others ſhall be drawn to make up the number.

Special jury.

12. *Tr.* 8 *W.* A rule was made, that when the maſter is to ſtrike a jury, *viz.* 48 out of the freeholders book, he ſhall give notice to the attornies of both ſides to be preſent; and if the one comes, and the other does not, he that appears ſhall according to the ancient courſe ſtrike out 12, and the maſter ſhall ſtrike out other 12 for him that is abſent. 1 *Salk.* 405.

But if by rule of court, the maſter is ordered to ſtrike a jury, in caſe it be not expreſſed in ſuch rule, that the maſter ſhall ſtrike 48, and each of the parties ſhall ſtrike out 12; the maſter is to ſtrike 24, and the parties have no liberty to ſtrike out any. 1 *Salk.* 405. *M.* 8 *W.*

And the party who ſhall apply for a ſpecial jury to be ſtruck, ſhall pay the fees for the ſtriking ſuch jury, and ſhall not be allowed the ſame on taxation. 3 *G.* 2. *c.* 25. *ſ.* 16. And alſo ſhall pay all the expences occaſioned by the trial of the cauſe, and ſhall have no other allowance for the ſame upon taxation of coſts, than he would be intitled to, if the cauſe had been tried by a common jury; unleſs the judge ſhall in open court certify upon the back of the record, that the ſame was a cauſe proper to be tried by a ſpecial jury. 24 *G.* 2. *c.* 18. *ſ.* 1.

And no perſon who ſhall ſerve upon a ſpecial jury, ſhall be allowed more than the ſum which the judge ſhall think reaſonable, not exceeding one guinea, except in cauſes wherein a view is directed. 24 *G.* 2. *c.* 18. *ſ.* 2.

On a motion for a ſpecial jury, in the caſe of the *King* againſt *Maccartney*, *T.* 2 *G.* for the murder of the duke of

of *Hamilton*, it was held by *Parker* chief juſtice, that there cannot be a ſpecial jury in caſes of *treaſon* or *felony*; for the party muſt have the advantage of challenging 20 in caſe of felony, and 35 in caſe of high treaſon, without cauſe ſhewn. In caſes of ſpecial juries, there are 48 brought before the maſter, and he takes 24; ſo there cannot be a rule for a good jury, nor for a ſpecial jury, in this caſe of a trial at bar; for the jury will be the ſame with or without ſuch a rule, for they are all good juries in *Middleſex*, and ſo in all caſes of jurors at the bar; and if there ſhould be a ſpecial jury, it would take away the advantage the party has of challenging peremptorily, altho' not of ſhewing cauſe. So no rule was made in this caſe, leſt the ſheriff in all other caſes, when there is no ſuch rule, ſhould not return a good jury. *Viner*. Trial. (D. e. 2.) 5.

13. Where a full jury at *niſi prius* (or on indictments, informations, or other actions on penal ſtatutes, 4 & 5 *P. & M. c.* 7.) ſhall not appear, or ſhall be reduced below the number by challenge, the judges on requeſt of the plaintiff (or defendant, 14 *El. c.* 9.) may command the ſheriff to appoint ſo many other able perſons of the county then preſent at the aſſizes, as ſhall make up a full jury; whoſe names ſhall be annexed to the panel. 35 *H.* 8. *c.* 6. *ſ.* 6. Tales.

And by the 4 & 5 *W. c.* 24. *ſ.* 18, 19. theſe tales-men *(tales de circumſtantibus)* ſhall have each 5 *l.* a year, of like eſtate as other jurors; in Wales, 3 *l.*

But by the 7 & 8 *W. c.* 32. *ſ.* 3. Tales-men in *niſi prius* ſhall be returned out of the other panels, returned to ſerve at the ſame aſſizes.

And the parties may have their challenges to the tales, as to other jurors. 35 *H.* 8. *c.* 6. *ſ.* 7.

And if ſuch tales-men, after they be called, be preſent, and do not appear, or after appearance do wilfully withdraw themſelves, the judges may fine them; which ſhall be levied as iſſues forfeited by jurors, for default of their appearance at common law, have been accuſtomed to be levied. 35 *H.* 8. *c.* 6. *ſ.* 9.

By the 4 & 5 *W. c.* 24. *ſ.* 20. No fee ſhall be taken by any ſheriff, clerk of aſſize, or any other perſon, for the return of any tales, or upon the account of any tales returned; on pain of 10 *l.* half to the proſecutor, and half to the king.

14. No ſheriff ſhall return any juror, without the addition of his dwelling, or ſome other addition by which he may be known; and no extract of iſſues ſhall be delivered out, without ſuch addition; on pain of five marks to the Addition to be returned.

king, and five marks to the party grieved; to be recovered in ſeſſions, or elſewhere. 27 *El. c.* 7.

Jurors not appearing.

15. By the common law, jurors returned, and not appearing, ſhall loſe and forfeit the iſſues returned upon them. 35 *H.* 8. *c.* 6.

And if a juryman be called, and (being preſent) refuſe to appear; or, having appeared, withdraw himſelf before he be ſworn, the court may ſet a fine upon him at their diſcretion. 2 *H. H.* 309. 35 *H.* 8. *c.* 6. *ſ.* 9.

And by the 29 *G.* 2. *c.* 19. a juror not appearing and ſerving in any court of record within the city of *London*, or in any other city or town corporate, liberty, or franchiſe, after being openly called three times, and oath made of his having been ſummoned, ſhall (without reaſonable excuſe on oath or affidavit to the ſatisfaction of the court) be fined not more than 40*s.* nor leſs than 20*s.* and on refuſal to pay to ſuch perſon whom the judge or judges ſhall appoint to receive the ſame, they ſhall levy the ſame by warrant of diſtreſs, rendring the overplus, the reaſonable charges of diſtreſs and ſale being firſt deducted; the ſame to be paid to the proper officer of the place, to be applied to ſuch uſes as iſſues ſet on jurors or other fines ſet in ſuch courts are by charter, uſage, or preſcription applicable.

Penalty of recording perſons who did not appear.

16. If the clerk of aſſize, or other officer, ſhall record the appearance of any perſon, who did not appear; he ſhall, on conviction before the judge of aſſize in a ſummary way, forfeit not exceeding 10 *l.* nor under 40 s. 3 *G.* 2. *c.* 25. *ſ.* 3.

Drawing jurors names for trial.

17. Laſt of all; The name of each perſon ſummoned to try the iſſues of *niſi prius*, with his addition and place of abode, ſhall be written in ſeveral and diſtinct pieces of parchment or paper, as near as may be of equal ſize, and delivered to the marſhal by the under ſheriff. And the ſame ſhall by the marſhal be rolled up, all, as near as may be, in the ſame manner, and put together in a box or glaſs to be provided for that purpoſe. And when any cauſe ſhall be brought on to be tried, ſome indifferent perſon, by direction of the court, ſhall in open court draw out 12 of the ſaid parchments or papers one after another. And if any of the perſons, whoſe names ſhall be ſo drawn, ſhall not appear, or be challenged and ſet aſide; then ſuch further number, until 12 be drawn who ſhall appear, and after all clauſes of challenge, ſhall be allowed as fair and indifferent. And the ſaid 12 perſons ſo firſt drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being ſworn, ſhall be the jury to try the cauſe. And the names of the perſons ſo drawn

drawn and ſworn, ſhall be kept apart by themſelves in ſome other box or glaſs to be kept for that purpoſe, till ſuch jury ſhall have given in their verdict, and the ſame is recorded, or until ſuch jury ſhall by conſent of the parties, or leave of the court, be diſcharged. And then the ſame names ſhall be rolled up again, and returned to the former box or glaſs, there to be kept with the other names remaining at that time undrawn. And ſo *toties quoties*, as long as any cauſe remains then to be tried. Provided, that if any cauſe ſhall be brought on to be tried, before the jury in any other cauſe ſhall have brought in their verdict, or be diſcharged; the court may order 12 of the reſidue of the ſaid parchments or papers, to be drawn as aforeſaid. 3 *G.* 2. *c.* 25. *ſ.* 11, 12.

IV. Of the challenge of jurors.

And herein,

i. Of the ſeveral kinds of challenge.

ii. When the challenge is to be taken.

iii. How the challenge ſhall be tried.

iv. How panels may be reformed by the court, without challenge.

i. Of the ſeveral kinds of challenge.

There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it ſtands *arrayed* in the *panel*, or little ſquare *pane* of parchment on which the jurors names are written: or to the *polls*, by which are meant the ſeveral particular perſons or *heads* in the array. 1 *Inſt.* 156, 158. Two kinds of challenge.

1. Challenge to the *array*, is in reſpect of the partiality or default of the ſheriff, coroner, or other officer that made the return: and this is two-fold; To the array:

(1) Principal challenge to the array: which if it is made good, is a ſufficient cauſe of exception, without leaving any thing to the judgment of the triers. Principal challenge to the array.

Cauſes of challenge of this ſort, are ſuch as theſe: If the ſheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array ſhall be quaſhed. If the plaintiff or defendant have an action of battery

battery againſt the ſheriff, or the ſheriff againſt either party, this is a good cauſe of challenge. So if the plaintiff or defendant have an action of debt againſt the ſheriff; but otherwiſe it is, if the ſheriff have an action of debt againſt either party. Or if the ſheriff have parcel of the land depending upon the ſame title. Or if the ſheriff, or his bailiff which returned the jury, be under the diſtreſs of either party. Or if the ſheriff, or his bailiff, be either of counſel, attorney, officer, or ſervant of either party; goſſip; or arbitrator in the ſame matter, and treated thereof. 1 *Inſt.* 156.

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quaſhed: but now, by the 24 *G.* 2. *c.* 18. *ſ.* 4. No challenge ſhall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is party.

And the ſubject may challenge the array againſt the king; as in traverſe of an office, he that traverſeth may challenge the array: And ſo it is in caſe of life. 1 *Inſt.* 156.

And where a ſubject may challenge the array, for unindifferency, there the king being a party may alſo challenge for the ſame cauſe. 1 *Inſt.* 156.

The array challenged on both ſides ſhall be quaſhed. 1 *Inſt.* 156.

Challenge to the array for favour.

(2) Challenge to the array, for favour. He that taketh this muſt ſhew in certain the name of him that made it, and in whoſe time, and all in certainty. This kind of challenge, being no principal challenge, muſt be left to the diſcretion and conſcience of the triers. As if the plaintiff or defendant be tenant to the ſheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the ſon of the ſheriff, and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the ſheriff marry the daughter of either party, or the like, this (as hath been ſaid) is a principal challenge. 1 *Inſt.* 156.

But where the king is party, one ſhall not challenge the array for favour; becauſe in reſpect of his allegiance, he ought to favour the king more: but if the ſheriff be a menial ſervant of the king, there the challenge is good. 1 *Inſt.* 156. By which ſeems to be meant, that ſuch challenge is not good, without ſhewing ſome actual partiality in the ſheriff. 2 *Haw.* 419.

But the king may challenge the array for favour. 1 *Inſt.* 156.

2. Challenge

2. Challenge to the *polls* is threefold: To the polls:

(1) Peremptory. This is ſo called, becauſe a perſon may challenge peremptorily, upon his own diſlike, without ſhewing of any cauſe. Peremptory challenge to the polls.

This peremptory challenge ſhall not be allowed to the king; for it is provided by the 33 *Ed.* 1. *ſt.* 4. that he who challengeth a juror for the king, ſhall ſhew cauſe, and the truth thereof ſhall be inquired of. And this extends as well to criminal, as civil cauſes. However, if the king challenge a juror, he need not ſhew any cauſe of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the perſon challenged. And if the defendant, in order to oblige the king to ſhew cauſe, preſently challenge all the reſt, yet it hath been adjudged, that the defendant ſhall be firſt put to ſhew all his cauſes of challenge, before the king need to ſhew any. 2 *Haw.* 413.

And this peremptory challenge is not allowable to the party againſt the king, but only in caſe of treaſon or felony, in favour of life. 1 *Inſt.* 156.

But in caſe of treaſon or felony, the priſoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the ſtatute of the 22 *H.* 8. *c.* 14. *ſ.* 6. the number is reduced to 20, in petit treaſon, murder, and felony; and in caſe of high treaſon, and miſpriſion of high treaſon, it was taken away by the ſtatute of the 33 *H.* 8. *c.* 23. but by the ſtatute of the 1 & 2 *P.* & *M. c.* 10. the common law was again revived for *any* treaſon, and therein the priſoner ſhall have his peremptory challenge to the number of 35. 1 *Inſt.* 156.

But as to all murders and other felonies, the ſtatute of the 22 *H.* 8. *c.* 14. taking away the peremptory challenge of above 20 ſtands in force. 2 *H. H.* 269. But if the party challenge above that number, he ſhall not have judgment of death, but his challenge ſhall be over-ruled, and he ſhall be put upon his trial. *H. Pl.* 259. 2 *H. H.* 270.

Note; The aboveſaid ſtatute of the 1 & 2 *P.* & *M. c.* 10. by miſtake hath been omitted out of Mr. *Hawkins's* edition of the ſtatutes.

(2) Principal challenge to the polls: where cauſe is ſhewn, but which if found true, ſtands ſufficient of itſelf, without leaving any thing to the triers. Principal challenge to the polls.

Cauſes of principal challenge to the polls, are ſuch as theſe:

A peer is not to be ſworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his diſcharge. 1 *Inſt.* 156. 2 *Haw.* 415.

Want

Want of freehold, is a good cauſe of challenge. 1 *Inſt.* 156.

Alſo, if a perſon is an alien. 1 *Inſt.* 156.

If the juror be within the age of 21, it is a good cauſe of challenge. 1 *Inſt.* 157.

If a juror is above the age of 70, or is ſick, or is non-reſident in the county, he may ſue out a writ of privilege for his diſcharge; but if he be returned and appear, he can neither be challenged by the party, nor excuſe himſelf from not ſerving, if there be not enow without him. 2 *Haw.* 418.

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law preſumeth that one kinſman doth favour another, before a ſtranger; and how far remote ſoever he is of kindred, yet the challenge is good. 1 *Inſt.* 157.

Affinity, or alliance by marriage, is a principal challenge, if the ſame continues, or iſſue be had; otherwiſe, it is but to the favour. 1 *Inſt.* 157.

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. 1 *Inſt.* 157.

If the juror have part of the land that dependeth upon the ſame title, it is a principal challenge. 1 *Inſt.* 157.

It hath been allowed a good cauſe of challenge, on the part of the priſoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. 2 *Haw.* 418.

Likewiſe if the juror gave a verdict before, for the ſame cauſe, or upon the ſame title or matter, though between other perſons. 1 *Inſt.* 157.

So likewiſe one may be challenged, that he was indictor of the plaintiff or defendant in the ſame cauſe; for ſuch a one, it may be thought, will not falſify his former oath. *Lamb.* 554. And if a grand juryman, who was one of the indictors in the ſame cauſe, be returned upon the petit jury, and do not challenge himſelf, he ſhall be fined. 2 *H. H.* 309.

If a juror hath been an arbitrator, choſen by the plaintiff or defendant in the ſame cauſe; and hath been informed thereof, or treated of the matter, this is a principal challenge; otherwiſe, if he were choſen indifferently by either of the parties. 1 *Inſt.* 157.

If he be of counſel, ſervant, or of fee, of either party, it is a principal challenge. 1 *Inſt.* 157.

Alſo, if a juryman, before he be ſworn, take information of the caſe, this is cauſe of challenge. 2 *H. H.* 306.

If

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cauſe of challenge. 1 *Inſt.* 157.

But it is not a principal challenge to a juror, but only to the favour, that the proſecutor was lately entertained at his houſe. 3 *Salk.* 81.

Actions brought either by the juror againſt either of the parties, or by either of the parties againſt him, which imply malice or diſpleaſure, are cauſes of principal challenge; other actions, which do not imply malice or diſpleaſure, are but to the favour. 1 *Inſt.* 157.

In a cauſe where the parſon of a pariſh is party, and the right of the church cometh in debate, a pariſhioner is a principal challenge. 1 *Inſt.* 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conſcience, this is no challenge at all, but lawful for him to do it. 1 *Inſt.* 157.

That the juror is a fellow ſervant with either party, is no principal challenge, but to the favour. 1 *Inſt.* 157.

If the juror be attainted or convicted of treaſon or felony, or for any offence to life or member, or in attaint for a falſe verdict, or for perjury as a witneſs, or in a conſpiracy at the ſuit of the king, or in any ſuit (either for the king or for any ſubject) be adjudged to the pillory, tumbrel, or the like, or to be branded or ſtigmatized, or to have any other corporal puniſhment, whereby he becometh infamous: theſe, and the like, are principal cauſes of challenge. 1 *Inſt.* 158.

So it is, if a man be outlawed in treſpaſs, debt, or any other action, for he is *exlex*, and therefore not a lawful man. 1 *Inſt.* 158.

And old books have ſaid, that if he be excommunicated, he could not be of a jury. 1 *Inſt.* 158.

3. Challenge to the polls for favour. This is, when either party cannot take any principal challenge, but ſheweth cauſes of favour, which muſt be left to the conſcience and diſcretion of the triers, upon hearing their evidence, to find him favourable, or not favourable. And the cauſes of favour are infinite. For all which, the rule of law is, that he muſt ſtand indifferent, as he ſtands unſworn. 1 *Inſt.* 157. Challenge to the polls for favour.

ii. When

ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. 2 *Haw.* 412.

2. He that hath divers challenges, muſt take them all at once. 1 *Inſt.* 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. 1 *Inſt.* 158.

4. After challenge to the array, and trial duly returned, if the ſame party take a challenge to the polls, he muſt ſhew cauſe preſently. 1 *Inſt.* 158.

5. If a juror be formerly ſworn, if he be challenged, the party muſt ſhew cauſe preſently, and that cauſe muſt riſe ſince he was ſworn. 1 *Inſt.* 158.

6. When the king is party, the defendant that challengeth for cauſe muſt ſhew his cauſe preſently. 1 *Inſt.* 158.

7. But if a juror be challenged between party and party, and there be enough of the panel beſides; the cauſe of challenge needeth not to be ſhewed, unleſs the other ſide challenges *touts peravail.* Tr. p. pais 143.

8. If a man, in caſe of treaſon or felony, challenge for cauſe, and he be tried indifferent, yet he may challenge him peremptorily. 1 *Inſt.* 158.

9. The priſoner muſt take all peremptory challenges himſelf, even in caſes wherein he may have counſel. 2 *Haw.* 413.

10. The challenge to the array, muſt be in writing (C); but where the challenge is to the polls, it is a ſhort way by a verbal challenge. *Tr. p. pais* 172.

iii. How the challenges ſhall be tried.

1. The challenge of him who firſt challenged ſhall be firſt tried. *Tr. p. pais* 144.

2. If the array be challenged, it lies in the diſcretion of the court how it ſhall be tried; ſometimes it is done by two coroners, and ſometimes by two of the jury, with this difference, that if the challenge be for kindred in the ſheriff, it is moſt fit to be tried by two of the jurors returned; if the challenge found in favour of partiality, then by any other two aſſigned thereunto by the court. 2 *H. H.* 275.

3. When any challenge is made to the polls, if it be before any jurors are ſworn, the court ſhall chuſe the triers; if two are ſworn, they ſhall try; and if they try one indifferent, and he be ſworn, then he and the two triers ſhall try

try another; and if another be tried indifferent, and he be ſworn, then the two triers ceaſe, and the two that be ſworn on the jury ſhall try the reſt: If the plaintiff challenge ten, and the defendant one, and the twelfth is ſworn, becauſe one cannot try alone, there ſhall be added to him one challenged by the plaintiff, and another by the defendant. *Finch* 112. 1 *Inſt.* 158.

4. The triers oath is, "You ſhall well and truly try, "whether *A. B.* (the juryman challenged) ſtand indifferent "between the parties to this iſſue: ſo help you god." 1 *Salk.* 152.

5. If the cauſe of challenge touch the diſhonour or diſcredit of the juror, he ſhall not be examined on his oath; but in other caſes, he ſhall be examined on his oath, to inform the triers. 1 *Inſt.* 158. 1 *Salk.* 153.

6. If the array be quaſhed againſt the ſheriff, the proceſs of *venire facias juratores* ſhall be directed to the coroners; if againſt any of the coroners, then proceſs ſhall be awarded to the reſt; if againſt all of them, then the court ſhall appoint certain eliſors (ſo named *ab eligendo*), againſt whoſe return no challenge ſhall be taken to the array, becauſe they were appointed by the court; but he may have his challenge to the polls. 1 *Inſt.* 158.

iv. How panels may be reformed by the court without challenge.

Beſides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 *H.* 8. *c.* 12. that in caſes where the king is party, the juſtices of aſſize, or of the peace in ſeſſions, may reform the panels of jurors, by putting to and taking out of the names of the perſons impanelled by their diſcretion; and if the ſheriff do not return the panel ſo reformed, he ſhall forfeit 20 *l.* half to the king, and half to him that ſhall ſue.

And this extends both to grand and petit juries. 2 *H. H.* 156.

And hence it is, that if a priſoner be arraigned before the judge that ſits upon the crown ſide, it is uſual for the judge to ſend for a jury to the judge of *niſi prius*, and when the jury is brought, the ſheriff returns them between the king and the priſoner; which is by virtue of this ſtatute. 2 *H. H.* 265.

V. Of

V. Of the demeanor of jurors in giving their verdict.

Jurors to be kept without meat or drink.

1. By the law of *England*, a jury after their evidence given upon the iſſue, ought to be kept together in ſome convenient place, without meat or drink, fire or candle, and without ſpeech with any, unleſs it be the bailiff, and with him only if they be agreed. 1 *Inſt.* 227.

Bailiff ſworn to keep them.

2. And the bailiff ought to be ſworn to keep them together, and not to ſuffer any to ſpeak with them. 2 *H. H.* 296.

Whether eating and drinking ſhall avoid the verdict.

3. And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict, it is finable, but it ſhall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it ſhall avoid the verdict; but if it be given for the defendant it ſhall not avoid it, and ſo on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do paſs, it ſhall not avoid the verdict. 1 *Inſt.* 227.

In what caſes they may eat or drink.

4. But with the aſſent of the juſtices they may both eat and drink; as if any of the jurors fall ſick before they be agreed of their verdict, then by the aſſent of the juſtices he may have meat or drink, and alſo ſuch other things as be neceſſary for him and his fellows alſo, at their own coſts, or at the indifferent coſts of the parties, if they ſo agree: and if they cannot agree, the juſtices may in ſuch caſe ſuffer the jury to have both meat and drink for a time, to ſee whether they will agree. *Dr. & St.* 158.

May re-examine witneſſes.

5. After their departure they may deſire to hear one of the witneſſes again, and it ſhall be granted, ſo he deliver his teſtimony in open court; and alſo they may deſire to propound queſtions to the court for their ſatisfaction, and it ſhall be granted, ſo it be in open court. 2 *H. H.* 296.

May hear no evidences but in court.

6. But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in iſſue, or any evidence, or any writing touching the matter in iſſue, which was not given in evidence, it ſhall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and ſo on the contrary. But if the jury carry away any writing unſealed, which was given in evidence in open court, this ſhall not avoid their verdict,

albeit

albeit they ſhould not have carried it with them. 1 *Inſt.* 227.

7. A jury ſworn and charged in a capital caſe, cannot be diſcharged (without the priſoner's conſent) till they have given a verdict. 2 *Hawk.* 439. Cannot be diſcharged without giving a verdict.

And the king cannot be nonſuit, for he is in judgment of law ever preſent in court. 1 *Inſt.* 227.

8. If a jury ſay they are agreed, and it being aſked who ſhall ſay for them, they ſay their foreman, but upon farther inquiry they are not agreed, they may be fined. 2 *H. H.* 309. May be fined for ſaying they are agreed, when they are not.

9. If a jury caſt lots for their verdict, it ſhall be ſet aſide, and they ſhall be fined for the contempt. 3 *Keb.* 805. 2 *Lev.* 140, 205. 2 *Jones* 83. Caſting lots for their verdict.

M. 12 *G. Hale* and *Cove.* The jury having ſat up all night, agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and ſo draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict muſt be ſet aſide; but the queſtion was, whether the defendant ſhould pay coſts: the court inclined to give the plaintiff coſts, comparing it to the caſe of a verdict againſt evidence; but at laſt it was agreed, that the coſts ſhould wait the event of the new trial. *Str.* 642.

10. The jury may give a verdict without teſtimony, when they themſelves have conuſance of the fact. *Tr. p. pais* 279. 1 *Ventr.* 97. Giving verdict without evidence.

11. But if they give a verdict on their own knowledge, they ought to tell the court ſo; but they may be ſworn as witneſſes; and the fair way is to tell the court before they are ſworn that they have evidence to give. 1 *Salk.* 405. Juror may be a witneſs.

For certainly it is of dangerous conſequence, to receive a verdict againſt evidence given, on ſuppoſal that ſome of the jury knew otherwiſe, or on private information given by any juryman to the reſt, where he cannot be croſs examined. *Tr. p. pais* 209.

12. After they be agreed, they may in cauſes between party and party, if the court be riſen, give a private verdict, before any of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court ſhall ſtand. 1 *Inſt.* 227. Private verdict.

But in criminal caſes of life or member, the jury can give no private verdict, but they muſt give it openly in court. 1 *Inſt.* 227.

Special verdict.

13. In all cauſes, and in all actions, the jury may give either a general or a ſpecial verdict, as well in cauſes criminal as civil; and the court ought to receive a ſpecial verdict, if pertinent to the point in iſſue. 3 *Salk.* 373.

Thus if one be indicted for grand larceny, that is, for ſtealing goods above the value of 12 *d.* yet the jury may find ſpecially, that he is guilty, but that the goods are not above the value of 12 *d.* In which caſe, he ſhall only have judgment of petit larceny. 1 *Haw.* 95.

Jurors to try not the law, but the fact.

14. Jurors are to try the fact, and the judges ought to judge according to the law that ariſeth upon the fact. 1 *Inſt.* 226.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they miſtake the law, they run into the danger of an attaint: therefore to find the ſpecial matter is the ſafeſt way, where the caſe is doubtful. 1 *Inſt.* 228.

But if the jury find according to the direction of the judge in matter of law, although the judge be miſtaken, yet the jury ſhall not be liable to attaint. L. *Raym.* 470.

Finding againſt evidence.

15. It hath been adjudged, that if the jury acquit a priſoner of an indictment of felony againſt manifeſt evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and re-conſider the matter; but this by many is thought hard, and ſeems not of late years to have been ſo frequently practiſed as formerly. However it is ſettled, that the court cannot ſet aſide a verdict which acquits a defendant, of a proſecution properly criminal, as it ſeems that they may a verdict that convicts him, for having been given contrary to evidence and the directions of the judge, or any verdict whatſoever for a miſtrial. 2 *Hawk.* 442.

Varying from the verdict.

16. After the verdict recorded, the jury cannot vary from it; but before it be recorded, they may vary from the firſt offer of their verdict, and that verdict which is recorded ſhall ſtand. 1 *Inſt.* 227.

Verdict finding an impoſſibility.

17. A verdict finding an impoſſible matter ſhall not be void, if at the ſame time it find the ſubſtance of the indictment; but the ſurplus ſhall be rejected. 1 *Hawk.* 77.

Verdict how far to be taken ſtrictly.

18. Verdicts ſhall not be taken ſo ſtrictly as pleadings; but the ſubſtance of the thing in iſſue ought to be always found. 3 *Salk.* 373.

Where they cannot agree.

19. It is ſaid, that if the jurors agree not, before the departure of the juſtices of gaol delivery into another county, the ſheriff muſt ſend them along in carts, and the judge may take and record their verdict in a foreign county. 2 *H. H.* 297. *Tr. p. pais* 274, 285. 1 *Vent.* 97.

But

But if the caſe ſo happen, that the jury can in no wiſe agree, as if one of the jurors knoweth in his own conſcience the thing to be falſe, which the other jurors affirm to be true, and ſo he will not agree with them in giving a falſe verdict, and this appeareth to the juſtices by examination; the juſtices (as it ſeemeth) in ſuch caſe may take ſuch order in the matter, as ſhall ſeem to them by their diſcretion to ſtand with reaſon and conſcience, by awarding a new inqueſt, or otherwiſe, as they ſhall think beſt by their diſcretion, like as they may do, if one of the jury die before the verdict. *Dr. & Stud.* 158.

VI. Of the indemnity and puniſhment of jurors.

Threatning a juror.

1. If a man aſſault or threaten a juror, for giving a verdict againſt him, he is highly puniſhable by fine and impriſonment; and if he ſtrike him in the court, in the preſence of the judge of aſſize, he ſhall loſe his hand, and his goods, and profits of his lands during life, and ſuffer perpetual impriſonment. 1 *Hawk.* 57, 58.

Juror not appearing.

2. Where more than one of the perſons returned on a jury do appear, but not a ſufficient number to take an inqueſt, and ſome of the others come within view of the court, or into the ſame town in which the court is holden, but refuſe to come into the court to be ſworn; upon proof of ſuch matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of ſuch defaulter's lands, and after ſuch inquiry made, either ſummon them to appear, on pain of forfeiting ſuch ſum as their lands have been found to be worth by the year, or ſome leſſer ſum, or impoſe a fine of the like ſum upon them, without any farther proceeding. But it ſeems, that ſuch juror ſhall be liable to loſe his iſſues only for ſuch default, and not the yearly value of his lands, unleſs the party pray it: But a juror who hath actually appeared, and after makes default, is ſaid to be ſubject to ſuch forfeiture of the yearly value of his lands, whether the party pray it or not; becauſe his contempt appears to the court by its own record: yet even in this caſe, the court in diſcretion will ſometimes only impoſe a ſmall fine. Alſo it ſeems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to loſe his iſſues, or to be amerced, but not to be fined. 2 *Hawk.* 146.

And by the 3 *G.* 2. *c.* 25. *ſ.* 13. In cauſes of *niſi prius*, every perſon whoſe name ſhall be drawn, and who ſhall

not appear, after being openly called three times, ſhall on oath made of his having been lawfully ſummoned, forfeit not exceeding 5 *l.* nor leſs than 40 *s.* unleſs ſome reaſonable cauſe be proved, by oath or affidavit, to the ſatisfaction of the judge.

Whether a grand jury may be fined for not finding a bill.

3. If the grand jury at the aſſizes or ſeſſions will not find a bill, the court may impanel another inqueſt (by the 3 *H.* 7. *c.* 1.) to inquire of their concealments, and thereupon ſet fines upon them: But it ſeemeth that fines ſet upon grand inqueſts in any other manner, are not warrantable by law; for the privilege of an *Engliſhman* is, that his life ſhall not be drawn in danger without due preſentment or indictment, and this would be but a ſlender ſcreen or ſafeguard, if every juſtice of the peace, or judge of aſſize, may make the grand jury preſent what he pleaſes, or otherwiſe fine them. 2 *H. H.* 160, 1.

Juror taking a bribe.

4. If any juror do take of either party to give his verdict, he ſhall on conviction by bill or plaint, before the court where the verdict ſhall paſs, forfeit ten times as much as he hath taken, half to the king, and half to him that ſhall ſue. 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 38 *Ed.* 3. *ſt.* 1. *c.* 12.

Whether a juror may be proſecuted for a verdict in a criminal matter.

5. It ſeems to be certain, that no one is liable to any proſecution whatſoever, in reſpect of any verdict given by him in a *criminal* matter, either upon a grand or petit jury; for ſince the ſafety of the innocent, and puniſhment of the guilty, doth ſo much depend upon the fair and upright proceedings of jurors, it is of the utmoſt conſequence, that they ſhould be as little as poſſible under the influence of any paſſion whatſoever. And therefore, leſt they ſhould be biaſſed with the fear of being harraſſed by a vexatious ſuit, for acting according to their conſciences, the law will not leave any poſſibility for a proſecution of this kind. And as to the objection, that an attaint lies againſt a jury for a falſe verdict in a civil cauſe, and that there is as much reaſon to allow of it in a criminal one; it may be anſwered, that in an attaint in a civil cauſe, a man's property is only brought into queſtion a ſecond time, and not his liberty or life. 1 *Haw.* 191. L. *Raym.* 469.

Attaint in a civil cauſe.

6. But where the jurors give a falſe verdict upon an iſſue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attaint in the king's bench or common pleas, upon which 24 of the beſt men of the county are to be jurors, who are to hear the ſame evidence which was given to the petty jury, and as much as can be brought in affirmance of the verdict, but no other againſt it. And if theſe 24, who are called the grand jury, find

find it a falſe verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party ſhall be infamous, ſo as never to be received to be a witneſs, or a juror; ſhall forfeit his goods and chattels; and his lands and tenements ſhall be taken into the king's hands; his wife and children caſt out of doors; his houſes proſtrated; his trees rooted up; his meadows ploughed up; and his body impriſoned. And ſeeing all trials of real, perſonal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury. 1 *Inſt.* 294. *Read.* Jur.

But now by the ſtatute of 23 *H.* 8. *c.* 3. The ſeverity of this puniſhment is moderated, if the writ of attaint be grounded upon that ſtatute; but nevertheleſs, the party grieved may at his election, either bring his writ of attaint upon that ſtatute, or at the common law. *Tr. p. pais* 222.

But this proceeding ſeems to be intirely diſuſed at this day; and in the place of attaint motions are now uſually made for new trials, when a verdict is againſt evidence. *Wood b.* 4. *c.* 4. *Read.* Jur.

But there can be no new trial for or againſt the king. *Tr. p. pais* 210.

7. It ſeems to be the current opinion of the old books, that jurors are not ſubject to any proſecution for a falſe verdict except by way of attaint: And there ſeem to be very few antient precedents for the puniſhment either of a grand or petit jury, merely for giving a verdict againſt evidence, or the direction of the court, either in a capital or civil matter. 2 *Haw.* 147. Whether they may be fined for their verdict.

And the fining and impriſoning of jurors for giving their verdict, hath ſeveral times been declared in parliament an illegal and arbitrary innovation, and of dangerous conſequence to the government, and the lives and liberties of the ſubject. 2 *Keb.* 180. *Read.* Jur.

And in *Buſhel*'s caſe, it was reſolved by all the judges, upon a full conference together, that a jury is not finable for going againſt their evidence, where an attaint lies. And where an attaint doth not lie, L. *Vaughan* ſays thus; "That the court could not fine a juryman at the com-"mon law, where attaint did not lie, I think to be the "cleareſt poſition that ever I conſidered, either for au-"thority or reaſon of law." And one reaſon for this is, becauſe the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evi-

dence, than what is ſhewed in court; they are of the vicinage, the judge is a ſtranger; they may have evidence from their own perſonal knowledge that the witneſſes ſpeak falſe, which the judge knows not of; they may know the witneſſes to be ſtigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and ſo the judge knew as much as they, yet they might make different concluſions, as oftentimes two judges do; and therefore as it would be a ſtrange and abſurd thing, to puniſh one judge for differing with another in opinion or judgment, ſo it would be worſe for the jury, who are judges of the fact, to be puniſhed for finding againſt the direction of him, who is not judge of the fact. *Tr. p. pais* 225. L. *Vaugh.* 135.

And to ſay the truth, ſays Lord *Hale*, it would be the moſt unhappy caſe that could be to the judge, if he at his peril muſt take upon him the guilt or innocence of the priſoner: and if the judge's opinion muſt rule the matter of fact, the trial by jury would be uſeleſs. 2 *H. H.* 315.

But what if a jury gave a verdict againſt all reaſon, convicting or acquitting a perſon indicted of felony, what ſhall be done? If the jury *convict* a man, againſt or without evidence, and againſt the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury *acquit* him in like manner, the court may ſend them back again (and ſo in the former caſe) to conſider better of it, before they record the verdict; but if they are peremptory in it, and ſtand to their verdict, the court muſt take their verdict and record it. 2 *H. H.* 309, 310.

A. Warrant for the returning liſts of jurors.

Weſtmorland. } To *Henry Holme*, gentleman, high conſtable of the Weſt Ward, within the county aforeſaid.

AT *the general quarter ſeſſions of the peace of our ſovereign lord the king, holden at* ——— *in and for the ſaid county, the* ——— *day of* July, *in the* ——— *year of the reign of our ſaid ſovereign lord* George *the third, of* Great Britain, France *and* Ireland, *king, defender of the faith, and ſo forth, before us* ——— *eſquires, and others our aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the*

the peace of our ſaid lord the king in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors, in the ſaid county committed:

Theſe are to require you, upon ſight hereof, to iſſue forth your precepts to all the petty conſtables within your ſaid ward, thereby directing and requiring them, to make and return true liſts of jurors, according to the form, or to the effect here following; that is to ſay,

Weſtmorland, Weſt ward. { To the conſtable of ———.

BY *virtue of a warrant from his majeſty's juſtices of the peace in and for the ſaid county, at their general quarter ſeſſions aſſembled, unto me directed, you are hereby required to make a true liſt in writing, containing the names and places of abode, together with the titles and additions, of all perſons, between the ages of* 21 *and* 70, *dwelling within your conſtablewick, qualified to ſerve upon juries; that is to ſay, of every ſuch perſon who hath in his own name, or in truſt for him, within the county aforeſaid,* 10l. *a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of antient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail, or for the life of himſelf, or ſome other perſon; or having land in poſſeſſion in his own right of* 20l. *a year above the reſerved rent, being held by leaſe for* 500 *years or more, or for* 99 *years, or any other term determinable on one or more lives: In order to the making of which liſt, you may, if you think it needful, apply to any pariſh officer, who ſhall have in his cuſtody any of the rates for the poor or land tax, and from thence take the names of ſuch perſons ſo qualified. Which liſt ſo being made as aforeſaid, you are required, upon two or more* ſundays, *at leaſt* 20 *days before* Michaelmas *next, to fix on the door of the church or chapel, and of every other publick place of religious worſhip within your pariſh or other precinct; and leave at the ſame time a duplicate thereof with a churchwarden or overſeer of the poor, to be peruſed by the pariſhioners* gratis. *And the ſaid liſt you are alſo further required to deliver in at the next general quarter ſeſſions of the peace, to be holden in and for the ſaid county, in open court; or otherwiſe, you may in the mean time apply to one of his majeſty's juſtices of the peace in and for the ſaid county, and in his preſence ſubſcribe the ſaid liſt, and atteſt the truth thereof upon oath; and the ſame (being firſt alſo ſigned by the ſaid juſtice) you may deliver to me, to be by me delivered in at the ſaid next general quarter ſeſſions. Given under my hand*

at Barnſkew *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

Henry Holme, *High Conſtable.*

And this you the ſaid high conſtable are in no wiſe to omit, upon the peril that ſhall enſue thereof. Given under our hands and ſeals the day and year firſt above written.

B. The form of a writ to the ſheriff to ſummon jurors, for the trial of an iſſue joined.

GEORGE *the third*, &c. *To the ſheriff of* ——— *greeting. We command you, that you do not omit by reaſon of any liberty within your county, but that you enter therein, and cauſe to come before* ——— *twelve good and lawful men of the* vicinage of ——— *whereof every one hath ſuch lands, tenements, or rents, as will qualify them to ſerve upon juries, and who* are neither of affinity to ——— (the plaintiff) nor *to* ——— (the defendant); *to hear and do thoſe things, which on our behalf ſhall be then and there enjoined them: And have you then there this precept. Witneſs* A. B. *and* C. D. *at* ——— *the* ——— *day of* ——— 4 & 5 W. c. 24. ſ. 15.

Note; The general precept for ſummoning jurors to the ſeſſions, is contained in the precept for ſummoning the ſeſſions, in the title Seſſions.

C. Challenge to the array, becauſe the ſheriff is of kindred to one of the parties; from *Coke*'s entries.

AND *now at this day, to wit* ——— *came the aforeſaid* A. *the plaintiff, and* B. *the defendant, by their attornies, and the jurors were impanelled, and demanded, and came, and thereupon the aforeſaid* B. *challengeth the array of the panel aforeſaid, becauſe he ſaid that that panel was arrayed by one* John Zouch, *knight, now and at the time of making the array aforeſaid, ſheriff of the ſaid county of* Derby, *which ſaid ſheriff is a kinſman of the aforeſaid* John Maners (*the plaintiff*); *to wit, the ſon of* George Zouch, *eſquire, the ſon of* John Zouch, *knight, the ſon of* John Zouch, *eſquire, the ſon of* William *Lord* Zouch, *the ſon of* Alan *Lord* Zouch, *the ſon of* William *Lord* Zouch, *the ſon of* Elizabeth *daughter of* William *Lord* Roos, *the father of* William *Lord* Roos, *the father of* Thomas *Lord* Roos, *the father of* Eleanor *mother of* George Maners, *knight, the father of* Thomas

Earl

Earl of Rutland, *the father of the aforeſaid* John Maners. *And this he is ready to verify, whereupon he prayeth judgment, and that the ſaid panel may be quaſhed. Which ſaid challenge by* ——— *and by* ——— *triers, to this choſen and ſworn, is found true. And therefore let the panel aforeſaid be quaſhed and amoved*, &c. Tr. per p. 160.

Challenge becauſe the panel was returned at the inſtance of the party.

And upon this, the ſaid ——— *challenges the array of the ſaid panel, becauſe he ſays, that that panel was arrayed by one* J. S. *eſquire, late ſheriff of the county of* ——— *aforeſaid, at the nomination of the ſaid* ———*and in his favour; which ſaid challenge, by triers thereof ſworn, is found true.*

For other forms of challenges, and proceedings thereupon, ſee *Tr. per pais* 159—184.

Juſtifiable homicide. See Homicide.

Juſtices of the peace.

JUSTICES of the peace are judges of record, appointed by the king, to be juſtices within certain limits, for the conſervation of the peace, and for the execution of divers things comprehended within their commiſſion, and within divers ſtatutes committed to their charge. *Dalt. c.* 2.

And a record or memorial made by a juſtice of the peace, of things done before him judicially in the execution of his office, ſhall be of ſuch credit, that it ſhall not be gainſaid. One man may affirm a thing, and another man may deny it; but if a *record* once ſay the word, no man ſhall be received to aver or ſpeak againſt it; for if men ſhould be admitted to deny the ſame, there would never be any end of controverſies. And therefore to avoid all contention, while one ſaith one thing, and another ſaith another thing, the law repoſeth it ſelf wholly and ſolely in the report of the judge. And hereof it cometh, that he cannot make a ſubſtitute or deputy in his office, ſeeing that he may not put over the confidence that is put in him. Great cauſe therefore have the juſtices to take heed that they

they abuſe not this credit; either to the oppreſſing of the ſubject by making an untrue record, or the defrauding of the king by ſuppreſſing the record that is true and lawful. *Lamb.* 63---66.

Hereof alſo it cometh, that if a juſtice of the peace certify to the king's bench, that any perſon hath broken the peace in his preſence, upon this certificate ſuch perſon ſhall be there fined, without allowing him any traverſe thereto. *Dalt. c.* 70.

And that I may treat intelligibly concerning this office (of which lord *Coke* ſays the whole chriſtian world hath not the like, if it be duly executed, 4 *Inſt.* 170.) I will ſet forth

I. The office of conſervators of the peace at the common law, before the inſtitution of juſtices of the peace.

II. The commiſſion of the juſtices of the peace, founded on the ſtatute law.

III. The juſtice of the peace his oath of office.

IV. Of fees to be taken by juſtices of the peace.

V. Some general directions relating to juſtices of the peace, not falling under any particular title of this book.

VI. Their indemnity and protection by the law, in the right execution of their office; and their puniſhment for the omiſſion of it.

I. The office of conſervators of the peace at the common law, before the inſtitution of juſtices of the peace.

Conſervators by election.

1. Of ancient time ſuch officers or miniſters, as were inſtituted either for preſervation of the peace of the county, or for execution of juſtice, becauſe it concerned all the ſubjects of that county, and they had a great intereſt in the juſt and due exerciſes of their ſeveral places, were by force of the king's writ in every ſeveral county choſen in full or open county by the freeholders of that county: as before the inſtitution of juſtices of the peace, there were conſervators of the peace in every county, whoſe office (according to their names) was to conſerve the king's peace, and to protect the obedient and innocent ſubjects from force and violence. Theſe conſervators, by the ancient com-

mon

mon law, were by force of the king's writ choſen by the freeholders in the county court, out of the principal men of the county; after which election ſo made, and returned, then in that caſe the king directed a writ to the party ſo elected, to take upon him and execute the office, until the king ſhould order otherwiſe. And thus the coroners ſtill continue to be choſen in full county; as alſo the knights of the ſhire for the parliament. 2 *Inſt.* 558, 559.

2. Beſides theſe conſervators of the peace properly ſo called, there were and are other conſervators of the peace by virtue of certain offices: as for inſtance; Conſervators by office.

(1) The lord chancellor, and every juſtice of the king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award proceſs for the ſurety of the peace, and to take recognizances for it. 2 *Haw.* 32.

(2) Alſo, every court of record, as ſuch, hath power to keep the peace within its own precinct. 2 *Haw.* 32.

(3) Alſo, every juſtice of the peace is a conſervator of the peace. *Crom.* 6.

(4) Alſo, every ſheriff is a principal conſervator of the peace, and may without doubt *ex officio* award proceſs of the peace, and take ſurety for it. And it ſeems the better opinion, that the ſecurity ſo taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 *Haw.* 33.

(5) Alſo, every coroner is another principal conſervator of the peace, and may certainly bind any perſon to the peace, who makes an affray in his preſence. But it ſeems the better opinion, that he has no authority to grant proceſs for the peace; and it ſeems clear, that the ſecurity taken by him for the keeping the peace (except only where it is taken by him as judge of his own court for an affray done in ſuch court) is not to be looked on as a recognizance, but as an obligation. 2 *Haw.* 33.

(6) Alſo, every high and petit conſtable are by the common law conſervators of the peace. 2 *Haw.* 33.

And it is ſaid, that if a conſtable ſee perſons engaged in an affray, or upon the very point of entring upon it, as where one ſhall threaten to kill, wound, or beat another, he may impriſon the offender of his own authority for a reaſonable time, till the heat ſhall be over, and alſo afterwards detain him till he find ſurety of the peace by obligation. 1 *Haw.* 137.

But it is ſaid, that a conſtable hath no power to arreſt a man for an affray done out of his own view; for it is the proper buſineſs of a conſtable to preſerve the peace, not to

puniſh the breach of it; nor doth it follow from his having power to compel thoſe to find ſureties who break the peace in his preſence, that he hath the ſame power over thoſe who break it in his abſence. 1 *Haw.* 137.

Conſervators by tenure.

3. There were alſo other conſervators of the peace by tenure; who held lands of the king by this ſervice, among others, of being conſervators of the peace within ſuch a diſtrict. 2 *Haw.* 33.

Conſervators by preſcription.

4. Alſo there were other conſervators of the peace by preſcription; who claimed ſuch power from an immemorial uſage in themſelves and their predeceſſors or anceſtors, or thoſe whoſe eſtate they had in certain lands, which wholly depended upon ſuch uſage, both as to its extent, and the manner in which it was to be exerciſed. 2 *Haw.* 33.

Thus it is ſaid, that a mayor of a corporation may be a conſervator of the peace by preſcription. *Crom.* 6.

It is queſtioned indeed by ſome, whether any ſuch power can be claimed by uſage; yet if the power of holding pleas and even of courts of record, which are of ſo high a nature, and imply a power of keeping the peace within their own precincts, may be claimed by uſage, as it ſeems to be certain that they may; it ſeemeth that the bare authority of keeping the peace in a certain diſtrict may as well be claimed by ſuch uſage. 2 *Haw.* 34.

Power of conſervators.

5. The authority which ſuch conſervators of the peace, whether by election, or tenure, or preſcription, have at common law, is the ſame authority which conſtables of a vill or wapentake have at this day. *Crom.* 6. 2 *Haw.* 34.

Their duty.

6. The general duty of the conſervators of the peace by the common law, is to employ their own, and to command the help of others, to arreſt and pacify all ſuch who in their preſence and within their juriſdiction and limits, by word or deed, ſhall go about to break the peace. *Dalt. c.* 1.

And if a conſervator of the peace, being required to ſee the peace kept, ſhall be negligent therein, he may be indicted and fined. *Dalt. c.* 1.

And if the conſervators of the peace have committed or bound over any offenders, they are then to ſend to, or be preſent at, the next ſeſſions of the peace, or gaol delivery, there to object againſt them. *Dalt. c.* 1.

II. Of the commiſſion of juſtices of the peace.

Juſtices of the peace at this day are of three ſorts; 1. By act of parliament; as the biſhop of *Ely* and his ſucceſſors, and the archbiſhop of *York*, and biſhop of *Durham*, 27 H. 8. c. 4. 2. By charter, or grant made by the king under the

the great ſeal; as mayors and the chief officers in divers corporate towns. 3. By commiſſion.

At the firſt, by the ſtatute of the 1 *Ed.* 3. which is the firſt ſtatute that ordains the aſſignment of juſtices of the peace by the king's commiſſion, thoſe juſtices had no other power but only to keep the peace. But the very next year, the form of the commiſſion was enlarged, and continued ſtill further to be enlarged both in that king's reign, and in the reign of almoſt every other ſucceeding prince, until the 30th year of the reign of Q. *Elizabeth*, when by the number of the ſtatutes particularly given in charge therein to the juſtices, many of which nevertheleſs had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the miſwriting of clerks, and partly by the untoward huddling of things together, it was become ſo cumberſome and foully blemiſhed, that of neceſſity it ought to be redreſſed. Which imperfections being made known to Sir *Chr. Wrey*, then Lord Ch. Juſtice of the king's bench, he communicated the ſame with the other judges and barons, ſo as by a general conference had amongſt them, the commiſſion was carefully refined in the *Michaelmas* term 1590, and being then alſo preſented to the lord chancellor, he accepted thereof, and commanded the ſame to be uſed: Which continues with very little alteration to this day. *Lamb.* 1. 9.

Which is as follows:

George *the third, by the grace of* God, *of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth.* To A. B. C. D. &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 W. And to keep and cauſe to be kept all ordinances and ſtatutes for the good of the peace, and for 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 the firing of 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

in our priſons until they ſhall find ſuch ſecurity to cauſe to be ſafely kept.

We have alſo aſſigned you, and every two or more of you (of whom any one of you the aforeſaid A. B. C. D. &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 the better known, of all and all manner of felonies, poiſonings, inchantments, ſorceries, art magick, 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, by whomſoever and after what manner ſoever in the ſaid county done or perpetrated, or which ſhall happen to be there done or attempted; And alſo of all thoſe who in the aforeſaid county in companies againſt our peace, in diſturbance of our people, with armed force have gone or rode, or hereafter ſhall preſume to go or ride; And alſo of all thoſe who have there lain in wait, or hereafter ſhall preſume to lie in wait, to maim or cut or kill our people; And alſo of all victuallers, and all and ſingular other perſons, who in the abuſe of weights or meaſures, or in ſelling victuals, againſt the form of the ordinances and ſtatutes or any one of them therefore made, for the common benefit of* England *and our people thereof, have offended or attempted, or hereafter ſhall preſume in the ſaid county to offend or attempt; And alſo of all ſheriffs, bailiffs, ſtewards, conſtables, keepers of gaols, and other officers, who in the execution of their offices about the premiſſes, or any of them, have unduly behaved themſelves, or hereafter ſhall preſume to behave themſelves unduly, or have been, or ſhall happen hereafter to be careleſs, remiſs, or negligent in our aforeſaid county; And of all and ſingular articles, and circumſtances, and all other things whatſoever, that concern the premiſſes or any of them, by whomſoever, and after what manner ſoever, in our aforeſaid county done or perpetrated, or which hereafter ſhall there happen to be done or attempted in what manner ſoever; And to inſpect all indictments whatſoever ſo before you or any of you taken or to be taken, or before others late our juſtices of the peace in the aforeſaid county made or taken, and not yet determined; and to make and continue proceſſes thereupon, againſt all and ſingular the perſons ſo indicted, or who before you hereafter ſhall happen to be indicted; until they can be taken, ſurrender themſelves, or be outlawed: And to hear and determine all and ſingular the felonies, poiſonings, inchantments, ſorceries, arts magick, treſpaſſes, foreſtallings, regratings, ingroſſings, extortions, unlawful aſſemblies, indictments aforeſaid, and all and ſingular other the premiſſes, according to the laws and ſtatutes of* England, *as in the like caſe it has*

been accuſtomed, or ought to be done; And the ſame offenders, and every of them for their offences, by fines, ranſoms, amerciaments, forfeitures, and other means as according to the law and cuſtom of England, *or form of the ordinances and ſtatutes aforeſaid, it ha⁹ been accuſtomed, or ought to be done, to chaſtiſe and puniſh.*

Provided always, that if a caſe of difficulty, upon the determination of any the premiſſes, before you, or any two or more of you, ſhall happen to ariſe; then let judgment in no wiſe be given thereon, before you, or any two or more of you, unleſs in the preſence of one of our juſtices of the one or other bench, or of one of our juſtices appointed to hold the aſſizes in the aforeſaid county.

And therefore we command you and every of you, that to keeping the peace, ordinances, ſtatutes, and all and ſingular other the premiſſes, you diligently apply yourſelves; and that at certain days and places, which you, or any ſuch two or more of you as is aforeſaid ſhall appoint for theſe purpoſes, into the premiſſes ye make inquiries; and all and ſingular the premiſſes hear and determine, and perform and fulfil them in the aforeſaid form, doing therein what to juſtice appertains, according to the law and cuſtom of England: *Saving to us the amerciaments, and other things to us therefrom belonging.*

And we command by the tener of theſe preſents our ſheriff of W. *that at certain days and places, which you, or any ſuch two or more of you as is aforeſaid, ſhall make known to him, he cauſe to come before you, or ſuch two or more of you as aforeſaid, ſo many and ſuch good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premiſſes ſhall be the better known and inquired into.*

Laſtly, we have aſſigned you the aforeſaid A. B. *keeper of the rolls of our peace in our ſaid county. And therefore you ſhall cauſe to be brought before you and your ſaid fellows, at the days and places aforeſaid, the writs, precepts, proceſſes, and indictments aforeſaid, that they may be inſpected, and by a due courſe determined as is aforeſaid.*

In witneſs whereof we have cauſed theſe our letters to be made patent. Witneſs ourſelf at Weſtminſter, &c.

George *the third*, &c.] This manner of iſſuing the commiſſion in the king's name, ſeems to be founded on the ſtatute of the 27 *H.* 8. *c.* 24. which enacts, that all juſtices of the peace ſhall be made by letters patents under the king's great ſeal, in the name and by authority of the king; but reſerves to all cities and towns corporate which have juſtices, the liberties which they have enjoyed in that behalf.

To A. B. C. D. &c. *greeting*] From the perſons here named in the commiſſion, it may be proper to conſider, who may, or may not, be juſtices of the peace.

By the ſtatutes of 13 *R.* 2. *c.* 7. and 2 *H.* 5. *ſt.* 2. *c.* 1. The juſtices ſhall be made within the counties of the moſt *ſufficient* knights, eſquires, and gentlemen of the law.

And by the 18 *G.* 2. *c.* 20. it is enacted as follows: *viz.* No perſon ſhall be capable of being or acting as a juſtice of the peace, who ſhall not have in law or equity, for his own uſe, in poſſeſſion, a freehold, copyhold, or cuſtomary eſtate for life, or for ſome greater eſtate, or an eſtate for ſome long term of years, determinable upon one or more lives, or for a certain term originally created for 21 years, or more, in lands, tenements, or hereditaments, in *England* or *Wales*, of the clear yearly value of 100 *l.* above what will diſcharge all incumbrances affecting the ſame, and all rents and charges payable out of the ſame; or who ſhall not be intitled to the immediate reverſion or remainder of lands leaſed for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reſerved rents of the clear yearly value of 300 l.

And who ſhall not before he acts, at the ſeſſions of the county where he intends to act, take and ſubſcribe the oath following; *I* A. B. *do ſwear, that I truly and* bona fide *have ſuch an eſtate, in law or equity, to and for my own uſe and benefit, conſiſting of* ——— (ſpecifying the nature of ſuch eſtate, whether meſſuage, land, rent, tythe, office, benefice, or what elſe) *as doth qualify me to act as a juſtice of the peace for the county, riding, or diviſion of* ———, *according to the true intent and meaning of an act of parliament made in the* 18*th year of the reign of his majeſty king* George *the ſecond, intitled, An Act to amend and render more effectual an act paſſed in the fifth year of his preſent majeſty's reign, intitled, An Act for the further qualification of juſtices of the peace; and that the ſame* (except where it conſiſts of an office, benefice, or eccleſiaſtical preferment, which it ſhall be ſufficient to aſcertain by their known and uſual names) *is lying or being, or iſſuing out of lands, tenements, or hereditaments, being within the pariſh, townſhip, or precinct of* ———, *or in the ſeveral pariſhes, townſhips, or precincts of* ———, *in the county of* ———, *or in the ſeveral counties of* ——— (as the caſe may be.)

Which oath taken and ſubſcribed, ſhall be kept by the clerk of the peace among the records of the ſeſſions.

And the clerk of the peace ſhall on demand forthwith deliver an atteſted copy to any perſon paying 2 *s.* for the ſame; which being proved to be a true copy of ſuch oath,

ſhall be admitted in evidence on any iſſue in an action brought on this act.

And if any perſon ſhall act as juſtice, without having taken and ſubſcribed the ſaid oath, or without being qualified as above, he ſhall for every offence forfeit 100 *l.* half to the poor of the pariſh in which he moſt uſually reſides, and half to him who ſhall ſue, with full coſts. The proſecution to be in ſix months.

And in ſuch action, the proof of the qualification ſhall lie on the perſon againſt whom it is brought.

And if the defendant intends to inſiſt on any lands not contained in ſuch oath, he ſhall at or before the time of pleading deliver to the plaintiff or his attorney a notice in writing ſpecifying ſuch lands, and the pariſh and county where they are ſituate (offices and benefices excepted, which it ſhall be ſufficient to aſcertain by their uſual names:) And if the plaintiff in ſuch ſuit ſhall think fit thereon not to proceed further, he may with leave of the court diſcontinue ſuch ſuit, on payment of coſts to the defendant as the court ſhall award.

And upon trial no eſtate, but what is contained in the oath and notice, ſhall be admitted as any part of the qualification.

And if the plaintiff or informer ſhall diſcontinue (otherwiſe than as aforeſaid) or be nonſuit, or judgment be given againſt him, he ſhall pay treble coſts.

But this ſhall not extend to any city, town, or liberty, having juſtices of their own; nor to any peer, lord of the privy council, judge, attorney or ſolicitor general, or to the juſtices of the great ſeſſions for *Cheſhire* and *Wales*, or to the eldeſt ſon or heir apparent of a peer, or of any perſon qualified to ſerve as knight of a ſhire:

Nor to the officers of the board of green cloth, or principal officers of the navy, or the two under ſecretaries in each of the offices of the principal ſecretary of ſtate, or the ſecretary of *Chelſea* college, in their reſpective liberties; nor to the heads of colleges or halls, or vicechancellor, of either of the univerſities, or to the mayors of *Oxford* or *Cambridge*.

By the 1 *G.* 3. *c.* 13. Whereas doubts have ariſen, whether perſons who were juſtices at the time of the demiſe of his late majeſty king *George* the ſecond, and who have been or ſhall be conſtituted juſtices by his preſent majeſty, can act as ſuch before they have again taken and ſubſcribed the ſaid oath; it is enacted, that all perſons who were juſtices at the demiſe of his ſaid late majeſty, or who ſhall be juſtices at the time of the demiſe of his preſent majeſty or

any of his ſucceſſors, and ſhall afterwards be appointed juſtices by his ſaid preſent majeſty or any of his ſucceſſors, and who ſhall take the oath of office before the clerk of the peace or his deputy, and who ſhall have taken and ſubſcribed the ſaid oath required by the 18 *G.* 2. *c.* 20. ſhall and may act as juſtices, without being obliged to take and ſubſcribe the ſame again.

By the 1 *M. ſeſſ.* 2. *c.* 8. No *ſheriff* ſhall exerciſe the office of a juſtice of the peace, during the time that he acts as ſheriff. And the reaſon ſeems to be, becauſe he cannot act at the ſame time both as judge and officer, for ſo he would command himſelf to execute his own precepts. *Dalt. c.* 3.

Alſo if he be made a *coroner*, this by ſome opinions is a diſcharge of his authority of juſtice. *Dalt. c.* 3.

But if he be created duke, archbiſhop, marquis, earl, viſcount, baron, biſhop, knight, judge, or ſerjeant at law, this taketh not away his authority of a juſtice of the peace. 7 *Ed.* 6. *c.* 7. *Dalt. c.* 3.

Alſo, no *attorney*, ſolicitor, or proctor, ſhall be a juſtice of the peace, during the time he ſhall continue in the practice of that buſineſs. 5 *G.* 2. *c.* 18. *ſ.* 2.

By *Holt* Ch. J. Though a man be a *mayor*, it doth not follow that he is a juſtice of the peace, for that muſt be by a particular grant in the charter. L. *Raym.* 1030. But although he be not a juſtice of the peace by the charter, yet there are many caſes, wherein he hath the ſame power as a juſtice of the peace given unto him by particular ſtatutes; as for inſtance, with regard to the cuſtoms, alehouſes, lord's day, ſwearing, gaming, weights, ſervants, fuel, leather, orchards, ſoldiers, and divers others.

Know ye that we have aſſigned you] This is founded on the ſtatute of the 1 *Ed.* 3. *c.* 16. *viz.* For the better keeping and maintenance of the peace, the king will, that in every county good men and lawful, which be no maintainers of evil, or barretors in the country, ſhall be aſſigned to keep the peace.

And from this act we are to date that great alteration in our conſtitution, whereby the election of conſervators of the peace was taken from the people, and tranſlated to the aſſignment of the king. *Lamb.* 20.

And here we may obſerve, that the commiſſion hath two parts; or conſiſteth of two different aſſignments: By this firſt aſſignment, any one or more juſtices have as well all the ancient power touching the peace, which the conſervators of the peace had at the common law, as alſo that whole

whole authority which the ſtatutes have ſince added thereto. *Dalt. c.* 5.

Jointly and ſeverally, and every one of you] Whatſoever any one juſtice alone may do, the ſame alſo may lawfully be done by any two or more juſtices; but where the law giveth authority to two, there one alone cannot execute it. *Dalt. c.* 6.

And yet where a ſtatute appointeth a thing to be done by two juſtices or more, if the offence be any miſdemeanor or matter againſt the peace, there upon complaint made of the offence, to any one of thoſe juſtices, it ſeemeth that one of them may grant out his warrant to attach the offender, and to bring him before the ſame juſtice and the other juſtice ſo appointed (at ſome convenient place), and then they to hear and determine the ſame. *Dalt. c.* 6.

But it ſeemeth, that when a thing is appointed by any ſtatute to be done by or before one perſon certain, ſuch thing cannot be done by or before any other: and by ſuch expreſs deſignation of one, all others are excluded, and their proceedings therein are *coram non judice*. *Dalt. c.* 6.

Our juſtices] In that the king calls them *our* juſtices, their authority determines of courſe by his death or demiſe: ſo that he being once dead, or having given over his crown, they are no more his juſtices, and the juſtices of the next prince they cannot be, unleſs it ſhall pleaſe him afterwards ſo to make them. *Dalt. c.* 3.

But by the 1 *An. ſt.* 1 *c.* 8. *ſ.* 2. No patent or grant of any office or employment ſhall determine by the king's death or demiſe, but ſhall continue in force for ſix months after, unleſs in the mean time made void by the ſucceſſor.

Alſo, before his death or demiſe, the king may determine the commiſſion at his pleaſure; and that either expreſſed, as by writ under the great ſeal, or by implication, by making a new commiſſion, and leaving out the former juſtices names. But until notice, or publiſhing of the new commiſſion, the acts of the former juſtices are good in law. *Dalt. c.* 3.

But to mayors and chief officers in corporations, which have the authority of juſtices of the peace, or of conſervators of the peace, by grant under the king's letters patent to them and their ſucceſſors the authority remaineth, notwithſtanding the king's death or demiſe. *Dalt. c.* 3.

Neither can the king diſcharge theſe again at his pleaſure; but yet ſuch grants and charters may for ſome great and general defect, or miſcarriage, in the execution of the powers therein granted, be repealed, and the liberties ſeized. *Dalt. c.* 3.

Juſtices to keep our peace] Although they are in no part of the commiſſion called *keepers of the peace*, yet inaſmuch as by the 18 *Ed.* 3. *c.* 2. they are expreſly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their uſual deſcription in certioraries is by the name of *keepers of the peace*; it hath been adjudged, that in the caption of an indictment, *keepers of the peace and juſtices of our lord the king*, is good, without expreſly naming them *juſtices of the peace*. 2 Haw. 38.

To keep our peace] Theſe words ſeem to give them the authority which the conſervators of the peace had at common law: and all that follows in the commiſſion, ſeems an addition to the power of the ancient conſervators.

Our peace] It hath been reſolved, that the deſcription of juſtices of the peace, by the name of *juſtices of our lord the king to keep the peace*, is good, without ſaying, the *peace of our lord the king*; for that is neceſſarily implied. 2 *Haw.* 38.

Alſo, by theſe words *our peace*, when the king dies, the ſurety of the peace is diſcharged; for when he is dead, it is not *his* peace. *Crom.* 124.

In our county of W.] Here are two conſiderations; One is, that the juſtice cannot act when he is out of the county; And the other is, that when he is in the county, he can act for that county only, and his power extendeth to no other. But both theſe are to be underſtood with ſome limitations.

As to the former caſe, when he is out of the county; Is is ſaid, that the juſtices have no *coercive* power when out of the county; and therefore that an order of baſtardy, or for payment of labourers wages, made by them out of the county, is not binding. Yet it is ſaid, that *recognizances* and *informations* voluntarily taken before them in any place, are good. 2 *Haw.* 37.

And L. *Hale* ſays, that a juſtice of the peace may do a miniſterial act out of his county, as examining a party robbed whether he knows the felons; but that he cannot do a compulſory act, as committing a perſon for not giving recognizance. 2 *H. H.* 50, 51.

Alſo, by the 9 *G. c.* 7. A juſtice dwelling in a city or precinct that is a county of it ſelf, within the county at large, may act at his own dwelling houſe for ſuch county at large.

And as to the latter caſe, wherein it is ſuppoſed that his power is limited unto that county only, — it is enacted by the 24 *G.* 2. *c.* 55. that if any perſon againſt whom a legal warrant ſhall be iſſued, ſhall eſcape, go into, reſide, or be in any place out of the juriſdiction of the juſtice granting the warrant, either before or after the iſſuing thereof; any

juſtice

juſtice for the county or place, where ſuch perſon ſhall ſo eſcape or be, upon proof on oath, of the hand writing of the juſtice granting ſuch warrant, ſhall indorſe his name thereon; which ſhall be a ſufficient authority to the perſon bringing ſuch warrant, and to all other perſons to whom the ſame was originally directed, to execute the ſame in ſuch other county or place, and to carry the offender before the juſtice who indorſed the warrant, or ſome other juſtice of that county, if the offence be bailable, and the offender be ready to give bail for his appearance at the next aſſizes or ſeſſions for the county or place where the offence was committed; and ſuch juſtice ſhall take bail accordingly, and ſhall deliver the recognizance, together with the examination or confeſſion of the offender, and all other proceedings relating thereto, to the conſtable or other perſon, who ſhall (on pain of 10*l.* to him who ſhall ſue) deliver over the ſame to the clerk of aſſize, or clerk of the peace, where the offender is required to appear. And if the offence is not bailable, or he ſhall not give bail to the ſatisfaction of the juſtice before whom he is brought, the conſtable or other perſon ſhall carry the offender before a juſtice of the proper county or place, where the offence was committed, there to be dealt with according to law.

And to keep and cauſe to be kept all ordinances and ſtatutes for the good of the peace] It ſeems certain, that by virtue hereof, they may execute all ſtatutes whatſoever, made for the better keeping of the peace, and conſequently thoſe of *Wincheſter* and *Weſtminſter*, and all others concerning the peace, made before the reign of *Ed.* 3. in whoſe time (as hath been ſaid) juſtices of the peace were firſt inſtituted; for all thoſe ſtatutes were expreſly mentioned in the ancient commiſſions of the peace, and have always been undoubtedly taken to be included in theſe general words of the preſent commiſſion. And yet none of the ſtatutes which ordain the office of juſtices of the peace, ſay any thing concerning the execution of the ſaid former ſtatutes; ſo that the power of juſtices of the peace in relation to thoſe ſtatutes ſeems entirely to depend on the king's commiſſion, and yet hath always been unqueſtionably allowed. From whence it appears, that regularly the king, by his commiſſion, may authorize whom he pleaſes to execute an act of parliament. 2 *Haw.* 37.

But if no power be expreſly given in any ſuch ſtatute to any one juſtice alone, he cannot proceed upon it, but he may prefer the cauſe at the ſeſſions, and work it to a preſentment upon the ſtatute. *Dalt. c.* 5.

But beſides the ſtatutes relating to the peace, there are alſo many other ſtatutes which are not ſpecified in the commiſſion, and yet are committed to the charge and care of the juſtices of the peace, by the expreſs words of ſuch ſtatutes; and all ſuch ſtatutes are to them a ſufficient warrant and commiſſion of themſelves, altho' they be not recited in the commiſſion, and are to be executed by them, according as the ſame ſtatutes themſelves do ſeverally preſcribe and ſet down. *Dalt. c.* 5.

Statutes for the good of the peace] Altho' a præmunire is not within the letter of the commiſſion, yet inaſmuch as it is againſt the peace of the king and of the realm, any juſtice may cauſe a perſon to be apprehended for ſuch offence, and take his examination, and informations againſt him, and certify the ſame to the king's bench or gaol delivery. 2 *Haw.* 39. And the ſame may be ſaid of other like offences.

And for the quiet government of our people] Of *our* people;—yet it ſeemeth, that the ſubjects of a foreign prince coming into *England*, and living under the protection of our king, ſhall be ſubject to, and have the benefit of the laws, in reſpect of the local allegiance which they owe to him. 2 *Haw.* 35. 1 *H. H.* 93, 94.

As well within liberties as without] By theſe words ſhall be intended ſuch liberties and franchiſes which have return of writs, and not ſuch as are counties of themſelves, as *London*, *Norwich*, *York*, and ſuch like. *Crom.* 8.

But yet from hence it ſeems clearly to follow, that they may execute their office within a town (not being a county of it ſelf) altho' it have a ſpecial commiſſion of the peace for its own limits, unleſs ſuch commiſſion have a clauſe, that no other juſtices except thoſe named in it, ſhall any way concern themſelves in the keeping of the peace within the liberties of ſuch town; And it may be queſtioned, whether ſuch a ſpecial clauſe in ſuch a commiſſion do abſolutely make void the act of any county juſtice within ſuch town; ſince the commiſſion for the county ſeems as fully to give thoſe named in it a juriſdiction over all ſuch towns within the precinct of it, as ſuch commiſſion for a town doth exclude them. And the juſtices for the county ſeem to be under no neceſſity of informing themſelves of the contents of a commiſſion, which they have nothing to do with. Yet if they have expreſs notice given them of ſuch a reſtraining clauſe, and proceed to act within ſuch town in defiance of it, they may perhaps be puniſhable for their contempt of the king's prohibition; and yet perhaps

it may be queſtioned whether their acts be void, for the reaſons abovementioned. 2 *Haw.* 37.

And lord *Hale* treating on the ſame ſubject, ſays, if the king by charter grant to a corporation, that the mayor, and recorder, or other, ſhall be juſtices within the ſame; yet if there be no words of excluſion, the juſtices of the county have a concurrent juriſdiction: But if this franchiſe of being juſtices be granted, *ſo that the juſtices of the county ſhall not intermeddle (ſe non intromittant)*; then tho' a ſubſequent commiſſion be granted in the county at large, it ſeems they have no juriſdiction in this corporation or town; yet it is queſtionable, whether an indictment in the franchiſe be void, or only a contempt in the juſtices. 2 *H. H.* 47.

But in the caſe of *Talbot* and *Hubble*, *T.* 14 *G.* 2. The queſtion was, whether as the city of *New Sarum* had an excluſive commiſſion of the peace, the juſtices of the county of *Wilts* could by virtue of the 12 *C.* 2. *c.* 23. & 15 *C.* 2. *c.* 2. act in exciſe matters within the city. This caſe was argued three times at the bar, and this term *Lee* Ch. J. delivered the reſolution of the court: 1. That the crown might grant to any city, to have juſtices of their own within themſelves, and exclude the county juſtices from intermeddling in the ordinary buſineſs of a juſtice of the peace. 2. That in ſuch caſe, the act of the county juſtices would be void, and not to be conſidered only as a breach of the franchiſe. 3. That though the 12 *C.* 2. gives the juriſdiction in exciſe matters to the juſtices of the peace reſiding near the place where the forfeiture ſhall be made, or offence committed; yet it never was the deſign of the legiſlature, to make any alteration in the reſpective juriſdictions of the juſtices, but only to veſt the exciſe juriſdiction in juſtices of counties, cities, and places, with reſpect to their ſeveral local juriſdictions within ſuch places. *Str.* 1154.

Concerning their bodies] *Lambard* and *Dalton* both think it ſeems clear, that if a man is in fear that another will hurt his *ſervants*, or *cattle*, or other *goods*, the ſurety of the peace ſhall not be granted; but Mr. *Dalton* is of opinion, that if one threatens to hurt a man's *wife*, or *child*, he may crave the peace by virtue of theſe words. *Lamb.* 82. *Dalt. c.* 116.

Have uſed threats] It ſhould ſeem from the many cauſes which from time to time have been adjudged ſufficient to bind to the good behaviour, that this expreſſion is not to be underſtood of *words* only, but of threatning *actions* like-

wiſe, or any thing whereby a man has juſt cauſe to apprehend the burning of his houſes, or ſome bodily hurt to be done to him.

To find ſufficient ſecurity] This is done by recognizance; by a reaſonable intendment of law, more than by any eſpecial law in that caſe provided. *Crom.* 125.

For the peace or their good behaviour] Lord *Hale* ſpeaking of the ſtatute of the 34 *Ed.* 3. *c.* 1. (on which Mr. *Crompton* ſays the power of juſtices to bind to the good behaviour is grounded) ſays, that this power of binding, tho' expreſſed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, *viz.* to appear at ſuch a day at their ſeſſions, and in the mean time to be of good behaviour. 2 *H. H.* 136.

In our priſons] The king's priſon is the common gaol of the county: But by the ſtatute of the 6 *G. c.* 19. the juſtices may commit vagrants and other criminals, and perſons charged with ſmall offences, either to the gaol, or to the houſe of correction, by their diſcretion, for ſuch offences, or for want of ſureties.

We have alſo aſſigned you, and every two or more of you] Here beginneth the ſecond part of the commiſſion, or the ſecond aſſignment: All the buſineſs within which aſſignment belongeth to the ſeſſions of the peace. *Dalt. c.* 5.

And by this it appeareth, that two juſtices may hold a ſeſſions, but that one juſtice cannot. *Crom.* 6, 7.

Of whom any one of you the aforeſaid A. B. C. D. *&c.* we *will ſhall be one*] This clauſe, which gives power to two or more juſtices to hear and determine offences, requires that at leaſt one of thoſe juſtices be of that ſelect number, which is commonly termed of the *Quorum* (from that word in the *Latin* commiſſions, *Quorum — unum eſſe volumus.*) For thoſe of the *quorum* were wont to be choſen ſpecially for their knowledge in the laws: And this was it which led the makers of ſeveral ancient ſtatutes expreſly to enact, that ſome learned in the laws ſhould be put into the commiſſion of the peace; and (to ſay the truth) all ſtatutes that require the preſence of the *quorum*, do ſecretly ſignify ſuch a learned man. For albeit that a diſcreet perſon (not converſant in the ſtudy of the laws) may ſufficiently follow ſundry particular directions concerning this ſervice of the peace; yet when the proceeding muſt be by way of preſentment or indictment, upon the evidence of witneſſes, and oaths of jurors, and by the order of hearing and determining, according to the ſtreight rule and courſe of the law,

law, it muſt be confeſſed that learning in the laws is very neceſſary. *Lamb.* 48, 49.

But learning being now greatly advanced and improved ſince the firſt inſtitution of this office, this diſtinction is not uſually made in the commiſſions of late years, but all the juſtices are equally aſſigned to be of the *quorum*; and by the ſtatute of 26 *G.* 2. *c.* 27. no act, order adjudication, warrant, indenture of apprenticeſhip, or other inſtrument done or executed by two or more juſtices, which doth not expreſs that one or more of them is of the *quorum* (altho' the ſtatutes reſpectively do require it) ſhall be impeached, ſet aſide, or vacated, for that defect only.

By the oath of good and lawful men] That is, by a jury ſworn.

Of all and all manner of felonies] That is, either by the common law, or by ſtatute. *Crom.* 8.

Felonies] Tho' the commiſſion doth not mention *murders* and *manſlaughters*, by expreſs name, but only felonies generally, yet by theſe general words, they have power to hear and determine murder and manſlaughter, and alſo may take an indictment of *ſe defendendo*, contrary to the opinions of *Fitzherbert* and *Stamford*. But tho' the juſtices have this power, yet they do not ordinarily proceed to hear and determine theſe offences, and rarely other offences without clergy, both becauſe of the monition and clauſe in their commiſſion, in caſes of difficulty to expect the preſence of the juſtices of aſſize; and alſo becauſe of the direction of the ſtatute of the 1 & 2 *P. & M. c.* 13. which directs juſtices of the peace, in caſe of manſlaughter and other felonies, to take the examination of the priſoner, and the information of the fact, and put the ſame in writing; and then to bail the priſoner, if there be cauſe, and to certify the ſame with the bail at the next gaol delivery; And therefore in caſes of great moment, they bind over the proſecutors, and bail the party if bailable, to the next gaol delivery. But in ſmaller matters, as petit larceny, and ſome caſes within clergy, they bind over to the ſeſſions; but this is only in point of diſcretion and convenience, not becauſe they have not juriſdiction of the crime. 2 *H. H.* 46.

So alſo, an inquiſition of *ſelf-murder*, if the body cannot be ſeen, and ſo not inquired of by the coroner, may be taken before juſtices of the peace; for it is a felony, and within the extent of their commiſſion. 1 *H. H.* 414.

So alſo, if a perſon hath committed *treaſon*, tho' the juſtices have no cognizance of it as treaſon, yet they have

cognizance

cognizance of it as a felony, and as a breach of the peace; and therefore a juſtice of the peace, upon information on oath, may iſſue his warrant to take the traytor, and may take his examination, and commit him to priſon. 1 *H. H.* 580.

Poiſonings] The word in the latin commiſſions was *veneficia*; and before the ſtatute of the 9 *G.* 2. *c.* 5. which aboliſheth witchcraft, was in the *Engliſh* tranſlations rendred witchcrafts.

Inchantments, ſorceries, arts magick] Theſe alſo are aboliſhed by the ſaid ſtatute, which enacts, that no proſecution ſhall thereafter be commenced againſt any perſon, for witchcraft, ſorcery, inchantment, or conjuration.

And from the words continuing in the commiſſion, when the crime itſelf is aboliſhed, we may obſerve the averſeneſs in the ſuperior courts from altering ancient forms.

Treſpaſſes] This is founded on the ſtatute of the 34 *Ed.* 3. *c.* 1. which enacts, that the juſtices aſſigned ſhall have power to reſtrain the offenders, rioters, and all other barators, and to chaſtiſe them according to their treſpaſs or offence.

And upon this Mr. *Hawkins* obſerves, that the word *treſpaſs* is of a very general extent, and in a large ſenſe not only comprehends all inferior offences, which are properly and directly againſt the peace, as aſſaults and batteries, and ſuch like, but alſo all others which are ſo only by conſtruction; as all breaches of the law in general are ſaid to be. Yet it hath been of late ſettled, that juſtices of the peace have no juriſdiction over forgery or perjury at the common law; the principal reaſon of which reſolution, he ſays, as he apprehended was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was, for the preſervation of the peace againſt perſonal wrongs, and open violence; and the word *treſpaſs* in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the ſaid ſtatute and commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40.

The word for treſpaſſes in the old latin commiſſions, is *tranſgreſſiones*.

Foreſtallings,

Foreſtallings, regratings, ingroſſings] Over theſe offences the juſtices in ſeſſions have a juriſdiction given to them, by the ſtatute of the 5 & 6 *Ed.* 6. *c.* 14.

Extortions] The intent of this word is, to inquire of thoſe who have done exceſſive wrongs; for wrong done by any one is properly treſpaſs, but exceſſive wrong done by any one is called extortion; and this is more properly in officers, as ſheriffs, mayors, bailiffs, eſcheators, and other officers whatſoever (as well ſpiritual as temporal) who by colour of their office have done great oppreſſion and exceſſive wrong to the king's ſubjects, in taking exceſſive rewards or fees for doing their offices. *Crom.* 8.

The juſtices have no expreſs power given them over this offence by any ſtatute; upon which Mr. *Hawkins* obſerves, that juſtices of the peace have juriſdiction of all inferior crimes within their commiſſion, whether ſuch crimes be mentioned in any ſtatute concerning them or not; for that all ſuch crimes are either directly, or at leaſt by conſequence and judgment of law, againſt the peace: And upon this ground principally, he ſays, as he apprehended, it was lately reſolved, that they may take an indictment of *extortion*. 2 Haw. 40.

And of all and ſingular other crimes and offences of which the juſtices of our peace may or ought lawfully to inquire] Which general words ſeem to include the vaſt number of offences over which they have a juriſdiction given them by many ſtatutes, and which are not particularly mentioned in the commiſſion.

And alſo of all thoſe who in companies againſt our peace in diſturbance of our people with armed force have gone or rode] By theſe words they are to inquire of riots, routs, and all unlawful aſſemblies. *Crom.* 8.

Weights or meaſures] This clauſe was firſt eſtabliſhed by the 34 *Ed.* 3. *c.* 5. And they have further power given herein by ſeveral ſubſequent ſtatutes, all which ſtatutes muſt be ſtrictly purſued in relation to the ſeveral offences.

Selling victuals] Over this they have a juriſdiction given them, by the 2 & 3 *Ed.* 6. *c.* 15. intitled, *The bill of conſpiracies of victuallers and craftſmen.*

And alſo of all ſheriffs, bailiffs, ſtewards, conſtables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themſelves] This clauſe is as ancient as the 4 *Ed.* 3. *c.* 2. on which it is founded.

And

And it hath been ſuffered to remain in the commiſſion, not as of any neceſſity at all (ſince it is incident to every court of record to do correction upon whatſoever officers and miniſters do ſerve them), but only for the plainer declaration of the power of theſe juſtices in that behalf, and for the more aſſured terrifying of ſuch as ſhall either of contempt or negligence, do that which is amiſs. *Lamb.* 49.

And to inſpect all indictments ſo before you taken] But they cannot proceed upon indictments taken before coroners, or juſtices of oyer and terminer or gaol delivery; but on indictments taken before the ſheriff in his turn they may proceed. *Hale's Pl.* 168.

Or before other late our juſtices] This is founded on the ſtatute 11 *H.* 6. *c.* 6. which enacts, that no indictment, plea, ſuit, or proceſs ſhall be diſcontinued by a new commiſſion; but the juſtices in the new commiſſion, after they ſhall have the records of the ſame pleas and proceſſes before them, ſhall have power to continue the ſaid pleas and proceſſes, and to hear and finally to determine the ſame, as the former juſtices might have done.

And to make and continue proceſſes] This is by *venire*, *diſtringas*, *capias*, or *exigent*, as the caſe ſhall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the king or of the juſtice; but the proceſs iſſues after indictment, and muſt be in the name of the king only. *Dalt. c.* 193.

Until they can be taken, ſurrender themſelves, or be outlawed] For the proceſs is ſent out to this end, that either the party ſhall come in, to anſwer and to be juſtified by the law; or elſe that he ſhall for his contumacy be deprived of the benefit of the law. *Lamb.* 521.

Or be outlawed] It is obſervable that the power of the juſtices ſtops here, and goes no further; ſo that they cannot make out a *capias utlagatum*, but the outlawry muſt be certified into the king's bench. *Lamb.* 521. 2 *H. H.* 52.

But by the 12 *Co.* 103. they that have power to award proceſs of outlawry, have alſo a power to award a *capias utlagatum*, as incident to their authority and juriſdiction.

Hear and determine] This power was firſt given to them by the ſtatute of the 18 *Ed.* 3. *ſt.* 2. *c.* 2. and afterwards confirmed and enlarged by divers other ſtatutes.

Yet this clauſe doth not in propriety make the juſtices of the peace juſtices of oyer and terminer, becauſe that is

a diſtinct commiſſion; and therefore a ſtatute limiting an offence to be heard and determined before juſtices of oyer and terminer, gives not the power therein to juſtices of the peace. *Hale's Pl.* 165.

And thereupon it is ſaid, that although they have power to hear and determine felonies, yet they cannot deliver a perſon ſuſpected thereof by proclamation (as juſtices of gaol delivery may) until an inquiſition taken; but if an inquiſition be taken, and an *ignoramus* found, they may deliver him as it ſeemeth. 2 *H. H.* 46, 47.

Likewiſe, although commiſſioners of oyer and terminer may indict and try at the ſame ſeſſions, yet it hath been ruled otherwiſe in caſe of juſtices of the peace, unleſs by conſent; but certainly conſtant uſage and learned opinion muſt give that expoſition upon thoſe reſolutions, that it muſt extend only to popular actions or indictments for miſdemeanors, and not in caſes of felony. 2 *H. H.* 48.

By fines, ranſoms, amerciaments, forfeitures, and other means—to chaſtiſe and puniſh] Hereby the juſtices are now armed with far more ample authority and power, than the ancient conſervators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the cauſe, nor to puniſh except in ſome few caſes as mentioned before. *Dalt. c.* 6.

But the juſtices may not award any recompence to the party wronged, otherwiſe than by perſuaſion. *Dalt. c.* 5.

Nevertheleſs, theſe words are inſerted, not as of neceſſity (for the puniſhment of all offenders is implied in the word *determine*), but for the plainer declaration of the juſtices power, and for the more aſſured terrifying of offenders. *Lamb.* 49.

If a caſe of difficulty ſhall happen to ariſe] That is a difficulty in point of law. *Crom.* 6.

Then let judgment in no wiſe be given] But yet if they liſt to proceed without the judge's advice, their judgment is not void; but it ſtandeth good and effectual, until it be reverſed by a writ of error. *Lamb.* 50.

At certain days and places] That is, when they hold their ſeſſions; which they are impowered and required to do, by ſeveral ſtatutes.

Laſtly, we have aſſigned you the aforeſaid A. B. *keeper of the rolls*] This is in purſuance of the ſtatute of the 37 *H.* 8. *c.* 1. which enacts, that the lord chancellor ſhall by commiſſion aſſign ſuch perſon to be *cuſtos rotulorum* as the king ſhall by writing under his hand appoint.

III.

III. The juſtice of the peace his oath of office.

On renewing the commiſſion of the peace (which generally happeneth as any perſon is newly brought into the ſame) there cometh a writ of *dedimus poteſtatem* directed out of chancery, to ſome ancient juſtice (or other) to take the oath of him which is newly inſerted, which is uſually in a ſchedule annexed; and to certify the ſame into that court, at ſuch a day as the writ commandeth. *Lamb.* 53.

And ſuch as have once taken the oaths under a writ of *dedimus poteſtatem*, ſhall not be obliged, upon the iſſuing of a new commiſſion, to ſue out or have any other *dedimus poteſtatem* from the clerk of the crown; but the clerk of the peace or his deputy, ſhall on ſuch new commiſſion being iſſued, prepare a parchment roll, with the oaths annexed to and uſually taken under the ſaid writ of *dedimus poteſtatem* ingroſſed on ſuch roll, and ſhall adminiſter without fee to ſuch juſtices the oaths in ſuch roll ſpecified; which juſtices having taken the ſaid oaths ſhall ſubſcribe their names on the ſaid parchment roll: and the ſaid roll ſhall be kept amongſt the records of the ſeſſions. 1 *G.* 3. *c.* 13. *ſ.* 2.

The form of which oath of office at this day is as followeth:

Ye ſhall ſwear, that as juſtice of the peace in the county of W. *in all articles in the king's commiſſion to you directed, you ſhall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and cuſtoms of the realm, and ſtatutes thereof made: And ye ſhall not be of counſel of any quarrel hanging before you: And that ye hold your ſeſſions after the form of the ſtatutes thereof made: And the iſſues, fines, and amerciaments that ſhall happen to be made, and all forfeitures which ſhall fall before you, ye ſhall cauſe to be entred without any concealment (or embezilling) and truly ſend them to the king's exchequer. Ye ſhall not let, for gift or other cauſe, but well and truly ye ſhall do your office of juſtice of the peace in that behalf: And that you take nothing for your office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute. And ye ſhall not direct, nor cauſe to be directed, any warrant (by you to be made) to the parties, but ye ſhall direct them to the bailiffs of the ſaid county, or other the king's officers or miniſters, or other indifferent perſons, to do execution thereof. So help you god.*

This oath ſeems to be founded on the ſtatute of the 13 *R.* 2. *c.* 7. which enacts, that the juſtices ſhall be ſworn, duly

duly and without favour, to keep and put in execution all the ſtatutes and ordinances touching their offices.

Beſides this oath of office, he is likewiſe to take the oath mentioned in the foregoing ſection concerning his qualification by eſtate; and he muſt, within ſix months after, take alſo the oaths of allegiance, ſupremacy, and abjuration, and make and ſubſcribe the declaration againſt tranſubſtantiation, at the ſeſſions, as other perſons admitted to offices.

IV. Of fees to be taken by juſtices of the peace.

In the oath of office abovementioned are theſe words; *And that you take nothing for your office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.*

And by ſtatute their fees in many caſes are limited and aſcertained; as is noted under the reſpective titles where they fall in throughout this book.

And for the reſt it is provided generally by the ſtatute of the 26 *G.* 2. *c.* 14.

That the juſtices at *Midſummer* ſeſſions 1753, ſhall ſettle a table of their clerks fees; which being approved by the juſtices at the next ſucceeding ſeſſions, with ſuch alterations as the juſtices there ſhall think proper, ſhall be laid before the judges at the next aſſizes, who ſhall confirm the ſame with ſuch alterations, additions, or abatements, as to them ſhall appear juſt and reaſonable: And the ſeſſions from time to time may make any other table of fees, and after the ſame ſhall have been approved by the next ſucceeding ſeſſions, ſhall lay the ſame before the judges at the next aſſizes, who may ratify the ſame in like manner: and no table of fees ſhall be valid, until confirmed by the judges. *ſ.* 1.

And if after three months from the time that ſuch table ſhall be confirmed, any juſtice's clerk ſhall demand or take any other or greater fee than ſhall have been ſo confirmed, he ſhall forfeit 20*l.* to him who ſhall ſue in three months. *ſ.* 2, 4.

And the ſaid table of fees ſhall be depoſited with the clerk of the peace, who ſhall cauſe true copies thereof to be kept conſtantly in a conſpicuous part of the room where the ſeſſions are held, on pain of 10*l.* *ſ.* 3.

And by the 27 *G.* 2. *c.* 16. In *Middleſex*, the like table ſhall be confirmed, by the two lord chief juſtices, and the lord chief baron, or any two of them. *ſ.* 4.

V. Some

V. Some general directions relating to juſtices of the peace, not falling under any particular title of this book.

Juſtice being a party.

1. Regularly, juſtices of the peace ought not to execute their office, in their own caſe; but cauſe the offenders to be convened or carried before ſome other juſtice, or deſire the aid of ſome other juſtice being preſent. *Dalt. c.* 173.

By *Holt* Ch. J. *M.* 10 *W.* The mayor of *Hereford* was laid by the heels, for ſitting in judgment in a cauſe where he himſelf was leſſor of the plaintiff in ejectment, though he by the charter was ſole judge of the court. 1 *Salk.* 396.

H. 3 *An.* The caſe of *Foxham* Tithing in the county of *Wilts.* A juſtice of the peace was ſurveyor of the highways, and a matter which concerned his office coming in queſtion at the ſeſſions, he joined in making the order, and his name was put in the caption. But by *Holt* Ch. J. It ought not to be; as if an action be brought by my lord chief juſtice *Trevor* in the court of common pleas, it muſt be before *Edward Nevill*, knight, and his aſſociates, and not before *Thomas Trevor*, &c. And it was quaſhed. 2 *Salk.* 607.

And lord chief juſtice *Raymond*, who had an eſtate in the pariſh of *Abbots Langley*, went off the bench, when an order relating to a pauper there came before the court. *Str.* 1173.

And yet if the juſtice ſhall deal in his own caſe, it ſeems in ſome caſes juſtifiable; as when a juſtice ſhall be aſſaulted, or (in the doing his office eſpecially) ſhall be abuſed to his face, and no other juſtice preſent with him; then it ſeems he may commit ſuch offender until he ſhall find ſureties for the peace or good behaviour, as the caſe ſhall require: But if any other juſtice be preſent, it were fitting to deſire his aid. *Dalt. c.* 173. *Str.* 420, 421.

And by the 16 *G.* 2. *c.* 18. The juſtices may do all things appertaining to their office, ſo far as the ſame relates to the laws for the relief, maintenance, and ſettlement of the poor; for paſſing and puniſhing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithſtanding that they are rated, or chargeable with the rates within any place affected by ſuch their acts. Provided, that this ſhall not impower any juſtice for any county at large, to act in the determination of any appeal to the quarter ſeſſions of ſuch county, from any order, matter, or thing, relating to any ſuch pariſh, townſhip, or place, where ſuch juſtice is ſo charged or chargeable.

And as it is unjuſt in many caſes for the magiſtrate to act in his own cauſe, ſo it is alſo imprudent: To which purpoſe the advice of lord *Coke* is applicable, who upon the occaſion of mentioning a certain judge, who made a ſettlement of his eſtate which was void in law, and brought an action in his own name, which all the other judges, of his own ſhewing in the count, were of opinion did not lie, makes this obſervation, that it is not ſafe for any man (be he never ſo learned) to be of counſel with himſelf in his own cauſe, but to take advice of other great and learned men; and the reaſon he gives is, for that men are generally more fooliſh in their own concerns, than in thoſe of other people. 1 *Inſt.* 377.

Acting without authority.

2. If a juſtice exceed his authority, in granting a warrant, yet the officer muſt execute it, and is indemnified for ſo doing; but if it be in a caſe wherein he hath no juriſdiction, or in a matter whereof he has no cognizance, the officer ought not to execute ſuch warrant; ſo that the officer is bound to take notice of the authority and juriſdiction of the juſtice. *Cro. Car.* 394. 10 *Co.* 76.

Thus if a juſtice ſend a warrant to a conſtable to take up one for ſlander, or the like, the juſtice hath no juriſdiction in ſuch caſes, and the conſtable ought to refuſe the execution of it. *Wood b.* 1. *c.* 7.

But by the 24 *G.* 2. *c.* 44. If the officer in ſix days after demand ſhall grant to the party complaining a peruſal and copy of the warrant, he ſhall not be liable to any action, but the juſtice only.

Whether they may ſuperſede their own proceedings.

3. *T.* 2 *G. Pancras* and *Rumbald.* There was an order of two juſtices for the removal of a poor perſon, from the pariſh of *Pancras* to *Rumbald.* Within three days, the juſtices, reciting that they were ſurprized, ſuperſeded it, and command the church-wardens to return the former order to be cancelled. It was inſiſted, that the juſtices could not iſſue ſuch a *ſuperſedeas.* But by the court, The *ſuperſedeas* is well ſent by the juſtices, and to prevent the charge of an appeal. And the laſt order was confirmed. *Str.* 6.

To condemn no man unheard.

4. In ſummary convictions, the party ought to be heard, and for that purpoſe ought to be ſummoned in fact; and if the juſtice proceed againſt a perſon without ſummoning him, it would be a miſdemeanor in him, for which an information would lie. 1 *Salk.* 181. L. *Raym.* 1407. *Str.* 678.

But before an information is granted, the court will firſt require, that the conviction be removed before them. *Str.* 915.

E. 11 *G.* 2. *K.* and *Harwood.* The defendant being a juſtice of the peace, was convicted on an information, for a conviction by him made of an alehouſe-keeper, who was never ſummoned or heard. It was moved, as of courſe, to diſpenſe with his appearance. This was oppoſed, unleſs there was ſome reaſon given, or affidavit made. And upon debate the court reſolved, it was not of courſe; and the defendant afterwards appeared in perſon. *Str.* 1088.

Refuſing to proceed in a cauſe depending before them.

5. *M.* 9 *G. K.* againſt *Todd* and others. By the 6 *G. c.* 21. the juſtices of the peace have a juriſdiction given them in ſome caſes to receive an information, and make their determination, upon a ſeizure of brandy. Upon information exhibited by the officer of the cuſtoms, the fact appeared not to warrant the ſeizure; but the juſtice, in favour of the officer refuſed to diſmiſs the information, ſo as the owners might have their brandy again. And now a *mandamus* was moved for, to compel him to determine the matter; which was granted accordingly. *Str.* 530.

H. 7 *G. K.* againſt *Newton* and others. By the 1 *G. c.* 13. *ſ.* 11. it is enacted, that two juſtices may ſummon any perſon to take the oaths before them; and if they do not appear, then on oath of ſerving ſuch ſummons, the juſtices are to certify the ſame to the quarter ſeſſions, where if the party ſo ſummoned doth not appear to take the oaths, he ſhall ſtand convicted of recuſancy. The defendants were juſtices of the peace, and iſſued their ſummons accordingly; but coming afterwards to underſtand, that the party was a gentleman of faſhion, and not ſuſpected to be againſt the government; leſt a tranſaction of this nature ſhould be an imputation upon him, they refuſed to give the proſecutor his oath of the ſervice of ſuch ſummons, that the matter might go no further. And now upon motion againſt them for an *information*, the court declared, that the juſtices had no diſcretionary power to refuſe to put the act in execution, and therefore granted an information againſt them. *Str.* 413.

Authority to appear on the face of their orders.

6. Where a ſpecial authority is given to juſtices out of ſeſſions, it ought to appear in their orders, that that authority was exactly purſued. 2 *Salk.* 475.

To make a record of their proceedings.

7. In all caſes where juſtices may hear and determine out of ſeſſions (*viz* on their own view, or confeſſion, or oath of witneſſes) the juſtices ought to make a record in writing under their hands of all the matters and proofs; which record notwithſtanding in many caſes they may keep by them. *Dalt. c.* 115.

To eſtreat fines.

8. And if upon ſuch conviction, the offender is to be fined to the king, then the juſtices are to eſtreat ſuch fine, and to ſend the eſtreat into the exchequer, whereby the barons

barons of the exchequer may cauſe the ſaid fine or forfeiture to be levied for the king's uſe. *Dalt. c.* 115.

9. Lord *Hale* ſays (contrary to the opinion of Lord *Coke*) that the juſtices out of ſeſſions may iſſue their warrants for apprehending perſons charged of crimes within the cognizance of the ſeſſions, and bind them over to appear at the ſeſſions, although the offender be not yet indicted. 1 *H. H.* 579. Whether a juſtice may iſſue his warrant for offences cognizable only in the ſeſſions.

But in another place he ſays, this ſeemeth doubtful; and that one thing which ſeems to make againſt it is, that in moſt caſes of this nature, though the party were indicted, or an information preferred, yet a *capias* was not the firſt proceſs, but a *venire facias*, and *diſtringas*. 2 H. H. 113.

And Mr. *Hawkins* on this point ſaith thus: It ſeems that anciently no one juſtice could legally make out a warrant for an offence againſt a penal ſtatute, or other miſdemeanor, cognizable only by a ſeſſions of two or more juſtices; for that one ſingle juſtice hath no juriſdiction of ſuch offence, and regularly thoſe only who have juriſdiction over a cauſe can award proceſs concerning it; yet the long, conſtant, univerſal and uncontrolled practice of juſtices of the peace, ſeems to have altered the law in this particular, and to have given them an authority in relation to ſuch arreſts, not now to be diſputed. 2 *Haw.* 84.

10. Foraſmuch as moſt of the buſineſs of a juſtice of the peace, conſiſteth in the execution of divers ſtatutes, which cannot be ſufficiently abridged but that they will come ſhort of the ſubſtance and body thereof; therefore it ſhall be ſafeſt for the juſtices to have an eye to the ſtatutes at large, and thereby to take their further and better directions, for their whole proceedings: for (as lord *Coke* obſerveth) abridgments are of good and neceſſary uſe to ſerve as tables, but not to ground any opinion, much leſs to proceed judicially upon them. *Dalt. c.* 173. Not to truſt to abſtracts and abridgments.

11. In like manner, it is not ſafe for them to truſt altogether to the care and judgment of their clerks, in drawing warrants and other inſtruments; much leſs, to the ſkill of pariſh officers in making copies of orders, and the like: but rather it is adviſeable to have good printed forms; and inſtead of copies to be taken upon occaſion, to make out duplicates. Not to truſt to clerks and tranſcribers.

VI. Their indemnity and protection by the law in the right execution of their office; and their puniſhment for the omiſſion of it.

1. A juſtice of the peace is ſtrongly protected by the law, in the juſt execution of his office. His indemnity.

Thus in the firſt place, he is not to be ſlandered or abuſed; as appears by the following report: *M.* 11 *G.* *Aſton* and *Blagrave.* The plaintiff declared, that he was a juſtice of the peace, and that upon a *colloquium* of him and the execution of his office, the defendant ſaid, *You are a raſcal, a villain, and a liar.* After verdict for the plaintiff it was moved in arreſt of judgment, that theſe words are not *actionable.* It was urged for the plaintiff; There is a great difference between magiſtrates and common tradeſmen: words of the latter, muſt affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former, is actionable: And although an *indictment* might not lie for theſe words, as perhaps not tending to a breach of the peace, yet nevertheleſs they are *actionable*; for in many caſes words are actionable, which are not indictable. After conſideration, *Pratt* Ch. J. delivered the opinion of the court, that though *raſcal* and *villain* were uncertain, yet being joined with *liar*, and ſpoken of a juſtice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. *Str.* 617. L. *Raym.* 1369.

Afterwards, *T.* 15 *G.* 2. *Kent* and *Pocock.* Theſe words ſpoken of a juſtice of the peace in the execution of his office, and relating thereto, were held actionable, *viz.* *Mr.* Kent *is a rogue*; according to the aforeſaid caſe of *Aſton* and *Blagrave.* Str. 1168.

E. 7 *G.* *K.* and *Revel.* The defendant was *indicted*, for ſaying of Sir *Edward Lawrence* a juſtice of the peace, in the execution of his office, *You are a rogue and a liar.* It was moved, after verdict for the king, in arreſt of judgment, that though the juſtice might have committed him for the contempt, yet the words are not *indictable*, ſince it is not to be preſumed they would provoke the juſtice to a breach of the peace, which is the reaſon why indictments have been held to lie for words. But by the court, The allowing he might be committed, ſhews they were indictable. It is true, the juſtice may make himſelf judge, and puniſh him immediately; but ſtill, if he thinks proper to proceed leſs ſummarily by way of indictment, he may. The true diſtinction is, that where the words are ſpoken in the preſence of the juſtice, there he may commit; but where it is behind his back, the party can be only indicted for a breach of the peace. Judgment for the king. *Str.* 420.

T. 14 *G.* 2. *K.* and *Pocock.* An *information* was moved for againſt the defendant, on account of words ſpoken of Mr. *Kent* a juſtice of the peace. And the affidavit ſtated, that

that in a converſation about a warrant granted by Mr. *Kent*, the defendant aſked, if Mr. *Kent* was a ſworn juſtice; and being anſwered, to be ſure he was, elſe he would not act, the defendant replied, *If he is a ſworn juſtice he is a rogue, and a forſworn rogue.* To this it was objected, that the words were not ſpoken *to* him in the execution of his office, but only in relation to what he had formerly done: And by the court, There ought to be no information; it is not the ſame inſult and contempt, as if ſpoken to him in the execution of his office, which would make it a matter indictable. *Str.* 1157.

Nevertheleſs, according to the diſtinction in the aforeſaid caſe of *Aſton* and *Blagrave*, although an *information* or *indictment* might not lie, yet it doth not follow but that the words were *actionable*; and ſo it ſeemeth to have been held in the caſe laſt but one abovementioned, of *Kent* and *Pocock*, which ſeemeth to have been no other than an *action* brought for this very ſame offence, after it had been determined that an *information* would not lie.

In the next place; he is not puniſhable at the ſuit of the party, but only at the ſuit of the king, for what he doth as judge, in matters which he hath power by law to hear and determine without the concurrence of any other; for regularly no man is liable to an action for what he doth as judge: but in caſes wherein he proceeds miniſterially, rather than judicially, if he acts corruptly, he is liable to an action at the ſuit of the party, as well as to an information at the ſuit of the king. 2 *Haw.* 85.

In the next place, by the 7 *J. c.* 5. it is enacted, that if any action ſhall be brought againſt a juſtice for any thing done by virtue of his office, he may plead the general iſſue, and give the ſpecial matter in evidence; and if he recovers, he ſhall have double coſts.

And by the 21 *J. c.* 12. ſuch action ſhall not be laid, but in the county where the fact was committed.

And moreover, by the 24 *G.* 2. *c.* 44. it is enacted, that no writ ſhall be ſued out againſt, or copy of any proceſs at the ſuit of a ſubject ſhall be ſerved on any juſtice, for any thing done by him in the execution of his office; until notice in writing ſhall have been given to him, or left at his uſual place of abode, by the attorney for the party, one month before the ſuing out, or ſerving the ſame; containing the cauſe of action, and indorſed with his name and place of abode; for which he ſhall be intitled to a fee of 20*s.* and no more. *ſ.* 1.

And unleſs it is proved upon the trial, that ſuch notice was given, the juſtice ſhall have a verdict and coſts. *ſ.* 3.

And the juſtice may at any time, within one month after ſuch notice, tender amends to the party complaining, or to his attorney; and if the ſame is not accepted, he may plead ſuch tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and if upon iſſue joined, the jury ſhall find the amends tendered to have been ſufficient, they ſhall give a verdict for the defendant; and in ſuch caſe, or if the plaintiff ſhall be nonſuit, or diſcontinue, or if judgment be given for the defendant upon demurrer, the juſtice ſhall be intitled to the like coſts, as if he had pleaded the general iſſue only: And if the jury ſhall find that no amends, or not ſufficient, were tendered, and alſo againſt the defendant on ſuch other plea, they ſhall give a verdict for the plaintiff, and ſuch damages, as they ſhall think proper, which he ſhall recover with coſts. *ſ.* 2.

And if the juſtice ſhall neglect to tender amends, or ſhall have tendered inſufficient, before the action brought, he may, by leave of the court before iſſue joined, pay into court ſuch ſum as he ſhall ſee fit; whereupon ſuch proceedings and judgment ſhall be had, as in other actions where the defendant is allowed to pay money into court. *ſ.* 4.

And no evidence ſhall be permitted to be given by the plaintiff on trial, of any cauſe of action, except ſuch as is contained in the notice. *ſ.* 5.

And no action ſhall be brought againſt any conſtable or other officer, or any perſon acting by his order and in his aid, for any thing done in obedience to the warrant of a juſtice, until demand hath been made, or left at the uſual place of his abode, by the party, or by his attorney, in writing, ſigned by the party demanding the ſame, of the peruſal and copy of ſuch warrant, and the ſame hath been refuſed or neglected for ſix days after ſuch demand: And if after compliance therewith, any ſuch action ſhall be brought, without making the juſtice, who ſigned the warrant, defendant; on producing and proving ſuch warrant at the trial, the jury ſhall give their verdict for the defendant, notwithſtanding any defect of juriſdiction in the juſtice. And if ſuch action be brought jointly againſt the juſtice and conſtable, on proof of ſuch warrant the jury ſhall find for the conſtable: And if the verdict ſhall be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt him, to be taxed in ſuch manner by the proper officer, as to include ſuch coſts as the plaintiff is liable to pay to ſuch defendant, for whom ſuch verdict ſhall be found. *ſ.* 6.

And moreover, no action ſhall be brought againſt any juſtice for any thing done in the execution of his office, unleſs commenced within ſix months after the act committed. *ſ.* 8.

2. On the other hand, it is enacted likewiſe, by the laſt mentioned ſtatute, that where the plaintiff in ſuch action againſt a juſtice, ſhall obtain a verdict, and the judge ſhall in open court certify on the back of the record, that the injury for which ſuch action was brought, was wilfully and maliciouſly committed, the plaintiff ſhall have double coſts. 24 *G.* 2. *c.* 44. *ſ.* 7. His puniſhment.

Moreover, if a juſtice will not, on complaint to him made, execute his office, the party grieved may complain to the judges of aſſize, or to the lord chancellor; and upon examination, if it appeareth that the complaint is true, the chancellor may put him out of the commiſſion, and he ſhall be puniſhed moreover according to his deſert. *Crom.* 7.

But the moſt uſual way of compelling them to execute their office in any caſe, is by a writ of *mandamus* out of the king's bench.

And in actions brought againſt juſtices, they are obliged to ſhew the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, muſt be produced and proved in court. *Seſſ. Caſ. V. 1. p.* 372. *Hill* and *Bateman.* 12 *G.*

And by the 18 *G.* 2. *c.* 20. If any perſon ſhall act as juſtice, without a qualification of 100 *l.* a year, and without making oath at the ſeſſions, as before is mentioned; he ſhall forfeit 100 *l.* half to the poor, and half to him that ſhall ſue, with full coſts.

Other matters relating to the very extenſive office of this magiſtrate, may be found under their proper heads, in almoſt every title of this book.

Labourers. See **Servants.**
Landlord and tenant. See **Diſtreſs.**

Land tax.

THE origin of the land tax ſeemeth to have been thus: King *Edward* the firſt, finding the way of taxing by eſcuage and tallage, the former upon lands held by knight's

ſervice, and the latter upon lands in antient demeſne and burgage tenure, to be very inconvenient, formed into diſtinct bodies his tenants *in capite* that held great baronies, who were called the greater barons, and are now the peers of parliament; and the repreſentatives of the leſſer barons, and of the ſeveral corporations, of whom he made one body, which now compoſes the houſe of commons. Theſe granted to the king a fifteenth of all their goods; which fifteenth ſeems to have been at firſt made from the eccleſiaſtical tenth. For the popes claimed the tenth of all benefices; it was therefore eaſy to know by the pope's collection of his tenths, what was the value of every eccleſiaſtical benefice. For the pope's tenth was reckoned at 2 *s.* in the pound, and therefore the fifteenth muſt be 1 *s.* 4 *d.* The benefice conſiſted of the glebe, and the tenth part of the townſhip; therefore by the value of the benefice, deducting the glebe, they knew the true value of the townſhip, and how to ſet a fifteenth upon it. In the time of king *Edward* the third, we find certain eſtabliſhed ſums ſet upon every townſhip; and ſo, as the king's wants increaſed, they gave one, two, or three fifteenths. In the times of king *Henry* the eighth, queen *Elizabeth*, and king *James* the firſt, they raiſed not only fifteenths, but alſo *ſubſidies*: This was, becauſe the value of things increaſed, and therefore the old fifteenths were not according to the then true value of the townſhips. And therefore they contrived, that the ſubſidy ſhould be raiſed by a pound rate upon lands, and likewiſe a pound rate upon goods. And we find in the ſubſidy of the fourth year of king *Charles* the firſt (which is ſaid to be the greateſt ſubſidy that ever was given, and which paſſed upon the petition of rights) there was 4 *s.* in the pound laid upon land, which was three fifteenths; and 2 *s.* 8 *d.* upon goods, which was two fifteenths. And in the time of the long parliament, certain ſums were fixed upon the ſeveral counties; which method of taxation hath continued to this day. *Gilb. Exch. ch.* 14.

The land tax acts are annual, but with little variation. The act here inſerted is that for this preſent year, 1 *G.* 3. *c.* 2. which, according to the natural order of the buſineſs, diſtributes itſelf under the following heads:

I. The firſt meeting of the commiſſioners, for iſſuing precepts to return aſſeſſors.

II. The ſecond meeting: Charge to the aſſeſſors, and therein concerning the manner of laying the aſſeſſment.

III. The

III. The third meeting: Signing the aſſeſſment, with warrant to collect.
IV. Fourth meeting: The appeal.
V. Collecting.
VI. Collector paying to the receiver general.
VII. Receiver paying into the exchequer.
VIII. Duplicates to be tranſmitted.
IX. General penalty on officers not doing their duty.
X. Indemnity of officers in doing their duty.

I. The firſt meeting of the commiſſioners, for iſſuing precepts to return aſſeſſors.

Commiſſioners. 1. Perſons who were appointed commiſſioners by the act of 31 G. 2. ſhall be commiſſioners to put this act in execution. *ſ.* 6.

But no perſon ſhall be capable to act as commiſſioner in any county or riding at large (the counties of *Merioneth*, *Cardigan*, *Carmarthen*, *Glamorgan*, *Montgomery*, *Pembroke*, and *Monmouth* excepted) unleſs he be ſeiſed of lands, tenements, or hereditaments, being freehold, copyhold, or leaſehold, over and above all ground rents, incumbrances and other reſervations, payable out of or in reſpect of ſuch leaſehold eſtates, which were taxed or did pay, laſt year, in the ſame county or riding, for the value of 100 *l.* a year of his own eſtate. *ſ.* 86.

But this ſhall not extend to commiſſioners being inhabitants of cities, boroughs, towns corporate, or cinque ports; or the inns of court, or chancery. *ſ.* 88.

And no attorney or ſolicitor, or perſon practiſing as ſuch, ſhall act as commiſſioner, without having 100 *l.* a year, as above. Nor ſhall any receiver general, or collector of any aid granted to his majeſty, act as commiſſioner. *ſ.* 88.

And if any commiſſioner diſabled ſhall preſume to act, he ſhall forfeit 50 *l.* to him who ſhall ſue. *ſ.* 91.

And if there are not a ſufficient number of qualified commiſſioners within any city or place for which commiſſioners are particularly appointed, the commiſſioners of the county may act therein. *ſ.* 82.

To take the oaths. 2. And no commiſſioner ſhall act, until he hath taken the oaths of allegiance, ſupremacy, and abjuration, which ſhall be adminiſtred to him by two or more commiſſioners, on pain of 200 *l.* to the king. *ſ.* 46, 47.

3. And

Time and place of meeting.

3. And they ſhall meet at the moſt uſual and common places of meeting, on or before *April* 29. *ſ.* 7.

Subdividing.

4. At which firſt meeting, they may ſubdivide themſelves, and the other commiſſioners not then preſent, ſo as three or more be appointed for each diviſion; but ſhall not thereby reſtrain any commiſſioners from acting in any other part of the county. *ſ.* 7.

And ſhall ſet down in writing, who, and what number of the commiſſioners ſhall act in each diviſion, and ſhall deliver a copy thereof to the receiver general. *ſ.* 8.

Receiver general, who.

5. Which receiver general ſhall be appointed by the king, or in purſuance of his directions; and ſhall have a ſalary allowed to him by the lords of the treaſury, not exceeding 2 *d.* a pound. *ſ.* 8. 13.

And the death or removal of a receiver general ſhall be notified to two or more commiſſioners, by the commiſſioners for the affairs of taxes, before the time of the firſt quarterly payment. *ſ.* 11.

And the receiver general ſhall give notice under his hand and ſeal of his appointing a deputy (which appointment ſhall be alſo under hand and ſeal) to two or more commiſſioners, in ten days after the firſt meeting, and in ten days after the death or removal of a deputy. *ſ.* 10.

Commiſſioners to ſet down the ſums on each diviſion.

6. And the ſaid commiſſioners, at ſuch firſt meeting, ſhall ſet down in writing the ſums to be charged on each diviſion, in proportion to the ſums which were aſſeſſed thereon by the land tax act, in the fourth year of the reign of W. & M. *ſ.* 7.

Note; There is ſaid to have been a hearing on *Feb.* 10. 1746, before the barons of the exchequer, upon the queſtion, whether the commiſſioners of the land tax, at their general meetings for the city and liberty of *Weſtminſter*, have power to alter the *quota's* in their ſeveral pariſhes, which was continued next day; and that the barons declared, they could not depart from the 4 *W. & M.* and the parliament only could redreſs the aggrieved pariſhes.

But where the proportion upon any diviſion ſhall exceed 4 *s.* in the pound, by reaſon of the eſtates of papiſts and nonjurors having been charged double within ſuch diviſion, in the 4 *W. & M.* (the ſums raiſed in that year on every diviſion governing the proportions at preſent) and the ſaid eſtates are not now liable to pay double, by reaſon of their being in the hands of perſons who have taken the oaths; in ſuch caſe two or more commiſſioners may certify the ſame to the barons of the exchequer, who may order ſo much of the proportion upon ſuch diviſion to be abated, as exceeds

ceeds the full ſum of 4*s.* in the pound upon the eſtates therein. *ſ.* 110.

7. Alſo, at ſuch firſt meeting, two or more commiſſioners ſhall direct their ſeveral or joint precepts (A) to ſuch inhabitants, high conſtables, petty conſtables, bailiffs and other officers and miniſters, and ſuch number of them as they ſhall think moſt convenient, to be preſentors and aſſeſſors, requiring them to appear before the ſaid commiſſioners, at ſuch time and place, not exceeding eight days after the date of ſuch precept, as they ſhall appoint. *ſ.* 8. Iſſuing precepts to return aſſeſſors.

They ſhall alſo appoint aſſeſſors and collectors in privileged and extraparochial places. *ſ.* 44.

But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof. *ſ.* 42.

II. The ſecond meeting: Charge to the aſſeſſors, and therein concerning the manner of laying the aſſeſſment.

1. Aſſeſſor not appearing, without lawful excuſe to be made out on the oath of two witneſſes; or appearing, and refuſing to ſerve, ſhall forfeit to the king, not more than 5*l.* nor leſs than 40*s.* *ſ.* 8. Aſſeſſor not appearing.

2. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates, duties, and charges, and openly declare the effect of their charge unto them, and how and in what manner they ought to make their aſſeſſments, and how to proceed in the execution of the act. *ſ.* 8. Charge to the aſſeſſors.

Which ſhall be in the manner following; that is to ſay,

3. Towards raiſing 2,037,874*l.* 1*s.* 10*d.* at 4*s.* in the pound in *Great Britain*, of which *England* ſhall raiſe 1,989,920*l.* 8*s.* and *Scotland* 47,954*l.* 1*s.* 2*d.* the charge upon *perſonal* eſtates ſhall be thus: *viz.* All perſons having an eſtate in goods, wares, merchandizes, or other chattels, or perſonal eſtate whatſoever, within *Great Britain* or without, belonging to or in truſt for them, ſhall pay 4*s.* in the pound, according to the true yearly value thereof; that is to ſay, for every 100*l.* of ſuch ready money and debts, and for every 100*l.* worth of goods, 20*s.* and after that rate for every greater or leſſer quantity. Excepting and deducting thereout ſuch ſums as they *bona fide* owe, and ſuch debts as the commiſſioners ſhall judge deſperate; and except ſtock upon lands, and houſhold ſtuff, and debts and loans owing from his majeſty. *ſ.* 3. Aſſeſſment on perſonal eſtates.

Every

Every perſon having any public *office* or employment and their ſubſtitutes ſhall pay 4 *s.* for every 20 *s.* of their ſalaries. Except military officers in the army or navy. *ſ.* 3.

Every perſon having an *annuity or penſion* out of the exchequer, or out of any branch of the revenue, or to be paid by any perſon whatſoever, ſhall pay 4 *s.* for every 20 *s.* Except ſalaries charged upon lands which pay to the full, and except annuities eſpecially exempted by act of parliament. *ſ.* 3. And except annuities paid to ſuperannuated commiſſion or warrant ſea officers, or to the widows of ſea officers ſlain in the ſervice of the crown. *ſ.* 95. And except money lent or advanced to the government, on the ſecurity of the act. *ſ.* 134. And except turnpike tolls, and the ſalaries of turnpike officers. *ſ.* 116.

On real eſtates. 4. The charge upon *real* eſtates ſhall be as follows:—That the intire ſum may be raiſed, all manors, meſſuages, lands and tenements; all quarries, mines of coal, tin and lead, copper, mundick, iron, and other mines, iron mills, furnaces, and other iron works; ſalt ſprings, and ſalt works; all allom mines and works; all parks, chaſes, warrens, woods, underwoods, coppices; all fiſhings, tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatſoever—ſhall be charged with as much equality and indifference as poſſible, by a *pound rate*, to make up the ſeveral ſums charged by the act on each county or place. *ſ.* 4.

Rent charges. 5. Where manors, meſſuages, lands, tenements, tithes, and hereditaments are incumbered with rent charges, annuities, fee-farm rents, rent ſervice or other rents thereupon reſerved or charged, the owners thereof may detain out of the payment of the ſame, a proportionable ſhare of the land tax; provided that ſuch rent or annual payment amount to 20 *s.* a year or more. *ſ.* 5.

Fee-farm rents of the crown. 6. Receivers of fee-farm rents, or other chief rents due to the king, or to any perſon claiming by grant or purchaſe from him (by which are meant ſuch fee-farm rents only, as are anſwerable to the king, or have been purchaſed from the crown by virtue of the ſtatutes of 22 *C.* 2. *c.* 6. and 22 & 23 *C.* 2. *c.* 24. or one of them, and which before *March* 25, 1693. were not payable to any college, hoſpital, reader in the univerſities, or other perſon exempted) ſhall allow 4 *s.* for every pound of the ſaid rents, and ſo proportionably for any greater ſum than 10 *s.* to the party paying the ſame; on pain of 20 *l.* to the party grieved, with full coſts. Provided that ſuch deduction or allowance do not exceed the ſum aſſeſſed on the whole eſtate out of which ſuch purchaſed fee-farm rent iſſues. *ſ.* 27, 28.

7. But

7. But nothing herein ſhall charge any college or hall in *Oxford* or *Cambridge*, or the colleges of *Windſor*, *Eaton*, *Winton*, or *Weſtminſter*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*, or any hoſpital, for or in reſpect of the ſites of the ſaid colleges, halls, or hoſpitals, or any of the buildings within the walls or limits of the ſame: Or any maſter, fellow, or ſcholar, or exhibitioner of any ſuch college or hall, or any reader, officer, or maſter of the ſaid univerſities, colleges, or halls, or any maſters or uſhers of any ſchools; for or in reſpect of any ſtipends, wages, rents, profits, or exhibitions whatſoever, ariſing or growing due to them in reſpect of the ſaid ſeveral places or employments: Or any of the lands which before *March* 25, 1693, did belong to the ſites of any college or hall, or to *Chriſt*'s hoſpital, St. *Bartholomew*, *Bridewell*, St. *Thomas*, and *Bethlehem* hoſpitals in *London* and *Southwark*; or any other hoſpitals or alms-houſes, in reſpect of any rents, or revenues, which before *March* 25, 1693, were payable to them, being to be received and diſburſed for the immediate uſe and relief of the poor of the ſaid hoſpitals and alms-houſes only. *ſ.* 22. Charities exempted.

But this ſhall not diſcharge any tenants of any houſes or lands belonging to the ſaid colleges, halls, or hoſpitals, alms-houſes, or ſchools, who by their leaſes or other contracts are obliged to pay and diſcharge all rates, taxes, and impoſitions. *ſ.* 24.

In general, all ſuch lands, revenues, or rents, belonging to any hoſpital or alms-houſe, or ſettled to any charitable or pious uſe, as were aſſeſſed in the 4 *W.* & *M.* ſhall be liable; and no other lands, revenues or rents, then belonging to any hoſpital or alms-houſe, or ſettled to any charitable or pious uſe, ſhall be charged, taxed, or aſſeſſed. *ſ.* 26.

And if there ſhall be any queſtion, how far any lands or tenements, belonging to any hoſpital or alms-houſe, not exempted by name, ſhall be liable, the ſame ſhall be finally determined at the appeal. *ſ.* 25.

8. No poor perſon ſhall be charged with, or liable to the pound rate, whoſe lands, tenements, or hereditaments are not of the full yearly value of 20 *l.* in the whole. *ſ.* 76. Poor exempted.

9. The commiſſioners ſhall aſſeſs the aſſeſſors. *ſ.* 41. Who ſhall aſſeſs the aſſeſſors.

10. And all places, conſtablewicks, diviſions, and allotments ſhall be aſſeſſed in ſuch county, hundred, rape, wapentake, conſtablewick diviſion, place, or allotment, as they have been uſually aſſeſſed in. *ſ.* 33. In what places or diviſions perſons ſhall be aſſeſſed.

Every

Every perſon, whether he hath a certain place of reſidence or not, ſhall be rated for his *perſonal* eſtate, at the place where he is *reſident* at the time of the execution of the act: And if he is out of the realm at the time of the aſſeſſment, he ſhall be rated at the place where he was laſt abiding in the realm. *ſ.* 49.

H. 7 *G. Purratt* and *Weeks.* At *Taunton* aſſizes, before *Price*, baron of the exchequer. The plaintiff was an exciſeman, and lived in the county of *Devon*, and executed his office in ſeveral pariſhes in that county, and alſo in a pariſh that extended into *Somerſetſhire*. And the commiſſioners of that county, apprehending they had a concurrent power with the commiſſioners of *Devon*, to tax him for his ſalary, on account that he executed his office in their county, they tax him accordingly, and for want of payment diſtrain. For which, treſpaſs was brought; and ruled, that it well lay; for though he rides about to the publick-houſes in that county, yet he muſt be ſaid to keep his office in the town where he lives and hath his books, and there he was only taxable. *Str.* 417.

And every houſholder ſhall, on demand of the aſſeſſors, give an account of the names and qualities of ſuch perſons as ſhall ſojourn and *lodge* in their houſes: on pain of 5 *l.* to be recovered as the other penalties. *ſ.* 52.

In a *city or town corporate*, perſons having their houſe in one pariſh or ward, and goods in another, ſhall be aſſeſſed for the whole where they inhabit. *ſ.* 30.

But if a perſon hath goods in any *other county* than where he is reſident, or had his laſt reſidence; he may be aſſeſſed for ſuch goods in the county where they are. *ſ.* 50.

Members of parliament ſhall be aſſeſſed for their perſonal eſtate, at their manſion houſes or places, where they moſt uſually reſide during the interval of parliament. *ſ.* 84.

Officers ſhall pay for the profits of their offices or employments, where the office is executed, and not where the ſalary is payable: But all other *penſions*, ſtipends, and annuities (not charged upon lands) ſhall be aſſeſſed where they are payable. *ſ.* 48, 49.

Officers in the receipt of the exchequer, and other publick offices, ſhall, on requeſt of the aſſeſſors, deliver *gratis* true liſts or accounts of all penſions, annuities, ſtipends, or other annual payments, and all fees, *ſalaries*, and other allowances; and if the tax thereupon ſhall not be afterwards paid, it ſhall be ſtopped in ſuch offices, and an account thereof ſhall be given to the collectors. *ſ.* 29.

And deputies in office ſhall pay for their principals. *ſ.* 102.

[By

[By the 32 *G.* 2. *c.* 33. relating to the duty upon offices, it is provided, that in all future aſſeſſments to the land tax, ſuch offices ſhall not be aſſeſſed at a higher rate to the land tax, than they were in the year 1758.]

If a perſon, having too places of reſidence or otherwiſe, ſhall be *doubly charged* for any perſonal eſtate, office, or otherwiſe; then on certificate of two commiſſioners for the place of his laſt perſonal reſidence, under hand and ſeal, of the ſum charged upon him there, and on oath made of ſuch certificate before a juſtice of the place where the certificate ſhall be made, the perſon ſo doubly charged ſhall be diſcharged elſewhere. *ſ.* 51.

If any perſon who ought to be taxed for his perſonal eſtate, ſhall, by changing his place of reſidence, or by any other fraud or covin eſcape from the taxation, and the ſame be proved before two commiſſioners or one juſtice where ſuch perſon reſideth, within one year after ſuch tax made; he ſhall pay treble, to be levied on his lands and goods, on certificate thereof made into the exchequer by ſuch juſtice or commiſſioners. *ſ.* 52.

Every perſon ſhall be aſſeſſed for *lands*, where they lie, and not elſewhere. *ſ.* 50.

And ſuch tax ſhall be paid by the tenant, who ſhall deduct it out of his rent: and if any difference ſhall ariſe between landlord and tenant, the commiſſioners, or two of them, ſhall ſettle the ſame. *ſ.* 15, 16.

But contracts between landlord and tenant, or other perſons, about paying taxes ſhall not be avoided thereby. *ſ.* 32.

11. The tax on foreign miniſters houſes ſhall be paid by the landlord. *ſ.* 43. Foreign miniſters.

12. Every papiſt, or reputed papiſt, being 18 years of age, and upwards, who ſhall not have taken the oaths of allegiance and ſupremacy, 1 *W.* *c.* 8. ſhall pay double; unleſs he take the ſaid oaths, before two commiſſioners in ten days after the firſt meeting. *ſ.* 56, 57. Papiſts and non-jurors.

Alſo every perſon (whether papiſt or not) being 18 years old and upwards, and not having taken the ſaid oaths, and upon ſummons under hand and ſeal of two commiſſioners, refuſing to take them, or neglecting to appear, ſhall pay double in like manner. *ſ.* 58, 59.

But quakers refuſing to take the oaths, ſhall not pay double, if they ſhall make and ſubſcribe the declaration of fidelity in the act of 1 *W.* *c.* 18. id. *ſ.* 60.

13. And at and after the charge given, the commiſſioners ſhall take care, that warrants be iſſued forth, and directed to two at leaſt of the moſt able and ſufficient inhabitants, appointing and requiring them to be aſſeſſors (B); and ſhall Appointing a time to bring in their aſſeſſments.

alſo

alſo therein appoint a day and place for the ſaid aſſeſſors to appear before them, and to bring in their aſſeſſments in writing. *ſ.* 8.

III. The third meeting: Signing the aſſeſſment, with warrant to collect.

Penalty on the aſſeſſor not appearing.

1. The aſſeſſor, after he is appointed, neglecting or refuſing to ſerve, or not appearing at ſuch third meeting, without lawful excuſe to be proved on oath of two witneſſes, or not performing his duty, ſhall forfeit to the king any ſum not exceeding 40 *l.* to be levied as the rates, and charged to the receiver general. *ſ.* 8.

Duplicates to be delivered in.

2. At ſuch third meeting, the aſſeſſors ſhall deliver two duplicates of the aſſeſſment in writing, ſigned by them, to the commiſſioners. *ſ.* 8.

Collectors names to be returned.

3. And ſhall then alſo return the names of two or more able and ſufficient perſons, living within the places where they ſhall be chargeable reſpectively, to be collectors; for whom the pariſh or place ſhall be anſwerable. *ſ.* 8.

Signing the duplicates.

4. Then three or more commiſſioners ſhall ſign and ſeal two duplicates of the aſſeſſments, and deliver one of them to the collectors (whom they ſhall nominate and appoint) with warrant to the ſaid collector to collect the ſame. (C) *ſ.* 8.

Appointing the appeal day.

5. And they ſhall at the ſame time give notice to the collectors, at what time and place appeals may be heard and determined: which ſhall be at leaſt 30 days from the time of ſigning and ſealing and delivering the duplicates to the collectors. *ſ.* 8.

IV. Fourth meeting: The appeal.

Notice of the appeal day to be given in the church.

1. Every collector ſhall, within ſen days after the receipt of the duplicates, cauſe publick notice to be given in every pariſh church or chapel within his diſtrict, immediately after divine ſervice on the Lord's day (if any ſuch divine ſervice ſhall be performed therein within that time) of the time and place ſo appointed by the commiſſioners for hearing and determining appeals: And ſhall alſo, on the ſame day, cauſe the like notices to be fixed in writing on the door of ſuch church or chapel. *ſ.* 8.

Collector ſhall ſuffer the duplicates to be inſpected.

2. And the collectors ſhall permit the duplicates to be inſpected, at all ſeaſonable times of the day without fee. *ſ.* 8.

3. Every

3. Every perſon intending to appeal, ſhall give notice thereof in writing to one or more aſſeſſors, that they may attend, if they think fit, to juſtify the aſſeſſment. *ſ.* 8. Appellant to give notice in writing.

4. And in caſe of any controverſy in apportioning the aſſeſſments, which concerns any commiſſioner, ſuch commiſſioner concerned therein in his own right, or in right of any other for whom he ſhall act as ſteward, agent, attorney, or ſolicitor, ſhall have no voice, but ſhall withdraw until it be determined; on pain of any ſum not exceeding 20 *l.* to be levied and paid as the other fines. *ſ.* 20. Commiſſioner intereſted to withdraw.

5. And where it appears by proof upon oath, that lands are overcharged by the pound rate, the commiſſioners at the appeal may make abatement, and cauſe the ſum abated to be reaſſeſſed upon the whole hundred, lathe, wapentake, or other diviſion where the overcharges happen, although the pound rate of 4 *s.* in the pound be thereby exceeded; or upon any perſon therein undercharged; ſo that the whole ſum charged on ſuch diviſion be fully anſwered. *ſ.* 80. Relief in caſe of overcharge.

6. And appeals once heard and determined, on the appeal day, ſhall be final, without any farther appeal upon any pretence whatſoever; and without further trouble or ſuit in law, either in the king's bench or any other court. *ſ.* 8, 20. Appeal determined, final.

V. Collecting.

1. The collectors ſhall make demand of the parties themſelves if they can be found, or elſe at the place of their laſt abode, or upon the premiſſes charged. *ſ.* 9. Demand.

2. And if any perſon ſhall refuſe or neglect to pay to the collector on demand, he may levy the ſame by diſtreſs and ſale of the goods of the perſon ſo neglecting or refuſing: Diſtreſs.

And where any refuſal, neglect, or reſiſtance ſhall be made, he may (calling the conſtable to his aſſiſtance) break open in the day time any houſe, and by warrant of two commiſſioners any cheſt, trunk, box, or other thing, where any ſuch goods are:

Or he may diſtrain upon the meſſuages, lands, tenements, and premiſſes; and the diſtreſs ſo taken, may keep for four days, at the charges of the owner; and if not paid in four days, then the diſtreſs ſhall be appraiſed by two inhabitants or other ſufficient perſons, and ſold by the collector, returning the overplus immediately (if any be) over and above the tax and charge of taking and keeping the diſtreſs. *ſ.* 15.

And if any difference ſhall ariſe upon taking the diſtreſs the ſame ſhall be determined and ended by two commiſſioners. *ſ.* 15.

In the caſe of the *India company* and *Skinner*, *T.* 7 *W.* The defendant pleaded the general iſſue; and upon evidence it was objected, that the warrant was to break open in caſe of oppoſition; and this warrant was granted before any default; which ought not to be, no more than a warrant to diſtrain for poor rates before demand made; for the firſt ought to be only a confirmation of the aſſeſſment, and afterwards upon refuſal a new warrant is to be made for diſtreſs And *Holt* Ch. J. ſaid, that ſtrictly it was ſo; but the practice having been, in this caſe of taxes, to grant ſuch a conditional warrant to diſtrain, *communis error facit jus.* Caſes of S. 250.

However it is ſafer not to leave the non-feaſance of the party to the judgment of the officers; but firſt to iſſue warrants impowering them to collect, as the act directeth; and then on proof of their refuſal, after ſummoning the party, grant a warrant to diſtrain.

Commitment for want of diſtreſs.

3. If any perſon ſhall refuſe or neglect to pay for ten days after demand, or ſhall convey his goods ſo that diſtreſs cannot be made, he ſhall be committed (unleſs he is a peer) by warrant of two commiſſioners to the common gaol, until payment of the money aſſeſſed, and of the charges for bringing in the ſame. *ſ.* 15.

Levying arrears.

4. Arrears may be levied by the preſent commiſſioners, in the ſame manner as the preſent tax. *ſ.* 114.

And where lands or houſes are unoccupied, and no diſtreſs can be found thereon, the collectors for the time being may diſtrain at any time after; and ſhall diſtribute the money to thoſe who contributed to make it up. *ſ.* 37.

Tax on woodlands how to be levied.

5. Where woodlands are aſſeſſed, and no diſtreſs can be had, the collector or conſtable by warrant of two commiſſioners, at ſeaſonable times of the year, may cut and ſell wood (except timber trees) to pay the tax. *ſ.* 38.

Tax on tithes, tolls and other annual profits, how to be levied.

6. If the tax upon any tithes, tolls, profits of markets, fairs, or fiſheries, or any other annual profits, not diſtrainable, ſhall not be paid in ſix days after demand, the collector, conſtable, or other officer, by warrant of two commiſſioners, may ſeize and ſell ſo much thereof, whereſoever found, as ſhall be ſufficient to pay the tax and charges occaſioned by non-payment. *ſ.* 39.

VI. Collector paying to the receiver general.

Collector to pay to the receiver.

1. The collector ſhall pay the money received, to the receiver general or his deputy, quarterly; on or before *June* 24. *Sept.* 29. *Dec.* 25. and *March* 25. at ſuch time and place as two commiſſioners ſhall appoint; ſo as the whole ſums due be anſwered by the reſpective quarterly pay days; and ſo as the collector ſhall not be obliged to travel above ten miles from his uſual place of abode. *ſ.* 9, 10, 12, 81.

Receiver neglecting to attend.

2. And if the receiver general ſhall wilfully neglect to attend at the time and place appointed, he ſhall forfeit 100 *l.* half to the king, and half to him who ſhall ſue. *ſ.* 81.

Receiver to give receipts.

3. The receiver general, or his deputy, ſhall give a receipt *gratis*. *ſ.* 10.

Receiver to deliver liſts of money received.

4. And at every time and place appointed by the commiſſioners for the collectors to pay the money to the receiver general, he ſhall deliver a a liſt of the money received by him, to ſuch perſon as two or more commiſſioners ſhall under their hands appoint; on pain of forfeiting a ſum not exceeding 20 *l.* to be paid into the exchequer, as the fines on aſſeſſors and collectors. *ſ.* 104.

Collector to have 3d. a pound.

5. And the collectors ſhall have 3 *d.* in the pound, for collecting and giving receipts, which they may detain out of the laſt payment. *ſ.* 14.

Collector making default.

6. If the collector ſhall keep in his hands any part of the money by him collected, longer than the time limited, or ſhall pay any part of it to any other perſon than to the receiver general, or his deputy, he ſhall forfeit 40 l. *ſ.* 77.

And if any collector ſhall refuſe or neglect to pay any ſum by him received, or ſhall detain in his hands any money by him received, and not pay the ſame as the act directs, two commiſſioners may impriſon him, or may ſeize his eſtate as well freehold as copyhold, and all other eſtate both real and perſonal, to him belonging, or which ſhall come to his heirs, executors, or adminiſtrators. Which ſaid commiſſioners may appoint a general meeting of the commiſſioners. and ſhall give public notice thereof at leaſt ſix days before: And the commiſſioners at ſuch general meeting may ſell ſuch eſtates, or any part thereof, for payment. *ſ.* 18.

And the commiſſioners at any general meeting may ſummon collectors, who have fraudulently converted land tax money to their own uſe, and cauſe them to pay the ſame, to make up the deficiency if there is any in that place; and if there is no deficiency, then to diſcharge ſo much of

the proportion charged on ſuch place, as that money doth amount to: And if ſuch collector ſhall neglect or refuſe ſo to pay, the commiſſioners may impriſon him, and ſeize and ſell his eſtate for payment. *ſ.* 111, 112, 113.

And perſons diſtraining upon collectors, may keep in their hands ſo much charges for making and keeping, or otherwiſe relating to the diſtreſs, as two commiſſioners, who ordered the diſtreſs, ſhall judge reaſonable. *ſ.* 105.

Receiver to certify defaults.

7. And in caſe of failure in payment, the receiver general ſhall certify the ſame into the exchequer; and the place or perſons neglecting ſhall be liable to proceſs. *ſ.* 99.

Deficiency to be reaſſeſſed.

8. If the full proportion upon any diviſion ſhall not be fully aſſeſſed, levied, and paid; or if any ſhare thereof ſhall be aſſeſſed upon any perſon not able to pay, or upon any empty or void houſe or land, where it cannot be collected or levied; or if through wilfulneſs, neglect, miſtake, or accident, the aſſeſſment ſhall not be paid to the receiver general or his deputy; the ſame ſhall be reaſſeſſed upon ſuch diviſion. *ſ.* 16.

Receiver falſly returning arrears.

9. If the receiver general ſhall return any perſons in arrear who have paid, he ſhall forfeit treble damages to the party, and double the ſum unjuſtly certified, to the king. *ſ.* 40.

And no receiver ſhall return any place in arrear, after three years; but the ſame ſhall be a debt on him and his ſecurities. *ſ.* 106.

VII. Receiver paying into the exchequer.

Receiver robbed.

1. No receiver general, or any of his agents, ſhall maintain an action againſt the hundred, on account of being robbed in carrying the money; unleſs they be together in company, and in number three at leaſt. *ſ.* 115.

Paying into the exchequer.

2. And the receiver general, within 20 days after receipt, ſhall pay the money into the exchequer. *ſ.* 13.

Which if he ſhall pay otherwiſe than into the exchequer, or not within the time limited, he ſhall forfeit 500 *l.* to him who ſhall ſue. *ſ.* 77.

VIII. Duplicates to be tranſmitted. (D).

Duplicates to be tranſmitted to the receiver general, and into the exchequer.

1. The commiſſioners on or before *Aug.* 8. or in 20 days after (all appeals being firſt determined) ſhall cauſe to be delivered to the receiver general or his deputy, a ſchedule

or

or duplicate in parchment under their hands and ſeals, containing the whole ſum aſſeſſed upon each pariſh or place; and ſhall tranſmit a like ſchedule or duplicate into the king's remembrancer's office in the exchequer; for which the remembrancer, or his deputy, ſhall give a receipt *gratis*, on pain of 10*l*. *ſ*. 8.

And in the ſchedules to be tranſmitted into the king's remembrancer's office, the commiſſioners ſhall diſtinguiſh and ſet down the groſs ſum charged in any diviſion for double taxes, that it may be known how much the double taxes amount to in ſuch diviſion. *ſ*. 118.

2. And by the 18 *G*. 2. *c*. 18. which requires that no perſon ſhall vote in the election of a knight of a ſhire for any lands which have not been aſſeſſed to the land tax for 12 kalendar months next before, it is enacted, That the commiſſioners or 3 of them ſhall ſign and ſeal a duplicate of the copies of the aſſeſſments to be delivered to them by the aſſeſſors, after all appeals determined, and cauſe the ſame to be delivered to the clerk of the peace, to be kept amongſt the records, and inſpected by any perſon without fee. *ſ*. 3, 4. To the clerk of the peace.

3. All which being done, the commiſſioners clerks, for their trouble in writing the aſſeſſments, duplicates, and copies, and all warrants, orders, and inſtructions relating thereunto, ſhall have 1½*d*. in the pound, to be paid by the receiver general, according to the warrant of two commiſſioners. 1 *G*. 3. *c*. 2. *ſ*. 14. Commiſſioners clerks to have 1 d. 2 q. in the pound.

IX. General penalty on officers not doing their duty.

1. If any aſſeſſor, collector, or other perſon, ſhall wilfully neglect or refuſe to perform his duty, or ſhall be guilty of fraud or abuſe, three commiſſioners may fine him not exceeding 40 *l*. which ſhall not be taken off, but by a majority of the commiſſioners who impoſed it. To be levied by warrant of the ſaid commiſſioners by diſtreſs and ſale; in default of diſtreſs (if not a peer) to be committed to priſon by two commiſſioners till payment. *ſ*. 17. General penalty.

2. And all fines ſhall be paid to the receiver general, and paid by him into the exchequer, and ſhall be inſerted in the duplicates to be tranſmitted into the office of the king's remembrancer. *ſ*. 17. To be paid to the receiver general.

Other penalties are annexed to the ſeveral offences.

X. Indemnity of officers in doing their duty.

Officer liable to no penalties but those of the act.

1. No commiſſioner, aſſeſſor, or collector, ſhall be liable to any other penalties than thoſe inflicted by the act. *ſ.* 45.

Treble coſts.

2. And perſons ſued for any thing done in the execution hereof, may plead the general iſſue, and have treble coſts. *ſ.* 36.

Note; The buſineſs of the commiſſioners of the land tax, in relation to the duties upon the perquiſites of offices, is treated of under the title *Offices*; and in relation to the duties upon houſes and windows, the ſame is treated of under the title *Windows*.

A. Precept to the high conſtable to return aſſeſſors.

Weſtmorland. { To *John Bowneſs*, gentleman, high conſtable of the Eaſt Ward within the ſaid county.

WE *the commiſſioners of the land tax, for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby require you forthwith upon the receipt hereof, to iſſue out your warrants to all the petty conſtables within your ſaid ward, in the form or to the effect here under following; that is to ſay,*

Weſtmorland, Eaſt Ward { To the conſtable of ———.

BY *virtue of a precept from the commiſſioners of the land tax for the ſaid county to me directed, you are hereby required forthwith to give notice to the laſt collectors of the ſaid duty within your conſtablewick, that they and every of them do perſonally appear before the ſaid commiſſioners at* ——— *in* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the ſame day, in order to be appointed aſſeſſors of the ſaid duty for this preſent year; and at the ſame time to receive their charge, how and in what manner to make their aſſeſſments, and otherwiſe how to proceed in the execution of their ſaid office. And be you then there, to certify what you ſhall have done in the*

the execution hereof. Herein fail you not. Given under my hand the ——— day of ——— in the year of our lord ———

John Bowneſs, *high conſtable.*

And this you the ſaid high conſtable are in no wiſe to omit, on the peril that ſhall enſue thereof. Given under our hands and ſeals the ——— day of ——— in the year of our lord ———

B. Appointment of aſſeſſors of the land tax, with their charge.

Weſtmorland. BY *virtue of an act for granting an aid to his majeſty by a land tax, at four ſhillings in the pound, for the ſervice of this preſent year, We the commiſſioners of the ſaid duty for the county aforeſaid do hereby nominate and appoint ——— to be aſſeſſors of the ſaid duty, within the townſhip of ——— in the county aforeſaid. And we do hereby require you the ſaid aſſeſſors, to make your aſſeſſment for the ſame, according to the proportions of the laſt aſſeſſment for the ſaid duty within your ſaid townſhip. And of your ſaid aſſeſſment you are to make out two duplicates in writing, and ſign the ſame with your names; and the ſame, together with the names of two or more able and ſufficient inhabitants to be collectors, you are to deliver unto us at ——— in ——— in the county aforeſaid, on ——— the ——— day of ——— at the hour of ——— in the forenoon of the ſame day. And you are to give notice to the ſaid perſons to be by you returned for collectors, that they alſo do appear at the ſame time and place, to receive their appointment and charge. Given under our hands and ſeals, the ——— day of ——— in the year of our lord ———*

C. Appointment and charge of the collectors of the land tax, with warrant to collect.

Weſtmorland. WE *the commiſſioners of the land tax for the ſaid county, whoſe names are hereunto ſet, and ſeals affixed, do hereby nominate and appoint ——— to be collectors of the land tax for the townſhip of ——— in the ſaid county for this preſent year; and do hereby impower them to demand, collect, and receive the ſame. And you the ſaid collectors are hereby required, within ten days after your receipt hereof, to cauſe public notice to be given in the church or chapel immediately after divine ſervice on the lord's day, and to cauſe the like notice in writing to be affixed*

on the door of ſuch church or chapel, that all appeals againſt the aſſeſſment for the ſame, will be finally heard and determined by the ſaid commiſſioners, at——— in ——— in the ſaid county, on the ——— day of——— now next enſuing. And if after the time of ſuch determination, any perſon ſhall refuſe or neglect to pay the ſame upon demand, you are hereby required forthwith to give notice unto us thereof, that ſuch further proceedings may be had therein, as to law doth appertain. And the ſame, when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to ſay,——deducting out of the laſt payment thereof 3 d. *for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and ſeals the —— day of —— in the year of our lord ———*

D. Form of the duplicates to be tranſmitted to the receiver general, and into the exchequer.

Weſtmorland. } A SCHEDULE, *containing the whole ſum aſſeſſed upon each pariſh or place, within the* East Ward *of the ſaid county, for and towards an aid granted to his majeſty by a land tax to be raiſed in* Great Britain, *for the ſervice of the year one thouſand ſeven hundred and ſixty-one, and alſo the chriſtian names and ſurnames of the reſpective aſſeſſors and collectors; made by us whoſe names are hereunto ſet and ſeals affixed, commiſſioners of the land tax for the ſaid county, this —— day of —— in the year aforeſaid.*

	l.	*s.*	*d.*
Orton ———	32	17	4
Aſſeſſors { A. B. C. D.			
Collectors { E. F. G. H.			
Ralſbeck ———	34	1	4
Aſſeſſors { I. K. L. M.			
Collectors { N. O. P. Q.			

(and ſo on.)

Larceny.

LARCENY comes from *latrocinium*, *latrociny*; and by contraction, or rather abuſe, *larceny*. 3 Inſt. 107.

I. Of grand larceny in general.
II. Of petit larceny.
III. Larceny from the perſon.
IV. Larceny from the houſe.
V. Larceny in a booth or tent.
VI. Larceny on a navigable river.
VII. Other larcenies.
VIII. Receiving ſtolen goods.
IX. Offering goods ſuſpected to be ſtolen, to be pawned or ſold.
X. Advertiſing or receiving a reward for helping to ſtolen goods.
XI. Charges of proſecution and conviction how to be paid.

I. Of grand larceny in general.

Grand larceny is *a felonious and fraudulent taking, and carrying away, by any perſon, of the mere perſonal goods of another, above the value of* 12 d. 1 Haw. 89.

Felonious and fraudulent] Felony is always accompanied with an evil intention, and therefore ſhall not be imputed to a mere miſtake or miſanimadverſion; as where perſons break open a door, in order to execute a warrant, which will not juſtify ſuch a proceeding; for in ſuch caſe there is no felonious intention. 1 *Haw.* 65.

For it is the mind that makes the taking of another's goods to be felony, or a bare treſpaſs only; but becauſe the variety of circumſtances is ſo great, and the complications thereof ſo mingled, that it is impoſſible to preſcribe all the circumſtances evidencing a felonious intent, or the contrary; the ſame muſt be left to the due and attentive conſideration of the judge and jury; wherein the beſt rule is, in doubtful matters rather to incline to acquittal than conviction. Only in general it may be obſerved, that the ordinary diſcovery of a felonious intent is, if the party doth it ſecretly, or being charged with the goods denies it. 1 *H. H.* 509.

But

But nevertheleſs, doing it openly and avowedly doth not excuſe from felony. So where a man came to *Smithfield* market to ſell a horſe, and a jockey coming thither to buy a horſe, the owner delivered his horſe to the jockey to ride up and down the market to try his paces, but inſtead of that, the jockey rode away with the horſe, this was adjudged felony. *Kel.* 82.

So where a perſon came into a ſempſtreſs's ſhop, and cheapened goods, and ran away with the goods out of the ſhop, openly, in her ſight, this was adjudged to be felony. *Raym.* 276.

So where a man comes into a houſe, by colour of a writ of execution, and carries away the goods; or ſues out a replevin to get another man's horſe, and then runs away with him; this is felony under colour of law. 2 *Ventr.* 94. *Kel.* 83.

Taking] All felony includes treſpaſs; and every indictment muſt have the words *feloniouſly took*, as well as *carried away*: from whence it follows, that if the party be guilty of no treſpaſs in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw.* 89.

And from this ground it hath been holden, that one who finds the goods which I have loſt, and converts them to his own uſe, with intent to ſteal them, is no felon; and *a fortiori* therefore it muſt follow, that one who has the actual poſſeſſion of my goods by my delivery, for a ſpecial purpoſe, as a carrier who receives them, in order to carry them to a certain place; or a taylor who has them in order to make me a ſuit of cloaths; or a friend who is intruſted with them to keep for my uſe, cannot be ſaid to ſteal them, by imbezilling of them afterwards. 1 *Haw.* 89.

But yet it hath been reſolved, that if a carrier open a pack, and take out part of the goods; or a weaver who has received ſilk to work, or a miller who has corn to grind, take out part thereof, with intent to ſteal it, it is felony. 1 *Haw.* 90.

So where a man's goods are in ſuch a place, where ordinarily they are or may be lawfully placed, and a perſon takes them, with intent to ſteal them, it is felony; and the pretence of finding muſt not excuſe. 1 *H. H.* 506.

So if a man's horſe be going upon a common where he has a right to put him, and another take the horſe with intent to ſteal him, it is no finding, but a felony. 1 *H. H.* 506.

So alſo, if the horſe ſtray into a neighbour's ground or common, it is felony in him that ſo takes him. But if the owner of the ground takes him doing damage, or the lord ſeize him as a ſtray, though perchance he hath no title ſo to do,

do, yet here is not a felonious intention, and therefore cannot be felony. 1 *H. H.* 506.

If one man's ſheep ſtray into another man's flock, and that other perſon drives it along with his ſtock, or by bare miſtake ſhears it, this taking is not a felony; but if he knew it to be another's, and marks it with his mark, this is an evidence of felony. 1 *H. H.* 507.

Lord *Hale* ſays, If one man take another man's hay or corn, and mingles it with his own heap or ſtock; or take another man's cloth, and embroider it with ſilk or gold; ſuch other perſon may retake the whole heap of corn, or cock of hay, or garment and embroidery alſo; and this retaking is no felony, nor ſo much as a treſpaſs. 1 *H. H.* 513.

It ſeems generally agreed, that one who has the bare charge, or the ſpecial uſe of goods, but not the poſſeſſion of them; as a ſhepherd who looks after my ſheep, or a butler who takes care of my plate, or a ſervant who keeps a key to my chamber, or a gueſt who has a piece of plate ſet before him in an inn, may be guilty of felony in fraudulently taking away the ſame. 1 *Haw.* 90.

By the 21 *H.* 8. *c.* 7. Servants imbezilling their maſter's goods, to the value of 40 *s.* or above (although this taking be no treſpaſs) ſhall be puniſhed as felons. But this ſhall not extend to any apprentice, nor to any perſon within 18 years of age.—And by the 12 *Ann. c.* 7. If it is taken out of an houſe, or outhouſe, it is felony without benefit of clergy.

Alſo by the 3 *W. c.* 9. If any perſon ſhall take away, with intent to ſteal, or imbezil, any furniture out of his lodging, he ſhall be guilty of felony.

And carrying away] To make it come within this deſcription, it ſeemeth that any the leaſt removing of the thing taken, from the place where it was before, is ſufficient for this purpoſe, though it be not quite carried off: And upon this ground, the gueſt, who having taken off the ſheets from his bed, with an intent to ſteal them, carried them into the hall, and was apprehended before he could get out of the houſe, was adjudged guilty of larceny: So alſo was he, who having taken an horſe in a cloſe, with an intent to ſteal him, was apprehended before he could get him out of the cloſe. 1 *Haw.* 93.

By any perſon] A wife may be guilty thereof, by ſtealing the goods of a ſtranger; but not by ſtealing the goods of her huſband. 1 *Haw.* 93.

It is ſaid by Mr. *Dalton* and others, that it is no felony for one reduced to extreme neceſſity, to take ſo much of another's

another's victuals, as will ſave him from ſtarving; but lord *Hale* ſays, that this rule by the law of *England* is falſe; and therefore that if a perſon, being under neceſſity for want of victuals or cloaths, ſteals another man's goods, it is felony. 1 *H. H.* 54.

If one ſtealeth another man's goods, and afterwards another ſtealeth the ſame from him; the owner may charge the firſt or ſecond felon at his choice. *Dalt. c.* 162.

Of the mere perſonal goods] *Mere*; for if the perſonal goods favour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold; therefore it is no larceny, but a bare treſpaſs, to ſteal corn or graſs growing, or apples on a tree; but it is larceny to take them being ſevered from the freehold, as wood cut, graſs in cocks, ſtones digged out of the quarry; and this, whether they are ſevered by the owner, or even by the thief himſelf, if he ſever them at one time, and then come again at another time and take them. 1 *Haw.* 93. 1 *H. H.* 510.

But by the 4 *G.* 2. *c.* 32. Every perſon who ſhall ſteal, rip, cut, or break, with intent to ſteal, any lead, iron bar, iron gate, iron paliſadoe, or iron rail, fixed to any building, or in any garden, orchard, court-yard, fence, or out-let belonging to any building; he, his aiders and abettors, and alſo all who ſhall knowingly buy or receive the ſame, ſhall be guilty of felony, and be tranſported for ſeven years.

Alſo the goods ought to have ſome worth in themſelves, and not to derive their whole value from the relation they bear to ſome other thing, which cannot be ſtolen; as paper, or parchment, on which are written aſſurances concerning lands, or obligations, or covenants, or other ſecurities for a debt, or other *choſe* in action. 1 *Haw.* 93.

But by the 8 *H.* 6. *c.* 12. If any perſon ſhall ſteal any record or proceſs belonging to any of the courts at *Weſtminſter*, by reaſon whereof any judgment ſhall be reverſed, he ſhall be guilty of felony.

And by the 2 *G.* 2. *c.* 25. If any perſon ſhall ſteal, or take by robbery, any exchequer order or tallies, or other orders, intitling any other perſon to any annuity or ſhare in any parliamentary fund; or any exchequer bills; bank notes; *South Sea* bonds; *Eaſt India* bonds; dividend warrants of the bank, *South Sea* company, *Eaſt India* company, or any other company; bills of exchange; navy bills or debentures; goldſmiths notes for payment of money; or other bonds or warrants, bills, or promiſſory notes for payment of money; he ſhall be guilty of felony, with or without

without the benefit of clergy, in the ſame manner as he would have been, if he had ſtolen or taken by robbery any other goods of like value with the money due thereon: But not to work corruption of blood.

The goods ought alſo not to be things of a baſe nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howſoever they may be valued by the owner, ſhall never be ſo highly regarded by the law, that for their ſakes a man ſhall die: But yet the ſtealing of an hawk, knowing it to be reclaimed, is felony by the common law and by ſtatute, in reſpect of that very high value which was formerly ſet upon that bird. 1 *Haw.* 93.

Of another] It ſeems agreed, that the taking of goods, whereof no one had a property at the time, cannot be felony; and therefore that he who takes any treaſure trove, or a wreck, waif, or ſtray, before they have been ſeized by the perſons who have a right thereto, is not guilty of felony, but ſhall be puniſhed by fine. 1 *Haw.* 94.

But yet the taking of theſe muſt be, where the party that takes them, really believes them to be ſuch, and colours not a felonious taking under ſuch a pretence; for then every felon would cover his felony under that pretence. 1 *H. H.* 506.

Neither ſhall he who takes fiſh in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. 1 *Haw.* 94.

Upon the like ground it ſeems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the houſe; but it is agreed, that one may commit larceny, in taking ſuch or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameneſs, and known by him to be ſo. 1 *Haw.* 94.

Alſo it is ſaid, that there may be felony in taking goods, the owner whereof is unknown; in which caſe, the king ſhall have the goods, and the offender ſhall be indicted for taking the goods of a perſon unknown; and it ſeems, that in ſome caſes the law will rather feign a property, where in ſtrictneſs there is none, than ſuffer an offender to eſcape. 1 *Haw.* 94.

He who ſteals goods belonging to a pariſh church, may be indicted for ſtealing the goods of the pariſhioners. 1 *Haw.* 94.

And it hath been adjudged, that he who takes off a ſhroud from a dead corps, may be indicted as having ſtolen it from him, who was the owner thereof when it was put on; for a dead man can have no property. 1 *Haw.* 94.

Above

Above the value of 12 *d.*] The learned editor of *Hale's* hiſtory of the pleas of the crown obſerves, that in former times, though the puniſhment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ranſom; but in the 9 *H.* 1. it was enacted, that whoever was convicted of theft ſhould be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But conſidering the alteration in the value of money, the ſeverity of it is much greater now than it was then; for 12 *d.* would then purchaſe as much as 40 *s.* will now: and yet a theft above the value of 12 *d.* is ſtill liable to the ſame puniſhment. Upon which Sir *H. Spelman* juſtly obſerves, that while all things elſe have riſen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occaſion to wiſh, that the antient tenderneſs of life were again reſtored. 1 *H. H.* 12.

And lord *Coke*, obſerving that when the ſtatute of the 3 *Ed.* 1. was made, which makes ſtealing of goods above the value of 12 *d.* to be grand larceny, the ounce of ſilver was at the value of 20 *d.* and now it is at the value of 5 *s.* and above, draws this concluſion, that the thing ſtolen ought to be reaſonably valued, that is, having reſpect to the great alteration in the value of money. 2 *Inſt.* 189, 190. For 20 *s.* were then a real *pound* weight; which name we ſtill retain, although the weight is much diminiſhed.

If two perſons or more, together, ſteal goods above the value of 12 *d.* every one of them is guilty of grand larceny; for each perſon is as much an offender as if he had been alone. 1 *Haw.* 95.

Alſo it ſeems the current opinion of all the old books, that if one at ſeveral times ſteal ſeveral parcels of goods, each under the value of 12 *d.* but amounting in the whole to more, from the ſame perſon, and be found guilty thereof on the ſame indictment, he ſhall have judgment of death as for grand larceny; but this ſeverity is ſeldom practiſed. 1 *Haw.* 95.

II. Of petit larceny.

Petit larceny agrees with grand larceny in the ſeveral particulars abovementioned, except only the value of the goods (and except as hereafter followeth); ſo that wherever an offence would amount to grand larceny, if the thing ſtolen were above the value of 12 *d.* it is petit larceny, if it be but of that value or under. 1 *Haw.* 95.

And if one be indicted for ſtealing goods to the value of 10 *s.* and the jury find ſpecially, as they may, that he is

guilty, but that the goods are worth but 10*d.* he ſhall not have judgment of death, but only as for petit larceny. 1 *Haw.* 95.

In petit larceny there can be no acceſſaries, neither before nor after. 1 *H. H.* 530.

By the 3 *Ed.* 1. *c.* 15. Perſons indicted of petit larceny, if they were not guilty of ſome other larceny aforetime, are bailable by juſtices of the peace. And it ſeems to be agreed, that there is no neceſſity, that ſuch perſons be of good reputation: but yet if the crime be open and manifeſt, it ſeems that they ought not to be bailed; but if there be any colour of probability for their innocence, it ſeems moſt agreeable to the intention of the ſtatute to bail them. 2 *Haw.* 101.

For a juſtice of the peace, before whom an offender ſhall be brought for petit larceny out of ſeſſions, may not puniſh the ſaid offender by his diſcretion, and ſo let him go; but muſt have him committed or bailed, to the intent he may come to his trial, as in caſes of other felonies: And if upon his trial, the jury ſhall find the goods ſtolen to exceed 12*d.* in value, the offender ſhall have judgment to die for the fault. *Dalt. c.* 154.

It ſeemeth that all petit larceny is felony, and conſequently requires the word *feloniouſly* in an indictment for it; yet it is certain, that it is not puniſhable with the loſs of life, or lands, but only with the forfeiture of goods, and whipping, tranſportation, or other corporal puniſhment. 1 *Haw.* 95.

If a man appear to be obſtinately mute, on an arraignment of petit larceny, he ſhall not have judgment of *pain fort et dure*, as in caſes of grand larceny; but he ſhall have the like judgment as if he had confeſſed the indictment. 2 *Haw.* 329.

III. Larceny from the perſon.

If the goods are taken from a man's perſon, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called *robbery*; for which ſee that title.

If it is without putting him in fear, then it is called barely *larceny from the perſon*. 1 Haw. 95.

If it is done privily without his knowledge, by picking of pockets, or otherwiſe, it is excluded from the benefit of clergy by the 8 *El. c.* 4. (That is, if the thing ſtolen be above the value of 12*d.* 2 *H. H.* 366.) But this ſtatute extendeth

extendeth not to acceſſaries, either before or after. 2 *Haw.* 350.

If it is done openly and avowedly before his face, it is within the benefit of clergy, (1 *Haw.* 97.) except where it is committed in a dwelling houſe, or outhouſe thereunto belonging, to the value of 40 *s.* from which the benefit of clergy is taken away, by the 12 *Ann. ſt.* 1. *c.* 7. hereafter following.

IV. Larceny from the houſe.

This muſt be underſtood where the offence falls ſhort of *burglary.*

Robbing a dwelling houſe, ſome perſon being therein.

1. By the 3 *W. c.* 9. Every perſon that ſhall feloniouſly take away any goods, being in any dwelling houſe, any perſon being therein, and put in fear; or ſhall rob any dwelling houſe in the day time, any perſon being therein; he, his comforters and abettors, ſhall be guilty of felony without benefit of clergy.

Robbing an houſe to the value of 5 *s.* no perſon being therein.

2. And by the 39 *El. c.* 15. Every perſon, who ſhall be convicted of the feloniouſly taking away in the day time any money or goods of the value of 5 *s.* in any dwelling houſe, or outhouſe thereunto belonging, and uſed to and with the ſame, altho' no perſon be therein, ſhall be guilty of felony without benefit of clergy.

This requires an actual breaking, and not entering by the doors being open. 1 *H. H.* 548.

Stealing out of an houſe to the value of 40 *s.* no perſon being therein, and the ſame not broken open.

3. And by the 12 *Ann. ſt.* 1. *c.* 7. Every perſon that ſhall feloniouſly ſteal any money, goods, or merchandizes, to the value of 40 *s.* being in any dwelling houſe, or outhouſe thereunto belonging, altho' it be not broken open, nor any perſon be therein, ſhall be guilty of felony without benefit of clergy.

Breaking a houſe in the day time, any perſon being therein, and put in fear.

4. And by the 1 *Ed. 6. c.* 12. *ſ.* 10. Every perſon who ſhall be convicted of breaking any houſe in the day time, any perſon being therein, and put in fear, ſhall be guilty of felony without benefit of clergy.

And this altho' nothing be actually taken: But it requires not only an actual breaking, and putting in fear, but alſo an entry *with intent to commit* felony, and ſo to be laid in the indictment. 1 *H. H.* 548.

Shoplifting, to the value of 5 *s.*

5. By the 10 & 11 *W. c.* 23. Every perſon that ſhall, by night or by day, in any ſhop, warehouſe, coach-houſe or ſtable, privately and feloniouſly ſteal any goods, wares, or merchandizes, to the value of 5 *s.* altho' it be not broken open, nor any perſon be therein, ſhall be guilty of felony without benefit of clergy.

6. Every perſon who ſhall apprehend any one guilty of breaking open houſes in a felonious manner; or of privately and feloniouſly ſtealing goods, wares, or merchandizes, of the value of 5 *s.* in any ſhop, warehouſe, coach-houſe, or ſtable, tho' they be not broken open, and altho' no perſon be therein to be put in fear, and ſhall proſecute him to conviction, ſhall have a certificate without fee, under the hand of the judge, certifying ſuch conviction, and within what pariſh or place the felony was committed, and alſo that ſuch felon was diſcovered and taken, or diſcovered or taken, by the perſon ſo diſcovering or apprehending; and if any diſpute ariſe between ſeveral perſons ſo diſcovering or apprehending, the judge ſhall appoint the certificate into ſo many ſhares to be divided among the perſons concerned as to him ſhall ſeem juſt and reaſonable: Reward for convicting an offender: Exemption from pariſh offices.

And if any perſon ſhall happen to be ſlain by any ſuch houſebreaker, or other felon as aforeſaid, in endeavouring to apprehend him, the executors or adminiſtrators of ſuch perſon ſlain, ſhall have the like certificate:

Which certificate ſhall be inrolled by the clerk of the peace of the county in which it ſhall be granted, for which he ſhall have 1 *s.*

And the ſaid certificate may be once aſſigned over, and no more:

And the original proprietor, or the aſſignee of the ſame, ſhall by virtue thereof be diſcharged from all manner of pariſh and ward offices, within the pariſh or ward where the felony was committed.

But the certificate ſhall not be aſſignable, after it has been once made uſe of to exempt any perſon from ſuch office. 10 & 11 *W.* *c.* 23.

7. And moreover, as a further reward, every perſon who ſhall apprehend any perſon guilty of the felonious breaking and entering of any houſe in the day time, and proſecute him to conviction, ſhall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the aſſizes, certifying the conviction, and in what pariſh the ſaid felony was committed, and alſo that ſuch felon was taken by the perſon claiming the reward; and if any diſpute ſhall happen to ariſe between the perſons claiming, the judge ſhall by the ſaid certificate appoint the ſame to be paid amongſt the parties claiming the ſame, in ſuch ſhare and proportions as to him ſhall ſeem juſt and reaſonable: 40 *l.* reward for convicting.

And on tender of ſuch certificate to the ſheriff, and demand made, he ſhall pay to the perſon ſo intitled the ſum of 40 *l.* without fee, within one month after ſuch tender and demand;

demand; on pain of forfeiting double, with treble coſts. 5 *An.* c. 31.

40*l.* to the executors of a perſon killed.

8. And if any watchman, or any other perſon be killed in endeavouring to apprehend any ſuch houſebreaker, his executors or adminiſtrators ſhall have a certificate delivered under the hand and ſeal of the judge, or of the two next juſtices, of ſuch perſon being ſo killed; which certificate they ſhall, upon ſufficient proof before them made, give without fee: Whereupon ſuch executor or adminiſtrator ſhall be intitled to receive the like ſum of 40*l.* in like manner. 5 *An.* c. 31. *ſ.* 2.

40*l.* and a pardon for convicting accomplices.

9. And moreover, If any perſon being out of priſon, ſhall commit any ſuch houſebreaking in the day time as aforeſaid, and afterwards diſcover two or more the like offenders, ſo as two or more be convicted, he ſhall have the like reward and allowance of 40*l.* and alſo all other advantages which are given to perſons who ſhall apprehend and convict any the like offenders; and ſhall alſo have the king's pardon for all burglaries, robberies, and felonies (except murder and treaſon) by him committed before ſuch diſcovery made; which pardon ſhall be likewiſe a good bar to an appeal. 5 *An.* c. 31. *ſ.* 4.

Sheriff to be repaid out of the treaſury.

10. And the ſheriff, on producing the certificates, and receipts for the ſaid rewards, may deduct the ſame on his accounts; and if he have not money in his hands, he ſhall be repaid out of the treaſury, on certificate from the clerk of the pipe. 5 *An.* c. 31. *ſ.* 3.

Or inſtead of charging the ſame in his accounts, he may immediately apply to the commiſſioners of the treaſury, who ſhall forthwith repay the ſame without fee. 3 *G.* c. 15. *ſ.* 4.

V. Larceny in a booth or tent.

Perſons found guilty of robbing any perſon in any booth or tent, in any fair or market, the owner, his wife, children, or ſervants being within, whether they be ſleeping or waking, ſhall ſuffer as felons without benefit of clergy. 5 & 6 *Ed.* 6. c. 9. *ſ.* 5.

VI. Larceny on a navigable river.

All perſons who ſhall felonioufly ſteal any goods or merchandize of the value of 40 *s.* in any ſhip, barge, lighter, boat or other veſſel or craft, upon any navigable river or in any port of entry or diſcharge, or in any creek belonging thereto, or from off any wharf or key adjacent to any navi-

gable

gable river, port of entry or diſcharge, or ſhall be preſent and aſſiſting therein, ſhall be guilty of felony without benefit of clergy. 24 *G.* 2. *c.* 45.

VII. Other larcenies.

There are moreover divers other larcenies, which are not here ſpecified, the ſame being inſerted under the ſeveral titles in this book, to which they do more properly belong, That is to ſay,

Larceny in ſtealing woollen cloth off the tenters in the night time, is inſerted under the title **Woollen manufacture.**

Larceny in ſtealing linen, fuſtian, callico, or cotton cloth, yarn, or goods laid to be printed, bleached, or dried, to the value of 10*s.* under title **Linen cloth.**

Larceny in ſtealing cattle or ſheep (with a reward of 10*l.* for convicting an offender) under the titles **Cattle** and **Sheep.**

Larceny in ſtealing deer in parks, conies or hares in warrens, or fiſh in ponds, under title **Game.**

Larceny in ſtealing hawks or ſwans, alſo under title **Game.**

VIII. Receiving ſtolen goods.

By the 3 *W.* *c.* 9. If any perſon ſhall buy or receive any ſtolen goods, knowing the ſame to be ſtolen; he ſhall be deemed an acceſſary after the fact, and ſuffer accordingly. *ſ.* 4.

And by the 5 *An.* *c.* 31. If any perſon ſhall buy or receive any ſtolen goods, knowing them to be ſtolen, or ſhall receive, harbour, or conceal any felons or thieves, knowing them to be ſo; he ſhall be deemed acceſſary to the felony, and, being convicted on the teſtimony of one witneſs, ſhall ſuffer death as a felon convict. *ſ.* 5.

And by the 4 *G.* *c.* 11. Perſons convicted of receiving or buying ſtolen goods, knowing them to be ſtolen, may be tranſported for 14 years. *ſ.* 1.

And notwithſtanding that regularly the acceſſary cannot be tried, till the principal be convicted, yet by the 5 *An.* *c.* 31. it is enacted, that if the principal felon cannot be taken, ſo as to be proſecuted and convicted, yet nevertheleſs the buyer and receiver of ſtolen goods may be proſecuted as for a miſdemeanor, and puniſhed by fine and impriſonment, or other ſuch corporal puniſhment as the court ſhall think

fit; which ſhall exempt him from being puniſhed as acceſſary, if the principal ſhall be afterwards taken and convicted. *ſ.* 6.

And by the 29 *G.* 2. *c.* 30. it is enacted as follows:

Whereas the pernicious practice of ſtealing lead, iron, copper, braſs, bell-metal, and ſolder, fixed to, or lying or being in or upon houſes, outhouſes, mills, warehouſes, workſhops, and other buildings, areas, vaults, yards, gardens, orchards, or other places; and alſo the ſtealing of ſuch materials from ſhips, boats, and other veſſels, and from off wharfs, keys, and other places, is become a great evil, by reaſon of the difficulty in apprehending and convicting the thieves, and in diſcovering the buyers and receivers; it is therefore enacted, that every perſon who ſhall buy or receive any of the ſame, knowing the ſame to be ſtolen or unlawfully come by, or ſhall privately buy or receive any ſtolen lead, iron, copper, braſs, bell-metal, or ſolder, by ſuffering any door, window, or ſhutter to be left open or unfaſtened, between ſun-ſetting and ſun-riſing, for that purpoſe; or ſhall buy or receive any of the ſame at any time in any clandeſtine manner; ſhall, on conviction by due courſe of law, altho' the principal felon hath not been convicted, be tranſported for 14 years. *ſ.* 1.

And one juſtice on complaint on oath by any credible perſon, that there is cauſe to ſuſpect that ſtolen lead, iron, copper, braſs, bell-metal, or ſolder, is concealed in any dwelling houſe, outhouſe, yard, garden, or other place, may by his warrant cauſe ſuch place to be ſearched in the day time; and if any of the ſame, ſuſpected to be ſtolen, ſhall be found therein, may cauſe the ſame, and the perſon in whoſe houſe or other place the ſame ſhall be found, to be brought before two juſtices: And if ſuch perſon ſhall not give an account, to the ſatisfaction of ſuch juſtices, how he came by the ſame, or ſhall not in ſome convenient time to be ſet by the ſaid juſtices produce the party of whom he bought or received the ſame, he ſhall be adjudged guilty of a miſdemeanor. *ſ.* 2.

And every conſtable within his conſtablewick, beadle within his diſtrict, and watchman whilſt he is upon duty, ſhall apprehend or cauſe to be apprehended every perſon who may reaſonably be ſuſpected of having, carrying, or conveying, after ſun-ſetting and before ſun-riſing, any of the ſaid materials, ſuſpected to be ſtolen or unlawfully come by; and the ſame, together with ſuch perſon, as ſoon as conveniently may be, ſhall carry before two juſtices: And if the perſon ſo apprehended conveying the ſame, ſhall not produce the party from whom he bought or received the ſame,

or

or ſome other credible witneſs to depoſe upon oath the ſale or delivery thereof, or ſhall not give an account, to the ſatisfaction of ſuch juſtices, how he came by the ſame, he ſhall be adjudged guilty of a miſdemeanor. ſ. 3.

In either of which caſes, two juſtices may cauſe the ſaid materials to be depoſited with the churchwardens or overſeers of the poor where the ſame were found, or in any other convenient place, for any time not exceeding 30 days, and in the mean time may order the ſaid churchwardens or overſeers, or one of them, in every pariſh within the bills of mortality, to inſert an advertiſement in ſome publick paper; and elſewhere cauſe notice to be given by ſome publick cryer, and by fixing on the church or chapel door notice deſcribing ſuch materials, and where depoſited: And if any perſon can prove his property thereto, upon oath, to the ſatisfaction of ſuch two juſtices, they ſhall order reſtitution thereof to the owner, after paying reaſonable charges of removing, depoſiting, and giving publick notice of the ſame. And if at the end of the 30 days, no perſon ſhall prove his property thereto, the ſame ſhall be ſold for the beſt price that can reaſonably be had; and after deducting the charges as aforeſaid, half of the money ariſing from ſuch ſale ſhall be given to the perſon apprehending, and half to the poor of the pariſh where the offence ſhall be committed (if it is known where), or elſe where the conviction ſhall be. ſ. 4.

And every perſon to whom any of the ſame ſhall be brought and offered to be ſold, pawned, or delivered (there being reaſonable cauſe to ſuſpect that the ſame was ſtolen or unlawfully come by) ſhall apprehend, ſecure, and carry before a juſtice (having it in his power ſo to do) the perſon ſo bringing or offering the ſame, together with the ſaid materials; and ſuch perſon ſhall be dealt with, and the ſaid materials ſhall be depoſited and diſpoſed of, as if he had been apprehended by the conſtable, beadle, or watchman: And if it ſhall appear upon the oath of any perſon, notwithſtanding he was concerned in ſtealing the ſame, if corroborated with other credible circumſtances, to the ſatisfaction of two juſtices, that there was reaſonable cauſe to ſuſpect that the ſame was ſtolen or unlawfully come by, and that the perſon to whom the ſame was brought or offered did not (having it in his power ſo to do) apprehend, ſecure, and carry before a juſtice the perſon who brought or offered the ſame; then the perſon to whom the ſame was brought or offered, ſhall be adjudged guilty of a miſdemeanor. ſ. 5.

And perſons for the two former miſdemeanors, in having or carrying any of the ſaid goods, ſhall forfeit for the firſt

offence 40*s.* for the ſecond 4*l.* and for every ſubſequent offence 6*l.* and for the other miſdemeanor, in not carrying a ſuſpected perſon before a juſtice, ſhall forfeit for the firſt offence 20*s.* for the ſecond 40*s.* and for every ſubſequent offence 4*l.* by diſtreſs; half to the informer, and half to the overſeers for the uſe of the poor where the offence was committed (if known), or otherwiſe, where the conviction ſhall be. And if no ſufficient diſtreſs ſhall be found, then to be committed to the common gaol or other priſon or houſe of correction for one month for the firſt offence, for the ſecond two months, and for every ſubſequent offence till diſcharged by order of ſeſſions. *ſ.* 6.

The conviction to be on parchment, and to be certified to the next ſeſſions, and there filed; in the form or to the effect following, *viz.*

Middleſex, to wit. BE *it remembred, that on the* ——— *day of* ——— *in the year* ——— A. O. *was convicted before us* ——— *of the juſtices of the peace for* ——— *of a miſdemeanor, in having in his poſſeſſion lead, iron, copper, braſs, bell-metal, or ſolder, ſuſpected to be ſtolen or unlawfully come by, and not producing the party or parties of whom he bought or received the ſame, nor giving a ſatisfactory account how he came by the ſame* [or, *in having, carrying, or conveying of lead, iron, copper, braſs, bell-metal, or ſolder, ſuſpected to be ſtolen or unlawfully come by, and not producing the party or parties from whom he bought or received the ſame, nor any credible witneſs to depoſe upon oath the ſale or delivery thereof, and not giving a ſatisfactory account how he came by the ſame*; or, *of neglecting to apprehend and ſecure the perſon who brought and offered to pawn, ſell, or deliver lead, iron, copper, braſs, bell-metal, or ſolder, ſuſpected to be ſtolen or unlawfully come by*; as the caſe ſhall be:] *Given under our hands and ſeals the day and year aforeſaid.*

Which conviction ſhall not be liable to be removed by certiorari, but ſhall be final to all intents and purpoſes. *ſ.* 7.

And if any perſon, being out of priſon, ſhall commit any felony by ſtealing any of the ſaid materials, and afterwards diſcover two or more perſons who ſhall buy or receive any of the ſame, knowing the ſame to be ſtolen, ſo as two or more be convicted, he ſhall have a pardon, which ſhall alſo be a bar to an appeal. *ſ.* 8.

And if any perſon ſhall be concerned in ſtealing any of the ſame, and ſhall afterwards, being out of priſon diſcover any perſon to whom he offered to ſell, pawn, or deliver the ſame, ſo as he be convicted of ſuch miſdemeanor; he ſhall not

not be liable to be profecuted for ſuch ſtealing. *ſ.* 9.

But this ſhall not repeal any former law for the puniſhment of ſuch offenders; and perſons puniſhed by this act, ſhall not for the ſame offence be profecuted by any ſuch former law. *ſ.* 11.

IX. Offering goods ſuſpected to be ſtolen, to be pawned or ſold.

By the 30 *G.* 2. *c.* 24. If any perſon who ſhall offer by way of pawn, pledge, exchange, or ſale any goods, ſhall not be able or ſhall refuſe to give a ſatisfactory account of himſelf, or of the means by which he became poſſeſſed thereof; or if there ſhall be any other reaſon to ſuſpect that ſuch goods are ſtolen or otherwiſe illegally or clandeſtinely obtained: it ſhall be lawful for any perſon, his ſervants or agents, to whom the ſame ſhall be offered, to ſeize and detain ſuch perſon and the ſaid goods, and to deliver him as ſoon as conveniently may be into the cuſtody of the conſtable or other peace officer, who ſhall immediately convey ſuch perſon and the ſaid goods before a juſtice; and if ſuch juſtice ſhall upon examination and inquiry have cauſe to ſuſpect that the ſaid goods were ſtolen, or illegally or clandeſtinely obtained, he may commit him to ſafe cuſtody for any time not exceeding ſix days in order to be further examined; and if upon either of the ſaid examinations it ſhall appear to the ſatisfaction of ſuch juſtice, that the ſaid goods were ſtolen, or illegally or clandeſtinely obtained, he ſhall commit the offender to the common gaol or houſe of correction, there to be dealt with according to law. *ſ.* 7.

Provided, that if ſuch goods ſo ſeized and detained as aforeſaid ſhall afterwards appear to be the property of the perſon who offered the ſame to be pawned, exchanged or ſold, or that he was authorized by the owner thereof to pawn, exchange or ſell the ſame; yet nevertheleſs the perſon who ſhall ſo ſeize or detain the party who offered the ſaid goods, ſhall be indemnified for having ſo done. *ſ.* 8.

X. Advertiſing or receiving a reward for helping to ſtolen goods.

By the 25 *G.* 2. *c.* 36. If any perſon ſhall publickly advertiſe a reward, with no queſtions aſked, for the return of things ſtolen or loſt, or ſhall make uſe of words therein purporting that ſuch reward ſhall be given, without ſeizing or

making inquiry after the perſon producing ſuch thing; or ſhall offer to return to any pawnbroker, or other, the money lent thereon, or other reward for the return thereof, he and alſo the printer and publiſher of ſuch advertiſement, ſhall reſpectively forfeit 50 *l.* with coſts, to him who ſhall ſue in ſix months.

And by the 4 *G. c.* 11. Wherever any perſon taketh money or other reward, directly or indirectly, under pretence, or upon account of helping any perſon to any ſtolen goods; he ſhall (unleſs he apprehend the felon, or cauſe him to be apprehended, and cauſe him to be brought to his trial, and give evidence againſt him) be guilty of felony in the ſame manner as if he had ſtolen the ſame. *ſ.* 4.

XI. Charges of proſecution and conviction how to be paid.

By the ſtatutes of the 1 *J. c.* 10. and the 27 *G.* 2. *c.* 3. The offender, if able, ſhall pay his own charges for carrying to gaol, and of thoſe who guard him thither; and if he is not able, then the treaſurer ſhall pay the ſame out of the county rates: as is ſhewn more at large in title Commitment.

And by the 25 *G.* 2. *c.* 36. The court before whom any perſon hath been convicted of any grand or petit larceny, may at the prayer of the proſecutor, and on conſideration of his circumſtances, order the county treaſurer to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble: and the clerk of aſſize, or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on payment of 1 *s.* and the treaſurer ſhall pay the ſame on ſight, which ſhall be allowed in his accounts. *ſ.* 11.

And by the aforeſaid act of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on his recognizance, in ſuch caſe, to give evidence, the court may allow him his reaſonable charges, to be paid in like manner by the treaſurer; the proper officer to have 6 *d.* for making out the order. Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

Warrant

Warrant for larceny.

Weſtmorland. { To the conſtable of ———

Forasmuch as A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information and complaint upon oath, before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, that this preſent day divers goods of him the ſaid* A. I. *to wit,* ——— *have feloniouſly been ſtolen, taken, and carried away from the houſe of him the ſaid* A. I. *at* ——— *aforeſaid in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect that* A. O. *late of* ——— *yeoman, feloniouſly did ſteal, take, and carry away the ſame: Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and to bring him before me to anſwer unto the ſaid information and complaint, and to be further dealt withal according to law: Herein fail you not. Given under my hand and ſeal the* ——— *day of* ——— *in the year* ———.

Note; The form of a warrant to ſearch for ſtolen goods is inſerted under the title *Search Warrant*.

Indictment for grand or petit larceny in general.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ——— *in the county of* ——— *labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *in the county aforeſaid, one linen ſheet of the value of* ——— *of the goods and chattels of one* A. O. *then and there being, feloniouſly did ſteal, take, and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for picking of pockets, or otherwiſe privately ſtealing from the perſon.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ——— *in the pariſh of* ——— *yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at the pariſh aforeſaid in the county aforeſaid, one ſilver watch of the value of* ——— *of the goods and chattels*

chattels of one A. I. *from the perſon of the ſaid* A. I. *ſubtilly, privily, craftily, and without the knowledge of the ſaid* A. I. *then and there feloniouſly did ſteal, take and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for breaking a houſe in the day time, ſome perſon being therein.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ——— *in the county of* ——— *labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the hour of* ——— *in the afternoon of the ſame day, with force and arms, at* ——— *in the county of* ——— *the dwelling houſe of one* A. I. *there ſituate, (one* B. I. *wife of the ſaid* A. I. *in the ſame houſe in the peace of God and of our ſaid lord the king then being) feloniouſly did break and enter, and one ſilver ſpoon of the value of* ——— *of the goods and chattels of him the ſaid* A. I. *then and there feloniouſly did ſteal, take, and carry away, and her the ſaid* B. I. *then and there in bodily fear and danger of her life feloniouſly did put; againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for breaking a houſe in the day time, (no perſon being therein.)

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ——— *on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the hour of* ——— *in the afternoon of the ſame day, with force and arms, at* ——— *in the county aforeſaid, the dwelling houſe of one* A. I. *there ſituate, feloniouſly did break and enter, and one ſilver ſpoon of the value of* ——— *of the goods and chattels of him the ſaid* A. I. *then and there feloniouſly did ſteal, take, and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for ſtealing goods out of a ſhop, warehouſe, coach houſe, or ſtable.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ——— *in the county aforeſaid, labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with*

force and arms, at ——— *in the county aforeſaid, one piece of cloth of the value of* ——— *of the goods and chattels of one* A. I. *in the ſhop of him the ſaid* A. I. *then and there being found, then and there privately and feloniouſly did ſteal, take, and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Leather.

Concerning the duties on leather, ſee title Exciſe.

THERE are ſeveral ſtatutes unrepealed, which were made before the firſt year of the reign of K. *James* the firſt, concerning leather; but the act made in that year renders them all uſeleſs, the ſame being intended to reduce all the acts into one relating to that commodity; which ſame thing was attempted in that king's reign, with ſucceſs, in divers other articles.

Therefore in this title I ſhall go no farther back than the ſtatute of the 1 *J. c.* 22. And to avoid abundance of repetitions, I will firſt inſert the methods of recovering the ſeveral penalties, and will then proceed with this article in its ſeveral progeſſies, in the order of time, from the firſt flaying off the hide, to its being at laſt ſold and manufactured in leather, or exported.

I. Of the penalties under this title.
II. Of hides before they come to the tanner.
III. Of the tanning of hides.
IV. Of the currying of hides.
V. Of the ſearching and ſealing of leather.
VI. Of the triers of leather.
VII. Of the ſelling and regiſtring of leather.
VIII. Of the manufacturing of leather, or exporting it.

I. Of the penalties under this title.

1. All *forfeitures* by the act of the 1 *J. c.* 22. not hereafter otherwiſe ſpecially directed, ſhall be divided one third to

Money and goods forfeited by the 1 J. how to be diſtributed.

to the king, one third to him that ſhall ſue, and one third to the city, town, or lord of the liberty. 1 *J. c.* 22. *ſ.* 46.

And all *leather, ſhoes, or other things* made of tanned or curried leather, ſeized and condemned by the triers hereafter mentioned, by the ſaid ſtatute of the 1 *J. c.* 22. if in *London*, ſhall be brought to *Guild-hall*, and prized by indifferent perſons, and the value thereof divided, one third to the ſeizor, one third to the chamber of *London*, and one third to ſuch poor as the mayor and four aldermen ſhall appoint: If in any other city, town, or place, they ſhall be brought to the common hall of ſuch town, or to ſome convenient and open place to be appointed by the lord of the liberty where no common hall is, there to be prized as aforeſaid, and the value divided, one third to the poor and in other deeds of charity after the diſcretion of the mayor or lord of the liberty, one third to the mayor for the uſe of the commonalty, or to the lord of the liberty where there is no mayor or other ſuch like officer, and one third to the ſeizor. 1 *J. c.* 22. *ſ.* 46.

Forfeitures on the 1 J. and on the 9 An. how to be recovered.

2. And the aboveſaid forfeitures on the 1 *J.* may be ſued for in any court of record, by action of debt, bill, plaint, or information, or otherwiſe. 1 *J. c.* 22. *ſ.* 46.

And likewiſe all juſtices of aſſize, juſtices of the peace, mayors, and ſtewards of leets, may inquire thereof in their ſeſſions, leet, or law day, and hear and determine the ſame. 1 *J. c.* 22. *ſ.* 50.

And moreover by the 9 *An. c.* 11. Any two juſtices near where the forfeitures on the ſaid act of the 9 *An.* ſhall be incurred, or offence committed, or where any offence ſhall be committed againſt the aforeſaid act of 1 *J. c.* 22. may hear and determine the ſame; who ſhall on information or complaint, in three months after any ſeizure made, or offence committed, ſummon the party accuſed, and the witneſſes; and on appearance, or contempt in not appearing (on proof of notice given) ſhall proceed to examine witneſſes on oath, and give judgment, and iſſue warrants for levying the penalties, and cauſe the diſtreſs to be ſold, if not redeemed in ſix days. And if either party is not ſatisfied with the judgment, he may appeal to the next ſeſſions, who ſhall determine the ſame, and in caſe of conviction iſſue warrants for levying the penalties. *ſ.* 36.

Forfeitures on the 13 and 14 C. 2. *c.* 7.

3. All forfeitures and ſums by the act of the 13 & 14 *C. 2. c.* 7. ſhall be recovered in any court at *Weſtminſter*, or in any court of record in the city, town, county, or place where the offence ſhall be committed; to be diſtributed half to the king, and half to the informer. *ſ.* 10.

II.

II. Of hides before they come to the tanner.

1. If any raw hide or calf ſkin ſhall wilfully or negligently be gaſhed or cut in flaying, or being gaſhed or cut ſhall be offered to ſale; the butcher or other perſon who impaired the ſame, or the perſon offering the ſame to ſale, ſhall forfeit 2 *s.* 6 *d.* for every hide, and 1 *s.* for every calf ſkin, half to the poor of the pariſh where it is found or offered to ſale, and half to him that ſhall ſue. 9 *An. c.* 11. *ſ.* 11. Gaſhing hides.

2. No butcher ſhall water any hide, except in *June*, *July*, and *Auguſt*; on pain of 3 *s.* 4 *d.* 1 *J. c.* 22. *ſ.* 2. Watering hides.

3. No butcher ſhall offer any hide to ſale, being putrefied; on pain of 3 *s.* 4 *d.* 1 J. c. 22. ſ. 2. Rotten hides.

4. None but tanners ſhall buy any rough hide or ſkin (except ſalt hides for the uſe of ſhips); on pain of forfeiting the ſame, or the value thereof. 1 *J. c.* 22. *ſ.* 7. Who may buy hides.

5. No perſon ſhall foreſtal any hides, nor buy any but in open fair or market, unleſs of perſons killing the beaſt for their own houſhold, on pain of 6 *s.* 8 *d.* 1 J. c. 22. ſ. 7. Foreſtalling hides.

III. Of the tanning of hides.

1. No perſon ſhall be a tanner, but who hath ſerved ſeven years, except the wife or ſuch ſon of a tanner as hath uſed the trade four years, or the ſon or daughter of a tanner, or ſuch perſon who ſhall marry ſuch wife or daughter to whom he ſhall leave a tan houſe and fats; on pain of forfeiting all ſuch leather by him tanned, or of which he ſhall receive any profit, or the value thereof. 1 *J. c.* 22. *ſ.* 5. Who may be a tanner.

No tanner ſhall be a butcher, on pain of 6 *s.* 8 *d.* a day 1 *J. c.* 22. *ſ.* 4.

No tanner ſhall be of any craft exerciſed in the cutting or working of leather; on pain of forfeiting the ſame, or the value thereof. 1 *J. c.* 22. *ſ.* 6.

2. No perſon ſhall regrate or ingroſs any oaken bark; on pain of forfeiting the ſame, or the value thereof. 1 *J. c.* 22. *ſ.* 19. Oak bark.

No perſon ſhall fell any oak trees meet to be barked, where bark is worth 2 *s.* a cart load, over and above the charges of barking and pilling (except timber for houſes, ſhips, or mills) but between *April* 1. and *June* 30. on pain of forfeiting the ſame, or double value thereof. *J.* 1. *c.* 22. *ſ.* 20.

No

No purveyor of timber ſhall fell for the king's uſe, any oak timber tree meet to be barked, but in barking time (except for the king's houſes or ſhips); or ſhall receive any profit by any lops, tops, or bark of trees to be taken by them; or ſhall take or diſpoſe from the owner, any more or any tree ſo to be taken, than only the timber thereof to be uſed only about the king's buildings or ſhips: on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree 40*s*. And the owner may withhold any bark, lop, or top, any commiſſion or other matter notwithſtanding. 1 *J*. *c*. 22. *ſ*. 21.

Manner of tanning.

3. No tanner ſhall ſuffer any hide or ſkin to lie in the limes till they be overlimed; nor ſhall put them into any tan fats, before the lime be perfectly ſokened and wrought out of them; nor ſhall uſe in the tanning thereof any thing but aſh bark, oak bark, tap wort, malt, meal, lime, culver dung, or hen dung; nor ſhall ſuffer it to lie wet till it be frozen; nor ſhall dry it by the fire, or ſummer ſun; nor ſhall tan any hide or ſkin putrefied or rotten; nor ſhall ſuffer the hides for utter ſole leather to lie in the woozes leſs than 12 months, nor the hides for upper leathers leſs that nine months; nor ſhall negligently work the hides in the woozes, but ſhall renew and make ſtrong their woozes, as often as ſhall be requiſite; nor ſhall put to ſale any leather tanned in any other ſort than by this ſtatute is limited: on pain of forfeiting every hide or ſkin tanned and offered to ſale contrary to this act, or the value thereof. 1 *J*. *c*. 22. *ſ*. 11.

No tanner ſhall raiſe with any mixtures any hide to be converted to backs, bend leather, clouting leather, or any other ſole leather, except they be for largeneſs, ſtate, and growth fit for that purpoſe, to be tried by the triers hereafter mentioned; on pain of forfeiting the ſame. 1 *J*. *c*. 22. *ſ*. 12, 13.

No perſons ſhall ſet the fats in tan hills, or other places, where the woozes or leather may take any unkind heats; or ſhall put any leather into any hot or warm woozes; or ſhall tan any hide or ſkin with any hot or warm woozes; on pain of 10 *l*. and the pillory on three market days in the next market town. 1 *J*. *c*. 22. *ſ*. 16, 17.

If any tanner or other perſon ſhall ſhave or cauſe to be ſhaved any hide or calf ſkin, before it be thoroughly tanned, whereby it ſhall be impaired; he ſhall forfeit the ſame or the value, half to the king, and half to him that ſhall ſue. 9 *An*. *c*. 11. *ſ*. 12.

Every

Every tanner, who ſhall ſhave, cut, and rake the upper leather hides all over, or the necks of their backs and butts; ſhall forfeit the ſame, or the value thereof, and the ſearchers and ſealers hereafter mentioned may ſeize them. 13 & 14 *C.* 2. *c.* 7. *ſ.* 8.

If any tanner ſhall offer to ſale any leather not thoroughly tanned or dried, to the ſatisfaction of the triers; he ſhall forfeit ſo much as ſhall be ſo deficient, whether whole hides or part thereof. 1 *J.* *c.* 22. *ſ.* 15.

IV. Of the currying of hides.

Who may be a currier.

1. No currier ſhall be a tanner, ſhoemaker, butcher, or other artificer uſing cutting of leather; on pain of forfeiting 6*s.* 8*d.* for every hide he ſhall curry during the time that he ſhall occupy any of the ſaid miſteries. 1 *J.* *c.* 22. *ſ.* 25.

Leather delivered to the currier.

2. Every artificer dealing in cutting of leather, or other perſon, who ſhall buy any red tanned leather, within *London* or three miles thereof, ſhall before the next market day for ſale of leather, give notice thereof to one of the curriers company, and in three weeks after ſhall deliver the leather ſo bought (except what ſhall be uſed for ſoles without being curried, tallowed, or dreſſed) to the ſaid currier, to be curried, tallowed, or dreſſed; on pain of 6*s.* 8*d.* for every back, butt, hide, or calf ſkin. 13 & 14 *C.* 2. *c.* 7. *ſ.* 13.

In what time he ſhall curry it.

3. No currier ſhall refuſe to curry any leather to him brought by any artificer being a cutter of leather, and bringing with him ſufficient ſtuff for the perfect liquoring the ſame, with as convenient ſpeed as may be, not exceeding eight days in ſummer, and 16 in winter, in the preſence of the ſaid artificer, if he will be preſent, otherwiſe in his abſence; on pain of forfeiting to the party grieved for every hide or piece of leather not in this manner curried, and well and ſpeedily dreſſed, 10s. 1 *J.* *c.* 22. *ſ.* 26.

And by the 12 *G.* 2. *c.* 25. If any currier ſhall refuſe to curry any leather brought or ſent to him by an perſon dealing or working in leather, or ſhall neglect to curry the ſame in 16 days between *Sept.* 28. and *March* 25. and in 8 days in the remaining part of the year; he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit any ſum not exceeding 5 *l.* by diſtreſs; half to the informer, and half to the poor. Perſons aggrieved may appeal to the next ſeſſions. *ſ.* 4, 5, 6.

4. No

Manner of currying.

4. No perſon ſhall curry any leather in the houſe of any ſhoemaker or other perſon, but only in his own houſe ſituate in a corporate or market town; nor ſhall curry any leather except it be perfectly tanned; nor ſhall curry any hide or ſkin being not thoroughly dry after his wet ſeaſon; in which wet ſeaſon, he ſhall not uſe any ſtale urine, or any other deceitful or ſubtle mixture or means to hurt the ſame; nor ſhall curry any leather meet for utter ſole leather, with any other ſtuff than with hard tallow, nor with any leſs of that than the leather will receive; nor ſhall curry any leather meet for overleather, and inner ſoles, but with ſufficient ſtuff, being freſh and not ſalt, and thoroughly liquored till it can receive no more; nor ſhall burn or ſcald any hide or leather in the currying; nor ſhall ſhave any leather too thin, nor ſhall gaſh or hurt any leather in the ſhaving, or by any other means; but ſhall work the ſame ſufficiently in all points: on pain of forfeiting for every ſuch offence (other than in gaſhing or hurting in ſhaving) 6*s.* 8*d.* and the value of ſuch ſkin or hide marred by his evil workmanſhip; and for every offence in gaſhing or hurting by ſhaving, double ſo much to the party grieved as the leather ſhall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party grieved ſhall be. 1 *J.* *c.* 22. *ſ.* 22.

V. Of the ſearching and ſealing of leather.

Searchers and ſealers in London.

1. The mayor and aldermen of *London* (on pain of 40*l.* for every year they make default, half to the king, and half to him that ſhall ſue) ſhall yearly appoint 8 freemen of ſome of the companies of cordwainers, curriers, ſadlers, or girdlers (whereof one ſhall be a ſealer, and keep a ſeal for the ſealing of leather); who ſhall be ſworn before them to do their office truly: And they ſhall ſearch and view all tanned leather brought to market, whether it is thoroughly tanned and dried; and if it is, ſhall ſeal the ſame. 1 *J.* *c.* 22. *ſ.* 31.

And four of the ſaid ſearchers ſhall be removed at the end of the year, and four new ones choſen; and no one ſhall continue in the office above two years together, nor ſhall be employed again till after the end of three years; on pain of 10*l.* a month. 1. *J.* *c.* 22. *ſ.* 36.

In other places.

2. And all mayors, and lords of liberties, fairs, and markets, out of the compaſs of three miles from *London*, ſhall (on like pain of 40*l.*) appoint and ſwear yearly two, three,

three, or more honeſt and ſkilful men, to be ſearchers within their precincts; who ſhall ſearch as often as they ſhall think good, or need ſhall be, and ſhall ſeal what they find ſufficient: And if they find any leather offered to be ſold, or brought to be ſealed, which ſhall be inſufficiently tanned or curried, or any boots, ſhoes, bridles, or other thing made of tanned or curried leather, inſufficiently tanned, curried, or wrought, they may ſeize and keep the ſame, till they be tried by the triers. 1 *J.* *c.* 22. *ſ.* 32.

3. The wardens of the curriers ſhall ſearch and try all ſuch curried leather as ſhall be brought to any of their company to be curried, and ſhall with a ſeal therefore to be prepared, with convenient ſpeed, not exceeding one day after the currying and requeſt made, ſeal ſuch leather as they ſhall find ſufficiently curried; taking for every hide ſo ſealed after the rate of one penny for the dicker, and for every ſix dozen of calves ſkins one penny, to be paid by the currier: on pain of forfeiture for every hide not ſearched and ſealed 6 s. 8 d. 1 *J.* *c.* 22. *ſ.* 27. Fee for ſealing.

But they ſhall not viſit, ſearch, or ſeize any leather, hide, or ſkin, but ſuch as ſhall be curried or dreſſed within *London* or three miles thereof, by ſome members of their own company, nor in any other place but in the open market, or in the ſhops, houſes, or warehouſes of ſuch curriers. 1 *W.* *ſeſſ.* 1. *c.* 33. *ſ.* 4.

4. If any ſearcher or ſealer ſhall refuſe with convenient ſpeed to ſeal any leather which is ſufficient, or do allow that which is inſufficient; he ſhall forfeit 40 *s.* If he ſhall receive any bribe, or exact any other fee than by this act is appointed, he ſhall forfeit 20 *l.* And if he ſhall refuſe to execute his office, he ſhall forfeit 10 l. 1 *J.* *c.* 22. *ſ.* 37. Penalty on the ſearcher or ſealer miſbehaving.

5. If any perſon ſhall deny, or withſtand, or not ſuffer the ſearching or ſeizing of inſufficient wares, he ſhall forfeit 5 l. 1 *J.* *c.* 22. *ſ.* 40. Penalty on hindering the ſearcher.

VI. Of the triers of leather.

1. The mayor of *London* (on pain of 5 *l.* half to the king, and half to him that ſhall ſue) ſhall within ſix days after notice given to him of any ſeizure of any leather, red and unwrought, appoint ſix triers, two of the cordwainers company; two of the curriers, and two of the tanners uſing *Leadenhall* market; who upon their oaths to be taken before him, ſhall on the ſecond or third market day for leather (to be holden on *Tueſday*, 13 & 14 *C.* 2. *c.* 7. *ſ.* 9.) in the Triers in London.

afternoon, try whether the ſame be ſufficient or not. 1 *J. c.* 22. *ſ.* 33, 35.

In other places. 2. Every other mayor, or lord of liberty, out of the compaſs of three miles from *London*, within whoſe precincts any ſeizure of any tanned leather, red or curried, or of any ſhoes, boots, or other wares made of tanned leather, ſhall be, ſhall (on like pain) with all convenient ſpeed after notice given to him of ſuch ſeizure, appoint ſix honeſt and expert men, to try whether the ſame be ſufficient or not; the ſame trial to be openly on ſome market day, and within 15 at the furtheſt from the time of the ſeizure, upon the oaths of the ſaid triers. 1 *J. c.* 22. *ſ.* 34.

Triers miſbehaving. 3. Triers not doing their duty, ſhall forfeit 5 l. 1 *J. c.* 22. *ſ.* 35.

VII. Of the ſelling and regiſtring of leather.

Selling unſealed. 1. No perſon ſhall put to ſale any tanned leather red and unwrought, but in open fair or market, unleſs the ſame hath been firſt ſearched and ſealed; nor ſhall offer to ſale any tanned leather red and unwrought before it be ſearched and ſealed; on pain of forfeiting the ſame, or the value thereof, and alſo for every hide or piece 6 *s.* 8 *d.* and for every dozen of calves ſkins 3 *s.* 4 *d.* 1 J. c. 22. ſ. 14.

But no perſon ſhall incur any penalty for ſelling or buying any ſheep ſkins unſearched or unſealed. 4 *J. c.* 6. *ſ.* 2.

Where to be ſold and regiſtred. 2. All red tanned leather ſhall be bought only in the open fair or market, and not in any houſe, yard, ſhop, or other place; on pain of forfeiting the ſame, or the value thereof, and the contract to be void. And all ſuch leather ſhall be ſearched and ſealed before ſale, and on ſale ſhall be regiſtred, and an entry made both by the buyer and ſeller, both being preſent, and their names and dwellings entred into the book of the regiſter; on pain that every ſuch buyer or ſeller who ſhall make default, ſhall forfeit the ſame or the value thereof. 13 & 14 *C.* 2. *c.* 7. *ſ.* 4.

Fee for regiſtring. 3. Searchers and ſealers ſhall keep a regiſter, wherein they ſhall enter all bargains made for leather, hides, or ſkins, during the fair or market, being thereunto required by the buyer or ſeller, with the prices; taking for ſearching, ſealing, and regiſtring of every ten hides, backs, or butts, of the ſeller, 2 *d.* and ſo after the rate; and for every ſix dozen of calves ſkins or ſheep ſkins 2 *d.* and of the buyer after the ſame rate. 1 *J. c.* 22. *ſ.* 41.

Regiſtring in London. 4. All red tanned leather which ſhall be brought into *London*, or within three miles thereof, ſhall be brought to *Leadenhall*

Leadenhall before it be houſed, and there viewed whether it hath been ſearched or ſealed, and ſhall be regiſtred by the ſearchers, with half ſuch fees to be paid for ſuch of the ſaid tanned leather as ſhall be bought out of *London*, or three miles compaſs from the ſame, and ſearched and ſealed before it be brought within the city; on pain that every perſon houſing or not bringing his leather to *Leadenhall* as aforeſaid, ſhall forfeit for every hide or ſkin 6 *s.* 8 *d.* 1 J. c. 22. ſ. 38.

5. By the 1 *J.* *c.* 22. No perſon ſhall buy any tanned leather unwrought, but who ſhall work the ſame into wares; on pain of forfeiting the ſame, or the value thereof. *ſ.* 8. Buyer of leather ſelling it again unwrought.

But by the 12 *G.* 2. *c.* 25. All perſons who deal or work in leather, may buy all ſorts of tanned leather in open fair or market, whether curried or uncurried, being firſt ſearched and ſealed; and may cut and ſell the ſame in any ſmall pieces in their open ſhops. *ſ.* 1.

And by the 1 *W.* *ſeſſ.* 1. *c.* 33. All dealers or workers in leather may buy all ſorts of red tanned leather in open fair or market, whether curried or uncurried, being firſt ſearched and ſealed, and may ſell it again in their open ſhops, or cut and convert it into other made ware. *ſ.* 5.

6. Within *London* or three miles thereof, no perſon ſhall ſell any wares appertaining to the miſtery of any artificer cutting leather, but only in open ſhop, common fair or market, whereby the wardens may have ſearch thereof; on pain of forfeiting the ſame, and alſo 10 s. 1 *J.* *c.* 22. *ſ.* 45. Where it may be ſold in London.

VIII. Of the manufacturing of leather, or exporting it.

1. No ſhoemaker ſhall make any boots or ſhoes, or any part of them, of *Engliſh* leather wet curried (other than deer ſkins, calves ſkins, or goat ſkins made and dreſſed like *Spaniſh* leather), but of leather well and truly tanned and curried in manner aforeſaid, or of leather well and truly tanned only, and well ſewed, without mixing overleathers, that is to ſay, part being neat's leather, and part calves leather; nor ſhall put into any part of any ſhoes or boots, any leather made of a ſheep ſkin, bull hide, or horſe hide; nor in the upper leather of any ſhoes, or into the nether part of any boots (the inner part of the ſhoe only excepted) any part of any hide from which the ſole leather is cut, called the wombs, necks, ſhank, flank, powle or cheek; nor ſhall put into the utter ſole any other leather, than the beſt of the ox or ſteer hide; nor into the inner ſole, any other leather than the wombs, neck, powle, or cheek; nor into the Shoemaker's duty.

treſwels of the double ſoled ſhoes, other than the flanks of any the hides aforeſaid; nor ſhall make or put to ſale between *September* 30. and *April* 20. any ſhoes or boots meet for any perſon above 4 years old, wherein ſhall be any dry *Engliſh* leather, other than calves ſkins or goats ſkins made or dreſſed like *Spaniſh* leather; on pain of forfeiting for every pair of ſhoes or boots 3 *s.* 4 *d.* and the value thereof. 1 *J. c.* 22. *ſ.* 28.

Artificers working bad leather.

2. And if any ſhoemaker, ſadler, or other artificer uſing of leather, do make any wares of any tanned leather inſufficiently tanned, or of tanned and curried leather being not ſufficiently tanned and curried; he ſhall forfeit the ſame, and the value thereof. 1 *J. c.* 22. *ſ.* 44.

Shoemakers in London.

3. If any ſhoemaker or cobler within *London* or three miles thereof, ſhall put any tanned leather into any boots or ſhoes, or other things made of tanned leather, which ſhall not be well and perfectly tanned; or do put any curried leather into boots or ſhoes or other things made of leather, which ſhall not be ſufficiently tanned and curried, and alſo ſealed; he ſhall forfeit the ſame, and the value thereof. 1 *J. c.* 22. *ſ.* 44.

Search in London for inſufficient wares.

4. And the maſter and wardens of the miſteries of cordwainers, curriers, girdlers, and ſadlers of *London* (on pain of 40 *l.* for every year they make default, half to the king and half to him that ſhall ſue) ſhall once a quarter or oftner make ſearch and view of all boots and ſhoes, and other wares made of tanned leather, within three miles of *London*, and if they are not truly wrought, they may ſeize and carry the ſame to their ſeveral common halls. 1 *J. c.* 22. *ſ.* 29.

And by the 1 *W. ſeſſ.* 1. *c.* 33. *ſ.* 3. Every hide, ſkin, or piece of tanned leather, ſhaved or liquored, of what colour ſoever, with any lawful liquor or dreſſing, and being well and truly curried, ſhall be deemed *ware* within the ſaid ſtatute of the 1 *J. c.* 22.

Exportation.

5. All ſorts of leather and ſkins, tanned or dreſſed, may be exported. 20 *C.* 2. *c.* 5. 9 *An. c.* 6. *ſ.* 4.

Lecturer.

BY the 13 & 14 *C.* 2. *c.* 4. Lecturers in churches, unlicenſed, or not conforming to the liturgy, ſhall be diſabled, and ſhall alſo ſuffer three months impriſonment in the common gaol; and two juſtices (or the mayor in a town

corporate) ſhall, upon certificate from the ordinary, commit them accordingly. *ſ.* 19—23.

Leet.

1. LEET (*leth, læthe, lathe*) is of *Saxon* original, and ſeemeth to be no other than the court of the *lathe*; as the county court is the court of the county. For in ancient times the counties were ſubdivided into lathes, rapes, wapentakes, hundreds, and the like. And the ſheriff twice a year performed his *tourn* or perambulation, for the execution of juſtice throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain diſtricts. And from hence, theſe courts, holden within particular parts of the county, have deſcended unto us without variation, under the name of the *leet, læth*, or *lathe* courts. Meaning of the word.

2. The *court leet* is a court of record, having the ſame juriſdiction within ſome particular precinct, which the ſheriff's *torn* hath in the county. 2 *Haw.* 72. Leet, what.

3. For the leet, or view of frankpledge, was by the king (for eaſe of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and reſiants within their manors; ſo as the tenants and reſiants ſhould have the ſame juſtice that they had before in the torn, done unto them at their own doors, without any charge or loſs of time. 2 *Inſt.* 71. Leet derived from the torn.

4. The inſtitution hereof for keeping of the king's peace, was, that every freeman at his age of 12 years (except peers, clergymen, and tenants in ancient demeſne, 2 *Haw.* 57.) ſhould in the leet, if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or ſureties ſhould be found for his truth to the king, and to all his people, or elſe to be kept in priſon: This frankpledge conſiſted moſt commonly of ten houſholds, which the *Saxons* called *theothung*, in the north parts they call them *tenmentale*, in other places of *England tithing*; whereof the maſters of the nine families who were bound, were of the *Saxons* called *freoborgh*, which in ſome places is to this day called *freeborow*, that is, free ſurety, or frankpledge, and the maſter of the tenth houſhold was called *theothungmon*, to this day in the weſt called *tithingman*, and *tihenheofod*, and *freoborher*, that is, *capitalis plegius*, chief pledge; and theſe ten maſters of families, were bound Frankpledge.

one for another's family, that each man of their ſeveral families ſhould ſtand to the law, or if he were not forthcoming, that they ſhould anſwer for the injury or offence by him committed. And the precinct of this frankpledge was called *decenna*, becauſe it conſiſted moſt commonly of ten houſholds; and every man of thoſe ſeveral houſholds, for whom the pledge or ſurety was taken, were called *decennarii*; which names are continued as ſhadows of antiquity to this day. 2 *Inſt.* 73.

And by the due execution of this law, ſuch peace was univerſally holden within this realm, as no injuries, homicides, robberies, theſts, riots, tumults, or other offences were committed; ſo as a man with a white wand might ſafely have ridden before the conqueſt, with much money about him, without any weapon, throughout England. 2 *Inſt.* 73.

But no perſon is obliged to appear at any leet, within the precincts whereof he doth not reſide. 2 *Haw.* 57.

Leet when to be holden.

5. He that claims a leet by charter, muſt hold it on the days preſcribed by the charter; he that claims it by preſcription, may claim to hold it once or twice every year, at any ſuch days as ſhall upon reaſonable warning be appointed, if the uſage hath been ſo that it hath been kept at uncertain times; or elſe it ought to be kept at ſuch certain days and times, as by preſcription hath been certainly uſed. 2 *Inſt.* 72.

Offences within the leet, not inquirable in the torn.

6. If a nuſance done within the juriſdiction of the leet, be not preſented in the leet, the ſheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwiſe there might be a double charge; but in that caſe a writ may be directed to the ſheriff to enquire thereof. 4 *Inſt.* 261.

Steward may commit for an affray.

7. It ſeems that a court leet is ſo far intruſted with the keeping of the peace within its own precinct, that the ſteward of it may by recognizance bind any perſon to the peace, who ſhall make an affray in his preſence, ſitting the court, or may commit him to ward, either for want of ſureties, or by way of puniſhment, without demanding any ſureties of him, in which caſe he may afterwards impoſe a fine according to his diſcretion. 2 *Haw.* 4.

What felonies are cognizable in the leet.

8. The leet hath power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unleſs ſpecially limited thereto. 2 *H. H.* 71.

Other publick offences.

9. Furthermore, this court hath cognizance of a great number of offences, both by the common law, and by ſtatute; as for inſtance, tipling in alehouſes; aſſaults whereby bloodſhed enſueth; common barators; bawdy houſes; defects in bridges and highways; deſtroyers of ancient boundaries; bakers;

bakers; brewers; butchers; curriers; cottagers and inmates; deciners or ſuitors not appearing in the leet; eſtrays, wâifs, and treaſure trove; eaves droppers; foreſtallers, regrators, ingroſſers; deſtroyers of game; gameſters; hedge breakers; neglecters of hue and cry; higlers; innholders; millers; night walkers; common nuſances; want of pillory and ſtocks, and common pounds; reſcous; ſcolds; ſhoemakers; ſearchers of leather; ſtoned horſes of two years old put on the common; victuallers; conſtables neglecting watch and ward; weights and meaſures; and many others by particular ſtatutes. *Wood b.* 4. *c.* 1.

Private offences.

10. But a man cannot be preſented in the leet for ſurcharging the common, or for digging in the common; becauſe this concerns the private, not the publick intereſt, and belongs rather to the court baron to inquire of it. *Wood b.* 4. *c.* 1.

Within what time offences are cognizable.

11. Alſo no offence is cognizable in the leet, unleſs it aroſe ſince the holding of the laſt court. 2 *Haw.* 66.

Conſtables choſen in the leet.

12. The conſtables of common right are to be choſen and ſworn in the leet or torn. 2 *Haw.* 62.

Jurors.

13. The leet ſeems not to be within the equity of the ſtatute of 1 *R.* 3. which requires that the jurors in the torn ſhall have 20 *s.* a year freehold, or 26 *s.* 8 *d.* copyhold or cuſtomary; for it is ſaid, that any perſon happening to be preſent at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the ſteward to be ſworn, whether he be reſident within the leet or not; by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Haw.* 69.

Indictments to be indented.

14. Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the ſteward, to prevent imbezilling. 2 *Haw.* 69.

Indictments of felonies, how to be certified.

15. Although the leet may receive indictments of felony, yet it cannot hear and determine them, but muſt ſend them to the gaol delivery, there to heard and determined, if the offenders are in cuſtody; or remove them by certiorari into the king's bench, that proceſs may be made upon them to outlawry. 2 *H. H.* 71.

Traverſe.

16. It ſeems to be agreed, that a preſentment in the leet, of any offence within the juriſdiction of the court, being neither capital, nor concerning any freehold, ſubjects the party to a *fine* or *amerciament* without any farther proceeding, and admits of no traverſe to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench, and there traverſed. 1 *Haw.* 217, 219. 2 *Haw.* 71.

Fine.

17. A *fine* is a pecuniary puniſhment, aſſeſſed by the ſteward, for an offence or contempt committed in court, or by publick officers out of court, in adminiſtration of their offices; a fine is always aſſeſſed by the ſteward, and is not to be affeered, though ſometimes it is called an amerciament; and the lord by a ſpecial warrant to the bailiff may diſtrain, or he may have an action of debt, for a fine impoſed, but he cannot impriſon; and this is the only court that can fine and not impriſon. *Wood b.* 4. *c.* 1. 2 *Haw.* 61.

Amerciament.

18. An *amerciament* is a pecuniary puniſhment, aſſeſſed by the homage or jury, for offences committed out of court by private perſons, to be mitigated by affeerers (from *affeurer*, to tax), who are to affirm the reaſonableneſs thereof upon their oaths, where no expreſs penalty is inflicted by ſtatute; and for this alſo the lord may have an action of debt, or may diſtrain of common right, and impound the diſtreſs, or ſell it at his pleaſure, but cannot impriſon for it. *Wood b.* 4. *c.* 1.

Amerciament how recovered.

19. And upon preſentment of a nuſance, the ſteward may either amerce the perſon, and order him alſo to remove it by ſuch a day, under pain of forfeiting a certain ſum; or he may order him to remove it, under ſuch a pain, without amercing him at all: and on preſentment at another court, that he hath not removed ſuch nuſance (having had notice thereof) the pain may be recovered by diſtreſs or action of debt, without farther proceeding. 2 *Haw.* 61.

By-laws.

20. It ſeemeth that of common right any court leet, with the aſſent of the tenants, may make by-laws under certain penalties, in relation to matters properly within the cognizance of ſuch court, as the reparation of the highways, and the like: And alſo a court baron by cuſtom may make by-laws, for the well regulating of commons, and ſuch like private matters. And therefore where a court leet and baron are holden together, as they uſually are, it ſeems, that what is tranſacted therein, in relation to publick matters, ſhall be applied to the juriſdiction of the court leet, and what is done in relation to private matters, ſhall be intended to be done by the court baron. 2 *Haw.* 68.

Pillory and ſtocks.

21. The lord of the leet ought to have a pillory and tumbrel; and for want thereof, he may be fined, or his liberty ſeized. *Cro. El.* 698.

But the ſtocks are to be provided at the charge of the town; for originally they were not to puniſh, but to keep men in hold. *Wood b.* 4. *c.* 1.

Buſineſs devolved on the ſeſſions.

22. But the buſineſs of the leet hath declined for many years; and is devolved on the quarter ſeſſions.

Letter.

BY the 9 *G. c.* 22. and 27 *G.* 2. *c.* 15. If any perſon ſhall knowingly ſend any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money, or other valuable thing, or threatning to kill or murder any of his majeſty's ſubjects, or to burn their houſes, outhouſes, barns, ſtacks of corn or grain, hay or ſtraw; or ſhall reſcue any perſon in cuſtody for ſuch offence; he ſhall be guilty of felony without benefit of clergy.

Seditious or defamatory letters, belong to title Libel.

Lewdneſs.

1. IF any offend their brethren by adultery, whoredom, inceſt, or any other uncleanneſs, the churchwardens ſhall preſent them to the ordinary, and they ſhall not be admitted to the holy communion, till they be reformed. *Can.* 109.

2. But altho' lewdneſs be properly puniſhable by the eccleſiaſtical law, yet the offence of keeping a bawdy houſe cometh alſo under the cognizance of the law temporal, as a common nuſance, not only in reſpect of its endangering the publick peace, by drawing together diſſolute and debauched perſons, but alſo in reſpect of its apparent tendency to corrupt the manners of both ſexes. 3 *Inſt.* 205. 1 *Haw.* 196.

3. And in general, all open lewdneſs groſsly ſcandalous is puniſhable upon indictment at the common law. 1 *Haw.* 7.

4. And offenders of this kind are puniſhable not only with fine and impriſonment, but alſo with ſuch infamous puniſhment as to the court in diſcretion ſhall ſeem proper. 1 *Haw.* 196.

5. And upon information given to a conſtable, that a man and woman are in adultery or fornication together, or that a man and woman of evil report are gone to a ſuſpected houſe together in the night, the officer may take company with him, and if he find them ſo, he may carry them

them before a juſtice, to find ſureties of the good behaviour. *Dalt. c.* 124. 2 *Haw.* 61.

6. For it ſeems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy houſes with women of bad fame, as alſo for keeping bad women in his own houſe. 1 *Haw.* 132.

7. And a wife may be indicted together with her huſband, and condemned to the pillory with him, for keeping a bawdy houſe; for this is an offence as to the government of the houſe; in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Haw.* 2.

8. And if a wife go away, and remain with an adulterer, without being reconciled to her huſband, ſhe ſhall loſe her dower. 2 *Inſt.* 435.

9. But if a perſon is indicted for frequenting a bawdy houſe, it muſt appear that he knew it to be ſuch a houſe; and it muſt be expreſly alledged that it is a bawdy houſe, and not that it is ſuſpected to be ſuch a houſe. *Wood b.* 3. *c.* 3.

10. On an indictment for keeping a diſorderly houſe, a female witneſs ſwore, that ſhe was a ſailor's wife, and during her huſband's abſence out of the realm, ſhe had often proſtituted her ſelf there: Lord *Raymond* ſaid, it was an odious piece of evidence, and ought not to be heard. *Barl.* Bawdy-h.

11. But it is ſaid, a woman cannot be indicted for being a bawd generally, for that the bare ſolicitation of chaſtity is not indictable. 1 *Haw.* 196. 1 *Salk.* 382.

Indictment for keeping a diſorderly houſe.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the ſaid county, labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and at divers other times as well before as after, with force and arms at* ——— *aforeſaid, in the county aforeſaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed, and diſorderly houſe, and in his ſaid houſe, for his own lucre and gain, certain evil and ill-diſpoſed perſons, as well men as women, of evil name and fame, and of diſhoneſt converſation, to frequent and come together then, and the ſaid divers other times, there unlawfully and wilfully did cauſe and procure; and the ſaid men and women, in his ſaid houſe, at unlawful times, as well in the night as in the day, then and the ſaid other times, there to be and remain, drinking, tiping, whoring, and miſbehaving*

miſbehaving themſelves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuſance of all the ſubjects of our ſaid lord the king, and againſt the peace of our ſaid lord the king, his crown and dignity.

Libel.

I. What it is.
II. Who are puniſhable for it.
III. How puniſhable.

I. What it is.

A Libel *is a malicious defamation of any perſon, expreſſed either in printing or writing, ſigns or pictures, to aſperſe the reputation of one that is alive, or the memory of one that is dead.* Wood b. 3. c. 3.

A malicious defamation] And the ſcandal which is expreſſed in a ſcoffing and ironical manner, is as properly a malicious defamation, as that which is expreſſed in direct terms; as where a perſon propoſes one to be imitated for his courage, who is known to be a great ſtateſman, but no ſoldier; and another to be imitated for his learning, who is known to be a great general, but no ſcholar; and the like: which kind of writing is as well underſtood to mean only to upbraid the parties with the want of theſe qualities, as if it had directly and expreſly done ſo. 1 *Haw.* 194.

And from the ſame foundation it hath alſo been reſolved, that a defamatory writing, expreſſing only one or two letters of a name, in ſuch a manner, that from what goes before and follows after, it muſt needs be underſtood to ſignify ſuch a particular perſon, in the plain, obvious, and natural conſtruction of the whole, and would be perfect nonſenſe if reſtrained to any other meaning, is as properly a libel, as if it had expreſſed the whole name at large; for it brings the utmoſt contempt upon the law, to ſuffer its juſtice to be eluded by ſuch trifling evaſions: And it is a ridiculous abſurdity to ſay, that a writing which is underſtood by every the meaneſt capacity, cannot poſſibly be underſtood by a judge and jury. 1 *Haw.* 194.

And it matters not whether the libel be true, or whether the party againſt whom it is made be of good or bad fame; for

for in a ſettled ſtate of government, the party grieved ought to complain, for any injury done to him, in the ordinary courſe of law, and not by any means to revenge himſelf, either by the odious courſe of libelling, or otherwiſe. 5 *Co.* 125. But this is to be underſtood, when the proſecution is by information or indictment; but in an action on the caſe, one may juſtify that it is true. *Wood b.* 3. *c.* 3.

Of any perſon] Where a writing inveighs againſt mankind in general, or againſt a particular order of men, as for inſtance, men of the gown, this is no libel; but it muſt deſcend to particulars and individuals to make it a libel. 3 *Salk.* 224.

And it hath been agreed in the court of king's bench, that a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law: yet it ſeems that the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame. 1 *Haw.* 195.

But if the libel is only againſt a private perſon, yet it deſerveth ſevere puniſhment; for albeit the libel be againſt one, yet it inciteth all thoſe of the ſame family, kindred, or ſociety, to revenge, and ſo tendeth by conſequence to quarrels, and breach of the peace, and may be the cauſe of effuſion of blood, and of great inconvenience: But if it be againſt a magiſtrate, or other public perſon, it is a greater offence; for it concerneth not only the breach of the peace, but the ſcandal of the government. 5 *Co.* 125.

Expreſſed either in printing or writing, ſigns or pictures] A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing is publiſhed to the contumely of another, by which his fame or dignity may be prejudiced; Without writing, may be by pictures, as to paint the party in any ſhameful and ignominious manner; or by ſigns, as to fix a gallows, or other reproachful and ignominious ſigns at a man's door. 5 *Co.* 125.

E. 7 *G.* Mayor of *Northampton*'s caſe. He ſent lord *Halifax* a licence to keep a public houſe, which the court ſaid was a libel in the caſe of a perſon of his quality, and granted an information for it. *Str.* 422.

Or the memory of one that is dead] For the offence is the ſame, whether the perſon libelled be alive or dead. 5 *Co.* 125.

II. Who are puniſhable for it.

It is certain, that not only he who compoſes a libel, or procures another to compoſe it, but alſo he who publiſhes, or procures another to publiſh it, are in danger of being puniſhed for it; and it is ſaid not to be material, whether he who diſperſes a libel knew any thing of the contents or effect of it or not; for nothing would be more eaſy, than to publiſh the moſt virulent papers with the greateſt ſecurity, if the concealing the purport of them from an illiterate publiſher, would make him ſafe in diſperſing them. 1 *Haw.* 195.

Alſo it hath been ſaid, that if he who hath either read a libel himſelf, or hath heard it read by another, do afterwards maliciouſly read or repeat any part of it, in the preſence of others, or lend or ſhew it to another, he is guilty of an unlawful publication of it. 1 *Haw.* 195.

Alſo it hath been holden, that the copying of a libel ſhall be a concluſive evidence of the publication of it, unleſs the party can prove, that he delivered it to a magiſtrate to examine it. 1 *Haw.* 195.

And it hath been ruled, that the finding a libel on a bookſeller's ſhelf, is a publication of it by the bookſeller; and that it is no excuſe to ſay, that the ſervant took it into the ſhop without the maſter's knowledge; for the law preſumes the maſter to be acquainted with what the ſervant does. *Seſſ. C. V.* 1. *p.* 33. *K* and *Dodd*, 10 *G.*

And it ſeems to be the better opinion, that he who firſt writes a libel dictated by another, is thereby guilty of making it, and conſequently puniſhable for the bare writing; for it was no libel, till it was reduced to writing: For the eſſence of a libel conſiſteth in the writing of it; for if a man ſpeaks ſuch words, unleſs the words be put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw.* 195.

Alſo it hath been reſolved, that the ſending of a letter full of provoking language to another, without publiſhing it, is highly puniſhable, as manifeſtly tending to a diſturbance of the peace. 1 *Haw.* 195.

But it hath been reſolved, that he who barely reads a libel in the preſence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his cuſtody, ſhall not in reſpect of any ſuch act be adjudged the publiſher of it. But the having in one's cuſtody a written

written copy of a libel publickly known, is an evidence of the publication of it. 1 *Haw.* 196.

The way for a man to keep himſelf out of danger in ſuch caſes is, if he finds a libel, and it be compoſed againſt a private perſon, he either may burn it, or forthwith deliver it to a magiſtrate; but if it concern a magiſtrate, or other publick perſon, he ought immediately to deliver it to a magiſtrate, to the intent that by examination and enquiry, the author may be found and puniſhed. 5 *Co.* 125.

III. How puniſhable.

There ſeemeth to be no doubt, but that the offenders may be condemned to pay ſuch fine, and alſo to ſuffer ſuch corporal puniſhment, as to the court in diſcretion ſhall ſeem proper, according to the heinouſneſs of the crime, and the circumſtances of the offender. 1 *Haw.* 196.

And it hath been adjudged, that libels, as having a direct and immediate tendency to a breach of the peace, are indictable before juſtices of the peace. 2 *Haw.* 40.

On an indictment ſetting forth the offence, *according to the tenor and to the effect following*, it was agreed by the court, that *to the effect following* had been naught, being vague and uſeleſs words; for the court muſt judge of the words themſelves: but the words, *according to the tenor*, do correct the defect; for they import the very words themſelves, for the *tenor* of a thing is the tranſcript and true copy of it, to which it may be compared: and therefore of words ſpoken there can be no tenor, becauſe there is no written original. 2 *Salk.* 417. 3 *Salk.* 225.

And it muſt be proved to be written or publiſhed, in the county laid in the indictment; all matters of crime being local. *Read.* Lib. *State Tr. V.* 3. 774, 775. *V.* 4. 672.

Indictment for a libel.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county of* ——— *gentleman, not having god before his eyes, but moved by the inſtigation of the devil, and falſly and maliciouſly contriving and intending to bring our ſaid lord the king into hatred and infamy amongſt his ſubjects, and to move ſedition amongſt the ſubjects of our ſaid lord the king, did on the* ———*day of* ——— *in the* ———*year of the reign of* ———*with force and arms, at* ——— *aforeſaid, in the county aforeſaid, falſly, ſeditiouſly,*

ouſly, and maliciouſly write and publiſh, and cauſe to be written and publiſhed, a certain falſe, ſeditious, and ſcandalous libel, intitled———In which ſaid libel are contained, among other things, divers falſe, ſeditious, ſcandalous, and malicious matters, according to the tenor following, to wit,———And in another part of the ſame libel are contained divers other falſe, ſeditious, ſcandalous, and malicious matters, according to the tenor following———to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.

Linen cloth.

FOR the duties on linen cloth printed or ſtained, ſee title Excise.

For journeymen and other workmen imbezilling the materials of the linen manufacture, ſee title Servants.

Who may ſet up trades in the linen manufacture.

1. Any perſon, native or foreigner, may without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, ſet up and exerciſe the occupation of breaking, hickling, or dreſſing of hemp or flax; as alſo for making and whitening of thread; as alſo of ſpinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as alſo the miſtery of making twine or nets for fiſhery, or of ſtoving of cordage; as alſo the trade of making tapeſtry hangings. 15 *C.* 2. *c.* 15. *ſ.* 2.

And all foreigners that ſhall uſe any the trades aforeſaid three years, ſhall (taking the oaths of allegiance and ſupremacy before two juſtices near unto their dwellings) enjoy all privileges as natural born ſubjects. *ſ.* 3.

Spoiling linen cloth in dreſſing.

2. Whereas certain evil diſpoſed perſons, by ſundry devices, ſtretch linen cloth both in length and breadth, and then with battledoors or otherwiſe beat the ſame, caſting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby looſened and made weak: If any perſon ſhall hereafter uſe the ſaid deceits, or do any other act with any linen cloth whereby it ſhall be made worſe, the ſaid cloth ſhall be forfeited, and the offender puniſhed by one month's impriſonment at the leaſt, and pay ſuch fine as the juſtices ſhall aſſeſs. 1 *El c.* 12. *ſ.* 1.

And the judges of aſſize, and juſtices of the peace or three of them (1 Q.) may hear and determine the ſame in their

their ſeſſions, by information, indictment, or upon the traverſe of any preſentment or indictment found before them. *ſ.* 2.

And if any perſon ſhall ſeize any ſuch deceitful linen cloth, he ſhall at the next ſeſſions, or before two juſtices (1 *Q.*) make due information of the offence and of the ſeizure; or elſe ſhall procure the offender to be indicted at the next ſeſſions, and ſhall alſo be bound by recognizance or obligation to purſue the ſame with effect, and to give evidence, and to pay the moiety of what he ſhall recover, to the ſheriff or other accountant to the uſe of the king. And the other half ſhall go to the informer or proſecutor. *ſ.* 3.

And the juſtices before whom the offence ſhall be tried, ſhall certify the ſame by eſtreat into the exchequer yearly at *Michaelmas* as they do other eſtreats, and thereupon the barons may make proceſs for ſo much thereof as appertaineth to the king, in like manner as for other fines. *ſ.* 4.

Stealing linen cloth.

3. Every perſon who ſhall, by day or night, feloniouſly ſteal any linen, fuſtian, calico, or cotton cloth; or cloth worked, woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn; linen or cotton tape, incle, filleting, laces, or any other linen, fuſtian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 10*s.* or ſhall knowingly buy or receive any ſuch wares ſtolen, ſhall be guilty of felony without benefit of clergy. 18 *G.* 2. *c.* 27.

Affixing counterfeit ſtamps on linen cloth.

4. If any perſon ſhall cauſe any ſtamps to be affixed to any foreign linens imported, in imitation of the ſtamps put on *Scotch* or *Iriſh* linens; he ſhall forfeit 5*l.* for each piece: Or if any perſon ſhall expoſe or pack up for ſale any foreign linens (knowing them to be ſo ſtamped) as the manufacture of *Scotland* or *Ireland*; he ſhall forfeit the ſame, and alſo 5*l.* for each piece. And if any perſon ſhall affix any counterfeit ſtamp on any linen of the manufacture of *Great Britain* or *Ireland*, in order to vend the ſame as linens duly ſtamped; he ſhall forfeit 5*l.* for each piece: And if any perſon ſhall expoſe or pack up for ſale, any ſuch linens, knowing them to be ſo ſtamped; he ſhall forfeit the ſame, and alſo 5*l.* for each piece. 17 *G.* 2. *c.* 30. *ſ.* 1.

And one juſtice may convict the offender on the oath of one witneſs, and may grant his warrant for diſtreſs and ſale; and for want of ſufficient diſtreſs, any juſtice, on proof thereof made on oath by the perſon executing the warrant, may commit him to gaol for ſix months, unleſs it be paid ſooner: Which penalty ſhall go to the informer, deducting

2*s.*

2s. in the pound to be paid to the conſtable who ſhall execute the warrant. *ſ.* 2.

Ling. Burning of it. See Burning.

London.

THERE are many acts of parliament relating to the city of *London* and other places within the bills of mortality, which being only local are not within the compaſs of this work; and which would require a diſtinct volume of themſelves. Mr. *Fielding*, in his "Extract of the penal laws relating to "the peace and good order of the city of *London*," hath collected theſe partly, amongſt other more general laws, for the inſtruction of ignorant offenders, and admonition of the unwary. It would be a work of further ſervice to the metropolis, if ſome perſon would undertake a compleat collection and digeſt of all the laws relating to the cities of *London* and *Weſtminſter*, and other places within the bills; out of which might be ſelected again, ſuch only as concern the office of a juſtice of the peace in particular.

Loom lace. See Buttons.

Lord's day.

1. ALL perſons, not having reaſonable excuſe, ſhall reſort to their pariſh church or chapel (or to ſome congregation of religious worſhip allowed by the toleration act) on every *ſunday*; on pain of puniſhment by the cenſures of the church, or of forfeiting 1 *s.* to the poor for every offence. 1 *El. c.* 2. *ſ.* 14, 24. To be levied by the churchwardens by diſtreſs, by warrant of one juſtice. 3 *J. c.* 4. *ſ.* 27, 28. Reſorting to church on the lord's day.

2. King *James* the firſt, in 1618, publickly declared to his ſubjects, in what was called the book of ſports, theſe games following to be *lawful*, *viz.* dancing, archery, leaping, vaulting, maygames, whitſon ales, and morris dances; and did command that no ſuch honeſt mirth or recreation ſhould be forbidden to his ſubjects on *ſundays* after evening ſervice: But reſtraining all recuſants from this liberty; and commanding each pariſh to uſe theſe recreations by itſelf; and prohibiting all *unlawful* games, bear baiting, bull baiting, Sports on the lord's day.

ing, interludes, and bowling by the meaner ſort. *Dalt. c.* 46.

After which it was enacted by the ſtatute of the 1 *C. c.* 1. that there ſhall be no concourſe of people *out of their own pariſhes* on the lord's day, for any ſports or paſtimes; nor any bear baiting, bull baiting, interludes, common plays, or other *unlawful* exerciſes and paſtimes uſed by any perſons *within their own pariſhes*; on pain that every offender, being convicted within a month after the offence, before one juſtice, on view, or confeſſion, or oath of one witneſs, ſhall forfeit for every offence, 3*s.* 4*d.* to the poor, to be levied by the conſtable and churchwardens by diſtreſs: In default of diſtreſs, the party to be ſet publickly in the ſtocks for three hours.

Exerciſing worldly callings on the lord's day.

3. By the 1 *J. c.* 22. No *ſhoemaker* ſhall ſhew, to the intent to put to ſale, any ſhoes, boots, buſkins, ſtartops, ſlippers, or pantofles, upon the *ſunday*; on pain of 3*s.* 4*d.* a pair, and the value thereof: to be recovered at the aſſizes, ſeſſions, or leet; one third to the king, one third to him who ſhall ſue, and one third to the town or lord of the leet. *J.* 28, 46, 50.

And by the 3 *C. c.* 1. No carrier with any horſe or horſes, nor waggonman with any waggon, nor wainman with any wain, nor *drover* with any cattle, ſhall by themſelves, or any other, travel on the lord's day, on pain of 20*s.* or if any *butcher*, by himſelf, or any other for him, with his privity and conſent, ſhall kill or ſell any victual on the lord's day, he ſhall forfeit 6*s.* 8*d.* The conviction to be in ſix months before one juſtice, or mayor, on view, or confeſſion, or oath of two witneſſes; to be levied by the conſtable or churchwarden, by diſtreſs; or to be recovered in any court of record, in any city or town corporate, before the juſtices in ſeſſions; to be applied to the uſe of the poor, except that the juſtice may reward the informer or proſecutor with part of the forfeiture, not exceeding one third part.

And by the 29 *C.* 2. *c.* 7. it is further enacted, that no *drover*, *horſe courſer*, *waggoner*, *butcher*, *higler*, or any of their ſervants, ſhall travel, or come to his inn or lodging on the lord's day, on pain of 20*s.* and in general, that no *tradeſman*, *artificer*, *workman*, *labourer*, *or other perſon*, ſhall do or exerciſe any worldly labour, buſineſs, or work of their ordinary callings on the lord's day; (except works of neceſſity and charity; and except dreſſing of meat in families, and dreſſing and ſelling of meat in inns, or cooks ſhops, or victualling houſes, for ſuch as cannot otherwiſe be provided; and by the 9 *An. c.* 23. *J.* 20. except licenſed hackney coachmen

coachmen and chairmen within the bills of mortality;) on pain of every offender above 14 years of age forfeiting 5*s.* and alſo that no perſon ſhall publickly *cry, ſhew forth, or expoſe to ſale,* any wares, merchandizes, fruit, herbs, goods or chattels whatſoever, on the lord's day (except crying and ſelling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be ſold on *ſundays*, before or after divine ſervice, by the 10 & 11 *W.* *c.* 24. *ſ.* 14); on pain of forfeiting the ſame; And alſo that no perſon ſhall uſe, employ, or travel on the lord's day, with any *boat*, wherry, lighter, or barge (unleſs allowed by a juſtice of the peace, on extraordinary occaſion; and except 40 watermen who may ply on the *Thames* on *ſundays* betwixt *Vauxhall* and *Limehouſe*, by the 11 & 12 *W.* *c.* 21. *ſ.* 13.) on pain of 5*s.* and if any perſon offending in any of the premiſſes, ſhall be thereof convicted, in 3 months after the offence, before one juſtice, on view, or confeſſion, or oath of one witneſs, the juſtice ſhall give warrant to the conſtables or churchwardens, to ſeize the goods cried, ſhewed forth, or put to ſale, and to ſell the ſame; and to levy the other forfeitures by diſtreſs; to the uſe of the poor, except that the juſtice may out of the ſame reward the informer with any ſum not exceeding one third part. And for want of diſtreſs, the offender ſhall be ſet publickly in the ſtocks for two hours.

Serving proceſs on the lord's day.

4. No perſon upon the lord's day, ſhall ſerve or execute any writ, proceſs, warrant, order, judgment, or decree (except in caſes of treaſon, felony, or breach of the peace), but the ſervice thereof ſhall be void; and the perſon ſerving the ſame ſhall be as liable to anſwer damages to the party grieved, as if he had done the ſame without any writ, proceſs warrant, order, judgment, or decree. 29 *C.* 2. *c.* 7. *ſ.* 6.

But this doth not extend to eccleſiaſtical proceſs, as citations, or excommunications. *Gibſ.* 271.

A juſtice iſſued a warrant to the conſtable, to make a perſon to find ſureties for his *good behaviour*: the conſtable executed the warrant on a *ſunday*, and he was juſtified by the court; who reſolved, that a warrant for the good behaviour is a warrant for the *peace*, and more; and that this ſtatute is to be favourably interpreted for the peace. *Raym.* 250.

Robbery on the lord's day.

5. No hundred ſhall be anſwerable for any robbery on the lord's day: Nevertheleſs the inhabitants ſhall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the

party robbed againſt the hundred, if he had been robbed on any other day. 29 *C.* 2. *c.* 7. *ſ.* 5.

Warrant on the 3 *C.* *c.* 1. and 29 *C.* 2. *c.* 7. to levy 20 *s.* on a carrier for travelling on the Lord's day; which ſame will do, *mutatis mutandis*, for the other penalties under this title.

Weſtmorland. { To the conſtable of——in the ſaid county, and to the church-wardens of the pariſh of——in the ſaid county.

FORASMUCH *as* A. O. *of*——*in the county of*——*carrier, is duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, for that he the ſaid* A. O. *on the*——*day of*——*in the*——*year of the reign of*——*being the lord's day, commonly called* ſunday, *with his horſes into and through the ſaid pariſh of*——*did travel, contrary to the ſtatutes in that caſe made and provided, whereby he hath forfeited the ſum of* 20 s. *of lawful money of* England; *theſe are therefore to command you forthwith to levy the ſaid ſum of* 20 s. *by diſtraining the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum ſhall not be paid, together with the reaſonable charges of taking and keeping the ſame, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay the ſum of* 6 s. 8 d. *part of the ſaid ſum of* 20 s. *to* A. I. *of*——*yeoman, who informed me of the ſaid offence, and that you ſee the remaining ſum of* 13 s. 4 d. *employed to the uſe of the poor of your ſaid pariſh of*——*returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And you are to certify to me, with the return of this precept, what you ſhall have done in the execution thereof. Herein fail you not. Given under my hand and ſeal at*——*in the ſaid county, the*——*day of*——

Lotteries. See **Gaming.**
Low wines. See **Exciſe.**
Lowbells. See **Game.**

Luna-

Lunaticks.

1. NON *compos mentis* is of four kinds:
First, Ideots; who are of *non ſane memory* from their nativity, by a perpetual infirmity. Who.

Secondly, Thoſe that loſe their memory and underſtanding by the viſitation of God, as by ſickneſs, or other accident.

Thirdly, Lunaticks; who have ſometimes their underſtanding, and ſometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themſelves of their memory and underſtanding. 1 *Inſt.* 247.

2. He who incites a madman to do a murder, or other crime, is a principal offender, and as much puniſhable as if he had done it himſelf. 1 *Haw.* 2. Inciting him to commit a crime.

3. But ideots and lunaticks, who are under a natural diſability of diſtinguiſhing between good and evil, are not puniſhable by any criminal proſecution. 1 *Haw.* 2. Not puniſhable for criminal offences.

Yet drunkards ſhall have no privilege by their want of ſound mind; but ſhall have the ſame judgment as if they were in their right ſenſes. 1 *Inſt.* 247. 1 *Haw.* 2. 1 *H. H.* 32.

4. But if a perſon, who wants diſcretion, commit a treſpaſs, againſt the perſon or poſſeſſion of another; he ſhall be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2. Puniſhable for civil offences.

5. If one who hath committed a capital offence become *non compos* before conviction, he ſhall not be arraigned; and if after conviction, he ſhall not be executed. *Hale's Pl.* 10. 1 *Haw.* 2. Becoming non compos before trial.

6. By the common law, if it be doubful whether a criminal, who at his trial in appearance is a lunatick, be ſuch in truth or not, it ſhall be tried by an inqueſt of office, to be returned by the ſheriff; and if it be found by them, that the party only feigns himſelf mad, and he ſtill refuſe to anſwer, he ſhall be dealt with as one that ſtands mute. 1 *Haw.* 2. How tried whether he is non compos.

7. An ideot cannot bring an appeal. 1 *Haw.* 162. Whether he may bring an appeal.

8. Neither can he be an approver; becauſe he can neither take the oath in that caſe required, nor wage battle. 3 *Inſt.* 129. Whether he may be an approver.

9. Any perſon may juſtify confining and beating his friend being mad, in ſuch manner as is proper in ſuch circumſtances. 1 *Haw.* 130. Friends reſtraining him.

Overſeers reſtraining him.

10. By the 17 *G.* 2. *c.* 5. it is enacted, that whereas there are ſometimes perſons, who by lunacy, or otherwiſe, are furiouſly mad, or are ſo far diſordered in their ſenſes, that they may be dangerous to be permitted to go abroad, it ſhall therefore be lawful for two or more juſtices where ſuch lunatick or mad perſon ſhall be found, by warrant directed to the conſtables, churchwardens, and overſeers of the place, or ſome of them, to cauſe ſuch perſon to be apprehended, and kept ſafely locked up in ſome ſecure place, within the county or precinct, as ſuch juſtices ſhall under their hands and ſeals direct and appoint, (and if ſuch juſtices find it neceſſary) to be there chained, if the ſettlement of ſuch perſon ſhall be within ſuch county or precinct.

And if ſuch ſettlement ſhall not be there, then ſuch perſon ſhall be ſent to his ſettlement by a vagrant paſs (*mutatis mutandis*); and ſhall be locked up or chained by warrant of two juſtices of the county or precinct, to which ſuch perſon is ſo ſent, in manner aforeſaid:

And the reaſonable charges of removing, and of keeping, maintaining, and curing ſuch perſon, during ſuch reſtraint (which ſhall be during ſuch time only as ſuch lunacy or madneſs ſhall continue), ſhall be ſatisfied and paid (ſuch charges being firſt proved upon oath) by order of two juſtices, directing the churchwardens or overſeers, where any goods, chattels, lands or tenements of ſuch perſon ſhall be, to ſeize and ſell ſo much of the goods and chattels, or receive ſo much of the annual rents of the lands, as is neceſſary to pay the ſame; and to account for what is ſo ſeized, ſold, or received, to the next quarter ſeſſions: But if ſuch perſon hath not an eſtate to ſatisfy the ſame, over and above what ſhall be ſufficient to maintain his family, then ſuch charges ſhall be paid by the pariſh, town, or place, to which ſuch perſon belongs, by order of two juſtices, directed to the churchwardens or overſeers for that purpoſe. *ſ.* 20.

Provided, that any perſon aggrieved by any act of ſuch juſtices out of ſeſſions, may appeal to the next ſeſſions, giving reaſonable notice; whoſe order therein ſhall be final. *ſ.* 28.

But nothing herein ſhall reſtrain or abridge the power of the king, or lord chancellor; nor ſhall reſtrain or prevent any friend from taking them under their own care and protection. *ſ.* 21.

King the guardian of lunaticks.

11. The king is the general guardian of ideots and lunaticks. 17 *Ed.* 2. *ſt.* 1. *c.* 9, 10.

12. A

12. A perſon of *non ſane* memory ſhall not avoid his own act, by reaſon of this defect; but his heir or executor may. 4 *Co. Beverly's* caſe. Whether he may avoid his own act.

13. If an ideot takes a wife, they are huſband and wife in law, and their iſſue legitimate; for he is allowed to be capable of conſenting to marriage. 1 *Sid.* 112. Whether he may conſent to marriage.

But by the 15 *G.* 2. *c.* 30. Lunaticks, found ſo by inquiſition by commiſſion under the great ſeal; or any lunatick or perſon under a phrenzy, whoſe perſon and eſtate is veſted in truſtees by act of parliament, if they marry before they are declared of ſound mind by the lord chancellor, or the truſtees or major part of them reſpectively, every ſuch marriage ſhall be void.

14. A lunatick may ſurrender a leaſe in the court of chancery or exchequer, in order to renew the ſame. 29 *G.* 2. *c.* 31. In what caſe he may make a ſurrender.

15. To make a will, it is not ſufficient that the teſtator have memory to anſwer to familiar and uſual queſtions, but he ought to have a diſpoſing memory, ſo as to be able to make a diſpoſition of his eſtate, with underſtanding and reaſon. 6 *Co.* 23. Whether he may make a will.

Lurcher. See Game.

Luteſtrings. See Silks.

Madder.

IF any perſon ſhall ſteal and take away, or wilfully and maliciouſly pull up or deſtroy any madder roots; and ſhall be convicted thereof before one juſtice, by confeſſion or oath of one witneſs; he ſhall, for the firſt offence, pay to the owner ſuch ſatisfaction for damages and in ſuch time as the juſtice ſhall appoint, and moreover ſhall pay down upon the conviction to the overſeer for the uſe of the poor ſuch ſum not exceeding 10*s.* as to the juſtice ſhall ſeem meet; and if he ſhall not make ſuch recompence, and alſo pay ſuch ſum to the uſe of the poor, the ſaid juſtice ſhall commit him to the houſe of correction for any ſpace not exceeding one month, or may order him to be whipped by the conſtable or other officer, as to the ſaid juſtice ſhall ſeem meet; and for the ſecond offence, ſhall by ſuch juſtice be committed to the houſe of correction for three months. Proſecution to be commenced within thirty days. 31 *G.* 2. *c.* 35. *ſ.* 5, 6.

Madmen. See Lunaticks.

Maim.

1. MAIM is ſuch a hurt of any part of a man's body, whereby he is rendered leſs able in fighting, either to defend himſelf, or annoy his adverſary. 1 *Haw.* 111.

2. For the members of every ſubject are under the ſafeguard and protection of the law, to the end a man may ſerve his king and country, when occaſion ſhall be offered: and therefore a perſon who maims himſelf, that he may have the more colour to beg, may be indicted and fined. 1 *Inſt.* 127.

And by the like reaſon, a perſon who diſables himſelf, that he may not be impreſſed for a ſoldier.

3. The cutting off, or diſabling, or weakening a man's hand or finger, or ſtriking out his eye, or foretooth, or caſtrating him, are ſaid to be maims, but the cutting off his ear, or noſe, were not eſteemed maims at the common law, becauſe they do not weaken but only diſfigure him. 1 *Haw.* 111, 112.

4. It is ſaid, that anciently caſtration was puniſhed with death; and other maims with the loſs of member for member: but afterwards no maim was puniſhed in any caſe with the loſs of life or member, but only with fine and impriſonment. 1 *Haw.* 112.

But now by the 22 & 23 *C.* 2. *c.* 1. (which is called the *Coventry* act, becauſe it was made on the occaſion of Sir *John Coventry*'s being aſſaulted in the ſtreet, and his noſe ſlit) If any perſon, on purpoſe, and of malice forethought, and by lying in wait, ſhall unlawfully cut out or diſable the tongue, put out an eye, ſlit the noſe, cut off a noſe or lip, or cut off or diſable any limb or member of any ſubject, with intention in ſo doing to maim or diſfigure him; the perſon ſo offending, his counſellors, aiders, and abettors (knowing of and privy to the offence) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood.

5. If a man attack another with intent to murder him, and he does not murder, but only maim him; the offence is nevertheleſs within this ſtatute. 1 *Haw.* 112.

6. If the maim comes not within any of the deſcriptions in the act, yet it is indictable at the common law, and may be puniſhed by fine and impriſonment: Or an appeal may

may be brought for it at the common law; in which the party injured ſhall recover his damages: Or he may bring an action of treſpaſs; which kind of action hath now generally ſucceeded into the place of appeals in ſmaller offences not capital. 2 *Haw.* 157—160.

7. It doth not ſeem, that in maiming there may be acceſſaries after the fact. 2 *Haw.* 311.

For maiming of cattle, ſee title Cattle.

Mainprize. See Bail.

Maintenance.

BUYING *of titles* belongeth not to this place, but is treated of under a title of its own.

I. Of maintenance in general.
II. Of champerty in particular.
III. Of embracery in particular.

I. Of maintenance in general.

Concerning which I will ſhew,

i. What it is.
ii. How puniſhable by the common law.
iii. How by ſtatute.

i. What it is.

1. Maintenance *(manu tenere) is an unlawful taking in hand or upholding of quarrels or ſides, to the diſturbance or hindrance of common right.* 1 Haw. 249.

2. And it is twofold;

One in the *country*; as where one aſſiſts another in his pretenſions to certain lands, by taking or holding the poſſeſſion of them for him by force or ſubtilty; or where one ſtirs up quarrels, and ſuits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is puniſhable at the king's ſuit by fine and impriſonment, whether the matter in diſpute any way depended in plea or not; but it is ſaid not to be actionable. 1 *Haw.* 249.

Another in the *courts of juſtice*; where one officiouſly intermeddles in a ſuit depending in any ſuch court, which no way belongs to him, by aſſiſting either party with money or otherwiſe, in the proſecution or defence of any ſuch ſuit. 1 *Haw.* 249.

3. Of this ſecond kind of maintenance, there are three ſpecies;

Firſt, where one maintains another, without any contract to have part of the thing in ſuit; which generally goes under the common name of *maintenance:*

Secondly, where one maintains one ſide, to have part of the thing in ſuit; which is called *champerty:*

Thirdly, where one laboureth a jury; which is called *embracery.* 1 Haw. 249.

4. But it ſeemeth to be agreed, that wherever any perſons claim a common intereſt in the ſame thing, as in a way, churchyard, or common, by the ſame title, they may maintain one another in a ſuit relating to the ſame. 1 *Haw.* 252.

5. Alſo, that whoever is any way of kin or affinity to the party, may counſel and aſſiſt him, but that he cannot juſtify the laying out any of his own money in the cauſe, unleſs he be either father, or ſon, or heir apparent. 1 *Haw.* 252.

6. Alſo, that any one in charity may lawfully give money to a poor man, to enable him to carry on his ſuit. 1 *Haw.* 253.

ii. How puniſhable by the common law.

It ſeemeth that all maintenance is not only *malum prohibitum* by ſtatute, but is alſo *malum in ſe*, and ſtrictly prohibited by the common law, as having a manifeſt tendency to oppreſſion; and therefore it is ſaid, that all offenders of this kind are not only liable to an action of maintenance at the ſuit of the party grieved, wherein they ſhall render ſuch damages as ſhall be anſwerable to the injury done to the plaintiff, but alſo that they may be indicted as offenders againſt publick juſtice, and adjudged thereupon to ſuch fine and impriſonment as ſhall be agreeable to the circumſtances of the offence. Alſo it ſeemeth, that a court of record may commit a man for an act of maintenance done in the face of the court. 2 *Inſt.* 212. 1 *Haw.* 255.

iii. How by ſtatute.

1. By the 1 *Ed.* 3. *ſt.* 2. *c.* 14. *No perſon ſhall take upon him to maintain quarrels, nor parties in the country, to the diſturbance of the common law.*

2.

2. And by the 20 *Ed.* 3. *c.* 4. *None ſhall take in hand quarrels, other than their own, nor the ſame maintain, by them nor by other, for gift, promiſe, amity, favour, doubt, fear, nor other cauſe, in diſturbance of law, and hindrance of right.*

3. And by the 1 *R.* 2. *c.* 4. *None ſhall take or ſuſtain any quarrel by maintenance in the country, on pain, if he is a great officer, as the king by advice of the lords ſhall ordain; if he is a leſſer officer, he ſhall forfeit his office, and be impriſoned and ranſomed at the king's will; and all other perſons, on pain of impriſonment, and ranſom at the king's will.*

4. And by the 32 *H.* 8. *c.* 9. *No perſon ſhall unlawfully maintain, or procure any unlawful maintenance, in any action, demand, or complaint, in any court having power to hold plea of lands; nor ſhall unlawfully retain any perſon for maintenance of any plea, to the diſturbance or hindrance of juſtice; on pain of* 10*l. half to the king, and half to him that ſhall ſue within one year.* ſ. 3, 6.

Unlawfully maintain] It ſeemeth that in an information on this ſtatute, it is not ſufficient to ſay, that the defendant maintained the party, without adding that he did it *unlawfully.* 1 Haw. 256.

Having power to hold plea of lands] It is ſaid to have been adjudged, that maintenance of a ſuit in a ſpiritual court, is neither within this nor any other ſtatute concerning maintenance. 1 *Haw.* 256.

To hold plea] It hath been holden that in an information on this ſtatute, it is neceſſary to ſhew, that a plea was depending; and therefore that it is not ſufficient to ſay that a bill was exhibited. 1 *Haw.* 256.

II. Of champerty in particular.

i. What it is.
ii. How puniſhable by the common law.
iii. How by ſtatute.

i. What it is.

Champerty (from *campi parte*) is *the unlawful maintenance of a ſuit, in conſideration of ſome bargain to have part of the lands or thing in diſpute, or part of the gains.* 1 Haw. 256. 33 Ed. 1. ſt. 2.

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a *ſpecies* of maintenance which is the *genus.* 2 Inſt. 208.

ii.

ii. How puniſhable by the common law.

Champerty was an offence at the common law, and as ſuch is puniſhable in like manner as hath been expreſſed in treating of maintenance in general. 2 *Inſt.* 208.

iii. How by ſtatute.

1. By the 3 Ed. 1. c. 25. *No officer of the king, by himſelf, nor by other, ſhall maintain pleas, ſuits, or other matters hanging in the king's courts, for lands, tenements, or other things for to have part or profit thereof, by covenant made between them; and he that doth ſhall be puniſhed at the king's pleaſure.*

By covenant made] That is, by agreement either by word or writing; for albeit in the common ſenſe, a covenant is taken for an agreement by writing, yet in a larger ſenſe it is taken (as it is here) for an agreement by writing or by word. 2 *Inſt.* 209.

2. And by the 28 Ed. 1. c. 11. *No perſon whatſoever, for to have part of the thing in plea, ſhall take upon him the buſineſs that is in ſuit, nor ſhall any upon ſuch covenant give up his right to another; on pain that the taker ſhall forfeit to the king the value of the part he hath purchaſed for ſuch maintenance. But no perſon ſhall be prohibited hereby to have counſel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.*

3. And by the 33 Ed. 1. *ſt.* 3. *Any perſon who ſhall take for maintenance, or the like bargain, any ſuit or plea againſt another; he, and alſo they who conſent thereunto, ſhall be impriſoned three years, and make fine at the king's pleaſure.*

4. And by the 1 *R.* 2. *c.* 9. *A feoffment of lands, or gift of goods, for maintenance, ſhall be void, and the perſon diſſeized ſhall recover the lands againſt the firſt diſſeizors, with double damages, without having any regard to ſuch alienations.*

Shall be void] But it is ſaid that it ſhall only be void with regard to him that hath right, and not between the feoffor and feoffee. 1 *Inſt.* 369.

5. And by the 31 El. c. 5. *The offence of champerty may be laid in any county, at the pleaſure of the informer.* ſ. 4.

III. Of embracery in particular.

i. What it is.
ii. How puniſhable by the common law.
iii. How by ſtatute.

i.

i. What it is.

1. It ſeems clear, *that any attempt whatſoever to corrupt, or influence, or inſtruct a jury, or any way to incline them to be more favourable to the one ſide than to the other, by money, promiſes, letters, threats, or perſuaſions, is a proper act of embracery*; whether the juror on whom ſuch attempt is made give any verdict or not, or whether the verdict given be true or falſe. 1 *Haw.* 259.

2. And the law ſo far abhors all corruption of this kind, that it prohibits every thing which has the leaſt tendency to it, what ſpecious pretence ſoever it may be covered with, and therefore it will not ſuffer a mere ſtranger ſo much as to labour a juror to appear and act according to his conſcience. 1 *Haw.* 259.

3. But any perſon who may juſtify any other act of maintenance, may ſafely labour a juror to appear and give a verdict according to his conſcience; but no one whatſoever can juſtify the labouring a juror not to appear. 1 *Haw.* 260.

ii. How puniſhable by the common law.

There is no doubt, but that offences of this kind, do ſubject the offender either to an indictment or action, in the ſame manner as all other kinds of unlawful maintenance do by the common law. 1 *Haw.* 260.

iii. How by ſtatute.

1. By the 32 H. 8. c. 9. *No perſon ſhall embrace any jurors on pain of* 10 l. *half to the king, and half to him that ſhall ſue within a year.* ſ. 3, 6.

2. And by the 38 Ed. 1. ſt. 1. c. 12. *If any juror ſhall take any thing to give his verdict; both he, and the embracer, ſhall forfeit ten times as much, half to the king, and half to him that ſhall ſue.*

Upon which ſtatute is founded the writ of *Decies tantum.*

Indictment for maintenance.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforeſaid, in the county aforeſaid, did unjuſtly and unlawfully maintain*

tain and uphold a certain ſuit, which was then depending in the court of our ſaid lord the king, before the king himſelf, between A. P. *plaintiff, and* A. D. *defendant in a plea of debt, on the behalf of the ſaid* A. P. *againſt the ſaid* A. D. *contrary to the form of the ſtatute in ſuch caſe made and provided, and to the manifeſt hindrance and diſturbance of juſtice, and in contempt of our ſaid lord the king, and to the great damage of the ſaid* A. D. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Malt. See Exciſe.
Manſlaughter. See Homicide.
Mariners. See Seamen.

Marriage.

BY the 26 *G.* 2. *c.* 33. If any perſon ſhall ſolemnize matrimony, in any other place than a church or publick chapel (unleſs by ſpecial licence from the archbiſhop of *Canterbury*;) or without publication of bans, or licence, in a church or chapel; he ſhall (on proſecution in 3 years) be adjudged guilty of felony, and tranſported for 14 years; and the marriage ſhall be void. *ſ.* 8, 9. But not to extend to *Scotland*, nor to the marriages of quakers, or jews. *ſ.* 17, 18.

And if any perſon ſhall knowingly and wilfully inſert, or cauſe to be inſerted, in the regiſter book, any falſe entry of any matter or thing relating to any marriage; or falſly make, alter, forge, or counterfeit, any ſuch entry in the regiſter, or any marriage licence, or cauſe the ſame to be done, or aſſent thereunto, or utter as true any ſuch falſified regiſter, or copy thereof, or any ſuch forged licence; he ſhall be guilty of felony without benefit of clergy. *ſ.* 16.

For other matters relating to this title, ſee Women and Polygamy.

Maſter. See Servant, Apprentice.
Meaſures. See Weights.
Metal. See Pewter.
Metheglin. See Exciſe.

Militia.

BY the 30 *G.* 2. *c.* 25. which is in force for five years, *&c.* all former acts relating to the raiſing of the militia ſhall be repealed, except in ſuch caſes as are therein ſpecially directed to be ſubject to the proviſions of the ſaid former acts or any of them. *ſ.* 70.

Which ſpecial directions relate only to certain particular places therein mentioned, and not to the militia within any of the counties at large: ſo that as to the general forming and regulating of the militia throughout the kingdom, the ſaid former acts do ſeem to ſtand at preſent wholly repealed, and are only in force in ſome reſpects (as will appear) with regard to the city of *London*, the tower hamlets, and the cinque ports. Nevertheleſs as the militia within theſe places ſpecified doth make up a moſt conſiderable and neceſſary part of the whole militia of the kingdom; and as the ſaid ſtatute of the 30 *G.* 2. *c.* 25. and the other ſtatutes depending thereupon are but temporary, it is judged requiſite to inſert firſt of all the former militia laws as they ſtood before the 30 *G.* 2. and then to inſert the new militia laws as they ſtand upon the ſaid act of the 30 *G.* 2. *c.* 25. and the other acts conſequent thereupon.

Old Militia.

I. Of the appointing lieutenants and deputy lieutenants.
II. Conſtituting inferior officers.
III. Perſons chargeable to find ſoldiers.
IV. Inliſting.
V. Muſtering, training, and leading.
VI. Trophy money; for ammunition, carriages, and other neceſſaries.
VII. Power to ſearch for arms.
VIII. Conſtables to be aſſiſting.

IX. Puniſh-

IX. Puniſhment for deſertion or diſobedience.
X. Puniſhment for imbezilling horſe or furniture.
XI. Officers pay.
XII. Soldiers pay.
XIII. Penalties how recoverable.
XIV. Double coſts.

I. Of the appointing lieutenants and deputy lieutenants.

The king may iſſue commiſſions to ſuch perſons as he ſhall think fit, to be lieutenants for the ſeveral counties, cities, and places. 13 & 14 *C.* 2. *c.* 3. *ſ.* 2.

Which lieutenants ſhall preſent to his majeſty the names of ſuch perſons as they ſhall think fit, to be deputy lieutenants; and upon his majeſty's approbation of them, ſhall give them deputations accordingly: always underſtood, that the king have power to direct and order otherwiſe; and accordingly at his pleaſure, may appoint and commiſſionate, or diſplace ſuch officers. *id.*

And the ſaid deputy lieutenants ſhall obey ſuch orders as they ſhall receive from the lieutenants. *id. ſ.* 13.

But no peer ſhall be capable of acting as lieutenant or deputy lieutenant, unleſs he ſhall firſt before ſix of the privy council, or ſuch others as ſhall be authorized by the king, take the oaths of allegiance and ſupremacy, and this oath following; *I* A. B. *do declare and believe, that it is not lawful upon any pretence whatſoever, to take arms againſt the king; and that I do abhor that traiterous poſition, that arms may be taken by his authority againſt his perſon, or againſt thoſe that are commiſſioned by him in purſuance of ſuch military commiſſion: So help me God.* id. ſ. 18.

And no perſon under the degree of a peer, ſhall be capable of acting as lieutenant or deputy lieutenant, unleſs he ſhall firſt take the ſaid oaths; which oaths, any one juſtice, of the county or place, may adminiſter to ſuch lieutenant as is not a peer; and the ſaid lieutenant, or any one ſuch juſtice, may adminiſter the ſame to the deputy lieutenants not being peers. *id. ſ.* 19.

II. Con-

II. Conſtituting inferior officers.

The lieutenants may give commiſſions to ſuch perſons as they ſhall think fit, to be colonels, majors, captains, and other commiſſion officers, 13 & 14 *C.* 2. *c.* 3. *ſ.* 2.

Which officers likewiſe, before they ſhall be capable of acting, ſhall firſt take the ſaid oaths; to be adminiſtred by the lieutenants, and in their abſence, or by their directions, the deputy lieutenants, or any two of them. *id. ſ.* 19.

III. Perſons chargeable to find ſoldiers.

1. The lieutenants and deputies, or the major part of them then preſent, or in the abſence of the lieutenant, the major part of the deputy lieutenants then preſent, which major part ſhall be three at leaſt, ſhall have power to charge any perſon, in the county, city, or town corporate, where his eſtate lies, having reſpect unto, and not exceeding the following proportions; *viz.* Who chargeable with horſe.

No perſon ſhall be charged with finding a horſe, horſeman, and arms, unleſs he have a revenue of 500 *l.* a year in poſſeſſion, or an eſtate of 6000 *l.* in goods or money, beſides the furniture of his houſe; and ſo proportionably for a greater eſtate, as they ſhall ſee cauſe, and think reaſonable. 13 & 14 *C.* 2. *c.* 3. *ſ.* 3.

2. And they ſhall not charge any perſon with finding a foot ſoldier and arms, that hath not a yearly revenue of 50 *l.* in poſſeſſion, or a perſonal eſtate of 600 *l.* in goods or money, other than ſtock upon the ground; and after the ſaid rate proportionably for a greater or leſſer revenue or eſtate. *id.* Who chargeable with foot.

But they may require the conſtables to furniſh, at a reaſonable time and place to be appointed, on a penalty not exceeding 40 *s.* ſo many ſufficient arms, with wages and other incident charges, as they ſhall aſſeſs according to the ſaid proportions, upon revenue under 50 *l.* a year, or on perſonal eſtates leſs than 600 *l.* And in order thereunto, if any perſon ſhall on demand refuſe or neglect to provide a foot ſoldier or ſoldiers according to the proportions aforeſaid, or to pay any ſums of money whereat he ſhall be aſſeſſed by a pound rate (according to a liſt ſigned by the lieutenants and deputies or three of them) towards defraying the neceſſary charge in providing ſuch arms as aforeſaid, the conſtable by warrant may levy ſuch ſum by diſtreſs and ſale, rendring the overplus, charge of diſtraining being firſt deducted: and the tenant ſhall pay the ſame, and deduct it

out of his next rent; and in default thereof, his goods alſo ſhall be liable to be diſtrained and ſold. 15 *C.* 2. *c.* 4. *ſ.* 4, 5.

But no perſon having an eſtate of 200 *l.* a year, or perſonal eſtate of 2400 *l.* ſhall be charged with finding any foot. 15 *C.* 2. *c.* 4. *ſ.* 18.

Who may be charged either with horſe or foot.

3. And they may charge any perſon having an eſtate of 100 *l.* a year, and under 200 *l.* or who hath a perſonal eſtate of 1200 *l.* and under 2400 *l.* towards the finding of foot or horſe, as to them ſhall ſeem moſt expedient. 15 *C.* 2. *c.* 4. *ſ.* 18.

None chargeable with both horſe and foot.

4. But they ſhall not charge any perſon with finding both horſe and foot in the ſame county. 13 & 14 *C.* 2. *c.* 3. *ſ.* 3.

Two or more may be charged together.

5. And they may impoſe the finding of horſe, horſeman, and arms; by joining two, three, or more perſons together in the charge. 13 & 14 *C.* 2. *c.* 3. *ſ.* 4.

But no perſon not having 100 *l.* a year in poſſeſſion in lands, leaſehold or copyhold, or 1200 *l.* perſonal eſtate, ſhall be compellable to contribute in finding any horſe and horſeman. *id. ſ.* 5.

Perſon chargeable with horſe, not to be charged with foot.

6. And no perſon chargeable to find a horſe and horſeman, or to be contributory thereunto, ſhall for the ſame eſtate be chargeable towards finding a foot ſoldier with arms, or contributory thereunto. 13 & 14 *C.* 2. *c.* 3. *ſ.* 4.

Who ſhall find, and who contribute.

7. Where two or more are charged to find any horſe or foot ſoldier and arms, three deputy lieutenants may appoint who ſhall find the ſame, and who ſhall be the contributors, and ſettle the ſums to be paid by every contributor, in caſe the ſame contribution be not aſcertained by agreement of the parties. 10 & 11 *W.* *c.* 12. *ſ.* 3.

Perſons may be examined on oath.

8. And for the better diſcovery of the ability of the perſons ſo to be aſſeſſed and charged, and of all miſdemeanors tending to the hindrance of the ſervice, they may examine on oath ſuch perſons as they ſhall judge neceſſary or convenient, or ſhall be produced by the party charged or accuſed, other than the perſons themſelves to be aſſeſſed or accuſed. 13 & 14 *C.* 2. *c.* 3. *ſ.* 11.

Hearing and determining complaints.

9. And they may hear complaints, and give redreſs, according to the merits of the cauſe. 13 & 14 *C.* 2. *c.* 3. *ſ.* 5.

Peers how to be charged.

10. No peer ſhall be charged otherwiſe than as follows; *viz.* the king may iſſue out commiſſions under the great ſeal, to ſo many peers (not fewer than 12) as he ſhall think fit; who, or any 5 of them, ſhall have power to aſſeſs all or any peers, according to the proportions herein mentioned (except the monthly taxes hereafter following), and

and to execute all the powers of this act, as well for laying aſſeſſments, as impoſing of penalties (impriſonment only excepted). Which aſſeſſment or charge ſo made, and penalties impoſed, ſhall be certified to the lieutenants. And in caſe of default in performance of any thing to be done or paid by any peer, the lieutenants and deputies, or any three of them, may cauſe diſtreſſes to be taken in the lands of ſuch defaulter; and if ſatisfaction ſhall not be made in one week after ſuch diſtreſs taken, then the ſame to be ſold: and if a tenant be diſtrained, he may deduct the ſum levied out of his next rent. 13 & 14 *C.* 2. *c.* 3. *ſ.* 33.

Officer how chargeable.

11. Every commiſſioned foot officer ſhall be exempted from finding, or contributing to find, any horſe or foot ſoldier, for his whole eſtate, if it is but charged with one horſe, or a leſs charge, or for ſuch part of his eſtate as is charged with one horſe, if his whole eſtate be charged with a greater charge than one horſe in the county or lieutenancy where he ſo ſerves as a foot officer, in reſpect of the expence which the ſaid employment doth neceſſarily engage him in. 15 *C.* 2. *c.* 4. *ſ.* 9.

Papiſts how to be charged.

12. Where any papiſt, reputed papiſt, or other perſon refuſing to take the oaths, is chargeable in reſpect of his eſtate, the lieutenant, or in his abſence the deputies, or three of them, may appoint ſuch perſon as they ſhall think moſt meet, to furniſh the ſame; and may charge the ſame eſtate with the payment of the yearly ſum of 8*l.* for a horſe, horſeman, and arms, and of 30*s.* for a foot ſoldier and arms. And if he ſhall not pay the ſame on demand, they may by their warrant levy the ſame by diſtreſs and ſale of the goods of ſuch perſon, or of his tenants, rendring the overplus, all neceſſary charges in levying thereof being firſt deducted; and ſuch tenant ſhall deduct the ſame out of his rent. 10 & 11 *W.* *c.* 12. *ſ.* 2.

Perſons reſiding out of the liberty, how to be charged.

13. Where any perſon ſhall be charged in the county, city, or place, where he doth not reſide, they ſhall ſend notice of the charge, if he have any land in his own occupation, to ſuch perſon as he employs as his ſervant in managing the ſame; and if all his eſtate be let to farm, then to one or two of the moſt ſufficient tenants; who ſhall forthwith, with all convenient ſpeed, convey the ſame to their maſter or landlord; and in ſuch time as ſhall be appointed, bring an account of his anſwer: And on neglect or refuſal of the landlord, to provide ſuch horſe or foot, as is duly charged upon him, for the yearly rent reſerved upon every demiſe or other grant, and not otherwiſe, within the time limited; then the tenant ſhall provide and do,

as the landlord in that behalf ought to have done: And if the tenant ſhall refuſe or neglect, within the time limited, the lieutenants, and in their abſence, or by their directions, the deputies, or two of them, may levy by their warrant all ſuch penalties as are appointed by this act, by diſtreſs and ſale of the offender's goods. 13 & 14 *C.* 2. *c.* 3. *ſ.* 16.

And the tenant may defalk out of his next rent, all ſuch money as he ſhall neceſſarily lay out in providing the ſame, or ſhall be levied upon him by diſtreſs for any default; unleſs the landlord ſhall make it appear, in two months after ſuch levying, before the lieutenant, or in his abſence, or by his direction, the deputies or any two of them, that the default and penalty was occaſioned by the tenant's wilful neglect. *id. ſ.* 17.

But this ſhall not avoid any covenant between landlord and tenant, concerning the finding horſes or arms, or the bearing of any charges by any tenant; but all charges ſhall be born by ſuch tenant, according to the agreement. *id. ſ.* 29.

Penalty on perſons not furniſhing.

14. If any perſon ſhall refuſe or neglect, by a reaſonable time to be appointed, to provide ſuch horſe, horſeman, arms, and other furniture, or to pay ſuch ſum towards providing the ſame as aforeſaid; the lieutenants and deputies, or three of them, may inflict a penalty on ſuch perſon not exceeding 20 *l.* and by their warrant may levy ſuch ſum, or the value of ſuch horſe, arms, and furniture, and ſuch penalty inflicted, by diſtreſs and ſale, rendring the overplus, all neceſſary charge in levying thereof being firſt deducted; the ſame to be employed to the uſes in default whereof the ſame was impoſed. 13 & 14 *C.* 2. *c.* 3. *ſ.* 9.

And if any perſon ſhall refuſe or neglect, by a reaſonable time to be appointed, to provide and furniſh ſuch foot ſoldier and arms, as ſhall be charged upon him; the lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5 *l.* to be employed to the uſes in default whereof it was impoſed: And the conſtable, by warrant for that purpoſe, may levy ſuch ſum by diſtreſs and ſale, rendering the overplus, charges of diſtraining being firſt deducted; and the tenant ſhall pay the ſame, and deduct it out of his next rent, and in default thereof his goods alſo ſhall be liable to be diſtrained and ſold. 15 *C.* 2. *c.* 4. *ſ.* 3, 5.

And if any perſon charged as a *contributor*, being an inhabitant, ſhall refuſe to pay his proportion on demand; or if he be not an inhabitant, if his tenant ſhall not pay the ſame upon demand; three deputy lieutenants by their warrant

rant may levy the ſame by diſtreſs and ſale, rendring the overplus, all neceſſary charge in levying thereof being firſt deducted; and ſuch tenant may deduct the ſame out of his rent. 10 & 11 *W.* *c.* 12. *ſ.* 3.

15. But no perſon charged with the finding horſe or foot, or with contributing thereunto; ſhall be compellable to ſerve in perſon, but may find one to ſerve for him, to be approved by the captain; ſubject nevertheleſs to be altered upon appeal to the lieutenant, or in his abſence to two deputy lieutenants. 13 & 14 *C.* 2. *c.* 3. *ſ.* 25. None compellable to ſerve in perſon.

IV. Liſting.

Every man who ſhall ſerve in his own perſon, or ſuch perſon as ſhall be accepted in his ſtead, ſhall at the next muſter of his troop or company, give in his name and place of abode, unto ſuch perſon as the lieutenant, or in his abſence, or by his direction, any two deputy lieutenants, ſhall appoint; to the end that the ſame may be liſted. 13 & 14 *C.* 2. *c.* 3. *ſ.* 25.

But he ſhall not be capable of acting as a ſoldier, unleſs he firſt take the ſaid oaths abovementioned, to be adminiſtred by the lieutenant, or in his abſence, or by his direction, the deputy lieutenants, or any two of them. *id.* *ſ.* 19.

V. Muſtering, training, and leading.

1. By the 13 & 14 *C.* 2. *c.* 3. The lieutenants ſhall have power to call together the militia, and to arm and array them, and form them into companies, troops, and regiments, and in caſe of inſurrection, rebellion, or invaſion, them to lead, conduct, and employ, or cauſe them to be led, conducted, and employed, as well within the ſeveral counties, cities, and places for which they ſhall be commiſſioned reſpectively, as alſo into any other counties and places, for the ſuppreſſing of all ſuch inſurrections and rebellions, and repelling of invaſions, as may happen to be, according as they ſhall receive directions from his majeſty. *ſ.* 2. Power to raiſe and lead.

And by the 15 *C.* 2. *c.* 4. The lieutenants, and in their abſence, or by their directions, the deputy lieutenants, or two of them, ſhall have power to lead, train, and exerciſe, or by warrant under their hands and ſeals, cauſe to be led, trained, and exerciſed, the perſons ſo raiſed, arrayed, and weaponed. *ſ.* 1.

But nothing herein ſhall extend to the giving any power for marching any ſubjects out of the realm, otherwiſe than

by the laws of *England* ought to be done. 13 & 14 *C.* 2. *c.* 3. *ſ.* 32.

Time of muſtering.

2. The ordinary times for training, exerciſing, and muſtering, ſhall be theſe: The general muſter and exerciſe of regiments, not above once a year; The training and exerciſing of ſingle companies, not above four times a year, unleſs ſpecial directions be given by the king or his privy council; And ſuch ſingle companies and troops ſhall not at any one time be continued in exerciſe above the ſpace of two days; And at a general muſter and exerciſe of regiments, no officer or ſoldier ſhall be conſtrained to ſtay above four days together from their habitations. *id. ſ.* 21.

Accoutrements.

3. At every ſuch muſter and exerciſe, every muſqueteer ſhall bring with him half a pound of powder, and half a pound of bullets; and every muſqueteer that ſhall ſerve with a match lock, ſhall bring with him three yards of match; and every horſeman ſhall bring with him a quarter of a pound of powder, and a quarter of a pound of bullets; all which ſhall be at the charge of him who provides the ſaid ſoldiers and arms: on pain of 5 *s.* for every omiſſion. 13 & 14 *C.* 2. *c.* 3. *ſ.* 21. 15 *C.* 2. *c.* 4. *ſ.* 7.

And the arms offenſive and defenſive, with the furniture for horſe, ſhall be as follows; the defenſive arms, a back, breaſt, and pot, piſtol proof; the offenſive arms, a ſword and a caſe of piſtols, the barrels not under 14 inches in length; the furniture for the horſe, a great ſaddle or pad with burrs and ſtraps to affix the holſters unto, a bit and bridle, with a pectoral and crupper: for the foot, a muſqueeter ſhall have a muſket, the barrel not under three foot in length, and the gauge of the bore to be for 12 bullets to the pound, a collar of bandileers, with a ſword: a pikeman to be armed with a pike of aſh, not under 16 foot in length (head and foot included), with a back, breaſt, headpiece, and ſword. 13 & 14 *C.* 2. *c.* 3. *ſ.* 21.

Muſter maſter.

4. The muſter maſter ſhall be an inhabitant of the county. 15 *C.* 2. *c.* 4. *ſ.* 6.

And once a year each ſoldier ſhall pay to him ſuch ſum, not exceeding 1 *s.* for a horſeman, and 6 *d.* for a footman, as the lieutenants and deputies, or three of them, ſhall under their hands and ſeals direct; who ſhall have power to levy the ſame, by diſtreſs and ſale of the goods of the perſons charged to find ſuch horſeman, or foot ſoldier, unleſs the default be by the neglect of ſuch ſoldier, who in that caſe ſhall be accountable for the ſame. *id.*

Penalty on not furniſhing.

5. If any perſon charged ſhall refuſe or neglect to ſend in, or deliver his horſe, arms, or other furniture, at the beat of drum, ſound of trumpet, or other ſummons; the lieute-

lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5 *l.* to be levied by diſtreſs and ſale, rendring the overplus, neceſſary charges for levying being firſt deducted. 13 & 14 *C.* 2. *c.* 3. *ſ.* 10.

6. Provided, that no officer or ſoldier of the militia, belonging to any city, borough, or town corporate, being a county of it ſelf, or to any other corporation or port town, who have uſed to be muſtered only within their own precincts, ſhall be compellable to appear out of ſuch precincts, at any muſter or exerciſe only. 13 & 14 *C.* 2. *c.* 3. *ſ.* 28. Exception as to corporations.

VI. Trophy money; for ammunition, carriages, and other neceſſaries.

And for furniſhing ammunition and other neceſſaries, the lieutenants and deputies, or three of them, ſhall have power to lay rates on the reſpective counties and places, not exceeding in the whole in any one year the proportion of a fourth part of one month's aſſeſſment in each county, after the rate of 70000 *l.* a month, charged by the act of the 12 *C.* 2. *c.* 29. Which ſhall be aſſeſſed, collected, and paid by ſuch perſons, and according to ſuch directions as ſhall be given by the lieutenants and deputies, or three of them; under the like penalties, and by the like ways and means, as are preſcribed in the ſaid act. 13 & 14 *C.* 2. *c.* 3. *ſ.* 7.

Which ſaid act of the 12 *C.* 2. *c.* 29. having been long ſince expired, is omitted out of the ſeveral editions of the ſtatutes at large, but is ſupplied in Mr. *Cay*'s abridgment, as follows:

The ſaid act of the 12 *C.* 2. *c.* 29. directs the ſum of 70000 *l.* a month to be raiſed in like manner as by the act of the 12 *C.* 2. *c.* 21. which act did direct the ſame to be raiſed, according to the proportions, and in ſuch manner as by an ordinance of both houſes made in his majeſty's abſence: Which ordinance was as followeth;

That is to ſay, there ſhall be raiſed an aſſeſſment of 70000 *l.* a month, in theſe proportions,

On the county of

	l.	*s.*	*d.*		*l.*	*s.*	*d.*
Bedford ——	933	6	8	*Cornwall* —	1633	6	8
Berks ——	1088	17	10	*Cumberland*	108	0	0
Buckingham	1283	6	8	*Derby* ——	933	6	8
Cambridge —	1102	10	0	*Devon* —	3003	15	6
Iſle of Ely	367	10	0	*Dorſet* —	1311	10	6
Cheſter county	770	0	0	*Town of Pool*	10	14	0
City ——	85	11	2	*Durham* —	153	14	4

	l.	s.	d.
Eſſex ——	3500	0	0
Glouceſter	1626	6	8
City ——	162	11	2
Hereford —	1166	13	4
Hertford	1400	0	0
Huntington	622	4	6
Kent ——	3655	11	2
Lancaſter —	933	6	8
Leiceſter —	1088	17	8
Lincoln —	2722	4	10
Middleſex	1788	17	10
London	4666	13	4
Northampton	1400	0	0
Nottingham	903	4	4
Town —	30	2	4
Norfolk —	3624	8	10
Norwich	186	13	4
Northumberland	179	19	10
Newcaſtle	35	11	8
Oxon ——	1127	15	6
City —	107	6	8
Rutland ——	272	4	6
Salop ——	1322	4	4
Stafford —	919	6	8
Litchfield	14	0	0
Somerſet —	2722	4	6
Briſtol	171	2	2
Southampton	2022	4	4
Suffolk —	3655	11	2
Surrey —	1565	5	6
Southwark	184	14	6
Suſſex —	1905	11	2
Warwick	1244	8	10
Weſtmorland	73	19	4
Wilts ——	1944	8	10
Worceſter	1182	4	4
City ——	62	4	6
York ——	3043	8	10
Kingſton	67	13	4
Angleſea —	135	14	4
Brecknock —	361	13	4
Cardigan —	213	10	0
Carmarthen	352	6	8
Carnarvan	202	4	4
Denbigh —	272	4	6
Flint ——	135	14	6
Glamorgan	458	17	8
Merioneth —	124	8	10
Monmouth —	466	13	4
Montgomery	295	11	0
Pembroke —	406	0	0
Radnor —	254	6	8
Haverford Weſt	14	11	8
Berwick —	5	16	8

And the commiſſioners ſhall cauſe the proportions to be equally aſſeſſed; and appoint aſſeſſors in each pariſh, who ſhall aſſeſs the ſame by a pound rate, according to all eſtates both real and perſonal, within the limits of their pariſhes.

And in caſe the way of aſſeſſing by a pound rate ſhall prove obſtructive to the ſpeedy bringing in of the aſſeſſment; the commiſſioners may direct the aſſeſſors to aſſeſs the ſame, according to the moſt juſt and uſual way of rates practiſed in ſuch places. Provided that the apportionment of the aſſeſſment ſhall not be drawn into precedent.

And no privileged place ſhall be exempted from the aſſeſſment.

But nothing contained in this ordinance ſhall charge any maſter, fellow, or ſcholar of any college in either of the univerſities, or of *Wincheſter*, *Eaton*, or *Weſtminſter*, or in any other free ſchools, or any reader, officer, or miniſter of the ſame, or of any hoſpitals, or almſhouſes, in reſpect of any profit ariſing in reſpect of the ſaid places; nor charge any

any houſes or lands belonging to *Chriſt's hoſpital*, *Bartholomew*, *Bridewell*, *Thomas*, and *Bethlehem*. But their tenants ſhall pay for ſo much as their leaſes are yearly worth, over and above the rents reſerved.

Perſons in *London* ſhall be aſſeſſed in the pariſhes where they dwell: And perſons out of *London*, having any office in *London*, ſhall be aſſeſſed where they dwell.

And the aſſeſſors ſhall deliver one copy of the aſſeſſment unto the commiſſioners; who ſhall ſign and ſeal two duplicates, and deliver one to the ſub-collectors, with warrant to collect; and deliver the other to the receiver general.

And if any difference ariſe between landlord and tenant concerning the rates, the commiſſioners ſhall ſettle the ſame; and perſons aggrieved by being over rated, on complaint in ſix days after demand to the commiſſioners who allowed the aſſeſſment, may by them be relieved.

And if any controverſy ſhall ariſe which concerns any of the commiſſioners, he ſhall withdraw.

On non-payment, the collectors may diſtrain; and in the day-time, taking with them the conſtable, may break open any houſe, cheſt, or box where the goods are. And if any queſtion ariſe upon the taking ſuch diſtreſs, the ſame ſhall be determined by the commiſſioners.

And if perſons convey their goods, the commiſſioners may impriſon them (not being peers) till payment; and tenants may deduct the ſame out of their rent.

And if the proportions be not fully paid, nor can be levied, the commiſſioners may reaſſeſs.

And if any perſon ſhall wilfully neglect to perform his duty in the execution of this ordinance, the commiſſioners may fine him, not exceeding 20 *l.* to be levied by diſtreſs, and paid to the receiver general.

And the receiver general ſhall have 1 *d.* in the pound; the ſub-collectors 1 *d.* the head collectors 1 *d.* and the commiſſioners clerks 1 *d.*

But nothing herein ſhall be drawn into example, to the prejudice of the ancient rights belonging to the peers.

And ſo much concerning this ordinance of the two houſes; in which we may obſerve the land tax acts in *embryo*.

And the ſame power which the commiſſioners had by this ordinance, the lieutenants and deputy lieutenants ſeem to have by the act of the 13 & 14 *C.* 2. with which we do now proceed.

The lieutenants and deputies, or the chief officers upon the place, in the reſpective counties and places, may charge carts, waggons, wains, and horſes, for the carrying of powder,

powder, match, bullet, and other materials, allowing 6*d.* a mile outward only, to every ſuch cart, waggon and wain with five horſes, or ſix oxen, and ſo proportionably; and for every horſe employed out of waggon or cart 1*d.* upon the marching of any regiment, company, or troop, on occaſion of invaſion, inſurrection, or rebellion. 13 & 14 *C.* 2. *c.* 3. *ſ.* 8.

And the lieutenants ſhall appoint one or more treaſurers, or clerks, for receiving and paying ſuch monies when levied; of all which receipts and diſburſements thereof, they ſhall every ſix months give their accounts in writing upon oath, to the lieutenants and deputies, or three of them: which account ſhall be forthwith certified to the privy council, and a duplicate thereof ſhall be certified to the juſtices at the next ſeſſions. *id. ſ.* 12.

Always provided, that the lieutenants or their deputies ſhall not iſſue warrants for raiſing any trophy money, till the juſtices in ſeſſions ſhall have examined, ſtated, and allowed the accounts of the trophy money collected for any preceding year, and certified ſuch examination under the hands and ſeals of four or more ſuch juſtices. 10 *An. c.* 25. *ſ.* 4.

VII. Power to ſearch for arms.

The lieutenants, or two of their deputies, may by warrant under their hands and ſeals, imploy ſuch perſons as they ſhall think fit (of which a commiſſioned officer, and the conſtable or his deputy, or in their abſence ſome other perſon bearing office in the pariſh where the ſearch ſhall be, ſhall be two) to ſearch for and ſeize all arms in the cuſtody of any perſon, whom the lieutenants or two of their deputies ſhall judge dangerous to the peace of the kingdom, and to ſecure the ſame, and thereof to give account to the lieutenants, and in their abſence, or by their directions, to the deputies, or two of them: Provided, that no ſearch be made in any houſe between ſun-ſetting and ſun-riſing, other than in cities or their ſuburbs, and towns corporate, market towns, and houſes within the bills of mortality, where they may ſearch in the night time, if the warrant ſo direct; and in caſe of reſiſtance, to enter by force: And no dwelling houſe of a peer to be ſearched, but by immediate warrant from the king, or in the preſence of the lieutenant or a deputy lieutenant: And in all places and houſes whatſoever, where ſearch is to be made, it ſhall be lawful in caſe of reſiſtance, to enter by force. And the arms ſo ſeized may be reſtored to the owners again, if the lieutenants, or

in

in their abſence as aforeſaid, their deputies, or two of them, ſhall ſo think fit. 13 & 14 *C.* 2. *c.* 3. *ſ.* 14.

VIII. Conſtables to be aſſiſting.

All high conſtables, petty conſtables, and other officers and miniſters, ſhall be aiding and aſſiſting to the lieutenants and their deputies, or any of them. 13 & 14 *C.* 2. *c.* 3. *ſ.* 15.

IX. Puniſhment for deſertion or diſobedience.

The yearly acts againſt mutiny and deſertion do not extend to the militia.

But if any of the militia ſhall not appear and ſerve, compleatly furniſhed with horſe and arms and other furniture, at the beat of drum, ſound of trumpet, or other ſummons; the lieutenants, and in their abſence, or by their directions, the deputies, or two of them, if the default be in ſuch perſon, may impriſon him for five days; or may inflict a penalty, if he is a horſeman, not exceeding 20 *s.* and if a footman, not exceeding 10 *s.* to be paid down without delay. 13 & 14 *C.* 2. *c.* 3. *ſ.* 10.

And the lieutenants or deputies, or chief officers upon the place, may impriſon mutineers, and ſuch ſoldiers as do not their duty at the days of muſter and training; and may inflict for puniſhment for every ſuch offence, any pecuniary mulct not exceeding 5 *s.* or impriſonment not exceeding twenty days. 13 & 14 *C.* 2. *c.* 3. *ſ.* 8.

And ſuch perſon duly liſted, ſhall not be exchanged, or deſert, or be diſcharged, but by the leave of the lieutenant, or two deputies, or his captain, upon reaſonable cauſe, firſt obtained in writing under hand and ſeal; on pain of 20 *l.* to be levied as other penalties; and for non-payment, or want of diſtreſs, to be committed to the common gaol of the county, not exceeding three months. *id. ſ.* 25.

X. Puniſhment for imbezilling horſe or furniture.

If any perſon ſhall detain or imbezil his horſe, arms, or furniture, the lieutenants, and in their abſence, or by their directions, the deputies, or two of them, if the default be in ſuch perſon, may impriſon him till he have made ſatisfaction.

XI. Officers

XI. Officers pay.

For ſatisfaction of the officers for their pay, during ſuch time (not exceeding one month) as they ſhall be with their ſoldiers in actual ſervice, proviſion ſhall be made by the king out of the treaſury. 13 & 14 *C.* 2. *c.* 3. *ſ.* 7.

And the lieutenants and deputies, or three of them, ſhall have power to diſpoſe of ſo much of the ſaid fourth part of the 70000 *l.* a month, to the inferior officers, for their pains and encouragement, as to them ſhall ſeem expedient. 15 *C.* 2. *c.* 4. *ſ.* 12.

XII. Soldiers pay.

Every perſon charged ſhall (on pain of 5 *s.*) pay on demand 2 *s.* 6 *d.* a day to each trooper, and ſhall (on pain of 2 *s.*) pay on demand 1 *s.* a day to each foot ſoldier, for ſo many days as they ſhall be abſent from their dwellings or callings, by occaſion of muſter or exerciſe, unleſs ſome certain agreement be made to the contrary before good witneſs; and the ſaid penalty is to be paid to ſuch ſoldier, to whom his pay was denied; the reſpective penalties to be demanded in ſix weeks after default, or at or before the next muſter or exerciſe, and not afterwards. 15 *C.* 2. *c.* 4. *ſ.* 2.

And in caſe of invaſions, inſurrections, or rebellions, whereby occaſion ſhall be to draw out ſuch ſoldiers into actual ſervice; the perſons ſo charged ſhall provide each their ſoldier with pay in hand not exceeding one month's pay, as ſhall be directed by the lieutenants, and in their abſence, or by their directions, by the deputies or any two of them. 13 & 14 *C.* 2. *c.* 3. *ſ.* 7.

For the repayment whereof, proviſion ſhall be made by the king out of the treaſury. *id.*

And in caſe a month's pay ſhall be provided and advanced as aforeſaid, no perſon who ſhall have advanced his proportion thereof, ſhall be charged with any other like month's payment, until he ſhall have been reimburſed the ſaid month's pay; and ſo from time to time, the month's pay by him laſt before provided and advanced. *id.*

XIII. Penalties how recoverable.

The forfeitures, penalties, and payments by the 15 *C.* 2. *c.* 4. not otherwiſe herein directed, may be recovered by warrant under the hands and ſeals of the lieutenants and deputies,

deputies, or three of them, by diſtreſs and ſale; and if ſufficient diſtreſs cannot be found, then the party to be impriſoned till ſatisfaction ſhall be made. 15 *C.* 2. *c.* 4. *ſ.* 16.

XIV. Double coſts.

Perſons ſued on either of the acts of the 13 & 14 *C.* 2. *c.* 3. or 15 *C.* 2. *c.* 4. may plead the general iſſue, and have double coſts. And the action muſt be commenced in ſix months, and in the proper county. 15 *C.* 2. *c.* 4. *ſ.* 13, 14.

New Militia.

I. Appointing officers.
II. Of the ſeveral meetings to be had.
III. Iſſuing precepts to return liſts.
IV. Return and ſettling of the liſts.
V. Proportioning the numbers in each diviſion.
VI. Allotting the men for ſervice.
VII. Inliſting.
VIII. Forming the militia into regiments and companies.
IX. Training and exerciſe.
X. Drawn out into actual ſervice.
XI. Cloathing and pay.
XII. New levies and ſupplies.
XIII. Privileges and exemptions of militia men.
XIV. General power of inforcing the execution hereof.
XV. Exceptions with reſpect to particular places and perſons.

I. Appointing officers.

1. BY the 30 *G.* 2. *c.* 25. The king may iſſue forth commiſſions of lieutenancy. *ſ.* 1. His majeſty's lieutenant.

But commiſſions of lieutenancy already granted by his majeſty, ſhall not hereby be vacated. *ſ.* 2.

Which

Which ſaid lieutenants ſhall have the chief command of the militia. *ſ.* 3.

And on the death of any of his majeſty's lieutenants, his deputy lieutenants ſhall continue to act, until his majeſty ſhall have appointed another lieutenant, and until commiſſions of deputy lieutenancy ſhall be by him iſſued. *ſ.* 71.

Deputy lieutenants.

2. And ſuch lieutenants ſhall appoint perſons, living within their reſpective diſtricts, to be deputy lieutenants; the names of ſuch perſons having been firſt preſented to and approved by the king. 30 *G.* 2. *c.* 25. *ſ.* 1.

Provided, that deputations already granted to deputy lieutenants ſhall not hereby be vacated; ſo as ſuch deputy lieutenants be qualified according to this act. *ſ.* 2.

And in every county, riding, or place, (except in the ſmaller counties, and other places, as hereafter ſpecified) there ſhall be appointed twenty or more deputy lieutenants, if ſo many qualified can be therein found; if not, then ſo many as can be therein found. *ſ.* 3.

And every ſuch deputy lieutenant (except as before excepted) ſhall be ſeiſed or poſſeſſed, either in law or equity, for his own uſe and benefit, in poſſeſſion of a freehold, copyhold, or cuſtomary eſtate, for life, or for ſome greater eſtate, or of an eſtate for ſome long term of years determinable on one or more lives, in manors, meſſuages, lands, tenements or hereditaments, in *England*, *Wales*, or *Berwick* upon *Tweed*, of the yearly value of 400 *l.* (or of an eſtate for a certain term originally granted for twenty-one years or more, and renewable, of the like annual value, over and above all rents and charges payable out of or in reſpect of the ſame, 31 *G.* 2. *c.* 26. *ſ.* 4.); or ſhall be heir apparent of ſome perſon having a like eſtate of 800 *l.* a year. *id.*

One moiety of which eſtates reſpectively ſhall be ſituate or ariſing within the county or riding, in which he ſhall be appointed to ſerve. *id.*

Provided, that the immediate reverſion or remainder of and in manors, meſſuages, lands, tenements or hereditaments, which are leaſed for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, on reſerved rents, and which are to the leſſee of the clear yearly value of 1200 *l.* ſhall be deemed equal to an eſtate before deſcribed as a qualification of the yearly value of 400 *l.* and ſo in proportion, be the ſaid qualifications of a greater or leſs degree. *ſ.* 4.

And every deputy lieutenant ſhall, within ſix months after his acceptance of his commiſſion, leave with the clerk

of the peace his qualification in writing ſigned by himſelf; who ſhall enter the ſame upon a roll to be kept for that purpoſe: and ſhall alſo at the general quarter ſeſſions, or in one of the courts of record at *Weſtminſter*, within ſix months after he ſhall have accepted his commiſſion, take the oaths of allegiance ſupremacy and abjuration, and ſubſcribe the declaration againſt tranſubſtantiation. *ſ.* 9.

And if any perſon ſhall act as deputy lieutenant, not being qualified as aforeſaid; or ſhall not, within the time limited, deliver in his qualification, and take the ſaid oaths and ſubſcribe the declaration; he ſhall forfeit 100*l.* half to him that ſhall ſue, and half to the uſes herein after directed. *ſ.* 10.

And in every action or information brought againſt any perſon, for acting not being qualified; the proof of the qualification ſhall lie upon the perſon againſt whom the ſame is brought. *ſ.* 57.

Provided, that nothing herein ſhall oblige any peer of this realm, or his heir apparent, being ſo appointed a deputy lieutenant (or commiſſion officer, as hereafter expreſſed) to leave with the clerk of the peace any qualification in writing as aforeſaid; but it ſhall be lawful for every ſuch peer or his heir apparent as aforeſaid ſo appointed, and taking the ſaid oaths and ſubſcribing the declaration, to act as deputy lieutenant or commiſſion officer, although he be not ſeiſed or poſſeſſed of ſuch eſtate as aforeſaid. *ſ.* 11.

Alſo, it is provided, that the acceptance of a commiſſion in the militia ſhall not vacate the ſeat of any member returned to ſerve in parliament. *ſ.* 12.

And by the 1 *G.* 3. *c.* 12. further time is allowed to the militia officers, for taking the oaths, or otherwiſe qualifying themſelves; provided that they ſhall take the ſaid oaths, or otherwiſe qualify themſelves, on or before the 12th day of *February* 1762.

Advertiſement for accepting commiſſions.

3. By the 31 *G.* 2. *c.* 26. where commiſſions of the field officers and captains have not been already given; his majeſty's lieutenant ſhall, within fourteen days after paſſing this act, or as ſoon after as may be, by an advertiſement in the gazette, and alſo in ſome one or more of the weekly news papers (if any ſuch there be) publiſhed or uſually circulated within ſuch county or place, ſummon a meeting of all perſons qualified to ſerve as officers in the militia of ſuch county or place, and willing to accept ſuch commiſſions, to be holden on ſome certain day within one month after the publication of ſuch advertiſement, and at ſome certain place within ſuch county or place: in order that

that every perſon ſo qualified, and willing to accept ſuch commiſſion, may at ſuch meeting deliver in his name in writing, or cauſe it to be delivered to his majeſty's ſaid lieutenant, or in caſe of his abſence to ſuch perſon as ſhall be authorized by him to receive the ſame, ſpecifying alſo the rank in which he is willing to ſerve. And if his majeſty's ſaid lieutenant ſhall not be able to find, within one month after ſuch meeting, ſo many perſons qualified and willing to accept the commiſſions of field officers and captains reſpectively, as ſhall be equal to the number of field officers and captains requiſite, for any one battalion of the militia of ſuch place; it ſhall be lawful for his majeſty's ſaid lieutenant, upon notice thereof publiſhed by him in the gazette, and ſuch other papers as aforeſaid, to ſuſpend all further proceedings until the following year. And whenſoever ſuch execution ſhall have been ſo ſuſpended; his majeſty's ſaid lieutenant ſhall, on or before the twenty-fifth day of *March* next following, ſummon in like manner, and with like notice, a meeting within ſuch county or place, of all perſons ſo qualified, and willing to ſerve as aforeſaid. *ſ.* 9.

But by the 33 *G.* 2. *c.* 2. Whereas ſeveral of his majeſty's lieutenants, in purſuance of the power veſted in them by the act of 31 *G.* 2. *c.* 26. have ſuſpended all farther proceedings in the execution of the militia laws, until the next year; and others of the ſaid lieutenants, until *March* and *April* 1760; ſo that no proceedings can be had till the ſaid limited times are expired: and whereas the ſpeedy carrying into execution the ſeveral proviſions made by law for ordering the militia, is moſt eſſentially neceſſary at this juncture to the peace and ſecurity of the kingdom:—It is enacted, that from and after the paſſing of this act, his majeſty's lieutenant of any county, riding or place, where a ſufficient number of perſons have not been found qualified and willing to accept commiſſions of field officers and captains reſpectively, as were equal to the number requiſite for any one battalion of the militia within ſuch county or place, ſhall within one month after the paſſing of this act, ſummon a meeting of all perſons qualified and willing to ſerve as officers in the militia of ſuch county or place, in order that every perſon ſo qualified and willing to accept ſuch commiſſion, may at ſuch meeting deliver his name in writing or cauſe it to be delivered to his majeſty's ſaid lieutenant, or in caſe of his abſence to ſuch perſon as ſhall be authorized by ſuch lieutenant to receive the ſame, ſpecifying alſo the rank in which he is willing to ſerve; and his majeſty's ſaid lieutenant ſhall proceed

ceed thereupon, and alſo in the further execution of the proviſions of the ſaid acts, in like manner as if ſuch proceedings had not been ſuſpended, and as he ought to have done in caſe a ſufficient number of perſons ſo qualified and willing to ſerve as aforeſaid had been found in the year 1758. And in every county, riding or place, where a ſufficient number of officers ſhall not be found at the firſt meeting held in purſuance of this act, the lieutenants ſhall ſummon a meeting for the ſame purpoſe once in every ſucceeding month, until a ſufficient number of officers qualified and willing to ſerve as aforeſaid have been found, or until the expiration of the militia acts. And notice of the time and place of all ſuch meetings ſhall be given by the lieutenant in the London gazette, and alſo in ſome one or more of the weekly papers (if any ſuch there be) uſually circulated within ſuch county, riding or place, at leaſt ſix days before the day appointed for ſuch meeting. *ſ.* 1, 3.

Provided always, that no commiſſion ſhall be granted to any perſon, to be an officer of the militia, until the lieutenant ſhall have certified the name of ſuch perſon to his majeſty: and if the king ſhall, within one month after ſuch certificate, ſignify his diſapprobation of ſuch perſon; the lieutenant ſhall not grant him his commiſſion. 31 *G.* 2. *c.* 26. *ſ.* 10.

4. Otherwiſe, by the 30 *G.* 2. *c.* 25. The lieutenant ſhall give commiſſions to a proper number of colonels (and other officers.) *ſ.* 1. Colonel.

And the qualification by eſtate of a colonel, ſhall be in all reſpects the ſame, with that of a deputy lieutenant; and he ſhall enter his qualification with the clerk of the peace, and take the oaths in like manner at the ſeſſions, under the like penalties. *ſ.* 9, 10.

And by the 33 *G.* 2. *c.* 22. It ſhall be lawful for the lieutenant to act himſelf as colonel of the regiment or battalion, during ſuch time as there ſhall not be any colonel appointed: but no lieutenant ſhall at any one time act as colonel to more than one regiment or battalion. And provided alſo, that where his majeſty's lieutenant ſhall ſerve as colonel, to any body of militia by this act deemed a battalion; he ſhall not, when ſuch battalion ſhall be embodied and in actual ſervice, be intitled to or receive any other pay than that of a lieutenant colonel; and that no other perſon whatſoever ſhall ſerve or be intitled to pay as a lieutenant colonel in ſuch battalion, during the time that his majeſty's ſaid lieutenant ſhall ſerve therein as colonel. *ſ.* 8, 9.

Lieutenant colonel.

5. Alſo, his majeſty's lieutenant ſhall give commiſſions to a proper number of lieutenant colonels. 30 *G.* 2. *c.* 25. *ſ.* 1.

And every lieutenant colonel (except in the ſmaller counties and other places hereafter excepted) ſhall be ſeiſed or poſſeſſed of a like eſtate as aforeſaid of 300*l.* a year, or be heir apparent of ſome perſon having 600*l.* a year. *ſ.* 3.

And he ſhall enter his qualification with the clerk of the peace, and take the oaths at the ſeſſions, in like manner as a deputy lieutenant or colonel; under the like penalties. *ſ.* 9, 10.

Major.

6. Alſo, his majeſty's lieutenant ſhall give commiſſions to a proper number of majors. 30 *G.* 2. *c.* 25. *ſ.* 1.

And the qualification by eſtate of a major, ſhall be in all reſpects the ſame with that of a lieutenant colonel; and he ſhall enter his qualification with the clerk of the peace, and take the oaths in like manner at the ſeſſions, under the like penalties. *ſ.* 9, 10.

Captains.

7. In like manner, his majeſty's lieutenant ſhall give commiſſions to a proper number of captains. 30 *G.* 2. *c.* 25. *ſ.* 1.

And every captain (except as before excepted) ſhall be ſeiſed or poſſeſſed of a like eſtate as aforeſaid of 200*l.* a year, or be heir apparent of ſome perſon having 400*l.* a year, or younger ſon of a perſon who ſhall be, or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of 600*l.* a year. *ſ.* 3.

And he ſhall enter his qualification with the clerk of the peace, and take the oaths at the ſeſſions, in like manner as aforeſaid. *ſ.* 9.

And if any perſon ſhall act as captain, not being qualified as aforeſaid; and ſhall not within the time limited as aforeſaid deliver in his qualification, and take the ſaid oaths, and ſubſcribe the declaration; he ſhall forfeit 100*l.* half to him that ſhall ſue, and half to the uſes herein after directed. *ſ.* 10.

Lieutenants.

8. So alſo, his majeſty's lieutenant ſhall give commiſſions to a proper number of lieutenants. 30 *G.* 2. *c.* 25. *ſ.* 1.

And every lieutenant (except as before excepted) ſhall be ſeiſed or poſſeſſed of a like eſtate as aforeſaid of 100*l.* a year, or be ſon of ſome perſon who ſhall be, or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of 200*l.* a year. *ſ.* 3.

And he ſhall enter his qualification with the clerk of the peace, and take the oaths at the ſeſſions, in like manner as the other officers above-mentioned. *ſ.* 9.

And

And if any perſon ſhall act as lieutenant, not being qualified as aforeſaid; and ſhall not within the time limited as aforeſaid deliver in his qualification, and take the ſaid oaths and ſubſcribe the declaration; he ſhall forfeit 100l. in like manner. *ſ.* 10.

9. So alſo, his majeſty's lieutenant ſhall give commiſſions to a proper number of enſigns. 30 *G.* 2. *c.* 25. *ſ.* 1. Enſigns.

And every enſign (except as before excepted) ſhall be ſeiſed or poſſeſſed of a like eſtate as aforeſaid of 50 l. a year, or be ſon of ſome perſon who ſhall be or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of 100l. a year. *ſ.* 3.

And he ſhall enter his qualification with the clerk of the peace, and take the oaths at the ſeſſions, in like manner as the other officers above-mentioned. *ſ.* 9.

And if any perſon ſhall act as enſign not being qualified as aforeſaid; and ſhall not within the time limited as aforeſaid deliver in his qualification, and take the ſaid oaths and ſubſcribe the declaration; he ſhall forfeit 100l. in like manner. *ſ.* 10.

10. Provided always, that any officer may be promoted on account of merit in the ſaid militia, when called out and aſſembled in caſe of actual invaſion, or upon imminent danger thereof, or in caſe of rebellion, by the lieutenant of any county or place, from a lower to an higher commiſſion, incluſive of that of lieutenant colonel, notwithſtanding he ſhall not have the qualifications requiſite for his firſt admittance into ſuch higher rank of the militia: But ſo, as that no perſon, not having the qualification herein before directed for a captain, ſhall be promoted to an higher rank than that of captain. 30 *G.* 2. *c.* 25. *ſ.* 5, 6. Commiſſion officers promoted on account of merit.

11. Provided always, that his majeſty ſhall, from time to time as he ſhall think fit, ſignify his pleaſure to his lieutenants, to diſplace all or any ſuch deputy lieutenants and officers; and thereupon the ſaid lieutenants ſhall appoint others, under the like qualifications. 30 *G.* 2. *c.* 25. *ſ.* 8. Diſplacing any of the aforeſaid officers.

12. And the king may appoint one proper perſon, who ſhall have ſerved, or ſhall at the time of ſuch appointment actually ſerve in ſome of his majeſty's other forces, to be an adjutant to each regiment or battalion of the militia; and ſuch adjutant ſhall, during his ſervice in the militia, preſerve his rank in the army, in the ſame manner as if he had continued in that ſervice. 30 *G.* 2. *c.* 25. *ſ.* 14. Adjutant.

And in counties and places where the whole militia ſhall not amount to a regiment, and conſequently ſhall be

formed only into a battalion, there is a proviſo, that the adjutant ſhall not be of higher rank in the army than a ſubaltern. *ſ.* 29.

But by the 33 *G.* 2. *c.* 22. His majeſty's lieutenant may grant to the adjutant of each regiment or battalion a commiſſion of lieutenant, or any inferior commiſſion therein, if he ſhall think fit, although ſuch adjutant ſhall not have the qualification mentioned for a lieutenant, or ſuch other inferior officer. *ſ.* 11.

Provided, that no adjutant (or ſerjeant) ſhall be appointed, until it ſhall appear by a return ſigned by his majeſty's lieutenant, or in his abſence by three deputy lieutenants, that three fifths of the militia men of ſuch county, riding or place, have been choſen, and that three fifths of the commiſſion officers have been appointed, and that they have taken out their commiſſions and entred their qualifications. 30 *G.* 2. *c.* 25. *ſ.* 35. 31 *G.* 2. *c.* 26. *ſ.* 34.

Serjeants. 13. And the king may appoint, according to the proportion of one ſerjeant to twenty private men, two or more ſerjeants to every company in the militia, out of his other forces, ſuch perſons having ſerved in the ſaid forces for three years next preceding; or may appoint ſuch other perſons to be ſerjeants, as have formerly ſerved for the ſpace of three years in his majeſty's ſaid forces. And the ſervice in the militia of ſuch perſons ſo appointed out of his majeſty's ſaid forces, ſhall intitle them to the benefit of *Chelſea* hoſpital, in the ſame manner as if they had continued to ſerve in the ſaid forces. And every perſon appointed to be a ſerjeant as aforeſaid out of the penſioners on the eſtabliſhment of Chelſea hoſpital, ſhall be intitled to be put again upon the ſaid eſtabliſhment, after he ſhall be diſcharged from the ſervice of the militia, provided he brings a certificate of his good behaviour, under the hand of the colonel or commanding officer of the regiment or battalion in which he ſhall have ſerved as aforeſaid. 30 *G.* 2. *c.* 25. *ſ.* 14.

And the captain of every company ſhall appoint, with the approbation of his majeſty's lieutenant, ſerjeants out of the private men of his company, to fill up ſuch vacancies of ſerjeants as may happen therein; and every ſuch appointment ſhall be deemed an actual diſcharge of the perſon ſo appointed, from ſerving in the militia as a private militia man; and it ſhall be lawful for the colonel, or in his abſence for the commanding officer of any battalion, to diſplace, upon the application of the captain, any perſon ſo appointed a ſerjeant out of the private militia men. 31 *G.* 2. *c.* 26. *ſ.* 6.

[But

[But it ſeemeth reaſonable, that the pariſh or townſhip who found ſuch perſon ſo made ſerjeant, ſhould not be obliged to provide another man, until after the expiration of three years from ſuch perſon's firſt inliſting.]

And his majeſty's lieutenant ſhall from time to time, as occaſion ſhall require, appoint a ſerjeant-major out of the ſerjeants, to each regiment or battalion. 30 *G.* 2. *c.* 25. *ſ.* 27.

But no perſon who ſhall keep any houſe of publick entertainment, or who ſhall ſell any ale, wine, brandy, or other ſpirituous liquors, by retail, ſhall be capable of being a ſerjeant in the militia. *ſ.* 15.

Drummers.

14. And the captain of every company may appoint two drummers to his company; and may diſplace ſuch drummers for miſbehaviour, and appoint others in their room from time to time, as he ſhall ſee occaſion. 31 *G.* 2. *c.* 26. *ſ.* 6.

And his majeſty's lieutenant ſhall from time to time, as occaſion ſhall require, appoint a drum-major out of the drummers, to each regiment or battalion. 30 *G.* 2. *c.* 25. *ſ.* 27.

[Note, here is no power given, or order taken, for the appointment of fifes.]

Corporals.

15. And the captain of every company may appoint two corporals out of the private men of his company, in the proportion of one corporal to twenty men; and may diſplace ſuch corporals for miſbehaviour, and appoint others in their room from time to time as he ſhall ſee occaſion. 31 *G.* 2. *c.* 26. *ſ.* 6.

Clerk of the regiment or battalion.

16. And his majeſty's lieutenant ſhall from time to time, as occaſion ſhall require, appoint a clerk to each regiment or battalion. 30 *G.* 2. *c.* 25. *ſ.* 27.

Which clerk of the regiment or battalion ſhall give ſecurity to his majeſty's lieutenant, by a bond to his majeſty in the penalty of one half of the ſum required for the whole year's charge of the regiment or battalion, for duly anſwering and paying ſuch ſums as he ſhall have from time to time received from the receiver general of the land tax of ſuch county, riding, or place, for the cloathing and pay of the unembodied militia, and for duly accounting for the ſame, and for performance of the truſt repoſed in him; which bond ſhall be lodged in the hands of the ſaid receiver general, who on forfeiture ſhall put the bond in ſuit in his majeſty's name; the full coſts and charges of which ſuit ſhall be paid by the ſaid clerk to the ſaid receiver general, who ſhall alſo receive to his own uſe, at the rate of 5 l. per centum out of all ſuch monies as ſhall

be by him recovered, and ſhall account for the reſidue with the auditor of the revenue. 1 *G.* 3. *c.* 22. *ſ.* 8.

And if his majeſty's lieutenant ſhall neglect to take ſuch ſecurity, or to depoſit the ſame in the hands of the receiver general; he ſhall be anſwerable to the receiver general, for any loſs ſuſtained by the default of ſuch clerk. *ſ.* 10.

Clerk of the general meetings.

17. His majeſty's lieutenant ſhall alſo appoint a clerk for the general meetings; and may diſplace ſuch clerk, if he ſhall think fit, and appoint another in his room. 31 *G.* 2. *c.* 26. *ſ.* 8.

Clerk of the ſubdiviſion meetings.

18. And the deputy lieutenants, at their firſt meeting within the ſubdiviſions, ſhall appoint a clerk for their ſubdiviſions; and may at any other meeting within their ſubdiviſion, diſplace ſuch clerk, if they ſhall think fit, and appoint another in his room. 31 *G.* 2. *c.* 26. *ſ.* 8.

II. Of the ſeveral meetings to be had.

General meetings.

1. By the 30 *G.* 2. *c.* 25. The lieutenant with two or more deputy lieutenants, and on the death or removal, or in the abſence of the lieutenant, the deputy lieutenants, or any three or more of them (except in the ſmaller counties and other places, as hereafter excepted, concerning which there are particular directions as to the number which ſhall conſtitute ſuch meeting) were required to meet once in every year, at ſome city or principal town of the county, riding, or place, or oftner if they ſhould think fit; there to concert ſuch meaſures as ſhould be moſt conducive to the faithful execution of the ſervice; the firſt of which meetings, for the year 1757, was to be on *July* 12; and for every ſubſequent year, on the firſt tueſday in June. *ſ.* 19.

But by the 31 *G.* 2. *c.* 26. for the year 1758, they were required to meet on the third tueſday in Auguſt. *ſ.* 11.

By the 32 *G.* 2. *c.* 20. it ſeemeth to be directed, that they may meet at any time, after reaſonable notice thereof given by his majeſty's lieutenant, or two deputy lieutenants. *ſ.* 2.

But by the 33 *G.* 2. *c.* 22. this ſeems to be again reſtricted to the ſpecial times therein preſcribed; by which it is enacted, that the *like method ſhall be annually obſerved during the continuance of the militia acts, for carrying the ſame into execution, as is directed by the* 31 G. 2. c. 26. *to be obſerved in the year* 1758; except only, that the firſt general meeting of the lieutenant and deputy lieutenants thereby directed to be held on the third tueſday in Auguſt,

ſhall

ſhall be annually held on the ſecond tueſday in January. *ſ.* 2.

[Which time, nevertheleſs, may be very inconvenient; not only upon account of the weather or the like, but alſo becauſe the principal perſons of the county are uſually then in London, and in moſt, if not all places, the buſineſs of that firſt general meeting (*viz.* the ordering of liſts to be returned) might be better anſwered at another ſeaſon, namely, when the farmers uſually change their places of abode, or ſervants are uſually hired, the times whereof are different in different counties.]

Of theſe general meetings there are to be three in every year; the firſt (as was ſaid) for iſſuing precepts to return liſts; the ſecond, for proportioning the numbers to ſerve in each diviſion; and the third, for forming the militia into companies and regiments.

[All which may be requiſite at the firſt ſetting forward of the militia in any county; but where the militia is already eſtabliſhed, it doth not ſeem that a general meeting is neceſſary for any of theſe purpoſes, but all the ſaid matters may well enough be performed at the ſubdiviſion meetings: at leaſt, it might be ſufficient to have one general meeting in the year, for the general purpoſe of carrying the militia laws into execution that year; or power might be given to the lieutenant to call a general meeting upon emergencies, as he ſhould find it expedient.]

Subdiviſion meetings.

2. At the ſaid firſt meeting, ſubdiviſions ſhall be appointed of the deputy lieutenants within the reſpective counties, ridings and places, and the times and places for their *firſt* meetings within the ſaid ſubdiviſions. 31 *G.* 2. *c.* 26. *ſ.* 11.

And the ſaid ſubdiviſion meetings (except in the ſmaller counties and other places hereafter excepted) ſhall conſiſt of three or more deputy lieutenants, or two deputy lieutenants, together with one juſtice, or one deputy lieutenant, together with two juſtices. 30 *G.* 2. *c.* 25. *ſ.* 20.

Provided, that it ſhall be lawful for any deputy lieutenant or juſtice, to act in any and every ſubdiviſion for which he ſhall be commiſſioned; and every ſuch deputy lieutenant and juſtice ſhall have the ſame power and authority therein, as is given to any deputy lieutenant or juſtice within the ſubdiviſion to which he ſhall be particularly appointed. 31 *G.* 2. *c.* 26. *ſ.* 7.

By the 30 *G.* 2. *c.* 25. *ſ.* 20. The deputy lieutenants and juſtices may meet in the ſubdiviſions from time to time as often as they ſhall think neceſſary. And by the 32 *G.* 2. *c.* 20. *ſ.* 2, 3. the lieutenant, deputy lieutenants, and juſ-

tices reſpectively, at a general meeting may change or alter the ſubdiviſion meetings, whenever they ſhall find it convenient ſo to do. And if there ſhall not appear at any ſubdiviſion meeting, a ſufficient number of deputy lieutenants and juſtices to act; the clerk of ſuch meeting ſhall, by notice given in writing to all the deputy lieutenants within ſuch ſubdiviſion, appoint another meeting to be held within fourteen days, at the ſame place where ſuch meeting had been before appointed to be held, giving at leaſt five days notice thereof. ——— *But poſſibly there may be ſome doubt, whether theſe proviſions are not altered by the aforeſaid clauſe of the* 33 G. 2. c. 22. *which directeth, that the method for carrying the militia laws into execution ſhall be according to the ſtatute of the* 31 G. 2. c. 26. *with one only exception, reſpecting the time of the firſt general meeting as aforeſaid. But perhaps it may be underſtood, that theſe two ſtatutes laſt mentioned, appointing a preciſe time for the ſeveral meetings reſpectively, are therein only directory; and not ſo to be conſtrued, as to render meetings, on other days than thoſe ſpecified, to be abſolutely void; otherwiſe, by unforeſeen accidents, the whole ſervice might be fruſtrated.*

The number of ſubdiviſion meetings *neceſſary* in every year for carrying the ſaid acts into execution, are three: the firſt, for taking in the liſts, and for hearing appeals; the ſecond, for ballotting the men; and the third, for inliſting. And other buſineſs to be done at any of the ſaid meetings as it falls in.

III. Iſſuing precepts to return liſts.

The lieutenant and deputy lieutenants at their firſt meeting as aforeſaid, ſhall iſſue their orders (A) to the chief conſtable, and where there is no chief conſtable, to ſome other officer of the ſeveral hundreds, rapes, laths, wapentakes, or other diviſions, to require by orders under their hands the conſtable, tithingman, headborough, or other officer of each pariſh, tithing or place, to return to the deputy lieutenants within their reſpective ſubdiviſions, at the place and on the day appointed at the ſaid firſt general meeting, fair and true liſts in writing, of all the men uſually and at that time dwelling within their reſpective pariſhes tithings and places, between the ages of 18 and 50 years, diſtinguiſhing their ranks and occupations, and which of the perſons returned labour under any infirmities incapacitating them from ſerving as militia men; having firſt affixed a true copy of ſuch liſt on the door of the church or chapel belonging to ſuch pariſh, tithing, or place; or, if extra-

parochial,

parochial, then on the door of the church or chapel of ſome pariſh or place thereto adjoining, on the ſunday morning before they ſhall make ſuch return. 31 *G.* 2. *c.* 26. *ſ.* 11.

[The age of 50 years ſeemeth ſomewhat of the lateſt for a man to begin to learn his exerciſe; and for the purpoſe of rotation, perſons of that age are not at all neceſſary. Before eleven perſons have ſerved three years each, all others who were of the age of 18 when the firſt began to ſerve, will be out in courſe of years, that is, above the age of 50. Therefore as all perſons cannot ſerve for three years, but ſome muſt be exempted; it may be deſireable, that the ſervice ſhould fall upon thoſe who are fitteſt, and theſe ſeem to be, bachelors, or widowers, having no families, betwixt the ages of 18 and 45. Or if perſons of very ſmall property were exempted; there would remain ſufficient of the richer ſort to ſupply the ſervice, either perſonally, or by hiring the poorer to ſerve for them.]

Provided, that no peer of this realm, nor any perſon who ſhall ſerve as a commiſſion officer in any regiment, troop or company, in his majeſty's other forces, or in any of his majeſty's caſtles or forts, nor any non-commiſſion officer or private man ſerving in any of his majeſty's other forces, nor any commiſſion officer ſerving in the militia, nor any perſon being a member of either of the univerſities, nor any clergyman, nor any teacher of any ſeparate congregation [duly qualified according to the act of toleration], nor any conſtable or other peace officer, nor any articled clerk, apprentice, ſeaman, or ſeafaring man, nor any perſon free of the company of watermen of the river Thames, ſhall ſerve perſonally or provide a ſubſtitute to ſerve in the militia. 31 *G.* 2. *c.* 26. *ſ.* 12, 13.

[Schoolmaſters (as it ſeemeth) duly licenſed, and ſcholars under ſuch ſchoolmaſters (altho' above 18 years of age) ought alſo to have been exempted.]

But all deputy lieutenants and pariſh officers ſhall be liable to ſerve, and their names ſhall be returned in the liſts. *ſ.* 14.

[By the 32 *G.* 2. *c.* 20. *ſ.* 4. The deputy lieutenants and juſtices within the ſubdiviſions, were annually to cauſe ſuch liſts to be made and returned to them at their meetings within the ſubdiviſions, on ſuch days and at ſuch places, as ſhould at the ſaid general meeting be appointed. But it being enacted by the aforeſaid clauſe in the 33 *G.* 2. *c.* 22. *ſ.* 2. that the directions of the 31 *G.* 2. *c.* 26. ſhall take place; it ſeemeth now that the precept ſhall iſſue from the ſaid

firſt

firſt general meeting, and not from any ſubdiviſion meeting.]

And if any chief conſtable or other officer of any hundred or other like diviſion, or any conſtable or other officer of any pariſh, tithing or place, ſhall refuſe or neglect to return ſuch liſts from time to time, or ſhall in making ſuch return as aforeſaid, be guilty of any fraud or wilful partiality; in ſuch caſe, three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, ſhall impriſon him in the common gaol, there to be kept without bail for the ſpace of one month; or fine him not exceeding 5 *l.* nor under 40 *s.* by diſtreſs; rendring the overplus on demand, after deducting the charge of diſtreſs and ſale. 30 *G.* 2. *c.* 25. *ſ.* 22.

And any perſon who ſhall, by gratuity, gift or reward, or by promiſe thereof, or of any indemnification, or by menaces, endeavour to prevail on any chief conſtable, or any conſtable, tithingman, headborough, or other officer, to make a falſe return of any liſt, or eraſe or leave out of any liſt the name of any ſuch perſon as ought to be returned; ſhall forfeit 50 *l.* to him who ſhall ſue for the ſame in any of his majeſty's courts of record at *Weſtminſter*. 31 *G.* 2. *c.* 26. *ſ.* 23.

And the lieutenant and deputy lieutenants as aforeſaid, at their ſaid firſt general meeting, ſhall appoint the time and place for a ſecond general meeting, for proportioning the numbers to ſerve in each diviſion, after the return of the liſts ſhall have been made, and the ſame ſhall have been ſettled at a ſubdiviſion meeting, as here next followeth. *ſ.* 11.

IV. Return and ſettling of the liſts.

On the day and at the place appointed for the returns of the liſts to the firſt ſubdiviſion meeting, the deputy lieutenants and juſtices as aforeſaid, ſo aſſembled in their ſubdiviſions, ſhall (after hearing any perſon who ſhall think himſelf aggrieved, by having his name inſerted in ſuch liſts, or by any others being omitted) direct ſuch liſts to be amended, and alſo the names of all perſons excepted to be ſtruck out of the ſaid liſts. 31 *G.* 2. *c.* 26. *ſ.* 11.

And ſhall return to the ſecond general meeting all the liſts for the ſeveral pariſhes, tithings and places ſo amended; for the numbers to ſerve in each diviſion to be there proportioned as aforeſaid. *id.*

And

And ſhall alſo appoint the times and places for their ſecond meetings within their ſubdiviſions, for allotting the men for ſervice, after they ſhall have been ſo proportioned as here followeth. *id.*

V. Proportioning the numbers in each diviſion.

At the ſecond general meeting as aforeſaid, his majeſty's lieutenant together with two deputy lieutenants, or in the abſence of his majeſty's lieutenant three deputy lieutenants, ſhall order copies to be made of all the ſaid liſts; and ſuch copies to be returned to the deputy lieutenants at their ſecond meetings within their ſubdiviſions, wherein the pariſhes, tithings and places for which ſuch liſts are returned are reſpectively ſituate; and ſhall appoint what number of men in each hundred, rape, lath, wapentake, or other diviſion, ſhall ſerve in the ſaid militia, towards raiſing the number of militia men directed to be raiſed for ſuch reſpective county, riding or place, in proportion to the whole number contained in ſuch liſts. 31 *G.* 2. *c.* 26. *ſ.* 11.

Which whole numbers (excluſive of the places herein after excepted) ſhall be as followeth:

For the county of Bedford	400
Berks	560
Bucks	560
Cambridge	480
Cheſter, with the city and county of the city of Cheſter	560
Cornwall	640
Cumberland	320
Derby	560
Devon, with the city and county of the city of Exeter	1600
Dorſet, with the iſland of Purbeck, and the town and county of the town of Poole	640
Durham	400
Eſſex	960
Glouceſter, with the city and county of the city of Briſtol	960
Hereford	480
Hertford	560
Huntingdon	320
Kent, with the city and county of the city of Canterbury	960
Lancaſter	800
Leiceſter	560

Lincoln,

Lincoln, with the city and county of the city of Lincoln	1200
Middleſex, excluſive of the Tower Hamlets	1600
Monmouth	240
Norfolk, with the city and county of the city of Norwich	960
Northampton	640
Northumberland, with the town and county of the town of Newcaſtle, and town of Berwick	560
Nottingham, with the town and county of the town of Nottingham	480
Oxford	560
Rutland	120
Salop	640
Somerſet	840
Southampton, with the town and county of the town of Southampton	960
Stafford, with the city and county of the city of Litchfield	560
Suffolk	960
Surrey	800
Suſſex	800
Warwick, with the city and county of the city of Coventry	640
Weſtmorland	240
Worceſter, with the city and county of the city of Worceſter	560
Wilts	800
York, Weſt Riding, with the city and county of the city of York	1240
—— North Riding	720
—— Eaſt Riding, with the town and county of the town of Kingſton	400
Angleſea	80
Brecknock	160
Cardigan	120
Caermarthen	200
Carnarvon	80
Denbigh	280
Flint	120
Glamorgan	360
Merioneth	80
Montgomery	240
Pembroke	160
Radnor	120

And

And the ſaid liſts ſhall by his majeſty's lieutenant be tranſmitted to the privy council. 30 *G.* 2. *c.* 25. *ſ.* 16, 18.

And after all the liſts ſhall have been returned to and amended by the deputy lieutenants and juſtices, and tranſmitted to the privy council, the ſaid council ſhall fix and ſettle, as near as may be, the number of private militia men, who ſhall for the future ſerve for each county, riding or place, within that part of Great Britain aforeſaid, by the proportion which the number returned in all the liſts for the pariſhes, tithings and places therein, bears to the whole number of private militia men directed to be raiſed within that part of Great Britain aforeſaid. And where the number of private militia men ſo fixed and ſettled as aforeſaid, ſhall be reſpectively greater than the number of private militia men, who ſhall have been by virtue of the aforeſaid act appointed to ſerve for any county, riding or place; in ſuch caſe, his majeſty's lieutenant together with two deputy lieutenants, or in the abſence of his majeſty's lieutenant three deputy lieutenants, ſhall at a general meeting to be held for that purpoſe, appoint what number of private militia men ſhall ſerve for each reſpective hundred, rape, lathe, wapentake or other diviſion, within the county, riding or place, to which they belong; and ſuch additional number of private militia men to make up the whole number ſo fixed and ſettled as aforeſaid, ſhall be choſen by lot and ſworn and inrolled, in like manner as all other private militia men. And where the number of private militia men ſo fixed and ſettled as aforeſaid, ſhall be reſpectively leſs than the number of private militia men, who ſhall have been by virtue of the aforeſaid act appointed to ſerve for any county, riding or place; in ſuch caſe, his majeſty's lieutenant together with two deputy lieutenants, or in the abſence of his majeſty's lieutenant three deputy lieutenants, ſhall at a general meeting to be held for that purpoſe, diſcharge by lot proportionably out of each reſpective hundred, rape, lathe, wapentake or other diviſion, ſo many private militia men as ſhall exceed the number ſo fixed and ſettled as aforeſaid. 31 *G.* 2. *c.* 26. *ſ.* 21.

[It is to be obſerved, that until the liſts of all the counties ſhall be tranſmitted to the privy council, they have no power, (nor indeed is it poſſible for them) to proportion the numbers equally throughout the ſeveral counties; and it is well known, that they are now very diſproportionate. It is indeed invidious, that it ſhould be left in the power of any county whether they will raiſe their militia or not. What hath been propoſed ſeems very reaſonable, that if the gentlemen in any county will not accept commiſſions, their militia

militia ſhould nevertheleſs be raiſed (when actual ſervice is required) and incorporated amongſt thoſe of other counties who have ſufficient officers. Or ſome other method ſhould be purſued, to make every part of the community bear its proportionable burden. And in the mean time, power might be given to the privy council, or otherwiſe, to proportion the numbers amongſt thoſe counties whoſe militia are already on foot; or rather, to compel *liſts* at leaſt of all the counties to be returned, that ſo the numbers might be regulated throughout the whole.]

And in caſe it ſhall at any time appear, to his ſaid majeſty's lieutenant and two deputy lieutenants, or on the death or removal or in the abſence of his majeſty's lieutetenant to any three deputy lieutenants, at their general meeting, that the diſtribution by them made of the whole number of militia men charged upon ſuch county, riding or place, among the ſeveral hundreds, rapes, lathes, wapentakes or other diviſions, was either unequally and erroneouſly made, or from any ſubſequent alteration of circumſtances is become unequal and diſproportionable; it ſhall be lawful for them to make a new and more equal diſtribution of ſuch number as aforeſaid, among the ſaid ſeveral hundreds, rapes, lathes, wapentakes or other diviſions, according to the method preſcribed by this act for making the aforeſaid original diſtribution; and to cauſe ſuch an additional number of men to be choſen by lot, or ſuch number to be diſcharged out of thoſe before choſen, for each reſpective hundred, rape, lathe, wapentake, or other diviſion, as ſhall become neceſſary in conſequence of ſuch new diſtribution; in like manner as is by this act preſcribed to be done, where the ſame ſhall become neceſſary in conſequence of the accounts tranſmitted from his majeſty's privy council. *ſ.* 22.

VI. Allotting the men for ſervice.

And the deputy lieutenants and juſtices as aforeſaid, at their ſaid ſecond meetings within the ſubdiviſions, ſhall cauſe the number of men appointed at the ſaid ſecond general meeting to ſerve for each reſpective hundred, rape, lath, wapentake or other diviſion, to be choſen by lot out of the liſts of the ſeveral pariſhes, tithings and places within the ſame. 31 *G.* 2. *c.* 26. *ſ.* 11.

And it ſhall be lawful for the deputy lieutenants and juſtices as aforeſaid, within their ſubdiviſions, to add together, whenſoever they ſhall think neceſſary, the liſts for two or more pariſhes, tithings or places, and proceed

upon ſuch liſts thus added together, in like manner as if they had been originally returned for one pariſh, tithing or place, ſo as to make the choice of militia men by lot, within ſuch ſubdiviſion, as equal and impartial as poſſible. *ſ.* 16.

Provided, that if the churchwardens or overſeers of the poor of any pariſh, tithing or place, ſhall provide and produce to the ſaid deputy lieutenants and juſtices as aforeſaid, at their meetings within their reſpective ſubdiviſions for chuſing the militia men, any number of *volunteers*, not being ſeamen or ſeafaring men, and ſuch volunteers ſhall be approved by the ſaid deputy lieutenants and juſtices ſo met as aforeſaid; they ſhall cauſe only ſuch a number of perſons to be choſen by lot, out of the liſt for ſuch pariſh, tithing or place, as ſhall be wanted after the acceptance of the ſaid volunteers, to make up the whole number to ſerve for ſuch pariſh, tithing or place: And in caſe any of the ſaid volunteers ſhall not at the next meeting appear to be ſworn and inrolled; the ſaid churchwardens and overſeers ſhall find others in their room, or forfeit and pay 10 l. for every volunteer not appearing as aforeſaid; to be recovered and applied as the penalty of 10 l. (hereafter mentioned) laid upon any perſon refuſing or neglecting to appear and be ſworn; and the ſaid churchwardens and overſeers ſhall be reimburſed the ſaid penalty out of their poor rates. *ſ.* 17.

And the ſaid deputy lieutenants, or any one or more of them, ſhall appoint another meeting to be held within three weeks in the ſame ſubdiviſion, for inliſting and ſwearing the militia men; and ſhall iſſue out an order to the chief conſtable (B) or other officer of the reſpective hundreds, rapes, laths, wapentakes or other diviſions, to direct the conſtable, tithingman, headborough, or other officer of each pariſh, tithing or place, to give notice to every man ſo choſen, to appear at ſuch meeting. *ſ.* 11.

Which notice ſhall be given, or left at his place of abode (C) at leaſt ſeven days before ſuch meeting. *id.*

VII. Inliſting.

Every perſon ſo choſen by lot, ſhall, upon ſuch notice as aforeſaid, appear at ſuch meeting as aforeſaid, and there take the following oath, to be adminiſtred by one deputy lieutenant; and ſhall be inrolled to ſerve in the militia as a private militia man, for the ſpace of three years, in a roll to be then and there prepared for that purpoſe; or ſhall provide a fit perſon (to be approved by the ſaid deputy

puty lieutenants and juſtices as aforeſaid then met) to ſerve as his ſubſtitute; which ſubſtitute ſo provided, ſhall take the ſaid oath, and ſign on the ſaid roll his conſent to ſerve as his ſubſtitute, during the ſaid term. 31 *G.* 2. *c.* 26. *ſ.* 11.

Which ſaid oath ſhall be as follows: "I *A. B.* do ſincerely promiſe and ſwear, that I will be faithful and bear true allegiance to his majeſty king George, his heirs and ſucceſſors; and I do ſwear, that I am a proteſtant, and that I will faithfully ſerve in the militia within the kingdom of Great Britain, for the defence of the ſame, during the time for which I am inrolled, unleſs I ſhall be ſooner diſcharged." *ſ.* 18.

[When the militia are drawn out into actual ſervice, and perhaps at a great diſtance from their own county; it is very inconvenient ſometimes to ſend men from the regiment or battalion, for the purpoſe only of being ſworn at the militia meetings. It might be reaſonable, that ſuch of the officers as are deputy lieutenants ſhould have power to adminiſter the oath, whereſoever they ſhall then happen to be.]

And if any perſon ſo choſen by lot to ſerve in the militia (not being one of the people called quakers) ſhall refuſe or neglect to take the ſaid oath and ſerve in the ſaid militia, or to provide a ſubſtitute to be approved as aforeſaid, who ſhall take the ſaid oath, and ſign his conſent to ſerve as his ſubſtitute; every perſon ſo refuſing or neglecting, ſhall forfeit 10 l. (D. E. F. G.) and at the end of three years be appointed to ſerve again. 30 *G.* 2. *c.* 25. *ſ.* 19. 31 *G.* 2. *c.* 26. *ſ.* 11, 18.

[This clauſe is intended as a further mean, to compel the perſon ballotted to ſerve, or to find a ſubſtitute at all events; by providing, that the payment of 10 l. ſhall only acquit him for 3 years. But if a vacancy ſhall happen before the 3 years end, by failure of the perſon hired by the deputy lieutenants in ſuch ballotted man's place, it ſeemeth that in ſuch caſe there ſhall be a new allotment; for by theſe words he cannot be called upon till the end of 3 years. And he may then perhaps be ſuperannuated, or otherwiſe diſabled: and it muſt be ſuppoſed, for the benefit of the ſervice, that ſuch perſon ſhall not be appointed at the 3 years end, unleſs he is fit and able to ſerve.]

Which ſaid forfeiture ſhall be applied in the firſt place by the deputy lieutenants and juſtices as aforeſaid within their reſpective ſubdiviſions, in providing a ſubſtitute for the perſon who ſhall have paid ſuch penalty; and if any part of ſuch penalty ſhall remain, after ſuch ſubſtitute

ſhall be provided, the ſame ſhall be paid into, and be applied as part of the regimental ſtock. 31 *G.* 2. *c.* 26. *ſ.* 29.

And where the goods of ſuch offender ſhall not be ſufficient to anſwer the diſtreſs, he ſhall be committed (as is hereafter ſpecified) to the common gaol, for any time not exceeding three months. 30 *G.* 2. *c.* 25. *ſ.* 56.

And the deputy lieutenants and juſtices ſhall every year, within fourteen days after their meetings in the ſubdiviſions for adminiſtring the oath and inrolling the private militia men, tranſmit to his majeſty's lieutenant true copies of the rolls for their reſpective ſubdiviſions. 31 *G.* 2. *c.* 26. *ſ.* 15.

VIII. Forming the militia into regiments and companies.

By the 30 *G.* 2. *c.* 25. *ſ.* 27, 29. and by the 31 *G.* 2. *c.* 26. *ſ.* 15. Within three weeks after the ſaid rolls are ſo returned from the deputy lieutenants and juſtices as aforeſaid, a general meeting ſhall be held by his majeſty's lieutenant, together with two or more deputy lieutenants, or in the abſence of the ſaid lieutenant by three or more deputy lieutenants, to form and order the militia into regiments; conſiſting, where the number of militia men will admit the ſame, of twelve, but in no caſe of leſs than ſeven companies, of forty men each at the leaſt, of perſons living as near to each other as conveniently can be; and ſhall poſt to each company proper officers commiſſioned and qualified as aforeſaid, and other proper non-commiſſion officers. Provided, that in any county, riding or place, where the number of men to be raiſed ſhall not amount to ſeven companies, and therefore not be ſufficient to form a regiment; ſuch companies ſhall be formed into a battalion, and ſhall be under the command of his majeſty's lieutenant: and one field officer, one adjutant, one ſerjeant major, one drum major, and one clerk, ſhall be appointed for ſuch battalion, and the whole militia of ſuch county, riding or place ſhall, in the whitſun-week be trained and exerciſed in the ſame manner as regiments in other counties.

But in caſe where they ſhall be embodied and drawn out into actual ſervice; for the avoiding unneceſſary expences on account of the officers pay, it is enacted by the 33 *G.* 2. *c.* 22. that the pay of every regiment or battalion of militia, to which the commiſſions for field officers have not been iſſued and given before May 1, 1760, and of

every independent company of militia now embodied and in actual ſervice, when it ſhall after its return home and diſcharge from ſuch actual ſervice, be again embodied and called out into actual ſervice, ſhall be iſſued and paid according to the following eſtabliſhment; that is to ſay, the field officers of a regiment (which, when embodied and in actual ſervice, ſhall in no caſe conſiſt of more than twelve companies, nor leſs than eight companies, of eighty private men at the moſt, and ſixty private men at the leaſt) intitled to pay, ſhall be one colonel, one lieutenant colonel, and one major; and where the number of private men ſhall amount to five companies, or to any number under eight companies, ſuch militia ſhall be formed into a battalion, with one lieutenant colonel, and one major, and no other field officer intitled to pay (or where his majeſty's lieutenant ſhall ſerve as colonel, then there ſhall be no lieutenant colonel, and his majeſty's ſaid lieutenant in ſuch caſe ſhall be intitled to no other pay than that of a lieutenant colonel); in like manner, where the number of private men ſhall amount to three companies, or to any number under five companies, ſuch militia ſhall be formed into a battalion, with one lieutenant colonel, and no other field officer intitled to pay; and in each regiment or battalion of militia, there ſhall be intitled to pay a number of captains, lieutenants, and enſigns, equal to the number of companies in ſuch regiment or battalion (grenadier companies excepted, wherein there ſhall be one captain and two lieutenants intitled to pay), and in every ſuch regiment or battalion there ſhall be intitled to pay one adjutant, one quarter maſter, one ſurgeon, one ſerjeant major, and one drum major, and a number of ſerjeants and corporals in the proportion of one ſerjeant and one corporal to twenty private men, and alſo two drummers to each company. *ſ.* 7, 9.

And where the number of officers in any regiment, battalion or independent company of militia, now embodied and in actual ſervice, exceeds the number by this act intitled to pay under the eſtabliſhment aforeſaid; ſuch and ſo many of them of each reſpective rank exceeding the number ſo intitled to pay ſhall, within two months after the paſſing of this act, be exempted from actual ſervice, as ſhall deſire ſo to be; and no officer ſo exempted ſhall be intitled to or receive any pay as an officer of the militia. *ſ.* 10.

And if the number of private militia men within any ſuch city or town as is aforeſaid, ſhall not be ſufficient to form one company, according to the eſtabliſhment aforeſaid; in ſuch caſe, the private militia men of ſuch city or town ſhall be deemed part of, and ſhall ſerve in ſome company

company or companies of the militia of the county or riding to which ſuch city or town is by the 30 *G.* 2. *c.* 25. united for the purpoſes therein mentioned; and the deputy lieutenants and juſtices of the peace for the county or riding to which ſuch city or town is ſo united as aforeſaid, ſhall in ſuch caſe have power to act within ſuch city or town, with reſpect to ſuch matters only as relate to the militia thereof, in like manner as they are impowered to act with reſpect to the militia of any other part of ſuch county, riding or place. *ſ.* 12.

IX. Training and exerciſe.

Time and place of exercife.

1. The unembodied militia, formed and ordered as aforeſaid, ſhall be trained and exerciſed in manner following; that is to ſay, in half companies on the firſt monday in the months of March, April, May, June, July, Auguſt, September, and October, and in companies on the third monday in the ſaid months, at each place of exerciſe, or ſo many, not amounting to half companies or companies reſpectively, living within the diſtances herein after mentioned, as can be conveniently brought together; and in regiments or by battalions, on the tueſday, wedneſday, thurſday, and friday in whitſun-week, in every year; at places of exerciſe to be appointed by the lieutenant and two deputy lieutenants, or in the abſence of the lieutenant by three deputy lieutenants, as convenient with regard to the reſpective abodes of the militia men as may be, and ſo as ſuch militia men may not be obliged to go above ſix miles from home, to perform ſuch exerciſe in half companies or companies: And notice of ſuch places of exerciſe, to which the militia men of each pariſh, tithing or place are to reſort, ſhall be ſent to the chief conſtables or other officers of the ſeveral hundreds or other diviſions, with directions to forward the ſame to the conſtables or other officers of the ſeveral pariſhes, tithings or places; who ſhall cauſe ſuch notice to be fixed on the doors of their churches or chapels reſpectively; or if any place (being extraparochial) ſhall have no church or chapel belonging thereto, then on the door of the church or chapel of ſome pariſh or place thereunto adjoining. 30 *G.* 2. *c.* 25. *ſ.* 27.

Provided, that if any five of the principal inhabitants of any pariſh, town or place, ſhall repreſent to the lieutenant, deputy lieutenants, or juſtices as aforeſaid, at any meeting in their ſubdiviſion, that it is upon account of fairs or markets inconvenient to exerciſe the militia men on the

day appointed by this act; they may direct them to be exerciſed on any other day within that week, ſunday excepted. *ſ.* 28.

And by the 31 *G.* 2. *c.* 26. It ſhall be lawful for his majeſty's lieutenant together with two deputy lieutenants, or in the abſence of the lieutenant for three deputy lieutenants, to change the day of training and exerciſing any half company or companies of militia, from monday to any other day of the week (ſunday excepted), as ſhall appear to them to be beſt for the good of the ſervice; ſo that the whole militia for the reſpective county, riding or place, be trained and exerciſed in half companies within the firſt week, and in whole companies within the third week, in each of the months aforeſaid. *ſ.* 30.

In like manner, his majeſty's lieutenant, together with two deputy lieutenants, or on the death or removal, or in the abſence of his majeſty's lieutenant, three deputy lieutenants may diſpenſe with the training and exerciſing of the militia in any one month in the time of harveſt; and order them to be trained and exerciſed inſtead thereof, on the tueſday and wedneſday in eaſter week. *ſ.* 31.

Provided alſo, that where by reaſon of the diſtance from the appointed place of exerciſe, a whole company or half company cannot be got together; his majeſty's lieutenant, with one or more deputy lieutenants, or in the abſence of his majeſty's lieutenant two deputy lieutenants, ſhall order ſuch ſmaller numbers to be trained and exerciſed by ſuch perſons and in ſuch places as they ſhall think fit. 30 *G.* 2. *c.* 25. *ſ.* 30.

Officers to attend.

2. And one commiſſion officer in every company ſhall attend the exerciſe of his men, when in companies or in half companies, as often as convenient; and ſhall then inſpect the ſtate of their arms, clothes and accoutrements, a report whereof he ſhall forthwith tranſmit in writing to his majeſty's lieutenant, or to the commanding officer of the regiment or battalion. 30 *G.* 2. *c.* 25. *ſ.* 31.

And the ſerjeants ſhall receive all their military orders, with reſpect to training the militia men under their care, from the adjutants, and their ſuperior officers; and ſhall report from time to time all crimes and miſdemeanors of the ſeveral militia men under their command, to their adjutant or ſuperior officers, or to ſome civil magiſtrate, as the caſe ſhall require. *ſ.* 43.

Private militia men to attend.

3. And all the private militia men ſhall duly attend on the days appointed, at the times and places of exerciſe. 30 *G.* 2. *c.* 25. *ſ.* 27.

And

And the ſerjeant, or ſuch other perſon as ſhall be appointed to train and diſcipline the men, ſhall call over the names of the militia men ſo appointed to be exerciſed; and within one week after every ſuch exerciſe, ſhall certify in writing to ſome neighbouring juſtice, the names of the militia men abſent from exerciſe, with the reaſons of their abſence, if known to him; and ſuch juſtice, upon proof thereof made upon oath, ſhall fine every ſuch abſent militia man, whoſe excuſe he ſhall not allow of, for the firſt crime of his being ſo abſent, 2 s. and if he ſhall refuſe immediately to pay the ſame, he ſhall by order of the ſaid juſtice be ſet in the ſtocks for one hour; and for the ſecond offence 4 s. and if not paid immediately, the ſaid juſtice ſhall commit him to the houſe of correction for four days; and for the third and every other offence 6 s. and if not paid immediately, the juſtice ſhall commit him to the houſe of correction for any time not exceeding one month, or until ſuch penalty be paid. *ſ.* 36.

And if any non-commiſſion officer or private militia man ſhall be abſent from the *annual* meeting, without juſt cauſe ſhewn; he ſhall, upon conviction on oath before one juſtice, forfeit 10 *s.* for each day's abſence; and if he ſhall refuſe immediately to pay the ſame, the ſaid juſtice ſhall commit him to the houſe of correction for one month. *ſ.* 38.

Provided, that no officer or private militia man ſhall be liable to any penalty on account of his abſence, during the time he ſhall be going to vote at the election of a member to ſerve in parliament, or ſhall be returning from ſuch election. *ſ.* 41.

And it ſhall be lawful for the officers of the militia, or in the abſence of an officer for a non-commiſſion officer, to detain the militia men, on the days of exerciſe, any time not exceeding ſix hours; provided, they do not keep them above two hours under arms at any one time, without allowing them a proper time to refreſh themſelves. 31 *G.* 2. *c.* 26. *ſ.* 32.

4. And the ſaid ſerjeant, or other perſon as aforeſaid, ſhall alſo certify at the ſame time, if any of them are diſobedient, or otherwiſe miſbehave themſelves. 30 *G.* 2. *c.* 25. *ſ.* 36. Miſbehaviour.

And if any militia man ſhall be drunk, at the time of his exerciſing, he ſhall, upon conviction on oath before one juſtice, forfeit 10 s. and if he ſhall refuſe to pay the ſame immediately, he ſhall by order of ſuch juſtice be ſet in the ſtocks for one hour. *id.*

And if any militia man ſhall be diſobedient or inſolent to his officer, and be thereof convicted as aforeſaid; he ſhall for the firſt offence forfeit 2s. 6d. and if he ſhall refuſe immediately to pay the ſame, the ſaid juſtice ſhall commit him to the houſe of correction for four days; for the ſecond offence 5s. and if he ſhall refuſe to pay the ſame immediately, the ſaid juſtice ſhall commit him to the houſe of correction for ſeven days; and for the third and every other offence 40s. and if he ſhall refuſe immediately to pay the ſame, ſuch juſtice ſhall commit him to the houſe of correction for any time not leſs than fourteen days and not exceeding one month. *id.*

Billeting during the time of exerciſe.

5. It ſhall be lawful for the mayors, bailiffs, conſtables and other chief magiſtrates and officers of cities, towns, pariſhes, tithings, villages and other places, and in their default or abſence for a juſtice of the peace inhabiting in or near ſuch place, and for no others; and they are hereby required, to quarter and billet the officers and private men, at the times when they ſhall be called out to their annual exerciſe, in inns, livery ſtables, alſehouſes, victualling houſes, and all houſes of perſons ſelling brandy, ſtrong waters, cyder, or metheglin, by retail. 30 *G.* 2. *c.* 25. *ſ.* 48.

And the officers and private militia men billeted ſhall be received, and furniſhed with diet and ſmall beer; paying and allowing for the ſame, for one commiſſion officer under the degree of a captain, for diet and ſmall beer 1s. a day; and for one private man's diet and ſmall beer, 4d. a day. 31 *G.* 2. *c.* 26. *ſ.* 33.

In like manner, the ſerjeants and drummers ſhall be billeted; and the occupiers of the houſes where they ſhall be billeted, ſhall provide for them, at ſuch times for which no proviſion has by law been made for that purpoſe, convenient lodgings only. 32 *G.* 2. *c.* 20. *ſ.* 6.

Militia man falling ſick.

6. In caſe any private man ſerving in the militia ſhall, on the march, or at the place where he ſhall be called out to annual exerciſe, be diſabled by ſickneſs; it ſhall be lawful for any one juſtice of the county, or any mayor or chief magiſtrate of any city, town or place, where ſuch man ſhall then be, to order him ſuch relief as he ſhall think reaſonable, by warrant under his hand and ſeal; and the officers of the pariſh, tithing or place, for which ſuch man ſhall ſerve as a militia man, ſhall reimburſe the ſame to the officers of the pariſh where ſuch militia man ſhall then receive ſuch relief: which ſhall be allowed in their accounts, upon producing the ſaid order. Provided, that ſuch allowance ſhall not intitle ſuch perſon to any ſettle-

ment

ment in the ſaid pariſh or place, where he ſhall receive ſuch relief. 31 *G.* 2. *c.* 26. *ſ.* 26.

[Which proviſo is only *ex abundanti cautela*; for he would not by ſuch relief have gained any ſettlement there, if this proviſo had not been. By the vagrant act of the 12 *An.* perſons whoſe other ſettlement did not appear, were to be ſent to the place where they had been laſt relieved: but this clauſe expired with that act, and was never afterwards revived.]

After exerciſe, arms and clothes to be depoſited.

7. The captain of each company ſhall keep in his own cuſtody, or leave and depoſit with the ſeveral ſerjeants belonging to his company, or with ſuch perſons as the ſaid captain ſhall appoint for that purpoſe, the arms, clothes and accoutrements provided for his company; and the churchwardens of every pariſh or place where the ſaid arms, clothes and accoutrements are ſo depoſited, or one of them, ſhall provide at the expence of ſuch pariſh or place, a cheſt, in which ſuch captain, ſerjeant or other perſon ſo appointed as aforeſaid ſhall keep the ſaid arms in ſome dry part of his houſe or dwelling, under lock and key; and another cheſt in which he ſhall keep under lock and key the ſaid clothes and accoutrements: and the ſerjeant or other perſon appointed to train and diſcipline the men, ſhall take care that after exerciſe every militia man ſhall clean and return his arms, clothes and accoutrements, to his captain, or to ſuch perſon as ſhall be appointed as aforeſaid to receive the ſame. 30 *G.* 2. *c.* 25. *ſ.* 32.

Provided, that his majeſty's lieutenant, or the colonel of any regiment of militia, may by his warrant employ ſuch perſons as he ſhall think fit, to ſeize and remove the arms, clothes and accoutrements belonging to the militia, whenever ſuch lieutenant or colonel ſhall judge it neceſſary to the peace of the kingdom; and to deliver the ſame into the cuſtody of ſuch perſons, as the ſaid lieutenant or colonel ſhall appoint to receive the ſame, for the purpoſes of this act. *ſ.* 33.

And if any ſerjeant, or any other perſon intruſted by the captain with the cuſtody of any arms, clothes or accoutrements belonging to the militia, ſhall deliver any of them out, unleſs for exerciſing the men, or by the command of his ſuperior officer, or by order of a juſtice of the peace under his hand and ſeal; it ſhall be lawful for two juſtices, to commit him to the common gaol, for any time not exceeding ſix months. *ſ.* 34.

And if any militia man ſhall refuſe or neglect to return his arms, clothes and accoutrements in good order, to his captain or to ſuch perſon as ſhall be appointed as

aforeſaid to receive the ſame, on the day of exerciſe, or the next day; he ſhall, on conviction before one juſtice forfeit 2s. 6d. and if he ſhall refuſe immediately to pay the ſame, ſuch juſtice ſhall commit him to the houſe of correction for ſeven days. *ſ.* 36.

And after the yearly exerciſe, if he ſhall refuſe or neglect to return the ſame, on or before the monday after whitſun week, and be thereof convicted as aforeſaid, he ſhall forfeit 5 s. and if he ſhall refuſe immediately to pay the ſame, ſuch juſtice ſhall commit him to the houſe of correction for fourteen days. *id.*

And if the ſerjeant, or other perſon appointed by any captain of the militia to receive and keep in his cuſtody the ſaid arms, clothes and accoutrements, ſhall not complain within three days to a neighbouring juſtice, of any militia man's not having returned his arms, clothes and accoutrements as before directed; he ſhall, on conviction upon oath before one juſtice, forfeit 20s. which if he ſhall refuſe immediately to pay, the ſame ſhall be levied by diſtreſs by warrant of ſuch juſtice. *ſ.* 37.

And if any militia man ſhall ſell, pawn or loſe any of his arms, clothes or accoutrements; he ſhall, on the like conviction, forfeit a ſum not exceeding 3 l. and if he ſhall refuſe immediately to pay the ſame, ſuch juſtice ſhall commit him to the houſe of correction for one month, and until ſatisfaction ſhall be made for the ſame; and if he ſhall not be of ability to make ſuch ſatisfaction, then for the ſpace of three months. *ſ.* 36.

And if any perſon ſhall knowingly and willingly buy, take in exchange, conceal or otherwiſe receive, contrary to the true intent and meaning of this act, any arms, clothes or accoutrements belonging to the militia, upon any account or pretence whatſoever; he ſhall, on conviction upon oath before one juſtice, forfeit 5 l. and if he ſhall refuſe immediately to pay the ſame, the ſaid juſtice ſhall by his warrant levy the ſame by diſtreſs; and for want of diſtreſs, ſhall commit him to the common gaol for three months, or ſhall cauſe him to be publickly whipt, at the diſcretion of ſuch juſtice. *ſ.* 40.

X. Drawn out into actual ſervice.

To be drawn out in caſe of invaſion or rebellion.

1. In caſe of actual invaſion, or upon imminent danger thereof, or in caſe of rebellion, it ſhall be lawful for his majeſty (the occaſion being firſt communicated to parliament, if the parliament ſhall be then ſitting; or declared in council, and notified by proclamation, if no parliament

ſhall

ſhall be then ſitting or in being) to order his lieutenants, and on their death or removal or abſence three deputy lieutenants, with all convenient ſpeed, to draw out and embody all the regiments and battalions of militia of their reſpective counties, ridings or places, or ſo many of them as he ſhall judge neceſſary, in ſuch manner as ſhall be beſt adapted to the circumſtances of the danger; and to put the ſaid forces under the command of ſuch general officers as his majeſty ſhall appoint. 30 *G.* 2. *c.* 25. *ſ.* 45.

And if at ſuch time the parliament ſhall happen to be ſeparated, by ſuch adjournment or prorogation as will not expire within fourteen days; it ſhall be lawful for his majeſty to iſſue a proclamation, for the meeting of the parliament, upon ſuch day as he ſhall thereby appoint, giving fourteen days notice of ſuch appointment: and the parliament ſhall accordingly meet upon ſuch day, and continue to ſit and act, in like manner to all intents and purpoſes, as if it had ſtood adjourned or prorogued to the ſame day. *ſ.* 46.

And if any militia man ſo ordered to be drawn out and embodied as aforeſaid (not labouring under any infirmity incapacitating him to ſerve as a militia man) ſhall not appear and march in purſuance of ſuch order; he ſhall, on conviction before two juſtices, forfeit 40 l. and if he ſhall refuſe immediately to pay the ſame, they ſhall commit him to the common gaol for twelve months, or until he ſhall have paid the ſame. *ſ.* 45.

2. And in ſuch caſe, his majeſty may direct the militia to be led, by their reſpective officers, into any parts of this kingdom; for the ſuppreſſion of ſuch invaſions and rebellions: Provided, that nothing herein ſhall be conſtrued to extend, to the giving or declaring any power, for the tranſporting any of the militia of this realm, or any way compelling them to march out of this kingdom. 30 *G.* 2. *c.* 25. *ſ.* 45, 51. But not to go out of the kingdom.

3. And the ſaid officers of the militia, and private militia men, ſhall from the time of their being drawn out and embodied as aforeſaid, and until they be returned again to their reſpective pariſhes or places of abode, remain under the command of ſuch general officers. 30 *G.* 2. *c.* 25. *ſ.* 45. To be ſubject to the articles of war, and the acts againſt mutiny and deſertion.

And the officers of the militia and private militia men ſhall, during ſuch time as aforeſaid, be ſubjected and made liable to all ſuch articles of war, rules and regulations, as ſhall be then by act of parliament in force, for the diſcipline

pline and good government of any of his majeſty's forces in Great Britain. *id.*

And alſo to all the proviſions contained in the yearly acts againſt mutiny and deſertion, relating to officers and ſoldiers muſtered, liſted or in pay in his majeſty's ſervice; excepting only as to ſuch particulars as are or ſhall be otherwiſe ſpecially provided for, by any act or acts of parliament for regulating the militia forces. 33 *G* 2. *c.* 22. *ſ.* 13.

Provided, that no officer ſerving in the militia, when called out into actual ſervice, ſhall ſit in any court martial upon the trial of any officer or ſoldier ſerving in any of his majeſty's other forces; nor ſhall any officer ſerving in any of his majeſty's other forces, ſit in any court martial upon the trial of any officer or private man ſerving in the militia. 30 *G.* 2. *c.* 25. *ſ.* 47.

And when the militia ſhall be returned again to their reſpective pariſhes or places of abode, they ſhall be under the ſame orders and directions only, as they were before they were drawn out and embodied as aforeſaid. *ſ.* 45.

And the officers of the militia ſhall, during ſuch time of actual ſervice as aforeſaid, rank with the officers of his majeſty's other forces of equal degree with them, as the youngeſt of their rank. *id.*

They may take in volunteers.

4. And when they ſhall be ordered out into actual ſervice as aforeſaid; it ſhall be lawful for the captain of any company, to augment his company, by incorporating, with the conſent of his majeſty's lieutenant, or in his abſence of two deputy lieutenants, any number of perſons who ſhall offer themſelves as volunteers, and who ſhall appear to him to be ſufficiently trained and diſciplined, and provided with proper clothes, arms and accoutrements, and who ſhall take the ſaid oath, and ſign their conſent to ſerve in the militia for the time of ſuch actual ſervice, and to ſubmit to the ſame rules and articles of war as militia men are by theſe acts liable to during the time of their continuing in actual ſervice. 31 *G.* 2. *c.* 26. *ſ.* 36.

Carriages.

5. And in caſe of actual invaſion, or upon imminent danger thereof, or in caſe of rebellion as aforeſaid, it ſhall be lawful for a juſtice of the peace, being duly thereunto required by an order from his majeſty, or from his majeſty's lieutenant, or a deputy lieutenant, or from the colonel or other chief commiſſion officer upon the place, of any regiment company or detachment of militia, to iſſue out his warrant under his hand, to the chief conſtables, petty conſtables or other officers of the hundreds, pariſhes, tithings or places, from, through, near or to which, any ſuch regiment or company of militia men, or any detachment

or

or troop thereof, ſhall be ordered to march, requiring them to make ſuch proviſion for carriages of the arms, clothes, accoutrements, powder, match, bullets, or other warlike materials, with able men to drive ſuch carriages, as is and are mentioned in the ſaid order: but in caſe ſuch ſufficicient carriages and men cannot be provided within any ſuch county, riding, hundred, rape, lath, wapentake, diviſion, pariſh, tithing, or place; then the next juſtice ſhall, upon ſuch order as aforeſaid being ſhewn unto him, iſſue his warrant to the chief conſtables, petty conſtables or other ſuch officers of the next county, riding, hundred, rape, lath, wapentake, diviſion, pariſh, tithing or place, for the purpoſes aforeſaid, to make up ſuch deficiency of carriages. 30 *G.* 2. *c.* 25. *ſ.* 49.

And ſuch lieutenant, deputy lieutenant, colonel, or other chief commiſſion officer upon the place, who by virtue of the ſaid warrant from the ſaid juſtice ſhall demand ſuch carriages of ſuch officer as aforeſaid, ſhall at the ſame time pay down to him in hand, for the uſe of the perſon who ſhall provide ſuch carriages and men, the ſum of 1s. for every mile any waggon with five horſes ſhall travel; and 1 s. for every mile any wain with 6 oxen, or with 4 oxen and 2 horſes, ſhall travel; and 9d. for every mile any cart with 4 horſes ſhall travel; and ſo in proportion for carriages drawn by a leſs number of horſes or oxen: for which the officer ſhall give a receipt. *id.*

And ſuch chief conſtable, petty conſtable, or other officer, ſhall order and appoint ſuch perſon or perſons having carriages within their reſpective diviſions, as they ſhall think proper, to provide and furniſh ſuch carriages and men according to ſuch warrant; which perſons ſo ordered ſhall provide and furniſh the ſame accordingly, for one day's journey, and no more. *id.*

And in caſe the ſaid chief conſtables, petty conſtables, or other officers, ſhall be at any charges for ſuch carriages, over and above what is ſo received by them of the ſaid lieutenant, deputy lieutenant, colonel, or other chief officer as aforeſaid; ſuch overplus ſhall be borne by each county, riding or place, where ſuch additional expence ſhall be incurred, and be repaid to them without fee by the treaſurer out of the publick ſtock. *id.*

And if any ſuch chief conſtable, conſtable, or other officer, ſhall wilfully neglect or refuſe to execute ſuch warrant; or if any perſon appointed by ſuch chief conſtable, conſtable, or other officer, to provide or furniſh any ſuch carriage and man, ſhall wilfully neglect or refuſe to provide the ſame; he ſhall forfeit a ſum not exceeding 40s.

nor

nor leſs than 20s. to the uſe of the poor of the pariſh or place where ſuch offence ſhall be committed: the ſame to be heard and determined by two juſtices; and the penalty to be levied by their warrant by diſtreſs. *id. ſ.* 50. [Which penalty, in caſe of actual invaſion or rebellion, is far too ſmall. And this puts it into the power of the conſtable intirely to diſappoint the ſervice, only by forfeiting 40s. to the poor of his own pariſh; which his neighbours who ought to furniſh the carriages, in caſes of extremity or imminent danger, perhaps might be ready enough to make up to him; for this amounts to no more than eaſing themſelves in their own poor rate. And the caſe is the ſame with regard to the regular forces, in the yearly acts againſt mutiny and deſertion.]

XI. Cloathing and pay.

By the 31 *G.* 2. *c.* 26. pay, arms, accoutrements and clothing ſhall be iſſued, when it ſhall appear by a return ſigned by his majeſty's lieutenant, or in his abſence by three deputy lieutenants, that three fifths of the militia men of any regiment or battalion have been enrolled, and that three fifths of the commiſſion officers have been appointed, and that they have taken out their commiſſions, and entered their qualifications. *ſ.* 34.

By the ſtatute of the 30 *G.* 2. *c.* 25. no pay was ſpecified, except when they ſhould be drawn out into actual ſervice; and in that caſe, it is provided, that the officers and private men ſhall be intitled to the ſame pay, as the officers and private men in his majeſty's other regiments of foot receive, and no other.

By the 31 *G.* 2. *c.* 26. when the militia of any county, riding or place ſhall be ordered out into actual ſervice, the receiver general of the land tax for ſuch county, riding or place ſhall pay to the captain or other commanding officer of each company ſo ordered out, one guinea for each private militia man belonging to his company; to be paid over by ſuch captain or other officer to every ſuch private militia man, on or before the day appointed for marching. *ſ.* 27.

And by the 33 *G.* 2. *c.* 24. every private militia man, who hath been or ſhall be ordered out into actual ſervice, whether at the time when the regiment, battalion or independent company was or ſhall be firſt embodied and ordered out into actual ſervice or afterwards, and who ſhall not have received the guinea as aforeſaid, ſhall in conſideration of his having been ſo called out into actual

ſervice, be intitled to and ſhall receive one guinea from his captain; which captain ſhall receive from the receiver general of the land tax ſo many guineas as now are or ſhall be ſo due, and the amount thereof ſhall be allowed to ſuch receiver general in his accounts. *ſ.* 12.

And whereas doubts have ariſen with regard to the time when the pay of the officers and private militia men ordered out into actual ſervice ought to commence, it is declared and enacted, that they are and ſhall be intitled to pay, from the day of the date of his majeſty's warrant for drawing out and embodying the ſaid militia. *ſ.* 15.

With reſpect to the unembodied militia; the acts for their pay are annual: that for the preſent year, *viz.* the ſtatute of the 1 *G.* 3. *c.* 22. is as followeth: Whereas the ſum of 70000l. hath been granted to his majeſty upon account, towards defraying the charge of pay and cloathing for the unembodied militia, from Mar. 25. 1761. to Mar. 25. 1762; it is enacted, that within ten days after his majeſty's lieutenant, or in his abſence three deputy lieutenants, where pay has not yet been iſſued for the militia according to law, ſhall have certified to the commiſſioners of the treaſury, that three fifths of the number of private militia men of any regiment, battalion or independent company of the militia of ſuch county, riding or place, have been choſen and inrolled, and that the like proportion of the number of the commiſſion officers of ſuch regiment, battalion or independent company have been appointed, and have taken out their commiſſions and entred their qualifications as is by law required; his majeſty's ſaid lieutenant, or in his abſence the ſaid three deputy lieutenants ſhall alſo certify the ſame to the receiver general of the land tax for ſuch county, riding or place: and when any regiment, battalion or independent company of the militia of any county, riding or place, that ſhall have been embodied and called out into actual ſervice, ſhall be diſembodied and returned home by order of their commanding officers, and thereby be no longer intitled to the ſame pay as the officers and private men in his majeſty's other regiments of foot receive; his majeſty's lieutenant of ſuch county, riding or place, or in his abſence any three deputy lieutenants, ſhall certify to the receiver general of the land tax for ſuch county, riding or place, that ſuch regiment, battalion or independent company is diſembodied and returned home as aforeſaid: upon receipt of which certificate, ſuch receiver general ſhall iſſue and pay as followeth; that is to ſay,

For the *pay* of the ſaid militia, for 4 calendar months in

in advance from the date of ſuch certificate, at the rate of 6s. a day for each *adjutant*, where an adjutant *is by this act allowed*; [Note, there is no limitation of the number of officers in this act; and the limitation in the former act, of the 33 *G.* 2. *c.* 22. (as is herein before ſet forth) is only in caſe where they ſhall be embodied and drawn out into actual ſervice: ſo that there ſeemeth to be here ſome miſtake.]

And at the rate of 1s. a day for each *ſerjeant*; with the addition of 2s. 6d. a week for each *ſerjeant major*, where a ſerjeant major is by this act allowed;

And at the rate of 6d. a day for each *drummer*; with the addition of 6d. a day for each *drum major*, where a drum major is by this act allowed;

And at the rate of 1s. for each *private militia man*, with the addition of 6d. to each *corporal*, for every day in which ſuch private militia man or corporal ſhall be reſpectively employed in the militia; and at the rate of 2s for each private militia man, with the addition of 1s. to each corporal, for his march on the monday and ſaturday in whitſun-week, to and from the place of general exerciſe; and at the rate of 5d. a month for each private man and drummer, for defraying the contingent expences of each regiment, battalion or independent company; [Note, here is no pay for the commiſſion officers: it ſeemeth reaſonable that they (as well as the reſt) ſhould receive pay on the days of training and exerciſe, unleſs they ſhould neglect to attend.]

And for half a year's ſalary for the *clerk of each regiment of militia, or of the battalion of militia*, belonging to ſuch county, riding or place, at the rate of 50l. a year;

And for the allowance to the clerk of the *general meetings*, at the rate of 5l. 5s. for each meeting.

And to the ſeveral *clerks of the ſubdiviſion meetings*, at the rate of 1l. 1s. for each meeting;

And alſo for the *cloathing* of the militia of ſuch county, riding or place, where the militia hath not been already cloathed, at the rate of 1l. 10s. for each private man; and at the rate of 2l. for each drummer; and at the rate of 3l. 10s. for each ſerjeant. *ſ.* 1.

Provided, that in every county, riding or place, for which his majeſty's lieutenant, or in his abſence three deputy lieutenants, ſhall have certified to the purpoſe aforeſaid, and received the cloathing for the militia thereof, which ſhall have not been embodied and called out into actual ſervice; and in every county, riding and place, where the militia ſhall, after having been embodied and called out into actual ſervice, be diſembodied, and be re-

turned home by order of their commanding officers, and thereby be no longer intitled to the ſame pay as the officers and private men in his majeſty's other regiments of foot receive, and ſuch return ſhall have been certified as aforeſaid; the receiver general ſhall make the payments aforeſaid, without any new or other certificate. *ſ.* 2.

All which ſums of money aforeſaid (except what ſhall be due to the clerks of the meetings) ſhall be paid by the receiver general into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to ſuch office under the hand and ſeal of his majeſty's lieutenant: and where the militia ſhall be formed into independent companies, ſuch ſums ſhall be paid by the receiver general into the hands of the reſpective captain of ſuch independent company, or to ſuch perſon as ſuch captain ſhall authorize to receive the ſame. *ſ.* 3.

And the ſaid receiver general ſhall alſo, within 14 days after the expiration of the third calendar month from the time of the ſaid firſt payment, make a ſecond payment for four calendar months in advance; and, within 14 days after the expiration of the third calendar month from the time of the ſaid ſecond payment, make a third payment for four calendar months in advance; for the pay and contingent expences of the militia, and for the allowances to the regimental or battalion clerk; and the receipt of ſuch clerk, and of ſuch captain of an independent company or of the perſon authorized by him as aforeſaid to receive the ſame, ſhall be a ſufficient diſcharge to the receiver general. *id.*

And the clerk of the regiment or battalion ſhall forthwith after the receipt of ſuch ſums as aforeſaid, pay or cauſe to be paid one calendar month's pay in advance to the adjutant, and 14 days pay in advance to the ſerjeant major and drum major; and to the captain or commanding officer of each company, two months pay in advance for his reſpective company, and for the contingent expences thereof; and ſo from time to time ſo long as any money on that account ſhall remain in his hands. *ſ.* 4.

Which pay, every ſuch captain or commanding officer ſhall diſtribute to each perſon belonging to his company, as it ſhall become due; and ſhall once in every year give in to the clerk of the regiment or battalion, an account of the ſeveral payments he ſhall have made in purſuance of this act, and ſhall pay back to the ſaid clerk the ſurplus (if any ſhall be) remaining in his hands, except the money by this act allowed for contingent expences, for the diſpoſition whereof proviſion is herein after made. *id.*

And

And the ſaid money allowed for contingent expences, ſhall once in every year be accounted for, by the captain of each company reſpectively, in manner aforeſaid; and the balance thereof ſhall be by him paid into the hands of the clerk of the regiment or battalion, to be applied to the general uſe of the ſaid regiment or battalion, as the field officers and captains thereof, or the greater part of them, at a general meeting ſhall direct. *id.*

And the captain of each independent company, ſhall diſtribute to each perſon belonging to his company intitled thereto, ſuch money as he ſhall receive by virtue of this act; and the ſaid money allowed for the contingent expences of each independent company of militia, ſhall be reſpectively applied to the particular uſe of ſuch independent company by the captain thereof. *id.*

And the ſaid regimental or battalion clerk may retain to his own uſe, out of the money ſo by him received, ſuch further ſums as ſhall complete the allowance herein before made for his ſalary. *ſ.* 5.

And ſhall alſo pay to ſuch perſon as ſhall produce an order from his majeſty's lieutenant or from the commanding officer of ſuch regiment or battalion, and to ſuch captain of an independent company, or to ſuch perſon as ſhall be by him appointed for that purpoſe, ſuch ſums as ſhall be due on account of the cloathing of the ſaid militia, not exceeding the rates herein before mentioned. *id.*

Provided always, that where any regiment, battalion or independent company of militia, ſhall be embodied and called out into actual ſervice, and thereby the officers and private men ſhall be entitled to the ſame pay as the officers and private men in his majeſty's other regiments of foot receive; all pay from the receiver general, whether to the adjutant, ſerjeants, private militia men, or others, and all money allowed as aforeſaid for the contingent expences of ſuch regiment, battalion or independent company, and alſo the allowance to the clerk of the regiment or battalion, ſhall during ſuch time of actual ſervice ceaſe and not be paid. *ſ.* 6.

And the receiver general ſhall pay to the clerk of the general meetings his allowance, at the rate of 5 l. 5 s. for each meeting; on his producing an order for that purpoſe from his majeſty's lieutenant, or from three deputy lieutenants aſſembled at a general meeting. *ſ.* 7.

And ſhall alſo pay to each and every the clerks of the ſubdiviſion meetings, their ſeveral allowances, at the rate of 1 l. 1 s. for each meeting; on his or their producing an order or orders reſpectively, from one or more deputy lieutenants

tenants assembled in the several subdivision meetings: which order shall be a sufficient discharge to the receiver general, and be allowed in his account. *id.*

And the said clerk of the regiment or battalion, and the captain of every independent company of militia, shall between March 25. and June 25. 1757. deliver to the receiver general a fair account in writing, of all money by him received and disbursed for the service of the preceding year in pursuance of this act, with proper vouchers for the same, and shall pay back to him any surplus that shall then be in his hands: which said accounts, signed by such clerk, shall be transmitted by the receiver general into the office of the auditors of the revenue. *ib.*

Finally, it is provided, that no fee or gratuity whatsoever shall be given or paid, for or upon account of any warrant or sum of money, which shall be issued in relation to, or in pursuance of this act. *s.* 12.

XII. *New levies and supplies.*

New supply of officers.

1. His majesty's lieutenant together with three or more deputy lieutenants, sold on the death or in the absence of his majesty's lieutenant any five or more deputy lieutenants, shall at the end of every four years, at their annual meeting, discharge such a number of the officers of the militia (not exceeding one field officer of each regiment or battalion, and one third part of the whole number of officers of each inferior rank respectively) as shall be equal to the number of persons who shall be fit and willing to serve and duly qualified as aforesaid, and such lieutenant shall appoint such persons to serve as officers, in the room of the officers so discharged. 30 G. 2. c. 25. *s.* 23.

[It may be a discouragement to officers accepting commissions, that they have not hereby an absolute right to be discharged at the four years end, if they require it; which, in case of age or other infirmities, changing their place of abode, or many other alterations in their circumstances, may cause great inconvenience.]

Of private men.

2. And the deputy lieutenants and justices as aforesaid, at their meetings within the subdivisions, shall cause a sufficient number of persons to be chosen by lot, in the room of such persons as shall have served three years, and of those who shall have been otherwise discharged: which persons so chosen shall take the said oaths, and subscribe the said declaration, and be inrolled in manner aforesaid. 30 G. 2. c. 25. *s.* 22. 31 G. 2. c. 26. *s.* 19.

By rotation.

3. So that by rotation all perſons, not excepted as aforeſaid, may ſerve perſonally, or by ſubſtitute, for the ſpace of three years. 30 G. 2. c. 25. ſ. 22. 31 G. 2. c. 26. ſ. 19.

And no perſon, having perſonally or by ſubſtitute ſerved three years in the militia, ſhall be obliged to ſerve again, until by rotation it comes to his turn. 30 G. 2. c. 25. ſ. 24.

Perſons of 35 years of age, or others ſhewing juſt cauſe for their diſcharge.

4. And if any man ſerving in the ſaid militia, being of the age of 35 years or upwards, and having ſerved two years ſhall deſire his diſcharge; or if any perſon whatſoever ſhall ſhew any juſt cauſe for his diſcharge; the ſaid deputy lieutenants and juſtices as aforeſaid, at any of their meetings within the ſubdiviſions, may diſcharge ſuch perſon from ſerving in the militia; and in the ſtead of the perſons ſo diſcharged, and alſo if there be any other vacancy by death or otherwiſe, they ſhall cauſe a like number of other perſons to be choſen by lot, out of the liſts of ſuch pariſhes, tithings or places where ſuch vacancies ſhall happen: which perſons ſo choſen ſhall take the ſaid oaths, and be inrolled, and ſerve in the ſaid militia, ſubject to the directions, proviſions and penalties aforeſaid. 30 G. 2. c. 25. ſ. 20. 31 G. 2. c. 26. ſ. 19.

[Note, here ſeems to be no power given to the commanding officer to make any diſcharges, but only to the deputy lieutenants at the ſubdiviſion meetings: and it would be a dangerous power lodged in the hands of any one man, if he might diſcharge perſons at his own will and pleaſure; for then the conſequence would be, that he might thereby call out into the ſervice what able perſon in the townſhip he ſhould think proper.

And it may be conſiderable, how far a regimental court martial ſhall have power to diſcharge a militia man for an offence committed; for this is to puniſh another man for that man's crime. ——— The caſe of the regulars is very different; for when they diſcharge, they can compel no other into the ſervice.]

Subſtitute not excuſed from ſerving himſelf.

5. But no militia man, having ſerved as a ſubſtitute, ſhall by ſuch ſervice be excuſed from ſerving for himſelf when he ſhall be choſen by lot as aforeſaid. 30 G. 2. c. 25. ſ. 22.

Subſtitute diſcharged, his principal not to find another.

6. But when a ſubſtitute ſhall, after having been approved as aforeſaid, and before the expiration of the term for which he was to ſerve, die or enter into any of his majeſty's land or ſea forces, or be appointed a ſerjeant in the militia, or be diſcharged for any other juſt cauſe; the perſon for whom he ſerved as ſubſtitute ſhall not be obliged to ſerve himſelf, or find another ſubſtitute; but ſuch vacancy

cancy shall be filled up, as in case of vacancies occasioned by the death or discharge of persons serving for themselves. 31 G. 2. c. 26. s. 20.

7. Provided, that every militia man shall, if he change the place of his abode, continue actually bound to serve in the militia of the parish, tithing or place, to which he shall have so removed, until his three years service shall be compleated; and if the quota to the militia of the parish, tithing or place to which he shall so have removed be full, he shall on the first vacancy be inrolled to serve in the militia thereof, until the whole term of three years actual service be compleated; and he shall, before he change the place of his abode, give notice thereof to three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, at some publick meeting, or to one deputy lieutenant; who shall give to him a certificate of the time he shall have served from his inrollment: and if such certificate shall have been given by one deputy lieutenant only, he shall certify the same to the next meeting within the subdivision. And if any militia man, so changing the place of his abode, shall not give notice as aforesaid; he shall, on conviction upon oath before one justice, forfeit 20 s. and if he shall refuse immediately to pay the same, it shall be levied by distress; and for want of distress, he shall be committed to the house of correction for one month. 30 G. 2. c. 25. s. 21. Person changing the place of his abode.

8. There seemeth to be no provision in case of deserters, when drawn out into actual service, namely, how the vacancy shall be supplied, especially in the case of substitutes hired by ballotted men, and substitutes hired by the deputy lieutenants out of the 10 l. forfeitures. And if the vacancy shall be supplied, and afterwards the deserter shall be apprehended or shall return, it doth not appear what shall in such case be done. Deserting.

XIII. Privileges and exemptions of militia men.

1. No private man serving in the militia, either for himself or as a substitute, shall, during the time of such service, be liable to do any highway duty, commonly called statute work. 31 G. 2. c. 26. s. 24. Exempted from highway duty.

2. Or be appointed to serve, as a peace officer, or parish officer. 31 G. 2. c. 26. s. 24. From offices.

3. Nor shall be liable to serve, in any of his majesty's land or sea forces, unless he shall consent thereto. 31 G. 2. c. 26. s. 24. From serving in the other forces.

Families to be maintained.

4. By the 33 *G.* 2. *c.* 22. If any militia man, who ſhall have been accepted and inrolled as a ſubſtitute, or as a hired man, or as a volunteer, before the paſſing of this act; (that is, before May 22. 1760.) or if any militia man, who ſhall have been choſen by lot, whether before or after the paſſing of this act; ſhall, when embodied and called out into actual ſervice, and ordered to march, leave a family unable to ſupport themſelves, the overſeers of the poor of the pariſh, tithing or townſhip where the family of ſuch militia man ſhall dwell, ſhall by order of one juſtice, out of the poor rates of ſuch place, pay to ſuch family a weekly allowance, according to the uſual and ordinary price of labour in huſbandry within the county, riding, diviſion, diſtrict or place where ſuch family ſhall dwell, by the following rule; that is to ſay, for one child under the age of ten years, the price of one day's labour; for two children under the age aforeſaid, the price of two days labour; for three or four children under the age aforeſaid, the price of three days labour; for five or more children under the age aforeſaid, the price of four days labour; and for the wife of ſuch militia man, the price of one day's labour; and the ſame ſhall be forthwith reimburſed to ſuch overſeer, by the treaſurer of the county, riding or place where ſuch pariſh, tithing or townſhip ſhall be ſituate, out of the publick ſtock. *ſ.* 1.

Provided always, that no family of any militia man, who ſhall not have have been choſen by lot (except the families of ſuch ſubſtitutes, hired men or volunteers, who ſhall have been accepted and inrolled before the paſſing of this act) ſhall, after the paſſing of this act, be intitled to or receive any ſuch weekly allowance. *ſ.* 2.

And in all cities, towns, liberties, diviſions and places, which are not liable to contribute to the county rates by virtue of the act of the 12 *G.* 2. *c.* 29. the juſtices of the peace for every ſuch city, town, liberty, diviſion and place, at any ſeſſions or meeting, may and ſhall appoint a treaſurer, and ſhall aſſeſs upon every pariſh, tithing, townſhip, hamlet or vill, within their juriſdictions, in ſuch proportions as the rates heretofore made for the relief of the poor have been uſually aſſeſſed, and ſhall cauſe to be paid out of the money collected and levied for the relief of the poor of every ſuch pariſh, tithing, townſhip, hamlet or vill, into the hands of ſuch treaſurer, ſuch ſums as they in their diſcretion ſhall think ſufficient for reimburſing to the overſeers of the poor of the ſeveral pariſhes, tithings, townſhips, hamlets or vills within their juriſdictions, the amount of the weekly allowances paid by ſuch overſeers

ſeers to the families of the militia men reſiding within their juriſdictions; and every ſuch treaſurer ſhall forthwith reimburſe the ſame to every ſuch overſeer accordingly. And ſuch treaſurer ſhall keep diſtinct accounts of all monies ſo paid into his hands, and by him reimburſed to ſuch overſeer as aforeſaid; and ſhall, at the end of every ſix calendar months, tranſmit the ſaid accounts to the treaſurer of the county or riding which ſuch city, town, liberty, diviſion or place is by the act of the 30 *G.* 2. *c.* 25. united with and made part of for the purpoſes of the ſaid act. (Provided, that the treaſurer of the city of Lincoln and county of the ſaid city, ſhall tranſmit his accounts to the treaſurer of the diviſion of Lindſey within the county of Lincoln.) *ſ.* 4, 5.

And the treaſurer of any county, riding, city, town, liberty, diviſion or place, who ſhall after the paſſing of this act reimburſe to any overſeer as aforeſaid any ſum of money in purſuance of this act, on account of the weekly allowance to the family of any militia man ſerving in the militia of any county, riding, city, town, liberty, diviſion or place, other than the county, riding, city, town, liberty, diviſion or place where ſuch family ſhall dwell, ſhall deliver or tranſmit an account of ſuch money as he ſhall have ſo reimburſed as aforeſaid, ſigned by one or more juſtices of the place where ſuch family ſhall dwell, to the treaſurer of the county, riding, city, town, liberty, diviſion or place, in the militia whereof ſuch militia man ſhall ſerve; and thereupon the treaſurer to whom ſuch account ſhall have been delivered or tranſmitted, ſhall pay to the treaſurer who ſhall have ſo delivered or tranſmitted ſuch account, the ſums ſo by him reimburſed to ſuch overſeers of the poor, and ſhall be allowed the ſame in his accounts. *ſ.* 6.

And the treaſurer of the county as aforeſaid ſhall keep diſtinct accounts of all the monies by him reimburſed; and ſhall, at the end of every ſeven calendar months, return the ſaid accounts, together with the accounts which he ſhall have received from the ſeveral treaſurers of the cities, towns, liberties or places, to the office of the treaſurer's remembrancer of the court of exchequer. *ſ.* 3.

[It is not expreſſed for what ſpecial purpoſe this account ſhall be tranſmitted: It ſeemeth reaſonable (as hath been very juſtly obſerved) that the ſame ſhould be reimburſed out of the publick revenue; becauſe when the militia are kept on foot in actual ſervice for any length of time, it creates a very heavy charge upon particular counties, which if general, would be equal. The parliament in-

ceed, by the aforeſaid clauſe in the 33 *G.* 2. *c.* 22. *ſ.* 2. leſſened the expence thereof, by taking away the allowance from future ſubſtitutes; yet ſtill the expence of the ballotted mens families is conſiderable: and unleſs the act had provided, that ſubſtitutes having families likely to become chargeable might be refuſed by the deputy lieutenants upon that ſole account, the charge is only transferred from the county at large, to the particular pariſhes unto which ſuch families do belong, which renders the burden ſtill the more unequal. —— Indeed it is not expreſly defined in any of the acts, for what cauſes ſubſtitutes may or may not be rejected by the deputy lieutenants; but it ought by no means in them to be diſcretionary, for then they might compel even a deputy lieutenant to ſerve perſonally.]

Cloaths. 5. By the 31 *G.* 2. *c.* 26. Every private militia man, who ſhall have ſerved in the militia for the ſpace of three years, ſhall be intitled to, and ſhall keep and retain to his own uſe, the cloaths provided for him as a private militia man. *ſ.* 25.

But by the 33 *G.* 2. *c.* 24. No private militia man, who ſhall not have been trained and exerciſed before the paſſing of this act, ſhall be intitled to his cloaths for his own uſe, until he ſhall have ſerved for the ſpace of three years if unembodied, or for the ſpace of one year if embodied and in actual ſervice, after delivery of the ſaid cloaths. *ſ.* 14.

Chelſea hoſpital. 6. If any non-commiſſion officer, or private militia man, ſhall be maimed or wounded in actual ſervice; he ſhall be equally intitled to the benefit of Chelſea hoſpital, with any non-commiſſion officer or private ſoldier belonging to his majeſty's other forces. 30 *G.* 2. *c.* 25. *ſ.* 45.

Setting up trades. 7. And alſo every ſuch perſon, having ſerved in the militia when called out into actual ſervice, and being a married man, may ſet up and exerciſe any ſuch trade as he is apt and able for, in any town or place within Great Britain or Ireland, without any moleſtation by reaſon of the uſing of ſuch trade; in like manner as any mariner or ſoldier may do by the ſtatute of the 22 *G.* 2. *c.* 44.—— 30 *G.* 2. *c.* 25. *ſ.* 25. 31 *G.* 2. *c.* 26. *ſ.* 24.

Criminal offence. 8. It hath been much diſputed, whether a man ſerving in the militia when embodied and drawn out into actual ſervice, may be apprehended and taken out of the ſervice by a warrant from a juſtice of the peace for getting a baſtard child. And the caſe is the very ſame of a man ſerving in the regular forces; for they are both equally under the clauſe in the acts againſt mutiny and deſertion, which expreſſeth, that no man ſhall be taken out of the ſervice

vice, unleſs it be for a debt not under 10 l. or for ſome *criminal matter*. Now the queſtion is, what the law calls *criminal*; and this ſeemeth to import an offence of a publick nature, for which a man may be puniſhed at the ſuit of the king: contrary whereunto, is a *civil* offence, betwixt party and party, where a man proſecutes for his own particular damages. In a *criminal* cauſe, a man may be indicted, fined, and impriſoned; and in ſome inſtances, in a more ſummary way, may be bound to the peace or good behaviour. But for getting a baſtard child, a man cannot be indicted; nor, for any thing that appears from any of the ſtatutes, notwithſtanding the frequent practice to the contrary, can he be bound to the peace or good behaviour. The truth is, before the acts of parliament were made which gave juriſdiction to juſtices of the peace in caſes of baſtardy, this was ſolely an eccleſiaſtical offence, and not cognizable in the temporal courts; and conſequently the temporal juriſdiction reſteth ſolely upon the acts of parliament which give power to juſtices of the peace to proceed in certain inſtances concerning baſtardy; and theſe acts principally regard the ſame as a *civil*, and not as a *criminal* offence; or however criminal it may be ſuppoſed to be even on a temporal account, yet certainly a warrant from a juſtice of the peace, on complaint of the pariſh officers for apprehending the reputed father, in order to give ſecurity for the maintenance of the child, doth not at all reſpect it *as criminal*, the ſame being only in a *civil* cauſe inſtituted betwixt party and party, that is, between the pariſh officers on the one hand, and the reputed father on the other, for the maintenance of the baſtard child, and the indemnification of the pariſh. And the criminal part ſtill remaineth ſubject to the eccleſiaſtical juriſdiction.

XIV. General power of inforcing the execution hereof.

Beſides the particular penalties for particular offences, as above ſpecified; there are ſeveral general directions for inforcing the execution of theſe acts, which are as followeth:

1. If any non-commiſſion officer ſhall be negligent in his duty, or inſolent, or diſobedient to the orders of the adjutant or other his ſuperior officer, and be thereof convicted upon the oath of the adjutant or other ſuperior officer before one juſtice; he ſhall forfeit any ſum not exceeding 30 s. at the diſcretion of ſuch juſtice; and if he ſhall refuſe immediately to pay the ſame, the ſaid juſtice

Miſbehaviour of non-commiſſion officers.

ſhall commit him to the houſe of correction for 14 days; and his majeſty's lieutenant may diſcharge ſuch non-commiſſion officer out of the militia, if he ſhall think fit. 30 G. 2. c. 25. ſ. 39.

Of conſtables.

2. By the 30 G. 2. c. 25. All chief conſtables, petty conſtables, tithingmen, headboroughs, and other officers of hundreds, rapes, laths, wapentakes, pariſhes, tithings and places, ſhall be aiding and aſſiſting to the juſtices, and to his majeſty's lieutenants and deputy lieutenants, and to all to whom any power is by this act given, in the execution of the premiſſes. ſ. 44.

And by the 31 G. 2. c. 26. ſ. 35. It ſhall be lawful for the deputy lieutenants and juſtices within their ſubdiviſions, from time to time, to iſſue out their order or warrant under their hands and ſeals, commanding the attendance of the conſtable, tithingman, headborough, or other officer of any pariſh, tithing or place within their ſubdiviſions, at ſuch times and places as in ſuch order or warrant ſhall be expreſſed; and if they ſhall refuſe or neglect to appear, they ſhall ſuffer as followeth:

That is to ſay, If any ſuch officer ſhall refuſe or neglect to comply with ſuch orders and directions as he ſhall from time to time receive, from his majeſty's lieutenant, deputy lieutenants and juſtices as aforeſaid; in ſuch caſe, three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, ſhall impriſon him in the common gaol, there to be kept without bail or mainprize for the ſpace of one month; or fine him not exceeding 5 l. nor under 40 s. by diſtreſs; rendring the overplus on demand, after deducting the charge of diſtreſs and ſale. 30 G. 2. c. 25. ſ. 22.

[As the high conſtables have a large ſhare of the buſineſs, and muſt neceſſarily be at conſiderable expence and trouble in the ſeveral attendances and diſperſing the precepts; it ſeemeth reaſonable that they ſhould have ſome pay: for which perhaps there might be a ſaving out of the ſalaries of the clerks of the meetings, and of the clerks of the regiments or battalions; or otherwiſe, it ſhould ſeem that thoſe clerks ſhould be required to execute that ſervice which is now performed by the high conſtables.]

Penalties how to be levied.

3. By the 30 G. 2. c. 25. All fines, penalties and forfeitures by this act impoſed, the manner of recovery whereof is not in this act particularly provided for, ſhall on proof upon oath before one juſtice, be levied by diſtreſs by warrant of ſuch juſtice; and where the goods of ſuch offender ſhall not be ſufficient to anſwer the diſtreſs, ſuch

juſtice

juſtice ſhall commit him to the common gaol, for any time not exceeding three months. *ſ.* 56.

[But there is no power given in any of the acts, to the lieutenant, deputy lieutenants, or deputy lieutenants and juſtices jointly, to adminiſter an oath (except only the military oath at inliſting the men); which ſeemeth to have been an omiſſion.]

Officer may convict on his own view.

4. It ſhall be lawful for any commiſſion officer of the militia, being a juſtice of the peace, and acting as ſuch, upon his own view of any offence committed by any non-commiſſion officer or private militia man under his command, puniſhable by the aforeſaid act, to puniſh ſuch perſon in the ſame manner as any one juſtice is impowered to do, upon proof thereof made as by the ſaid act. 31 *G.* 2. *c.* 26. *ſ.* 37.

Commitment to the houſe of correction.

5. By the 30 *G.* 2. *c.* 25. In all caſes, when any perſon ſhall be committed to the houſe of correction by virtue of this act; he ſhall, during the time of ſuch commitment, be kept to hard labour. *ſ.* 56.

Application of the penalties.

6. By the 30 *G.* 2. *c.* 25. All fines, penalties and forfeitures by this act impoſed, the application whereof is not otherwiſe particularly provided for, ſhall be paid to the clerk of the regiment or battalion, and be made a common ſtock in each ſubdiviſion wherein the ſame ſhall ſo ariſe; and the ſaid clerk ſhall give a particular account thereof, as it ſhall ariſe, to the deputy lieutenants and juſtices at their next meeting within the ſubdiviſion; who ſhall cauſe butts to be erected in ſome convenient place, and ſhall direct the clerk of the regiment or battalion to buy and provide with ſome part of the money ſo ariſing, a proper quantity of gunpowder and ball, to be uſed at proper times by the militia men in ſhooting at marks; and to diſpoſe of ſuch other part thereof as they ſhall think reaſonable, in ſome prizes to be given to ſuch militia men, as ſhall by the commanding officer then preſent be adjudged to be the beſt markſmen; and to apply the reſidue thereof to other contingencies, relating to the militia within ſuch ſubdiviſion. *ſ.* 56.

Certiorari.

7. By the 30 *G.* 2. *c.* 25. it is provided, that no order made by any of his majeſty's lieutenants, or by any deputy lieutenant, or by two deputy lieutenants together with one juſtice, or by one deputy lieutenant together with two juſtices, or by any juſtice or juſtices, by virtue of this act, ſhall be removed by certiorari, nor execution or other proceedings upon ſuch order be ſuperſeded thereby. *ſ.* 58.

8. By

Treble coſts.

8. By the 30 *G.* 2. *c.* 25. and 31 *G.* 2. *c.* 26. If any ſuit be commenced againſt any perſon for any thing done in purſuance of the ſaid acts; the action ſhall be laid in the proper county, and the defendant may plead the general iſſue, and if he recovers ſhall have treble coſts.

XV. Exceptions with reſpect to particular places and perſons.

The leſſer counties.

1. By the 30 *G.* 2. *c.* 25. it is provided, that his majeſty's lieutenants of the ſeveral counties of Cumberland, Huntingdon, Monmouth, Weſtmorland and Rutland, and of every county and place in Wales, ſhall reſpectively have the chief command of the militia thereof; and in every of them reſpectively, there ſhall be five or more deputy lieutenants appointed (if ſo many qualified can be found therein); and the eſtates requiſite for the qualification of the deputy lieutenants and officers therein ſhall be as follows: A deputy lieutenant or colonel ſhall be ſeiſed or poſſeſſed of a like eſtate as aforeſaid, of the yearly value of 300 l. or ſhall be heir apparent of a perſon having a like eſtate of 500 l. lieutenant colonel or major 200 l. or heir apparent of a perſon having a like eſtate of 400 l. captain 150 l. or ſon of a perſon who ſhall be or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of 300 l. lieutenant 100 l. or ſon of a perſon who ſhall be or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of 200 l. enſign 50 l. or ſon of a perſon who ſhall be or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of 100 l. And the penalties for acting not being qualified, or not having delivered in ſuch qualification and taken the oaths and ſubſcribed the declaration, ſhall be, for a deputy lieutenant or field officer 100 l. captain, lieutenant, or enſign 50 l. *ſ.* 52.

And by the 31 *G.* 2. *c.* 26. Where twenty deputy lieutenants cannot be found of 300 l. a year; his majeſty's lieutenant may appoint ſuch number of perſons to be deputy lieutenants as he ſhall think fit, of 200 l. a year as aforeſaid: provided that the perſons ſo appointed ſhall not make the whole number of deputy lieutenants for ſuch county to exceed the number of twenty. *ſ.* 5.

And by the 30 *G.* 2. *c.* 25. in the counties abovementioned, any two or more deputy lieutenants ſhall have and exerciſe all and every the powers conferred by this act on any three deputy lieutenants, or any two deputy lieutenants together with one juſtice, or any one deputy lieutenant together with two juſtices. *ſ.* 52.

And

And by the 31 *G.* 2. *c.* 26. Any two deputy lieutenants together with one juſtice, or any one deputy lieutenant together with two juſtices, within the ſaid counties of Cumberland, Huntingdon, Monmouth, Weſtmorland and Rutland, and within all the counties and places in Wales, ſhall have and exerciſe all and every the powers conferred by the ſaid act and by this act on any three deputy lieutenants, or on any two deputy lieutenants together with one juſtice, or on any one deputy lieutenant together with two juſtices. *ſ.* 38.

[As for inſtance: Whereas in the larger counties there muſt be at leaſt three deputy lieutenants (when the lieutenant himſelf is not there) to act in the *general* meetings; in theſe counties and places abovementioned, three deputy lieutenants ſhall not be neceſſary, but two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, ſhall be ſufficient: And whereas in the larger counties there muſt be three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, to act within the *ſubdiviſions*; in theſe counties and places abovementioned, three deputy lieutenants or juſtices reſpectively ſhall not be neceſſary, but two deputy lieutenants therein ſhall be ſufficient.]

Cities and towns being counties within themſelves.

2. By the 30 *G.* 2. *c.* 25. In all cities or towns which are counties within themſelves, and have heretofore uſed to raiſe and train a ſeparate militia within their reſpective liberties, and which are by this act united with and made part of any county for the purpoſes of this act only; his majeſty's lieutenant of ſuch cities or towns, or where there is no lieutenant appointed by his majeſty, the chief magiſtrate of ſuch city or town, ſhall appoint five or more deputy lieutenants (if ſo many duly qualified can be found), and ſhall alſo appoint officers of the militia, whoſe numbr and rank ſhall be proportionable to the number of militia men which ſuch city or town ſhall raiſe, as their quota towards the militia of the county to which ſuch city or town is by this act united for the purpoſes aforeſaid; and all powers given and proviſions made by this act with reſpect to counties at large, ſhall take place in the ſaid cities and towns, except only, that after the number of perſons which ſuch city or town is to furniſh ſhall have been appointed as aforeſaid by his majeſty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the county at large, two deputy lieutenants within ſuch city or town ſhall have and exerciſe all the powers conferred by this act on three deputy lieutenants, or two deputy lieutenants together

gether with one juſtice, or one deputy lieutenant together with two juſtices, of any county at large: And the qualification for a deputy lieutenant and field officer ſhall be 300l. a year as aforeſaid, or a perſonal eſtate alone of 5000l. captain 150l. a year, or perſonal eſtate of 2500l. lieutenant or enſign 50l. a year, or perſonal eſtate of 750l. one half of all which real eſtates ſhall be within ſuch city or town, or within the county at large to which ſuch city or town is by this act united for the purpoſes aforeſaid: and the penalties for acting not being qualified, or not having delivered in ſuch qualification, or not taken the oaths and ſubſcribed the declaration, ſhall be, for a deputy lieutenant or field officer 100l. captain, lieutenant or enſign 50l. And his majeſty's lieutenants, and the chief magiſtrates of ſuch cities or towns being counties within themſelves, ſhall put the powers of this act for raiſing and training the militia within ſuch cities or towns in execution: but the militia of ſuch cities and towns, being by this act declared to be part of the militia of the counties to which ſuch cities and towns are united for the purpoſes of this act, the militia of ſuch cities or towns ſhall annually join the militia of the county to which ſuch cities or towns are ſo united for the purpoſes aforeſaid; and the whole militia ſo joined together, ſhall be exerciſed together at the general annual exerciſe in whitſun-week; and ſhall then, and alſo in time of actual ſervice, be deemed the militia of the county to which ſuch cities or towns are ſo united. *ſ.* 55.

But by the 33 *G.* 2. *c.* 22. In every city and town being a county, where the number of private militia men ſhall not be ſufficient to form a regiment or battalion, the militia thereof ſhall be formed into independent companies, each company conſiſting of 80 private men at the moſt and 60 private men at the leaſt; and to every ſuch company there ſhall be intitled to pay when embodied and in actual ſervice, one captain, one lieutenant, and one enſign, and a number of ſerjeants and corporals equal to the number herein before allowed to a company of militia; and it ſhall be lawful for his majeſty, to join together any number of ſuch independent companies, and therewith to form a battalion, or to incorporate them with any regiment or battalion of militia, but ſo as the number of companies in any ſuch regiment or battalion do not exceed or fall ſhort of the number of companies, of which a regiment or battalion of militia is herein before reſpectively allowed to conſiſt. *ſ.* 7.

The cinque ports.

3. The lord warden of the cinque ports, two ancient towns, and their members, and in his abſence his lieutenant

nant or lieutenants, ſhall put in execution within the ſame all the powers and authorities granted by the former militia acts, in like manner as his majeſty's lieutenants of counties and their deputy lieutenants may do; and may keep up and continue the uſual number of ſoldiers in the ſaid ports, towns and members, unleſs he or they find cauſe to leſſen the ſame: and the militia of the ſaid ports, towns and members, ſhall remain ſeparate from the militia of the ſeveral counties within which the ſaid ports, towns and members are ſituate. 30 *G.* 2. *c.* 25. *ſ.* 68.

4. His majeſty's lieutenants commiſſioned for the militia of the city of London, ſhall continue to liſt and levy the trained bands and auxiliaries of the ſaid city, in manner as before the making of theſe acts. 30 *G.* 2. *c.* 25. *ſ.* 65. The city of London.

5. It ſhall be lawful for the conſtable of the tower, or lieutenant of the tower hamlets, for the time being, from time to time, to appoint his deputy lieutenants, and to give commiſſions to a proper number of officers to train and diſcipline the militia to be raiſed within and for the ſaid diviſion, purſuant to the ſtatute of the 13 & 14 *C.* 2. and to form the ſame into two regiments of eight companies each, in ſuch manner as the ſaid conſtable or lieutenant hath uſed to do: and alſo, for defraying the neceſſary charge of trophies and other incident expences of the militia of the ſame diviſion, it ſhall be lawful for his majeſty's ſaid conſtable or lieutenant, to continue to raiſe in every year the proportion of a fourth part of one month's aſſeſſment of trophy money, within the ſaid diviſion or hamlets, in ſuch manner as he hath uſed to do by the ſaid act of the 13 & 14 C. 2.—31 *G.* 2. *c.* 26. *ſ.* 40. The tower hamlets.

And his majeſty's ſaid conſtable of the tower, or lieutenant of the tower hamlets, ſhall appoint a treaſurer of the ſaid trophy money, for receiving and paying ſuch monies as ſhall be levied by the ſaid act of *C.* 2. who ſhall yearly account in writing and upon oath for the ſame to the ſaid lieutenant or his deputy lieutenants or any three of them; which accounts ſhall be certified to the juſtices for the ſaid diviſion at their next ſeſſions. And the ſaid conſtable or lieutenant ſhall not iſſue out warrants for raiſing any trophy money, until the juſtices at ſuch ſeſſions ſhall have examined, ſtated and allowed the accounts of the trophy money raiſed for the preceding year, and certify the ſame under the hands and ſeals of four of ſuch juſtices; unleſs where it ſhall appear to ſuch juſtices, that by reaſon of the death of ſuch treaſurer or otherwiſe, ſuch accounts cannot be paſſed. *ſ.* 41.

6. By

The ſtanneries.

6. By the 30 *G.* 2. *c.* 25. it is provided, that nothing therein ſhall extend to the tinners in Devon and Cornwall; but the lord warden of the ſtanneries for the time being, in purſuance of his majeſty's commiſſion in that behalf, and ſuch as he ſhall commiſſionate and authorize under him, ſhall uſe the like powers, and array, aſſeſs, arm, muſter and exerciſe the ſaid tinners, as hath been heretofore uſed, and according to the ancient privileges and cuſtoms of the ſtanneries. *ſ.* 64.

His majeſty's docks.

7. By the ſaid ſtatute of the 30 *G.* 2. *c.* 25. it is provided, that nothing therein ſhall extend, to ſubject any perſon muſtered, trained and doing duty in any of his majeſty's docks, for the defence thereof, to any ſervice in the militia. *ſ.* 69.

Berwick upon Tweed.

8. By the 31 *G.* 2. *c.* 26. All proviſions made for the county of Northumberland and the militia thereof, ſhall be in force with reſpect to the town of Berwick upon Tweed, except only as to the particulars here expreſſed and otherwiſe provided for: and out of the perſons returned in the liſts for the ſaid town, a number of private militia men ſhall be choſen by lot to ſerve for the ſaid town, in the ſame proportion with the private militia men appointed to ſerve for the other reſpective hundreds, wards, and other diviſions within the ſaid county of Northumberland: and if perſons can be found within the ſaid town and liberties thereof, with ſuch qualifications as are required for deputy lieutenants and officers within cities and towns which are counties of themſelves; the chief magiſtate of the ſaid town of Berwick ſhall appoint five deputy lieutenants, and ſuch number of officers of the militia as ſhall be proportionable to the number of militia men which the ſaid town ſhall raiſe, as their quota towards the militia of the county of Northumberland. And the ſaid militia ſhall annually join the militia of the county of Northumberland, and be exerciſed together at the general annual exerciſe in whitſun-week, and ſhall then, and alſo in time of actual ſervice, be deemed the militia of the county of Northumberland for the purpoſes aforeſaid. *ſ.* 42.

But by the 33 *G.* 2. *c.* 22. Where in the ſaid town of Berwick, the number of private militia men ſhall not be ſufficient to form a regiment or battalion, the militia thereof ſhall be formed into independent companies, each company conſiſting of 80 private men at the moſt, and 60 private men at the leaſt; and to every ſuch company there ſhall be intitled to pay when in actual ſervice, one captain, one lieutenant, and one enſign, and a number of ſerjeants and corporals equal to the number herein before allowed

allowed to a company of militia; and it shall be lawful for his majesty, to join together any number of such independent companies, and therewith to form a battalion, or to incorporate them with any regiment or battalion of militia, but so as the number of companies in any such regiment or battalion do not exceed or fall short of the number of companies, of which a regiment or battalion of militia is herein before respectively allowed to consist. *s.* 7.

9. By the 30 *G.* 2. *c.* 25. The governor of the isle of Wight shall appoint the officers of the militia there, as his majesty's lieutenants of counties may do; and shall appoint five or more deputies to act with him: which deputies and officers shall be qualified and act as is prescribed with respect to like officers in Wales. And the militia of the said island shall be raised in the same manner as the militia of the county of Southampton, and shall be deemed a part of the militia of the said county. And after the same shall be so raised, the governor, lieutenant governor and deputies, shall order and direct the training and exercising the militia, in the same manner as the lieutenants and deputy lieutenants may do elsewhere. *s.* 53. Isle of Wight.

But by the 33 *G.* 2. *c.* 22. they shall be formed into independent companies; and, as such, be ordered in all respects in like manner as is before prescribed for the town of Berwick. *s.* 7, 9.

10. The estates requisite for the qualification of the deputy lieutenants and officers in the isle of Ely, shall be as follows; a deputy lieutenant shall be seised or possessed, either in law or equity, for his own use and benefit, in possession of a freehold, copyhold, or customary estate, for life, or for some greater estate, or of an estate for some long term of years, determinable on one or more lives, or of an estate for a certain term originally granted for 20 years or more, and renewable, over and above all rents and charges payable out of or in respect of the same, in manors, messuages, lands, tenements or hereditaments in England, Wales, or Berwick upon Tweed, of the yearly value of 200*l.* captain 100*l.* or heir apparent to a person having a like estate of 200*l.* lieutenant or ensign 50*l.* or heir apparent of a person having a like estate of 100*l.* half of all which shall be situate or arising within the said isle, or some other part of the county of Cambridge: and the penalty for acting not so qualified, shall be the same as of other like officers within any other county. 32 *G.* 2. *c.* 20. *s.* 7. 33 *G.* 2. *c.* 22. *s.* 14. Isle of Ely.

11. Where any parish shall lie in more counties or ridings than one; the inhabitants of such parish shall serve Parish in different counties.

in the militia of that county or riding, wherein the church belonging to ſuch pariſh is ſituated. 30 G. 2. c. 25. ſ. 59.

Wokingham. 12. The inhabitants of the town and pariſh of Wokingham, ſhall ſerve in and be trained and exerciſed with the militia of the county of Berks. 30 G. 2. c. 25. ſ. 60.

Filey. 13. The inhabitants of the townſhip of Filey, ſhall ſerve in the militia of the eaſt riding of the county of York. 30 G. 2. c. 25. ſ. 61.

Threapwood. 14. The inhabitants of Threapwood, ſhall ſerve in the militia of the county of Flint, and be trained and exerciſed with the militia of the pariſh of Wrothenbury. 30 G. 2. c. 25. ſ. 62.

Stamford Baron. 15. The inhabitants of the pariſh of St. Martin, called Stamford Baron, in the ſuburbs of the borough and town of Stamford, on the ſouth ſide of the waters there, called Welland, ſhall ſerve in the militia of the county of Lincoln. 30 G. 2. c. 25. ſ. 63.

Quakers. 16. If a quaker ſhall be choſen by lot to ſerve in the militia, and ſhall refuſe or neglect to appear and to take the oath in that behalf provided, and to ſerve in the ſaid militia, or to provide a ſubſtitute to be approved as aforeſaid; three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, ſhall upon as reaſonable terms as may be, provide and hire a fit perſon, who ſhall take the ſaid oaths, make, repeat and ſubſcribe the declaration, and ſubſcribe his conſent to ſerve in the ſaid militia for the ſpace of three years, as the ſubſtitute of ſuch quaker; and ſhall levy by (H) diſtreſs and ſale of the goods and chattels of ſuch quaker, ſuch ſum or ſums as ſhall be neceſſary, to defray the expence of providing and hiring ſuch perſon, as his ſubſtitute to ſerve in the ſaid militia for the ſpace of three years; rendring the overplus, after deducting the charges of diſtreſs and ſale. And if any meaſures ſhall be uſed in making diſtreſs, which may by ſuch quaker be thought oppreſſive; he may complain thereof to the deputy lieutenants and juſtices at their next meeting, who ſhall hear and finally determine the ſame. 30 G. 2. c. 25. ſ. 26. 31 G. 2. c. 26. ſ. 11. [Note, here is no clauſe of impriſonment, for want of ſufficient diſtreſs, ſo that if a quaker is poor, or ſhall make away his goods, or a poor man of another perſuaſion ſhall become a quaker, a ſpace is hereby left open for eluding the ſervice.]

Perſon having two places of reſidence. 17. Each perſon liable to ſerve in the militia, having more than one place of reſidence, ſhall be deemed to be and ſhall ſerve as a militia man, within the county, riding or place where he ſhall have been firſt choſen by lot.

32 *G.* 2. *c.* 20. *ſ.* 5.

[Note, the acts for cloathing and pay are annual; the reſt are in force for 5 years from the date of the firſt of the ſaid acts, *viz.* the 30 *G.* 2. *c.* 25. and from thence to the end of the then next ſeſſion of parliament.]

A. Form of a precept to the high conſtable for ordering liſts to be returned; with the petty conſtable's warrant thereupon.

Weſtmorland } To H. C. gentleman, chief conſtable of the Eaſt Ward within the ſaid county.

WE A. D. *and* B. D. *eſquires, deputy lieutenants, and* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county, at our general meeting for that purpoſe aſſembled, do hereby require you to iſſue out your warrants to the ſeveral petty conſtables within your ſaid ward, according to the form hereon indorſed. Given under our hands and ſeals the——day of——in the year——*

From the ſaid warrant indorſed.

Weſtmorland } To the conſtable of——
Eaſt Ward }

BY *virtue of an order from the deputy lieutenants and juſtices of the peace in and for the ſaid county at their general meeting for that purpoſe aſſembled, unto me directed, you are hereby required to make out a fair and true liſt in writing of all men uſually and at this time dwelling within your conſtablewick, between the ages of eighteen and fifty years, diſtinguiſhing therein their ranks and occupations, and which of the ſaid perſons labour under any infirmities incapacitating them from ſerving as militia men. (Provided that you are not to inſert in the ſaid liſt the name of any peer of this realm, nor of any perſon who ſhall ſerve as a commiſſion officer in any regiment, troop or company in his majeſty's other forces, or in any of his majeſty's caſtles or forts, nor of any non-commiſſion officer or private man ſerving in any of his majeſty's other forces, nor of any commiſſion officer ſerving in the militia, nor of any perſon being a member of either of the univerſities, nor of any clergyman, nor of any teacher of any ſeparate congregation, nor of any conſtable or other peace officer, nor of any articled clerk, apprentice, ſeaman or ſeafaring man.) Which liſt ſo fairly and truly made as aforeſaid, you are hereby required to return to the deputy lieutenants and*

juſtices of the peace for the ſaid county, at their meeting for that purpoſe to be held on the——day of——next enſuing the date hereof, at the moot-hall in Appleby in the ſaid county. And you are hereby further required to affix a true copy of the ſaid liſt ſo to be made out as aforeſaid, on the door of the church or chapel belonging to your reſpective pariſh, townſhip or place; and if ſuch place being extraparochial, hath no church or chapel belonging thereto, then on the door of the church or chapel of ſome pariſh or place thereto adjoining, on the ſunday morning next before the ſaid——day of——. And in the mean time, you are to give notice to all perſons whoſe names ſhall be inſerted in the ſaid liſt, that if any of them ſhall think themſelves aggrieved by having their names inſerted, or by any others being omitted, they may appear at the ſame time and place, when and where all appeals concerning the ſame will be heard and determined. Herein fail you not. Given under my hand, the——— day of———in the year of our lord———

H. C. chief conſtable of the ſaid Ward.

B. Precept to the high conſtable, for iſſuing his warrants to the petty conſtables, to give notice to the perſons choſen by lot, to appear and take the oath and be inrolled; with the petty conſtable's warrant thereupon.

Weſtmorland } To H. C. gentleman, chief conſtable of the Weſt Ward within the ſaid county.

WE A. D. and B. D. eſquires, deputy lieutenants, and J. P. and K. P. eſquires, two of his majeſty's juſtices of the peace, in and for the ſaid county, at our ſubdiviſion meeting for that purpoſe aſſembled, do hereby order and require you forthwith to iſſue out your warrants to the ſeveral petty conſtables within your ſaid ward, according to the form hereon indorſed. Given under our hands and ſeals the——— day of ———in the year of our lord.

Form of the ſaid warrant indorſed.

Weſtmorland } To the conſtable of———
Weſt Ward }

BY virtue of an order from the deputy lieutenants and juſtices of the peace in and for the ſaid county, at their ſubdiviſion meeting for that purpoſe aſſembled, you are hereby directed

directed and required, to give notice to A. M. *an inhabitant within your conſtablewick, choſen by lot at the ſaid meeting to ſerve in the militia of the ſaid county, that he do appear at the moot-hall in Appleby in the ſaid county, on———the——— day of———next, then and there to take the oath in that behalf required by law, and to be inrolled to ſerve in the militia of the ſaid county as a private militia man for the ſpace of three years, or otherwiſe to provide a fit perſon (to be approved by the deputy lieutenants and juſtices of the peace that ſhall be then and there preſent) to ſerve as his ſubſtitute, who ſhall take the ſaid oath and be inrolled in manner aforeſaid. Which notice you are to give unto him, or to leave the ſame at his place of abode, at leaſt ſeven days before the ſaid———day of———next. And be you then there to certify what you ſhall have done in the premiſſes. Herein fail you not. Given under my hand the———day of———in the year of our lord———.*

H. C. chief conſtable of the ſaid ward.

C. Form of the notice to be left at the dwelling houſe, where perſonal notice cannot be given.

William Harriſon,

NOTICE *is hereby given unto you, that you are choſen by lot to ſerve in the militia of this county of* W. *and that you are to appear at the moot-hall in* A. *in the ſaid county, on———the———day of———next, before the deputy lieutenants and juſtices of the peace for the ſaid county to be then and there aſſembled, to take the oath in that behalf required, and to be inrolled to ſerve in the militia of the ſaid county as a private militia man for the ſpace of three years, or otherwiſe to provide a fit perſon to be then and there approved by the ſaid deputy lieutenants and juſtices, who ſhall take the ſaid oath, and be then and there inrolled as aforeſaid. Given under my hand the———day of———in the year of our lord———.*

A. C. conſtable of———.

To prevent miſtakes, it may be beſt to have printed forms, and to deliver the ſame properly filled up to the reſpective conſtables.

D. Form of a warrant againſt a militia man not appearing to take the oath and be inrolled.

Weſtmorland } To the conſtable of———

WHEREAS *complaint and information upon oath hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. O. *late of———in the county aforeſaid, yeoman, (not being one of the people called quakers) hath been duly choſen by lot to ſerve as a private militia man in the militia of the ſaid county, and hath had due notice to appear before the deputy lieutenants and juſtices of the peace in and for the ſaid county, at their ſubdiviſion meeting for that purpoſe aſſembled, to take the oath in that behalf required, and to be inrolled to ſerve in the ſaid militia as a private militia man, or to provide a fit perſon to be approved by the ſaid deputy lieutenants and juſtices as aforeſaid to ſerve as his ſubſtitute; and that he the ſaid* A. O. *hath neglected* [or, *refuſed*] *to take the ſaid oath, and to ſerve in the ſaid militia, and hath alſo neglected to provide any fit perſon to ſerve as his ſubſtitute: Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before me at the houſe of———in———in the ſaid county, on———the———day of———at the hour of———in the afternoon of the ſame day, to anſwer unto the ſaid complaint, and to ſhew cauſe why the penalty of ten pounds ſhould not be levied upon his goods and chattels for the ſaid offence. Herein fail you not. Given under my hand and ſeal the———day of———in the year of our lord———*

E. Warrant of diſtreſs for the penalty of 10l.

Weſtmorland } To the conſtable of———

WHEREAS A. O. *late of——in the county of——, yeoman, (not being one of the people called quakers,) is this day duly convicted upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, for that he the ſaid* A. O. *having been duly choſen by lot to ſerve as a private militia man in the militia of the ſaid county, and after due notice given unto him to appear before the deputy lieutenants and juſtices of the peace in and for the ſaid county at their ſubdiviſion meeting for that purpoſe aſſembled, to take the oath in that behalf required, and*

to

to be inrolled to ſerve in the ſaid militia as a private militia man, or to provide a fit perſon to be approved by the ſaid deputy lieutenants and juſtices as aforeſaid to ſerve as his ſubſtitute, hath neglected to take the ſaid oath, and to ſerve in the ſaid militia, and alſo hath neglected to provide any fit perſon to ſerve as his ſubſtitute; whereby he the ſaid A. O. *hath forfeited the ſum of ten pounds: Theſe are therefore in his ſaid majeſty's name to command you, to levy the ſaid ſum by diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [four] *days next after ſuch diſtreſs by you taken, the ſaid ſum together with reaſonable charges of taking and keeping the ſaid diſtreſs ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay the ſaid ſum of ten pounds to the ſaid deputy lieutenants and juſtices as aforeſaid, or to ſuch perſon as they ſhall appoint to receive the ſame, for the providing of a ſubſtitute to ſerve for him the ſaid* A. O. *and for the other purpoſes by law directed for the application thereof; rendring the overplus (if any ſhall be) on demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods and chattels of him the ſaid* A. O. *whereon to levy the ſaid ſum of ten pounds, that then you certify the ſame to me together with the return of this precept. Herein fail you not. Given under my hand and ſeal, the———day of——— in the year of our lord———.*

F. Conſtable's return of the want of diſtreſs.

Weſtmorland.

A. C. *conſtable of———in the ſaid county, maketh oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the———day of———in the year———that by virtue of my warrant to him directed, to levy the ſum of———by diſtreſs and ſale of the goods and chattels of* A. O. *late of———aforeſaid, in the county aforeſaid, he the ſaid conſtable hath made diligent ſearch for ſuch goods and chattels, and that he doth not know, nor can find, that the ſaid* A. O. *hath goods and chattels ſufficient to anſwer the ſaid diſtreſs.*

A. C.

Before me
J. P.

G. Commitment for want of diſtreſs.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the common gaol at *A.* in the ſaid county.

WHEREAS A. O. *late of* ——— *in the county aforeſaid, yeoman, (not being one of the people called quakers) was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, for that he the ſaid* A. O. *having been duly choſen by lot to ſerve as a private militia man in the militia of the ſaid county, and after due notice given unto him to appear before the deputy lieutenants and juſtices of the peace in and for the ſaid county at their ſubdiviſion meeting for that purpoſe aſſembled, to take the oath in that behalf required and to be inrolled to ſerve in the ſaid militia as a private militia man, or to provide a fit perſon to be approved by the ſaid deputy lieutenants and juſtices as aforeſaid to ſerve as his ſubſtitute, did neglect to take the ſaid oath, and to ſerve in the ſaid militia, and alſo did neglect to provide any fit perſon to ſerve as his ſubſtitute, and thereupon did forfeit the ſum of ten pounds: And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of ten pounds, by diſtreſs and ſale of the goods and chattels of him the ſaid* A. O. *And whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods and chattels of the ſaid* A. O. *as aforeſaid, and that the goods and chattels of him the ſaid* A. O. *are not ſufficient to anſwer the ſaid diſtreſs: Theſe are therefore to command you the ſaid conſtable of* ——— *aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the common gaol at* A. *aforeſaid in the county aforeſaid, and there deliver him to the ſaid keeper thereof, together with this precept. And I do hereby command you the ſaid keeper of the ſaid common gaol, to receive into your cuſtody in the ſame common gaol the ſaid* A. O. *and him there ſafely to keep for the ſpace of* [three months]: *And for ſo doing, this ſhall be your ſufficient warrant. Given under my hand and ſeal, the* —— *day of* ——— *in the year of our lord* ——.

H. Warrant

H. Warrant of diſtreſs for quakers ſubſtitutes.

Weſtmorland. { *A. D.* eſquire, deputy lieutenant, and *J. P.* and *K. P.* eſquires, two of his majeſty's juſtices of the peace for the ſaid county; To the high conſtable of Kendal ward within the ſaid county, and to the petty conſtables of ——— in the ſaid county, and to each and every of them.

FORASMUCH *as* A. Q. *late of* ——— *aforeſaid in the county aforeſaid, yeoman, being one of the people called quakers, hath been duly choſen by lot to ſerve in the militia of the ſaid county, and after due notice given unto him hath neglected to appear and to take the oath in that behalf required, and to ſerve in the ſaid militia, and hath alſo neglected to provide any fit perſon to ſerve for him as his ſubſtitute; and whereas we the ſaid deputy lieutenants and juſtices as aforeſaid have, upon as reaſonable terms as might be, namely, for the ſum of* ——— *provided and hired* A. S. *a fit perſon to ſerve in the ſaid militia, as the ſubſtitute of him the ſaid* A. Q. *We do therefore hereby require you to levy the ſaid ſum of* ——— *by diſtreſs and ſale of the goods and chattels of him the ſaid* A. Q. *and to pay the ſame unto* ——— *for the uſe of him the ſaid* A. S. *rendring the overplus (if any ſhall be) unto him the ſaid* A. Q. *after deducting the charges of the ſaid diſtreſs and ſale. Herein fail you not. Given under our hands and ſeals the* —— *day of* ——— *in the year of our lord* ——.

Miller.

BY an ancient ordinance, *Hawk. Stat. V.* 1. *p.* 181. The toll of a mill ſhall be taken according to the cuſtom of the land, and according to the ſtrength of the water-courſe, either to the twentieth or four and twentieth corn.

And yet in ſome places the millers do claim and take the ſixteenth part: and where the cuſtom hath been ſo uſed time out of mind, perhaps it may be good and warrantable. *Dalt. c.* 112.

And Mr. *Dalton* ſays, the miller ought to take but one quart for grinding of one buſhel of hard corn, but if he fetch and carry back the griſt to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meſlin (which is wheat and rye mixed). And for malt, the miller ſhall take but half ſo much toll as he taketh for hard corn, that is, one pint in the buſhel, for that malt is more eaſily ground than wheat or rye: But if the miller do fetch to his mill, and carry back the malt to the owner's houſe, then the miller alſo ſhall have double toll. *Dalt. c.* 112.

But, by *Holt* Ch. J. the toll of a mill muſt be regulated by cuſtom; and if the miller takes more than the cuſtom warrants, it is extortion: But if it is a new mill, there the miller is not reſtrained to any certain toll; but the perſons who will have their corn ground there, muſt comply with the miller's demands; and whatſoever he takes, it is not extortion, becauſe it is the voluntary agreement of the parties. L. *Raym.* 149.

In ſome places, the tenants are bound to have their corn ground at the lord's mill. As in the caſe of *Hix* and *Gardener*, *H.* 11 *Ja.* In an action on the caſe for erecting a mill, the lord declared upon a cuſtom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the cuſtom; and this was adjudged a good cuſtom: And ſuit to a mill may be by reaſon of tenure or ſervice, and alſo by cuſtom, and ſo may well bind ſtrangers. 2 *Bulſt.* 195.

And a new erected houſe within the precincts is within the cuſtom of multure; and none may grind elſewhere, but in caſe of exceſſive toll, or that the griſt cannot be ground in convenient time. *Hardr.* 177.

16 *G.* 2. *K.* and *Wood.* The defendant, being a miller, was indicted for *changing* corn delivered to him to be ground, and giving bad corn inſtead of it. It was moved to quaſh it, becauſe only a private cheat, and not of a publick nature. But it was anſwered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. And the court was unanimous not to quaſh it. *Seſſ. Caſ. V.* 1. 217.

Altho' every larceny implies a treſpaſs, and a felonious *taking* of the thing ſtolen; yet it hath been reſolved, that even thoſe who have the poſſeſſion of goods by the delivery of the party, as a miller who hath corn delivered to him to grind, may be guilty of felony by taking away part thereof with an intent to ſteal it. 1 *Haw.* 90.

Millers

Millers are not to be common buyers of any corn, to ſell the ſame again, either in corn or meal; but ought only to ſerve for the grinding of corn that ſhall be brought to their mills. *Dalt. c.* 122.

Miniſter. See **Publick worſhip.**
Miſadventure. See **Homicide.**

Misdemeanor.

THIS word in its uſual acceptation is applied to all thoſe crimes and offences, for which the law has not provided a particular name; and they may be puniſhed according to the degrees of the offence, by fine, or impriſonment, or both. *Barl.*

Miſpriſion of felony. See **Felony.**
Miſpriſion of treaſon. See **Treaſon.**
Mittimus. See **Commitment.**
Money. See **Coin.**
Murder. See **Homicide.**
Muſter. See **Soldiers, Militia.**

Mute.

THE whole learning relating to this title, will be comprehended in the explication of the ſtatute of *Weſtminſter* 1. *c.* 12. which is as follows:

Notorious felons, and which openly be of evil name, and will not put themſelves in inqueſt of felonies that men ſhall charge them with before the juſtices at the king's ſuit, ſhall have ſtrong and hard impriſonment, as they which refuſe to ſtand to the common law of the land. But this is not to be underſtood of ſuch priſoners as be taken of light ſuſpicion. 3 Ed. 1. c. 12.

Felons] This ſtatute extendeth not to treaſon, which is the higheſt offence; nor to petit larceny, which is of all felonies

felonies the loweſt: but if a man ſtand obſtinately mute upon an arraignment of treaſon or petit larceny, he ſhall have the like judgment as if he had confeſſed the indictment. 2 *Inſt.* 177. 2 *Haw.* 329.

This word *felons* extendeth as well to women, as to men. 2 *Inſt.* 177.

Notorious, and openly of evil fame] Therefore no perſon ſhall be put to this puniſhment, unleſs the matter be evident or proveable, which it is the duty of the judge to look unto, and to examine the evidence which proves the priſoner guilty of the fact, before he proceed to the judgment of *pain fort & dure*. 2 Inſt. 177. 2 Haw. 330.

And will not put themſelves in inqueſts.] This is called ſtanding mute. Now a man may ſtand mute two manner of ways:

Firſt, when he ſtands mute *without ſpeaking of any thing*; and then the court ſhall *ex officio* inquire by the oath of any 12 perſons that happen to be preſent, whether he do ſo of malice, or by the act of god; and if it be found that it was by the act of god, then the judges of the court (who are always to be of counſel with the priſoner to give him law and juſtice) ought to inquire touching all thoſe points which he might poſſibly plead for himſelf, as whether a felony were done, whether he be the ſame perſon that is indicted for it, whether he did it, and whether he hath any matter to alledge for his diſcharge; and ſuch inquiry ſhall be made, not by an inqueſt of office, but by a jury returned by the ſheriff, in the ſame manner as if the defendant had actually pleaded; for ſince it is not his own fault that he did not ſo plead, there is no reaſon why his trial ſhould be in a more looſe and ſummary manner, or any way leſs regular or ſolemn, than if he had ſo pleaded. 2 *Inſt.* 178. 2 *Haw.* 327, 328. 2 *H. H.* 317.

But what if all this be found againſt the priſoner, what ſhall be done? —— Whether judgment of death ſhall be given againſt him, though he never pleaded, ſeems yet undetermined. 2 *H. H.* 317.

But after a man hath confeſſed himſelf guilty, or pleaded and put himſelf upon his country, he ſhall not afterwards be demeaned as one that ſtands mute, in reſpect of his ſubſequent ſilence; but the jury ſhall be charged, and the trial ſhall proceed, and the like judgment ſhall be given as in common caſes. 2 *Haw.* 327.

Alſo if the perſon become mute, and not by the act of god, as by cutting out his own tongue, he ſhall forthwith be put to his penance. 2 *Inſt.* 178.

Another

Another kind of mute is, when the priſoner can ſpeak, and perhaps pleadeth not guilty, or pleadeth a plea in law, and *will not conclude to the inqueſt* according to this act, that is, to be tried by god and the country; then this act is ſufficient warrant, if the cauſe be evident or probable, to put him to his penance: But if he demur in law, and it be adjudged againſt him, he ſhall have judgment to be hanged; and tho' by his demurrer he refuſe to put himſelf upon the inqueſt according to the letter of this act, yet foraſmuch as he is out of the reaſon of this act, for that he refuſeth not the trial of the common law, the demurrer being allowed to him by law, and to be tried by the judges, he ſhall not be put to his penance, but have judgment to be hanged, and not have *pain fort & dure*. 2 Inſt. 178.

At the king's ſuit] This act ſpeaketh only of indictments at the ſuit of the king; but the judgment of *pain fort & dure* was at the common law, both in indictments and appeals. 2 *Inſt.* 177.

Shall have ſtrong and hard impriſonment] *Soient miſes en la priſon fort & dure:* The judgment in this caſe is, that the man or woman ſhall be remanded to the priſon, and laid there in ſome low and dark room, where they ſhall lie naked on the bare earth without any litter, ruſhes, or other cloathing, and without any garment about them, but ſomething to cover their privy parts, and that they ſhall lie upon their backs, their heads uncovered and their feet, and one arm ſhall be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the ſame manner ſhall be done with their legs, and there ſhall be laid upon their bodies iron and ſtone, ſo much as they may bear and more, and the next day following they ſhall have three morſels of barley bread without any drink, and the ſecond day they ſhall drink thrice of the water that is next to the houſe of the priſon (except running water) without any bread, and this ſhall be their diet until they be dead. So as upon the matter they ſhall die three manner of ways, by weight, by famine, and by cold. And the reaſon of this terrible judgment is, becauſe they *refuſe to ſtand to the common law of the land*. 2 Inſt. 178, 179.

Which puniſhment being ſo ſevere, lord *Hale* adviſes, that it be not given too haſtily, but that the priſoner be not only thrice admoniſhed, but alſo have ſome convenient reſpite, as until the afternoon, to bethink himſelf, if the arraignment be in the morning; or till the next morning, if the arraignment be in the afternoon; and that the judgment

ment it ſelf be diſtinctly read to him, that he may know his danger before his final refuſal, with due admonition not to deſtroy himſelf. 2 *H. H.* 320.

And it is ſaid to be the practice of *Newgate* ſeſſions, where a priſoner refuſes to plead, to endeavour to compel him to do it, by tying his thumbs together with whip-cord, and drawing them together by the ſtrength of two men, to give him a taſte of the pain to be endured, if he will not comply. 2 *Haw.* 331.

And tho' judgment be given of *pain fort & dure*, yet if the offence laid in the indictment be within clergy, his clergy ſhall be allowed him; and tho' in ſtrictneſs of law the priſoner ought to pray it, yet it is the duty of the judge to allow it, tho' not prayed, and that as well after judgment pronounced as before. 2 *H. H.* 320, 321.

And as to the caſe how far he is intitled to his clergy, it is enacted by the 3 *W. c.* 9. that if any perſon be indicted of any offence, for which by virtue of that or any former ſtatute he is excluded from the benefit of clergy, if he had been convicted by verdict or confeſſion; if he ſtand mute, or will not anſwer directly to the felony, or ſhall challenge peremptorily above 20 of the jury, he ſhall not be admitted to the benefit of clergy. *ſ.* 2.

In which expreſſion [by virtue of any *former* ſtatute] offences excluded from the benefit of clergy by ſubſequent ſtatutes ſeem not to be comprehended; and conſequently perſons ſtanding mute on an indictment upon any ſuch ſubſequent ſtatute, ſhall have their clergy, if it is not otherwiſe ſpecially provided by ſuch ſtatute. 2 *Haw.* 332.

And as to the other conſequences of ſtanding mute, it is obſervable, that where a perſon ſtanding mute is adjudged to his penance, and thereby prevents that attainder which otherwiſe he might have incurred, he *forfeits his chattels* only, and not his *lands*; and for this reaſon ſome have endured this puniſhment. 2 *Haw.* 331.

It doth not appear that the proſecutor of an indictment for felony, where the defendant ſtandeth mute, is intitled to the reſtitution of his goods, either by the common law or by any ſtatute. 2 *Haw.* 332.

But this is not to be underſtood of ſuch priſoners as ſhall be taken on light ſuſpicion] But if they obſtinately ſtand mute, it ſeemeth that they may be ſeverely fined and impriſoned for the contempt. 2 *Haw.* 330.

Naval

Naval ſtores. See **Stores.**
Navigation. See **Rivers.**
Needlework. See **Buttons.**
Nets. See **Game.**
News papers. See **Stamps.**
Night walkers. See **Surety.**
Noblemen. See **Peers.**
Non compos. See **Lunatick.**
Non conformiſts. See **Diſſenters.**

Northern borders.

1. BY the 43 *El. c.* 13. Foraſmuch as many perſons dwelling in *Cumberland*, *Northumberland*, *Weſtmorland*, and *Dureſme*, have been taken by force, and kept until ranſomed; and whereas by reaſon of incurſions, burnings, and robberies, ſeveral inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other conſideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied with divers in thoſe parts, who are known to be great robbers and ſpoil-takers in the ſaid counties, to the end thereby to be by them freed, protected, and kept in ſafety; by reaſon whereof many are impoveriſhed, and rapine much increaſed: It is therefore enacted, that whoſoever ſhall without good authority take or detain any ſuch perſons againſt their wills, to ranſom them, or make a prey or ſpoil of their perſons or goods, upon deadly feud, or otherwiſe; or ſhall be aiding therein; or whoſoever ſhall take, receive, or carry any money, corn, cattle, or other conſideration, commonly called Blackmail, for ſuch protection; or ſhall burn any ſtack of corn: he ſhall, on conviction at the aſſizes or ſeſſions, be guilty of felony without benefit of clergy. *ſ.* 1, 2. Blackmail.

Foraſmuch as, &c.] At the time when this act was made, and for ſome time after, the peace of the borders was maintained by commiſſioners appointed by the two crowns reſpectively, who agreed upon certain articles to be obſerved by both ſides; appointed guards and watches at

certain fords and other places; kept courts; redreſſed grievances; puniſhed offenders; and had power of life and death by way of legal trial in the manner of oyer and terminer. And this act was not made in abolition of ſuch power, but in aid thereof, and for the puniſhment of certain offenders unto whom the commiſſion of the lords wardens of the marches did not extend; which offenders, although not employed in the protection of the country by virtue of the inſtitution of the wardenſhip of the marches, yet demanded contribution of the inhabitants under pretence of preſerving them from rapine and depredation by reaſon of the friendſhip and alliance which they had with the ſpoil-takers and robbers in thoſe parts.

Blackmail] *Maile*, in French is a ſmall piece of money; and in the 9 *H.* 5. ſilver halfpence here were termed *mailes*. In a larger acceptation, the word *maile* ſignifies a rent in general, paid either in money, corn, cattle, or other goods, as *geeſe maile*, *cow maile*, and the like; and in *Scotland*, *maile* is ſtill the common word for rent. *White maile*, white rents, (vulgarly called quit-rents,) were rents paid in ſilver, and thereby diſtinguiſhed from work day rents, cummin rents, corn rents, and the like. *Black maile*, or black rents, ſeem properly to have been rents paid in cattle (otherwiſe called *neat gelt*, or *neat geld*, from the Daniſh *gelt*, *geld*, *geldum*, a payment or tribute); but more largely taken, it ſeemeth to have been uſed to ſignify all rents not paid in ſilver, in contradiſtinction to the *redditus albi*, blanch farms, or white rents. In parts where the ground was arable, rents were frequently paid in *corn*; and particularly in the border ſervice, the officers and men appointed to guard againſt incurſions had for the ſuſtentation of their horſes part of their ſalaries paid in corn, to be raiſed upon certain eſtates ſubject to the enemies depredations, as they had alſo money out of other eſtates, and in others (which were near the place of ſervice) they had meadows, foggage, poultry, fuel, and other neceſſaries. The wardens of the marches had an officer called the *ſergeant*, who ſeems to have been a *civil*, and not a *military* officer, for the execution of proceſs, arreſting offenders, and ſuch like, in the nature of a bailiff or head conſtable; and his ſalary and appointments ſeem to have been of the like nature with thoſe of the officers military. The *juſtices in eyre* alſo had officers attending them called *ſerjeants*, in the nature of tipſtaves, who are taken notice of in the ſtatute of *Weſtm.* 1. *c.* 30. In *Britton* the word *ſerjeant* is uſed for

for an officer of the *county*; and *Bracton* takes notice of a *ſerjeant of the hundred*. There were alſo *ſerjeants of manors*, who ſeem to have been the ſame with thoſe called *land-ſerjeants*; and theſe were not properly what are now ſtyled *bailiffs of the manor*, but a kind of ſuperior bailiffs over divers manors; for in the ſetting or ſupervifal of the watch in the border ſervice, we find ſometimes ſeveral towns together, as three, four, or more, required to watch at certain fords and places, and the ſearchers, or examiners of the ſaid watch are the *land-ſerjeant and bailiffs*, or the *land-ſerjeant bailiffs and conſtables* there. There is yet in *Weſtmorland* a payment called *ſerjeant oats*; but for which of theſe kinds of ſerjeants, or whether for any of them, it is difficult to ſay.

Deadly feud] *Feud* in the *German* ſignifies enmity, or war; as in like manner the word *Foe* ſignifies an enemy. *Feud* in *Scotland*, is a combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Deadly feud* is a profeſſion of irreconcilable hatred, till a perſon is revenged even by the death of his adverſary. And this ſeemeth to have ſprung from the inſtitution of the military tenures, whereby the tenant, upon admiſſion to his eſtate, was obliged to ſwear fealty and allegiance to his lord, and to take up arms at his lord's ſummons. This military eſtabliſhment is what is commonly called the *feudal* ſyſtem, by an eaſy derivation (as it ſhould ſeem) from the word *feud*; although it hath given much trouble to the etymologiſts to inveſtigate its origin elſewhere. ——In the northern counties, where a number of thieves, rogues, and vagabonds combine together to commit rapine, theft, and other outrages, they are ſtill denominated the *foe-gang*.

And, by the ſaid ſtatute, perſons outlawed in any of the ſaid counties for any ſuch murder, robberies, burglaries, or other felonies, ſhall in two months be certified in writing by the clerk of the peace to all the ſheriffs of all the ſaid counties; and the ſaid ſheriffs ſhall proclaim them in *Carliſle*, *Penreth*, *Cockermouth*, *Appulby*, *Kendal*, *Newcaſtle*, *Morpeth*, *Alnewick*, *Hexam*, *Dureſme*, *Darlington*, *Biſhop Awckland*, *Bernard caſtle*, and *Berwick*, and once a month in every their county courts, till they ſurrender; and the mayors ſhall proclaim them in every fair, and every ſix weeks in the market; and perſons relieving, or conferring with them, ſhall, on the like conviction, be impriſoned for ſix months, and bound to the good behaviour for a year. *ſ.* 3, 4, 5, 6.

Engliſhman committing a felony in Scotland.

2. By the 7 *J.* *c.* 1. If an *Engliſhman* ſhall commit felony in *Scotland*, and then fly into *England*, the juſtices of aſſize or ſeſſions may ſend the offender into *Scotland* to be tried.

Moſs-troopers.

3. The juſtices of *Northumberland* and *Cumberland*, may make order in ſeſſions, for charging the reſpective counties, for ſecuring the ſame againſt the moſs-troopers (that is, thieves and robbers, who after having committed offences in the borders, do eſcape through the waſtes and moſſes); ſo as *Northumberland* be not charged above 500l. nor *Cumberland* above 200l. a year. And they may appoint a commander, with 30 men in *Northumberland*, and 12 men in *Cumberland*, to ſearch for, purſue, and apprehend offenders. 13 & 14 *C.* 2. *c.* 22.

And the perſons ſo employed ſhall be choſen in ſeſſions yearly, or every two years at the fartheſt. 29 & 30 *C.* 2. *c.* 2.

And the ſeſſions ſhall take ſecurity of the perſons by them employed for preſervation of the borders, to anſwer the damages ſuſtained by their neglect or default, and to pay the ſame in four months after proof made thereof in ſeſſions by oath of one witneſs; ſo as the goods ſtolen be entred in one of the books to be kept for that purpoſe, in 48 hours after they be ſtolen or gone; and books ſhall be kept for that end in every market town in the ſaid counties, and in ſuch other places, and by ſuch perſons, as the ſeſſions ſhall appoint. 29 & 30 *C.* 2. *c.* 2.

And by the 18 *C.* 2. *c.* 3. Great and notorious thieves and ſpoil-takers in the ſaid counties of *Northumberland* and *Cumberland*, ſhall ſuffer death as felons without benefit of clergy; or may be tranſported by order of the judges of aſſize, during life.

Nuſance.

I. What it is.
II. How it may be removed.
III. How puniſhed.

I. What it is.

A Common nuſance ſeems to be, an offence againſt the publick, either by doing a thing which tends to the annoyance of all the king's ſubjects, or by neglecting to do

do a thing which the common good requires. 1 *Haw.* 197.

Annoyances to the prejudice of particular perſons, are not puniſhable by a publick proſecution as common nuſances, but are left to be redreſſed by the private actions of the parties aggrieved by them. 1 *Haw.* 197.

Where note a diverſity between a *private* and a *publick* nuſance: If it is a *private* nuſance, he ſhall have his action upon his caſe, and recover his damages; but if it is a *publick* nuſance, he ſhall not have an action upon his caſe, and this the law hath provided for avoiding of multiplicity of ſuits, for if any one might have an action, all men might have the like; but the law for this common nuſance hath provided an apt remedy, by preſentment or indictment at the ſuit of the king, in the behalf of all his ſubjects; unleſs any man hath a particular damage, as if he and his horſe fall into a ditch made acroſs a highway, whereby he received hurt and loſs, there for this ſpecial damage which is not common to others, he ſhall have an action upon his caſe. 1 *Inſt.* 56.

And from hence it clearly follows, that no indictment for a nuſance can be good, which lays it to the damage of private perſons only: as where it accuſes a man of ſurcharging ſuch a common; or of incloſing ſuch a piece of ground, wherein the inhabitants of ſuch a town have a a right of common, to the nuſance of all the inhabitants of ſuch a town; or of diſturbing a watercourſe running to ſuch a mill, to the damage of ſuch a perſon and his tenants, without ſaying *of all the liege ſubjects of the king.* 1 Haw. 197.

Yet it hath been ſaid, that an indictment of a *common ſcold* is good, although it conclude to the common nuſance of *divers*, inſtead of *all*, the king's ſubjects; perhaps for this reaſon (ſays Mr. *Hawkins)* becauſe a common ſcold cannot but be a common nuſance. 1 *Haw.* 198.

And if the law be ſo in this caſe, why ſhould not an indictment ſetting forth a nuſance to a way, and expreſly and unexceptionably ſhewing it to be a highway, be good, notwithſtanding it conclude to the nuſance of *divers*, without ſaying *all* the king's ſubjects? And perhaps the authorities which ſeem to contradict this opinion, might go upon this reaſon, that in the body of the indictment, it did not appear with ſufficient certainty, whether the way, wherein the nuſance was alledged, were a highway, or only a private way; and therefore that it ſhall be intended from the concluſion of the indictment, that it was a private way. 1 *Haw.* 198.

There is no doubt, but that common *bawdy houſes* are indictable as common nuſances; and it hath been ſaid, that all common *ſtages for rope dancers*, and alſo all common *gaming houſes*, are nuſances in the eye of the law, not only becauſe they are great temptations to idleneſs, but alſo becauſe they are apt to draw great numbers of diſorderly perſons. 1 *Haw.* 198.

Alſo it hath been holden, that a common *play houſe* may be a nuſance, if it draw together ſuch a number of coaches or people, as prove generally inconvenient to the places adjacent. 1 *Haw.* 198.

Erecting a *ſhed* ſo near a man's houſe, that it *ſtops up his lights* is not a nuſance for which an action will lie, unleſs the houſe is an ancient houſe, and the lights ancient lights. 2 *Salk.* 459.

Alſo ſtopping a *proſpect* is not a common nuſance 3 *Salk.* 247.

A gate erected in a highway, where none had been before, is a common nuſance. 1 *Haw.* 199.

It hath been holden, that it is no common nuſance to *make candles* in a town becauſe the needfulneſs of them ſhall diſpenſe with the noiſomneſs of the ſmell; but the reaſonableneſs of this opinion ſeems juſtly to be queſtionable, becauſe whatever neceſſity there may be that candles be made, it cannot be pretended to be neceſſary to make them in a town: And ſurely the trade of a *brewer* is as neceſſary as that of a chandler; and yet it ſeems to be agreed, that a brewhouſe erected in ſuch an inconvenient place, wherein the buſineſs cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuſance: And ſo in like caſe may a *glaſs houſe*, or a *ſwine yard*. 1 Haw. 199.

A perſon was indicted for making great noiſes in the night with a *ſpeaking trumpet*, to the diſturbance of the neighbourhood; and it was held by the court to be a nuſance. *T.* 12 *G. K.* and *Smith. Str.* 704.

But it hath been reſolved, that neither an old, nor a new *dove-cote* is a common nuſance; but perhaps if a tenant hath erected one without licence of the lord of the manor, the lord may have an action on his caſe againſt him. 1 *Haw.* 198.

A *monſter* ſhewn for money is a miſdemeanor. 2 *Cha. Ca.* 110. *T.* 34 *C.* 2. *Harring* and *Walrond.* It was a monſtrous child, that died, and was embalmed to be kept for ſhew; but was ordered by the lord chancellor to be buried.

If

If a man has a *dog* that kills ſheep, this is not a publick nuſance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of ſuch quality, he ſhall not be puniſhed for this killing: And in an action upon the caſe for ſuch killing, the plaintiff ſhall be required to prove in evidence, that the dog had uſed to kill ſheep. *Dyer* 25. *Het.* 171.

And in order to maintain an action for biting by the defendant's dog, it muſt be proved alſo that he knew his dog to be uſed to bite; but one inſtance is ſufficient in that caſe. 12 *Mod.* 555.

And if a man keeps a dog accuſtomed to bite *ſheep*, and he knows it, and notwithſtanding he keeps the dog ſtill, and afterwards the dog bites a *horſe*; this ſhall be actionable, altho' he had been known before to bite ſheep only: becauſe the owner, after notice of the firſt miſchief, ought to have deſtroyed or hindred him from doing any more hurt. Ld. *Raym.* 110.

If a man has an unruly *horſe* in his ſtable, and leaves open the ſtable door, whereby the horſe gets forth and doth miſchief, an action lies againſt the maſter. 1 *Vent.* 295.

In the caſe of *Buxendin* and *Sharp*, *E.* 8 *W.* The plaintiff declared, that the defendant kept a *bull*, that uſed to run at men, but did not ſay that the defendant knew of this quality; it was adjudged, that an action did not lie, unleſs it did appear that the maſter knew of this quality. 2 *Salk.* 662.

There is a difference between beaſts that are *feræ naturæ*, as lions and tygers, which a man muſt always keep up at his peril; and beaſts that are *manſuetæ naturæ*, and break thro' the tameneſs of their nature, ſuch as oxen and horſes: In the latter caſe, an action lies, if the owner has had notice of the quality of the beaſt; but in the former caſe, an action lies without ſuch notice. L. *Raym.* 1583.

But after ſuch wild beaſts have eſcaped from their keeper, ſo as to regain their natural liberty; in ſuch caſe, he that kept them before, ſhall not anſwer for the damage they ſhall commit after he hath loſt them, and they have reſumed their wild nature. 1 *Ventr.* 295.

A *maſtiff*, going in the ſtreet unmuzzled, from the ferocity of his nature being dangerous and cauſe of terror to his majeſty's ſubjects, ſeemeth to be a common nuſance, and conſequently the owner may be indicted for ſuffering him ſo to go at large.

II. How it may be removed.

It ſeemeth to be certain, that any one may pull down or otherwiſe deſtroy a common nuſance, as a new gate, or even a new houſe erected in a highway, or the like; for if one whoſe eſtate is or may be prejudiced by a *private* nuſance actually erected, as a houſe hanging over his ground, or ſtopping his lights, may juſtify the entring into another's ground, and pulling down and deſtroying ſuch a nuſance, whether it were erected before or ſince he came to the eſtate, it cannot but follow *a fortiori*, that any one may lawfully deſtroy a *common* nuſance: And as the law is now holden, it ſeems that in a plea, juſtifying the removal of the nuſance, a man need not ſhew that he did as little damage as might be. 1 *Haw.* 199.

But although he may remove the nuſance, yet he cannot remove the materials, or convert them to his own uſe. *Dalt. c.* 50.

III. How puniſhed.

It is ſaid, that a common ſcold is puniſhable by being put into the cucking ſtool. 1 *Haw.* 200.

Note; *cuck* or *guck* in the *Saxon* tongue (according to lork *Coke*) ſignifieth to ſcold or brawl; taken from the bird *cuckow* or *guckhaw:* and *ing* in that language ſignifieth water; becauſe a ſcolding woman was for her puniſhment ſowſed in the water. 3 *Inſt.* 219. The common people in the northern parts of *England*, amongſt whom the greateſt remains of the ancient *Saxon* are to be found, pronounce it *ducking ſtool*; which perhaps may have ſprung from the *Belgic* or *Teutonick ducken*, to dive under water; from whence alſo probably we denominate our *duck* the water fowl: or rather, it is more agreeable to the analogy and progreſſion of languages, to aſſert, that the ſubſtantive *duck* is the original, and the verb made from thence; as much as to ſay, that to *duck* is to do as that fowl does.

And ſhe may be convicted, without ſetting forth the particulars in the indictment. 2 *Haw.* 227.

Nevertheleſs, the offence muſt be ſet forth with convenient certainty; and the indictment muſt conclude not only *againſt the peace*, but *to the common nuſance of divers of his majeſty's liege ſubjects*. As in the caſe of *K.* and *Margaret Cooper*, *H.* 19 *G.* 2. She was convicted on an indictment, for being *a common and turbulent brawler, and ſower of diſcord amongſt her quiet and honeſt neighbours, ſo that ſhe hath ſtirred, moved, and incited divers ſtrifes, controverſies,*

troverſies, quarrels, and diſputes, amongſt his majeſty's liege people, againſt the peace, &c. It was moved in arreſt of judgment, that the charge was too general, and did not amount to being either a barrator or common ſcold, which are the only inſtances in which a general charge will be ſufficient. It was likewiſe objected, that if the words did amount to a deſcription of a ſcold, yet it ſhould be laid to be to the common nuſance of her neighbours, for every degree of ſcolding is not indictable. And the court was of opinion, that the judgment ought to be arreſted on both exceptions; for none of the words here uſed are the technical words, and it muſt be laid to be to the common nuſance. *Str.* 1246.

There is no doubt, but that whoever is convicted of another nuſance, may be fined and impriſoned; and it is ſaid, that one convicted of a nuſance done to the king's highway, may be commanded by the judgment to remove the nuſance at his own coſts: and it ſeemeth to be reaſonable, that thoſe who are convicted of any other common nuſance, ſhould alſo have the like judgment. 1 *Haw.* 200. *Str.* 686.

And the defendant ſhall not be allowed to make any objections againſt the indictment, until he hath pleaded to it. *Dalt. c.* 66.

And the court never admits a perſon convicted of a nuſance, to a ſmall fine, until proof is made of the nuſance being removed. *Dalt. c.* 66.

A maſter is indictable for a nuſance done by his ſervant. L. *Raym.* 264.

All common nuſances are indictable not only at the ſeſſions, but alſo in the torn and leet. 2 *Haw.* 67.

An act of general pardon only diſcharges the fine, but not the abatement of the nuſance. 2 *Salk.* 458.

There are many offences by particular ſtatutes declared to be common nuſances, which are treated of under their reſpective titles.

General indictment for a nuſance.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ———*in the county of*———*yeoman, on the*———*day of*———*in the*———*year of the reign of*———*and on divers other days and times, as well before as afterwards, with force and arms, at*———*in the ſaid county*, [here ſet forth the nuſance;] *and the ſame* (nuſance) *ſo as aforeſaid done, doth yet continue and ſuffer to remain; to the com-*

mon nuſance of all the lieges and ſubjects of our ſaid lord the king, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.

Oaths.

I. Of oaths in general.
II. The common forms of oaths.
III. Quakers oaths.
IV. Oaths of infidels.

I. Of oaths in general.

Oath.

1. OATH is a corruption of the *Saxon* word *eoth*. 3 Inſt. 165.

Corporal oath.

2. It is called a corporal oath, becauſe the perſon lays his hand upon ſome part of the ſcriptures when he takes it. 3 *Inſt.* 165.

Oath taken on the common prayer book.

3. If the oath be taken on the common prayer book, which hath the epiſtles and goſpels, it is good enough, and perjury upon the ſtatute may be aſſigned upon this oath. 2 *Keb.* 314.

So help me god.

4. The words, *So help me God*, in the common form of an oath, perhaps may have been firſt uſed in the very ancient manner of trial by battle in this kingdom, or at leaſt are delivered with a peculiar emphaſis in that ſolemnity; wherein the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and ſwears to this effect. *Hear this, thou who calleſt thy ſelf* John *by the name of baptiſm, whom I hold by the hand, that falſly upon me thou haſt lied; and for this thou lieſt, that I who call my ſelf* Thomas *by the name of baptiſm did not felonioufly murder thy father* W. *by name*——*So help me god*——(and then he kiſſes the book, and ſays) *and this I will defend againſt thee by my body, as this court ſhall award.* And ſo the appellant is ſworn in like manner.

[Where we may obſerve alſo the genuine foundation, as it ſeemeth, of the *lie* being eſteemed ſtill ſo great an affront above all others, as, whenever it is pronounced, to cauſe an immediate affray and bloodſhed.]

5. No

5. No ancient oath can be altered, or new oath impoſed, without an act of parliament; nor can any oath be adminiſtred by any, that have not allowance by the common law time out of mind, or by an act of parliament. 2 *Inſt.* 479. 3 *Inſt.* 165. Power of adminiſtring an oath.

And this is the reaſon why generally there is a clauſe in the ſtatutes, giving power to the juſtices to this or the like effect [*which oath ſuch juſtice is hereby impowered to adminiſter*;] tho' it ſeems to be clear, that if an act impowers a juſtice, in a ſummary way to convict an offender by the oath of a witneſs, it doth (without any more) of neceſſity give him power to adminiſter the oath to that witneſs; and that it is ſufficiently implied in the words, and neceſſarily included in the power. For when the law grants any thing, that alſo is granted, without which the thing it ſelf cannot be. 12 *Co.* 130, 131.

6. Where an oath is adminiſtred by a perſon that hath lawful authority to tender the ſame, and it be afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor puniſhable by the common law. 3 *Inſt.* 166. Perjury.

Therefore if one call another a *perjured* man, he may have an action on the caſe, becauſe it ſhall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forſworn* man, no action lies; becauſe the forſwearing may be extrajudicial, and conſequently no perjury in law. 3 *Inſt.* 166.

7. Every layman, above the age of 12 years, was anciently obliged to take the oath of allegiance at the tourn or leet, and it was a high contempt to refuſe it. 1 *Inſt.* 68. Of the oath of allegiance.

But the clergy were not obliged to take the oath of allegiance till the reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *H. H.* 71, 72.

Lord *Hale*, ſpeaking of the ancient oath of allegiance, which continued above 600 years, ſays, that therein the prudence of the common law is obſervable, that it was ſhort and plain, not intangled with long and intricate clauſes or declarations, but that the ſenſe of it was obvious to the moſt common underſtanding, and yet withal comprehenſive of the whole duty of a ſubject to his prince. 1 *H. H.* 63. And from this the preſent form of the oath of allegiance hath not much varied.

8. The oath of ſupremacy came in, upon aboliſhing the papal authority at the reformation. *Read.* Oath. Of the oath of ſupremacy.

9. The oath of abjuration came in after the revolution; received ſome alterations in the firſt year of queen *Anne*; Of the oath of abjuration.

and again in the firſt year of king *George* the firſt; and ſo continues to this time.

Perhaps it might be wiſhed, that it were made more applicable to lord *Hale*'s rule, in being more ſhort and plain; there being in it ſeveral hard words, which probably many who take it do not well underſtand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have conſulted.

Summoning perſons to take the oaths.

10. Two juſtices may ſummon by writing under hand and ſeal, any perſon whom they ſhall ſuſpect to be dangerous or diſaffected to the government, to appear before them, at a certain day and time therein to be appointed, to take the oaths of allegiance, ſupremacy, and abjuration; and if ſuch perſon neglects or refuſes to appear, then on due proof made on oath of the ſummons having been ſerved on ſuch perſon, or left at his dwelling houſe, or uſual place of abode, with one of the family there, they ſhall certify the ſame to the next ſeſſions, there to be recorded by the clerk of the peace. And if ſuch perſon ſhall neglect or refuſe to appear and take the oaths at the ſaid ſeſſions (the name of ſuch perſon being publickly read at the firſt meeting of the ſaid ſeſſions), then ſuch perſon ſhall be eſteemed and adjudged a popiſh recuſant convict: and the ſame ſhall be thence certified, by the clerk of the peace, into the chancery or king's bench, to be there recorded. 1 *G. ſt.* 2. *c.* 13. *ſ.* 10, 11.

Whom they ſhall ſuſpect] It ſeemeth that a bare ſuſpicion is not ſufficient, but there ſhould be ſome good cauſe of ſuſpicion, and that the cauſe of ſuſpicion is traverſable. *Read.* Oath.

Refuſe—to take the oaths] A perſon cannot be ſaid to *refuſe* the oaths, unleſs they be read to him, or offered to be read. *Read.* Oath.

II. The common forms of oaths.

Oath of allegiance.

1. The oath of allegiance, by the 1 *G. ſt.* 2. *c.* 13.

I A. B. *do ſincerely promiſe and ſwear, that I will be faithful, and bear true allegiance to his majeſty king* George: *So help me god.*

Oath of ſupremacy.

2. The oath of ſupremacy, by the 1 *G. ſt.* 2. *c.* 13.

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*

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.

3. The oath of abjuration, by the 1 *G. ſt.* 2. *c.* 13. Oath of abjuration.

I A. B. *do truly and ſincerely acknowledge, profeſs, teſtify, and declare in my conſcience, before god and the world, that our ſovereign lord king* George *is lawful and rightful king of this realm, and all other his majeſty's dominions thereunto belonging. And I do ſolemnly and ſincerely declare, that I do believe in my conſcience, that the perſon pretended to be prince of* Wales, *during the life of the late king* James, *and ſince his deceaſe, pretending to be, and taking upon himſelf, the ſtyle and title of king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the ſtyle and title of king of* Great Britain, *hath not any right or title whatſoever, to the crown of this realm, or any other the dominions thereto belonging: And I do renounce, refuſe, and abjure any allegiance or obedience to him. And I do ſwear, that I will bear faith and true allegiance to his majeſty king* George, *and him will defend, to the utmoſt of my power, againſt all traiterous conſpiracies and attempts whatſoever, which ſhall be made againſt his perſon, crown, or dignity. And I will do my utmoſt endeavour, to diſcloſe and make known to his majeſty, and his ſucceſſors, all treaſons and traiterous conſpiracies which I ſhall know to be againſt him, or any of them. And I do faithfully promiſe, to the utmoſt of my power, to ſupport, maintain and defend the ſucceſſion of the crown againſt him the ſaid* James, *and all other perſons whatſoever; which ſucceſſion, by an act, intitled,* An act for the further limitation of the crown, and better ſecuring the rights and liberties of the ſubject, *is and ſtands limited to the princeſs* Sophia, *Electoreſs and dutcheſs dowager of* Hanover, *and the heirs of her body being proteſtants. And all theſe things I do plainly and ſincerely acknowledge and ſwear, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promiſe, heartily, willingly, and truly, upon the true faith of a chriſtian: So help me god.*

4. The declaration againſt tranſubſtantiation; by the 25 *C.* 2. *c.* 2. *ſ.* 9. Declaration againſt tranſubſtantiation.

I A. B. *do declare, that I do believe, that there is not any tranſubſtantiation in the ſacrament of the lord's ſupper or in the elements of bread and wine, at or after the conſecration thereof by any perſon whatſoever.*

5. The

Declaration againſt popery.

5. The declaration againſt popery; by the 30 *C.* 2. *ſt.* 2. *c.* 1.

I A. B. *do ſolemnly and ſincerely, in the preſence of god, profeſs, teſtify and declare, that I do believe, that in the ſacrament of the lord's ſupper there is not any tranſubſtantiation of the elements of bread and wine into the body and blood of* Chriſt, *at or after the conſecration thereof by any perſon whatſoever: And that the invocation, or adoration of the virgin* Mary, *or any other ſaint, and the ſacrifice of the maſs, as they are now uſed in the church of* Rome, *are ſuperſtitious and idolatrous: And I do ſolemnly in the preſence of god, profeſs, teſtify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary ſenſe of the words read unto me, as they are commonly underſtood by* Engliſh *proteſtants, without any evaſion, equivocation, or mental reſervation whatſoever, and without any diſpenſation already granted me for this purpoſe by the pope, or any other authority or perſon whatſoever,* or *without any hope of any ſuch diſpenſation from any perſon or authority whatſoever,* or *without thinking that I am or can be acquitted before god or man, or abſolved of this declaration, or any part thereof, although the pope, or any other perſon or perſons, or power whatſoever, ſhall diſpenſe with or annul the ſame, or declare that it was null or void from the beginning.*

III. Quakers oaths.

Affirmation allowed.

1. In all caſes wherein by any act of parliament an oath ſhall be allowed or required, the ſolemn affirmation of quakers ſhall be allowed inſtead of ſuch oath; and that, altho' no expreſs proviſion be made for that purpoſe in ſuch act. 22 *G.* 2. *c.* 46.

Perjury incurred by falſe affirmation.

2. And if any perſon ſhall be lawfully convicted of wilful, falſe, and corrupt affirming or declaring any matter or thing, which if ſworn in the uſual form would have amounted to wilful and corrupt perjury, he ſhall ſuffer as in caſes of perjury. 8 *G.* *c.* 6. *ſ.* 2.

Affirmation not allowed in criminal matters.

3. But no quaker ſhall by virtue hereof be qualified or permitted to give evidence in any criminal cauſe, or ſerve on any juries, or bear any office or place of profit in the government. 7 & 8 *W.* *c.* 34. *ſ.* 6.

In any criminal cauſe] By which words it ſeemeth, that a quaker ſhall not have ſureties of the peace or good behaviour granted to him, or have a warrant to ſearch for ſtolen goods, or ſue the hundred for damages in caſe of robbery,

robbery, and the like, upon his bare affirmation; but that in all ſuch caſes, an oath is firſt neceſſary to be made.

Thus, *T.* 4 *G.* 2. *K.* and *Wych.* It was denied to read a quaker's affirmation, on a motion for an *information* for a miſdemeanor. *Str.* 872.

T. 7 *G. Robins* and *Sayward.* By the court, We cannot ground an *attachment*, for non-performance of an award, on the affirmation of a quaker; for though it be in a ſuit between party and party, yet it is a criminal proſecution within the proviſo of the ſtatute. *Str.* 441.

H. 3 *G.* 2. *Caſtell*, widow, againſt *Bambridge* and *Corbet.* In an *appeal* of murder, a quaker was called for a witneſs, and it was inſiſted that this is a civil ſuit between party and party, and not between the king and the party, and therefore his affirmation ought to be taken. But *Raymond* Ch. J. ſaid, it was to this purpoſe a criminal proceeding, and therefore he could not be a witneſs. *Str.* 856.

General form of affirmation.

4. The quakers ſolemn affirmation, inſtead of an oath, as finally ſettled by the 8 *G. c.* 6. is as follows; *viz.*

"*I* A. B. *do ſolemnly, ſincerely, and truly declare and* "*affirm.*"

Declaration of fidelity.

5. Inſtead of the oaths of allegiance and ſupremacy, quakers ſhall be allowed to make the following declaration of fidelity; by the 8 *G. c.* 6.

I A. B. *do ſolemnly and ſincerely promiſe and declare, that I will be true and faithful to king* George; *and do ſolemnly, ſincerely, and truly profeſs, teſtify, and declare, that I do from my heart abhor, deteſt, and renounce, as impious and heretical, that wicked 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 power, juriſdiction, ſuperiority, pre-eminence, or authority, eccleſiaſtical or ſpiritual, within this realm.*

Abjuration.

6. And by the ſame act, they ſhall be allowed to take the effect of the abjuration oath, in theſe words;

I A. B. *do ſolemnly, ſincerely, and truly acknowledge, profeſs, teſtify, and declare, that king* George *is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do ſolemnly and ſincerely declare, that I do believe the perſon pretended to be the prince of* Wales, *during the life of the late king* James, *and ſince his deceaſe, pretending to be, and taking upon himſelf the ſtile and title of king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the ſtile and title of king of* Great Britain, *hath not any right or title whatſoever*

to

to the crown of this realm, nor any other the dominions thereunto belonging; and I do renounce and refuſe any allegiance or obedience to him. And I do ſolemnly promiſe, that I will be true and faithful, and bear true allegiance to king George, *and to him will be faithful againſt all traiterous conſpiracies and attempts whatſoever, which ſhall be made againſt his perſon, crown, or dignity. And I will do my beſt endeavour to diſcloſe and make known to king* George, *and his ſucceſſors, all treaſons and traiterous conſpicacies, which I ſhall know to be againſt him, or any of them. And I will be true and faithful to the ſucceſſion of the crown againſt him the ſaid* James, *and all other perſons whatſoever, as the ſame is and ſtands ſettled by an act, intitled,* An act declaring the rights and liberties of the ſubject, and ſettling the ſucceſſion of the crown, *to the late queen* Anne, *and the heirs of her body, being proteſtants; and as the ſame, by one other act, intitled,* An act for the further limitation of the crown, and better ſecuring the rights and liberties of the ſubject, *is and ſtands ſettled and intailed, after the deceaſe of the ſaid late queen; and for default of iſſue of the ſaid late queen, to the late princeſs* Sophia, *electoreſs and dutcheſs dowager of* Hanover, *and the Heirs of her body, being proteſtants. And all theſe things I do plainly and ſincerely acknowledge, promiſe, and declare, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever. And I do make this recognition, acknowledgment, renunciation, and promiſe, heartily, willingly, and truly.*

Profeſſion of belief.

7. The quakers profeſſion of their belief; by the 1 *W. c.* 18.

I A. B. *profeſs faith in god the father, and in* Jeſus Chriſt *his eternal ſon, the true god, and in the holy ſpirit, one god bleſſed for evermore; and do acknowledge the holy ſcriptures of the old and new teſtament to be given by divine inſpiration.*

IV. Oaths of infidels.

Jews.

1. A Jew is to be ſworn on the old teſtament, and perjury upon the ſtatute may be aſſigned upon this oath. 2 *Keb.* 314.

H. 2 *G.* 2. *Gomez Serra* and *Munez.* Upon error in debt upon a bond, the bail being both Jews, were ſuffered to put on their hats while they took the oath. *Str.* 821.

When Jews take the oath of abjuration, the words [*on the true faith of a chriſtian*] ſhall be omitted. 10 *G. c.* 4. *ſ.* 18.

2. At

2. At the council, *Dec.* 9, 1738. Preſent the two chief juſtices. On a complaint of *Jacob Fachina* againſt general *Sabine*, as governor of *Gibraltar*; *Alderaman Ben Monſo*, a Moor, was produced as a witneſs, and ſworn upon the *Koran*. Str. 1104. Mahometans.

So in the caſe of *Omichund* againſt *Barker*, in the court of chancery, a Mahometan was ſworn upon the *Koran*. Str. 1104.

Concerning the taking of oaths for qualifying for offices, ſee title Office.

And concerning the offences of profane curſing and ſwearing, ſee title Swearing.

Office.

I. Concerning the qualification for offices in corporations.

II. Concerning the qualification for offices in general.

III. Duty on the perquiſites of offices.

I. Qualification for offices in corporations.

1. NO perſon ſhall be placed, elected, or choſen, to any office or place of mayor, alderman, recorder, bailiff, town clerk, common council man, or other office of magiſtracy, place, or truſt, or other employment, relating to the government of cities, corporations, boroughs, cinque ports, and other port towns, who ſhall not have received the ſacrament according to the rites of the church of *England*, within one year next before ſuch election: and every perſon ſo placed or elected, ſhall take the oaths of allegiance and ſupremacy, at the ſame time that the oath of office is taken; which ſhall be adminiſtred by thoſe, who by charter or uſage adminiſter the oath of office; and in default of ſuch, by two juſtices of the corporation, if there be any ſuch; or otherwiſe by two juſtices of the county. And in default thereof every ſuch election and placing ſhall be void. 13 *C.* 2. *ſt.* 2. *c.* 1. 5 *G.* *c.* 6. *ſ.* 1, 2. To receive the ſacrament, and take the oaths.

And it hath been adjudged, to be no excuſe, that the oaths were not tendred. 1 *Haw.* 10.

Yet notwithſtanding that the words of this act of the 13 *C.* 2. (and alſo of the 25 *C.* 2. hereafter following) are

ſo

ſo very ſtrong as to make the officer's election void to all intents and purpoſes, yet it hath been ſtrongly holden, that the acts of a perſon under ſuch a diſability, being inſtated in ſuch an office, and executing the ſame without any objection to his authority, may be valid as to ſtrangers; for otherwiſe not only thoſe who no way infringe this law, but even thoſe whoſe benefit is intended to be advanced by it, might be ſufferers for another's fault, to which they are no way privy; and one chaſm in a corporation, happening thro' the default of one head officer, would perpetually vacate the acts of all others, whoſe authority, in reſpect of their admiſſion into their offices, or otherwiſe, may depend on his. 1 *Haw.* 10.

Entring the ſame.

2. Which ſaid juſtices abovementioned ſhall cauſe memorandums to be made of ſuch oaths taken before them, and delivered once a year to the town clerk, or other regiſter or clerk, who ſhall enter the ſame in their books. 13 *C.* 2. *ſt.* 2. *c.* 1.

Limitation of actions.

3. But no ſuch office ſhall be void on account of not having received the ſacrament, unleſs the perſon ſhall be removed in ſix months, or unleſs proſecution ſhall be commenced in ſix months, and carried on without wilful delay. 5 *G.* *c.* 6. *ſ.* 3.

Clauſe of indemnification.

4. And by the 1 *G.* 3. *c.* 12. Perſons who have omitted ſo to qualify, ſhall be indemnified, if they qualify on or before *Feb.* 12. 1762.

And by the 28 *G.* 2. *c.* 3. Perſons who had omitted to take the *oath of office* were indemnified, if they ſhould take the ſame on or before *Sept.* 29. 1755.

And by the 29 *G.* 2. *c.* 32. Perſons whoſe admiſſions have not been provided, or not duly ſtamped, or loſt or miſlaid, ſhall be indemnified, if they provide the ſame duly ſtamped on or before *Nov.* 8. 1756.

And probably there may be ſome clauſe of indemnification in ſome future act, as there hath been from time to time heretofore.

II. Qualification for offices in general.

Receiving the ſacrament and ſubſcribing the declaration.

1. Every perſon who ſhall be admitted into any office civil or military, or ſhall receive any pay by reaſon of any patent or grant from the king, or ſhall have any command or place of truſt in *England* or in the navy, or ſhall have any ſervice or employment in the king's houſehold; ſhall, within three months after his admiſſion, receive the ſacrament according to the uſage of the church of *England* in ſome publick church on the lord's day, immediately after

after divine ſervice and ſermon: and in the court where he takes the oaths (as hereafter mentioned, which ſhall be within ſix months after his admiſſion) he ſhall firſt deliver a certificate of ſuch his receiving the ſacrament, under the hands of the miniſter and churchwarden, and ſhall then make proof of the truth thereof by two witneſſes on oath. And they ſhall alſo, when they take the ſaid oaths, make and ſubſcribe the declaration againſt tranſubſtantiation. 25 *C.* 2. *c.* 2. *ſ.* 2, 3, 9.

Any office civil or military] This ſeemeth evidently not to extend to eccleſiaſtical offices; and it may well be taken for granted, that clergymen, need not to make ſuch proof of their conformity to the church of *England*. But, by the following ſtatute, they are to take the oaths as other perſons qualifying for offices.

Alſo this ſhall not extend to the office of any high conſtable, petty conſtable, tithingman, headborough, overſeer of the poor, churchwarden, ſurveyor of the highways, or any like inferior civil office, or to any office of foreſter, or keeper of any park, chace, warren, or game, or of bailiff of any manor or lands, or to any like private offices. *ſ.* 17.

2. And by the 1 *G. ſt.* 2. *c.* 13. Every perſon who ſhall be admitted into any office civil or military; or ſhall receive any pay by reaſon of any patent or grant from the king; or ſhall have any command or place of truſt in *England*, or in the navy; or ſhall have any ſervice or employment in the king's houſhold; all eccleſiaſtical perſons; heads and members of colleges, being of the foundation, or having any exhibition, of eighteen years of age; and all perſons teaching pupils; ſchoolmaſters and uſhers; preachers and teachers of ſeparate congregations; high conſtables; and practiſers of the law, ſhall (within ſix kalendar months after ſuch admiſſion, 9 *G.* 2. *c.* 26. *ſ.* 3.) take and ſubſcribe the oaths of allegiance, ſupremacy, and abjuration, in one of the courts at *Weſtminſter*, or at the quarter ſeſſions; 1 *G. ſt.* 2. *c.* 13. *ſ.* 2. between the hours of nine and twelve in the forenoon, and no other; and during the time of taking thereof, all proceedings in the ſaid courts ſhall ceaſe. 25 *C.* 2. *c.* 2. *ſ.* 2. Taking the oaths.

But this ſhall not extend to the office of tythingman, headborough, overſeer of the poor, churchwarden, ſurveyor of the highways, or any like inferior civil office, or to any office of foreſter, or keeper of any park, chace, warren, or game, or of bailiff of any manor or lands, or to any like private offices. 1 *G. ſt.* 2. *c.* 13. *ſ.* 20.

Which exception is the ſame with that in the 25 *C.* 2. ſave only, that *high conſtables* and *petty conſtables* by name are here omitted. *Petty conſtables* nevertheleſs ſeem to be excepted, as holding a *like inferior civil office* with the *tithingman* or *headborough:* But *high conſtables* are expreſly inſerted amongſt the other officers required to take the oaths; although they are exempted by the former act, from being required to produce a certificate of their having received the ſacrament, and from ſubſcribing the declaration againſt tranſubſtantiation.

Inrolling and fee. 3. And the court ſhall inroll ſuch perſons names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpoſe only; which ſhall be hung up in ſome publick place of ſuch court during the whole time of its ſitting, to be ſeen without fee. 25 *C.* 2. *c.* 2. *ſ.* 6.

And the clerk of the peace ſhall have no more than 2*s.* for the entry. 1 *G. ſt.* 2. *c.* 13. *ſ.* 9.

But no ſeaman or ſoldier, under the degree of a commiſſion or warrant officer, ſhall pay any fee for taking the oaths. 1 *G. ſt.* 2. *c.* 13. *ſ.* 31.

Penalty of executing the office unqualified. 4. Every perſon, making default herein, ſhall be incapable to hold his office; and if he ſhall execute his office, after the ſaid times are expired, he ſhall, upon conviction, be diſabled to ſue in any action, or to be guardian, or executor, or adminiſtrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and ſhall forfeit 500*l.* to him who ſhall ſue for the ſame. 25 *C.* 2. *c.* 2. *ſ.* 4, 5. 1 *G. ſt.* 2. *c.* 13. *ſ.* 8.

Exception of perſons beyond ſea. 5. But perſons beyond the ſeas, ſhall not be diſabled, if they ſhall qualify within ſix months after their return. 9 *G.* 2. *c.* 26. *ſ.* 4.

Feme covert: Infant: Non compos. 6. Alſo no married woman, or perſon under 18 years of age, or *non compos mentis*, ſhall forfeit their office (other than ſuch married woman during the life of her huſband only) if they take the oaths, and do the other things required, within four months reſpectively, after the death of the huſband, coming to the age of 18 years, and becoming of ſound mind. 25 *C.* 2. *c.* 2. *ſ.* 13.

General clauſe of indemnification. 7. Likewiſe, by the 1 *G.* 3. *c.* 12. perſons having omitted to qualify themſelves in due time, ſhall be indemnified (if their place is not filled up), provided they qualify on or before Feb. 12. 1762.

And there is commonly an indemnifying clauſe to the like purpoſe in ſome act, every two or three years.

By the 20 *G.* 2. *c.* 48. perſons who had omitted to ſubſcribe

ſubſcribe the declaration againſt popery, of the 30 *C.* 2. were indemnified, if they ſubſcribed on or before Dec. 1. 1747.——Note, In the ſeveral acts of indemnification of late years, it ſeemeth to have been intended to comprehend perſons who had omitted to ſubſcribe this declaration, by reciting the ſaid act of the 30 *C.* 2. in the preamble; but the ſame is dropped in the enacting part, by confounding (as it ſeemeth) the declaration againſt *tranſubſtantiation* of the 25 *C.* 2. with the declaration againſt *popery* of the 30 *C.* 2.

8. Alſo, any perſon forfeiting his office, may take a new grant thereof, on his taking the oaths, and conforming; provided it be not filled up before. 1 *G. ſt.* 2. *c.* 13. *ſ.* 14. Perſons diſqualified may take a new grant.

9. In the univerſities, where perſons ſhall not take the oaths, or ſhall not produce a certificate thereof, to be regiſtred in their proper college, and others be not elected in their places within 12 months, the king ſhall appoint and nominate. 1 *G. ſt.* 2. *c.* 13. *ſ.* 12, 13. Perſons diſqualified in the univerſities.

10. Perſons refuſing the oaths, having any office of inheritance, may appoint a deputy, ſo as ſuch deputy be approved by the king under his privy ſignet. 1 *G. ſt.* 2. *c.* 13. *ſ.* 18. Offices of inheritance may be executed by deputy.

Note, The forms of the aboveſaid oaths and declarations, are inſerted in the title *Oaths*.

III. Duty on the perquiſites of offices.

1. By the 31 *G.* 2. *c.* 22. altered and explained by the 32 *G.* 2. *c.* 33. there are certain duties laid upon offices and penſions; and ſo much of the ſalaries of ſuch offices, as ariſeth from perquiſites, is directed to be under the management of the commiſſioners of the land tax. Duty on the perquiſites of offices.

2. By *perquiſites* are meant ſuch profits of offices and employments, as ariſe from fees eſtabliſhed by cuſtom or authority, and payable either by the crown, or the ſubjects, in conſideration of buſineſs done in the courſe of executing ſuch offices or employments. 32 *G.* 2. *c.* 33. *ſ.* 8. Perquiſites what.

3. And there ſhall be paid yearly, over and above all other duties, 1s. for every 20s. of the yearly value of all ſalaries fees and perquiſites, incident unto or received for or in reſpect of all offices and employments of profit in *Great Britain*, and the like ſum of 1s. for every 20s. of all *penſions* and other gratuities payable out of any revenue belonging to his majeſty in *Great Britain*, exceeding the value of 100l. a year. 31 *G.* 2. *c.* 22. *ſ.* 1. General duty on offices and penſions.

And a deduction ſhall be made thereof in the exchequer; or if paid by any perſon, and not out of the exchequer, then the ſame ſhall be paid by ſuch perſon into the exchequer. 31 *G.* 2. *c.* 22. *ſ.* 2.

So much thereof as relates to perquiſites, to be under the management of the commiſſioners of the land tax.

4. But where the profits of ſuch offices ſhall ariſe, in the whole or in part, from perquiſites due and payable in the courſe of office, and not from ſalaries, fees, and wages paid by the crown; the ſame ſhall be under the management of the commiſſioners of the land tax, who ſhall aſcertain, according to the valuation of ſuch offices to the land tax, or otherwiſe according to their beſt judgment, the ſum total of the perquiſites ariſing from ſuch office, diſtinct from the ſalary, fees, and wages thereof. 31 *G.* 2. *c.* 22. *ſ.* 3, 5, 6. 32 *G.* 2. *c.* 33. *ſ.* 5.

Manner of laying the aſſeſſment.

5. In order whereunto the commiſſioners ſhall meet at the moſt common places of meeting, yearly on or before July 3d, and afterwards as often as ſhall be neceſſary; and may ſubdivide; and any two or more of them, at ſuch general meeting, or within 8 days after, ſhall ſet down in writing, in a rate to be by them prepared for that purpoſe, the amount of the ſaid duty of 1s. in the pound, to be paid by all officers, their clerks, or agents, exerciſing any of the ſaid employments, the ſalary wages fees and perquiſites whereof exceed the value of 100l. a year. 31 *G.* 2. *c.* 22. *ſ.* 6.

And for the better aſcertaining thereof, the receiver to be appointed by his majeſty for theſe duties ſhall tranſmit to the commiſſioners of the land tax in every diſtrict where any office is to be aſſeſſed, an account of all ſuch offices whereof the ſalaries fees and wages do not exceed 100l. a year; and if the commiſſioners ſhall find that the perquiſites ariſing from ſuch office, together with the ſalary fees and wages thereof as certified by the receiver, do exceed together the amount of 100l. a year, they ſhall aſſeſs ſuch office, and cauſe the duty of 1s. a pound to be levied and collected thereon. 32 *G.* 2. *c.* 33. *ſ.* 6.

And where any perſon ſhall have two or more offices in any part of *Great Britain*, the ſalary and perquiſites whereof together exceed 100l. a year; ſuch perſon ſhall pay 1s. in the pound for the profits of ſuch offices, notwithſtanding the ſalary and perquiſites of no one of the ſaid offices are of the value of 100l. a year. 31 *G.* 2. *c.* 22. *ſ.* 23.

And deputies ſhall be liable to pay for their principals, and deduct the ſame out of the profits of their office. *ſ.* 27.

Exemptions.

6. Provided, that nothing herein ſhall extend to any ſalaries,

ries, fees, penſions, or perquiſites belonging to the Princeſs dowager of Wales, or to the duke of Cumberland. 31 *G.* 2. *c.* 22. *ſ.* 8, 9.

Nor to the pay of commiſſion or non-commiſſion officers or private men ſerving in the navy or army. *ſ.* 24.

Nor to the pay of any military officers ſerving on the ſtaff, or belonging to any of his majeſty's garriſons, regiments, troops, companies, Chelſea hoſpital, or the hoſpitals of the army. 32 *G.* 2. *c.* 33. *ſ.* 11.

Nor to ſuch penſions or gratuities as the king ſhall declare in the warrant directing the payment thereof, to be intended as charitable donations. 32 *G.* 2. *c.* 33. *ſ.* 10.

Nor to any penſion, annuity, rent, or ſum charged upon the revenue by any of the king's predeceſſors, or by act of parliament, granted to any perſon in fee or fee tail, or till redeemed by payment of any ſum mentioned in any grant or act of parliament. *ſ.* 12.

Nor ſhall any thing in the ſaid act of the 32 *G.* 2. extend to to charge any offices or employments in either of the two univerſities, with the duty by the ſaid act of 32 *G.* 2. impoſed. *ſ.* 13.

Signing the aſſeſſment.

7. And the ſaid commiſſioners, or any three of them, ſhall within the time above limited ſign and ſeal two duplicates of the ſaid rates, and cauſe one of them to be delivered to the collectors of the land tax for each place reſpectively, or to ſuch other two honeſt and reſponſible perſons as they ſhall at their diſcretion appoint to be collectors thereof; with warrant to collect. 31 *G.* 2. *c.* 22. *ſ.* 6.

Appeal.

8. Perſons thinking themſelves aggrieved by being *over rated*, may appeal to the barons of the exchequer; and the ſaid barons, or one of them, ſhall hear and determine all ſuch appeals, on or before the laſt day of *Michaelmas* term yearly.—Perſons charged, may inſpect the rates in the day time; without fee.—Notice of appeal, to be given in writing to a collector. 31 *G.* 2. *c.* 22. *ſ.* 6.

And if any diſpute ſhall ariſe, whether the fees, ſalary or wages of any office or employment, or whether any penſion or gratuity, be *chargeable*, or touching the ſum which ought to be ſtopped and deducted thereout; the ſame ſhall be heard by the barons of the exchequer, on complaint or repreſentation laid in writing before them, either by the party grieved, or by the receiver. And the complainant ſhall give a copy of his complaint to the perſon againſt whom the ſame is made, within ten days after it ſhall have been lodged with the barons. And they ſhall hear and determine ſuch diſpute in a ſummary way, and

their determination ſhall be final. 32 *G.* 2. *c.* 33. *ſ.* 3, 4.

Duplicates to be tranſmitted.

9. The commiſſioners ſhall cauſe to be delivered a duplicate in parchment, under their hands and ſeals, containing the whole ſum rated within each pariſh or place, to the ſaid receiver; and another, into the remembrancer's office in the exchequer; on or before the firſt day of Hilary term, or within 20 days after (all appeals being firſt determined). 31 *G.* 2. *c.* 22. *ſ.* 6.

Collecting.

10. And the ſaid duty ſhall be collected (where it is not herein otherwiſe directed) in all reſpects as the land tax for the year 1758. 31 *G.* 2. *c.* 22. *ſ.* 7.

And in all caſes where any fees, ſalaries, wages, or other allowances or profits on any office, ſhall be payable at the receipt of the exchequer, or by the cofferer of his majeſty's houſhold, or out of any other publick office, or by any of his majeſty's receivers or paymaſters; the duty, in caſe of non-payment, may be ſtopped there. *ſ.* 26.

Collector paying to the receiver.

11. And the payment of the ſaid ſums collected ſhall be paid to the receiver, in the courſe of the quarter wherein the ſame ſhall have been deducted; who ſhall give receipts for the ſame. 31 *G.* 2. *c.* 22. *ſ.* 12. 32 *G.* 2. *c.* 33. *ſ.* 1.

Receiver paying into the exchequer.

12. And the receiver ſhall, within the next quarter, pay the ſame into the exchequer. 32 *G.* 2. *c.* 33. *ſ.* 1.

Orchards. See Wood.
Overſeers of the poor. See Poor.
Outlawry. See Proceſs.
Pamphlets. See Stamps.
Paper. See Exciſe.
Papiſts. See Popery.
Parchment. See Stamps.

Pardon.

Pardon, what.

1. A Pardon is a work of mercy, whereby the king, either before the attainder, ſentence, or conviction, or after, forgiveth any crime, offence, puniſhment, execution, right, title, debt, or duty, temporal or eccleſiaſtical. 3 *Inſt.* 233.

2. Par-

2. Pardons are either *general* or *ſpecial*: *General*, are by act of parliament; of which, if they are without exceptions, the court muſt take notice *ex officio*; but if there are exceptions therein, the party muſt aver that he is none of the perſons excepted. 3 *Inſt.* 233. *Hale's Pl.* 252. General pardon.

By the act of 20 *G.* 2. *c.* 52. for the king's general pardon; All perſons are pardoned and diſcharged from all treaſons, miſpriſions of treaſons, felonies, treaſonable and ſeditious words and libels, leaſing making, miſpriſions of felony, offences whereby any perſon may be charged with the penalty of præmunire, riots, routs, offences, contempts, treſpaſſes, entries, wrongs, deceits, miſdemeanors, forfeitures, penalties, ſums of money, pains of death, pains corporal, and pains pecuniary, and generally from all other things, cauſes, quarrels, ſuits, judgments, and executions, not by this act excepted, which can by the king be pardoned, and which were done or incurred before *June* 15. 1747.—Excepted, perſons in the ſervice of the pretender, or of *France* or *Spain*; forging the king's ſeal; coining; violating the privileges of ambaſſadors; murders; petty treaſons; poiſonings; burning of houſes, corn, hay, ſtraw, wood; ſhooting at any perſon; ſending threatning letters; piracy; deſtroying ſhips; offences in the navy or army; burglary; ſacrilege; robbery; ſodomy; buggery; rape; perjury; ſubornation; forgery; felony in caſes of bankruptcy; deſtroying banks of rivers and ſea banks; firing coal pits; offences againſt the exciſe, cuſtoms, land tax, poſt office, ſtamp duties, duty on houſes and windows, wool, importing or exporting goods; offences concerning highways or bridges; imbezilling goods, and warlike ſtores of the crown; titles of quare impedit; inceſt; ſimony; dilapidations; firſt fruits; tenths; money due to the king from publick officers on account; perſons tranſported; offences by papiſts; contempts in cauſes for non-performance of awards, or non-payment of coſts; contempts in eccleſiaſtical courts, in cauſes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, ſeveral perſons by name.

And the like, for the moſt part, hath been enacted by former ſtatutes of general pardon.

3. *Special* pardons, are either *of courſe*, as to perſons convicted of manſlaughter, or *ſe defendendo*, and by divers ſtatutes to thoſe who ſhall diſcover their accomplices in ſeveral felonies; or, *of grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they muſt be pleaded. 3 *Inſt.* 233. Special pardons.

Pardon to contain the ſuggeſtion.

4. By the 27 *Ed.* 3. *c.* 2. In every charter of the pardon of felony, the ſuggeſtion, and the name of him that maketh the ſuggeſtion, ſhall be comprized; and if it be found untrue, the charter ſhall be diſallowed.

Pardon to ſpecify the offence.

5. And by the 13 *R.* 2. *ſt.* 2. *c.* 1. No charter of pardon ſhall be allowed for murder, treaſon, or rape, unleſs the offence be ſpecified therein.

Lord *Coke* ſays, the intention of this act was not, that the king ſhould grant a pardon of murder by expreſs name in the charter, but becauſe the whole parliament conceived that he would never pardon murder by ſpecial name. And he ſays, he hath never ſeen any pardon of murder by any king of *England*, by expreſs name. 2 *Inſt.* 233, 236.

The king cannot pardon an offence before it is committed.

6. The king cannot pardon an offence before it is committed; but ſuch pardon is void. 2 *Haw.* 389.

Cannot pardon an appeal.

7. As the releaſe of the party will not bar an indictment at the ſuit of the king; ſo neither will a pardon by the king be any bar to an appeal at the ſuit of the party. 2 *Haw.* 392.

Cannot pardon a nuſance.

8. And in ſome caſes even where the king is ſole party, ſome things there are which he cannot pardon; as for example, for all common nuſances, as for not repairing of bridges or highways, the ſuit (for avoiding multiplicity of ſuits) is given to the king only, for redreſs and reformation thereof; but the king cannot pardon or diſcharge either the nuſance, or the ſuit for the ſame; becauſe ſuch pardon would take away the only means of compelling a redreſs of it. But it hath been holden by ſome, that a pardon of ſuch offence will ſave the party from any fine, for the time precedent to the pardon. 3 *Inſt.* 237. 2 *Haw.* 391.

Cannot diſcharge a recognizance.

9. Thus alſo, if one be bound by recognizance to the king, to keep the peace againſt another by name, and generally all other lieges of the king; in this caſe, before the peace be broken, the king cannot pardon or releaſe the recognizance, altho' it be made only to him, becauſe it is for the benefit and ſafety of his ſubjects. 3 *Inſt.* 238.

Cannot releaſe an information qui tam.

10. Likewiſe, after an action popular is brought, *as well for the king as for the informer*, according to any ſtatute, the king can but diſcharge his own part, and cannot diſcharge the informer's part; becauſe by bringing of the action, the informer hath an intereſt therein: but before the action brought, the king may diſcharge the whole (unleſs it be provided to the contrary by the act) becauſe the informer cannot bring an action or information originally for his part only, but muſt purſue the ſtatute. And if the action be given to the *party grieved*, the king cannot diſcharge the ſame. 3 *Inſt.* 238.

11. It

11. It ſeems to have been always agreed, that the king's pardon will diſcharge any ſuit in the ſpiritual court *ex officio*: Alſo it ſeems to be ſettled at this day, that it will diſcharge any ſuit in ſuch court at the inſtance of the party, for the reformation of manners, or welfare of the ſoul, as for defamation, or laying violent hands on a clerk, and ſuch like; for ſuch ſuits are in truth the ſuits of the king, tho' proſecuted by the party. Alſo, it ſeems to be agreed, that if the time to which ſuch pardon hath relation, be prior to the award of coſts to the party, it ſhall diſcharge them: And it ſeems to be the general tenor of the books, that tho' it be ſubſequent to the award of the coſts, yet if it be prior to the taxation of them, it ſhall diſcharge them; becauſe nothing appears in certain to be due for coſts before they are taxed. 2 *Haw.* 394. May diſcharge a ſuit in the ſpiritual court.

But it ſeems agreed, that a pardon ſhall not diſcharge a ſuit in the ſpiritual court, any more than in a temporal, for a matter of intereſt or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and ſuch like. 2 *Haw.* 394.

12. If the king releaſe to a man all debts, this ſhall not diſcharge his partner; but otherwiſe it is in caſe of a ſubject, for in that caſe the releaſe to one diſchargeth both. 3 *Inſt.* 239. Doth not by releaſing a man releaſe his partner.

13. When a pardon is pleaded by any one for felony, the juſtices may at their diſcretion remand him to priſon till he enter into recognizance, with two ſureties, for his good behaviour, for any time not exceeding ſeven years. 5 *W. c.* 13. Perſon pardoned may be bound to the good behaviour.

14. It ſeems to be a ſettled rule, that no pardon by the king, without expreſs words of reſtitution, ſhall deveſt, either from the king or ſubject, an intereſt either in lands or goods, veſted in them, by an attainder or conviction precedent: Yet it ſeems agreed, that a pardon prior to a conviction, ſhall prevent any forfeiture either of lands or goods. 2 *Haw.* 396. Pardon doth not reſtore lands or goods forfeited.

15. A pardon after the attainder, doth not reſtore the corruption of blood; for this cannot be reſtored but by act of parliament. 3 *Inſt.* 233. Doth not reſtore the corruption of blood.

But as to iſſue born after the pardon, it hath the effect of a reſtitution of blood. 1 *H. H.* 358.

16. It ſeems to be ſettled at this day, that the pardon of a treaſon or felony, even after a conviction or attainder, doth ſo far clear the party from the infamy and all other conſequences of his crime, that he may not only have an action for a ſcandal, in calling him traytor or felon, after the time of the pardon, but may alſo be a good witneſs, Doth reſtore the credit.

notwithſtanding the attainder or conviction; becauſe the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Haw.* 395.

But it ſeems to be the better opinion, that the pardon of a conviction of *perjury* doth not ſo reſtore the party to his credit, as to make him a good witneſs; becauſe it would be an injury to the people in general, to make them ſubject to ſuch a perſon's teſtimony. 1 *Vent.* 349.

Parliament.

Electors to be aſſeſſed to the land tax.

1. BY the 18 *G.* 2. *c.* 18. No perſon ſhall vote in the election of a knight of the ſhire, in reſpect of any lands which have not been aſſeſſed to the land tax 12 kalendar months next before ſuch election.——And three commiſſioners of the land tax ſhall ſign and ſeal a duplicate of the aſſeſſments (to be delivered to them by the aſſeſſors) after all appeals determined, and deliver the ſame to the clerk of the peace, to be kept amongſt the records, and be inſpected by any perſon at ſeaſonable times (paying 6 d. for ſuch inſpection), and the clerk of the peace ſhall give copies to any perſon paying after the rate of 6 d. for every 300 words.

Election.

2. By the 2 *G.* 2. *c.* 24. which act is required to be read at every *Eaſter* ſeſſions, the returning officer of a member of the houſe of commons, ſhall after reading the writ, and before the election, take the oath againſt bribery, and that he will make a due return; to be adminiſtred by one juſtice (or in his abſence by three of the electors) and entred amongſt the records of the ſeſſions.

And by the 9 *An.* *c.* 5. The oath of the qualification of a candidate ſhall be adminiſtred by two juſtices, who ſhall certify the ſame in three months into the chancery or king's bench, on pain of 100 *l.* And thereupon no fee ſhall be paid, but 1 *s.* for the oath, 2 *s.* for the certificate, and 2 *s.* for the filing.

And by the 10 *An.* *c.* 23. The ſheriff in 20 days after the election ſhall deliver the poll books upon oath to the clerk of the peace, to be kept among the records of the ſeſſions; which oath ſhall be adminiſtred by the two next juſtices (1 *Q.*)

Privilege.

3. A member of parliament ſhall have the privilege of parliament, not only for himſelf and his ſervants, to be freed from arrects, ſubpœna, citations, and the like; but alſo

alſo for his horſes and goods to be free from diſtreſſes: but for treaſon, felony, and breach of the peace, there can be no privilege. 4 *Inſt.* 24, 25.

And by the 12 & 13 *W.* *c.* 3. and 11 *G.* 2. *c.* 24. Actions may be commenced and proceeded on, againſt peers or members of parliament, immediately after any diſſolution, or prorogation for above 14 days, until they meet again.—Allowing nevertheleſs a reaſonable time for their return from parliament; for their privilege exiſteth, not only during the time of their ſitting, but for a reaſonable time both before and after, for their going and returning. *Stra.* 985. Col. *Pitt*'s caſe.

But it is ſaid to have been declared by a reſolution of the houſe of commons, *Mar.* 23, 1696. that no member of that houſe hath any privilege againſt payment of any aids, ſupplies, or tax granted to his majeſty, or any pariſh duties.

4. If at any time in caſe of invaſion, or upon imminent danger thereof, or in caſe of rebellion, the parliament ſhall happen to be ſeparated by ſuch adjournment or prorogation, as will not expire within 14 days; it ſhall be lawful for his majeſty to iſſue a proclamation for the meeting of the parliament upon ſuch day as he ſhall thereby appoint, giving 14 days notice of ſuch appointment; and the parliament ſhall accordingly meet upon ſuch day, and continue to ſit and act as if it had ſtood adjourned or prorogued to the ſame day. 30 *G.* 2. *c.* 25. *ſ.* 46. To meet in caſe of invaſion.

5. By the 7 & 8 *W.* *c.* 15. The parliament ſhall not be diſſolved by the king's death or demiſe, but ſhall continue to ſit and act for ſix months, unleſs ſooner diſſolved by the ſucceſſor: and if there be no parliament; the next preceding parliament ſhall meet and act, as if they had not been diſſolved. In caſe of the king's death or demiſe.

Partition.

BY the 8 & 9 *W.* *c.* 31. intituled, An act for the eaſier obtaining partitions of lands in coparceny, joint-tenancy, and tenancy in common, it is enacted, that if the high ſheriff cannot conveniently be preſent at the execution of any judgment in partition, in ſuch caſe the under ſheriff in preſence of two juſtices may proceed to execution of the writ of partition.

Partridge

Partridge. See Game.
Pawning of goods. See Cheat.
Peace. See Surety.
Pedlars. See Hawkers.

Peers.

Not conſervators of the peace.

1. DUKES, earls, and barons are not conſervators of the peace at common law; and have no more power as ſuch, than mere private perſons. 2 *Haw.* 32.

Sureties of the peace againſt them.

2. The ſafeſt way of proceeding againſt a peer, for ſureties of the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

Trial of peers.

3. A nobleman muſt be tried by his peers: but this is to be underſtood only at the ſuit of the king, upon an indictment of high treaſon, petit treaſon, felony, or miſpriſion thereof; but in caſe of a præmunire, riot, or the like, and generally for all other crimes out of parliament (unleſs otherwiſe ſpecially provided for by ſtatute, as it is in many inſtances), tho' it be at the ſuit of the king, he ſhall not be tried by his peers, but by the freeholders of the county. 3 *Inſt.* 30. 2 *Haw.* 424.

Whether they may be outlawed.

4. Proceſs of outlawry lies againſt a peer, if he be indicted, and appears not, and cannot be taken; otherwiſe he might take advantage of his own contumacy. 3 *Inſt.* 31.

Whether they ſhall be burnt in the hand.

5. Peers ſhall have the benefit of clergy for the firſt offence of felony, without burning in the hand. 1 *Ed.* 6. *c.* 12. *ſ.* 14.

Evidence.

6. A peer produced as a witneſs, ought to be ſworn. 3 *Keb.* 631.

Perry. See Exciſe.

Perjury and ſubornation.

I. Of perjury and ſubornation by the common law.
II. Of perjury and ſubornation by the ſtatute of the 5 El.
III. Of matters common to them both.

I. Of perjury and ſubornation by the common law.

1. PERJURY by the common law, ſeemeth to be *a wilful falſe oath, by one who being lawfully required to depoſe the truth in any judicial proceeding, ſwears abſolutely, in a matter material to the point in queſtion, whether he be believed or not.* 1 Haw. 172. 3 Inſt. 164. Perjury at the common law.

Wilful] The falſe oath alledged againſt him, ſhould be proved to be taken with ſome degree of deliberation; for if upon the whole circumſtances of the caſe it ſhall appear probable, that it was owing rather to the weakneſs than perverſeneſs of the party, as where it was occaſioned by ſurprize, or inadvertency, or a miſtake of the true ſtate of the queſtion, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 *Haw.* 172.

Falſe] It is ſaid not to be material, whether the fact which is ſworn, be in it ſelf true or falſe; for however the thing ſworn may happen to prove agreeable to the truth, yet if it were not known to be ſo by him who ſwears to it, his offence is altogether as great as if it had been falſe, inaſmuch as he wilfully ſwears that he knows a thing to be true, which at the ſame time he knows nothing of, and impudently endeavoars to induce thoſe before whom he ſwears, to proceed upon the credit of a depoſition, which any ſtranger might make as well as he. 1 *Haw.* 175.

Being lawfully required] It ſeemeth clear, that no oath whatſoever, taken before perſons acting merely in a private capacity; or before thoſe who take upon them to adminiſter oaths of a publick nature, without legal authority; or before thoſe who are legally authorized to adminiſter ſome kinds of oaths, but not thoſe which happen to be taken before them; or even before thoſe who take upon them to adminiſter juſtice by virtue of an authority ſeemingly colourable, but in truth unwarranted and merely void,

void,——can amount to perjuries, but are altogether idle and of no force. 1 *Haw.* 174.

In any judicial proceeding] For tho' an oath be given by him that hath lawful authority, and the ſame is broken, yet if it be not in a judicial proceeding, it is not perjury; becauſe ſuch oaths are general and extrajudicial: but it ſerves for aggravation of the offence. Such are, general oaths given to officers or miniſters of juſtice, the oath of fealty and allegiance, and ſuch like. Thus if an officer commit extortion, it is againſt his general oath, but yet not perjury, becauſe not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may ſerve for aggravation. 3 *Inſt.* 166.

If a perſon calleth another *perjured* man, he may have his action upon his caſe, becauſe it muſt be intended contrary to his oath in a judicial proceeding; but for calling him a *forſworn* man, no action doth lie, becauſe the forſwearing may be extrajudicial. 3 *Inſt.* 166.

Swears abſolutely] For the depoſition muſt be direct and abſolute; and not, as he thinketh, or remembreth, or believeth, or the like. 3 *Inſt.* 166.

In a matter material to the point in q eſtion] For if it be not material, then tho' it be falſe, yet it is no perjury, becauſe it concerneth not the point in iſſue, and therefore in effect it is extrajudicial. 3 *Inſt.* 167.

But it is not neceſſary that it appear *to what degree*, the point in which a man is perjured, was material to the iſſue; for if it is but circumſtantially material, it will be perjury. L. *Raym.* 258.

Much leſs is it neceſſary that the evidence be ſufficient for the plaintiff to recover upon; for in the nature of the thing, an evidence may be very material, and yet it may not be full enough to prove directly the point in queſtion. L. *Raym.* 889.

Whether he be believed or not] It hath been holden, not to be material upon an indictment of perjury at common law, whether the falſe oath were at all credited, or whether the party in whoſe prejudice it was intended, were in the event any way aggrieved by it or not; inſomuch as this is not a proſecution grounded on the damage of the party, but on the abuſe of publick juſtice. 1 *Haw.* 177.

Subornation at common law.

2. Subornation of perjury, by the common law, ſeems to be *an offence, in procuring a man to take a falſe oath, amounting to perjury, who actually taketh ſuch oath.* 1 Haw. 177.

But

But it ſeemeth clear, that if the perſon incited to take ſuch an oath, do not actually take it, the perſon by whom he was ſo incited is not guilty of ſubornation of perjury; yet it is certain, that he is liable to be puniſhed, not only by fine, but alſo by infamous corporal puniſhment. *id.*

Puniſhment of periury and ſubornation by the common law.

3. The puniſhment of perjury, and ſubornation of perjury by the common law, is reſtrained by the ſtatute of the 5 *El.* hereafter following; that it ſhall not be leſs, than is inflicted by that ſtatute.

Power of juſtices of the peace therein.

4. Mr. *Hawkins* ſays, it hath been of late ſettled, that juſtices of the peace have no juriſdiction over perjury at the common law; the principal reaſon of which reſolution, he ſays, as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was, for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* (in the commiſſion) in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only, or at the moſt to extend to ſuch other offences only, as have a direct and immediate tendency to cauſe ſuch breaches of the peace; as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40.

And in the caſe of *K.* and *Bainton*, *E.* 11 *G.* 2. An indictment at the quarter ſeſſions for perjury at the common law, was quaſhed for want of juriſdiction; and was ſaid to have been done ſo about three years before, in the caſe of *K.* and *Weſtineſs*. Str. 1088.

II. Of perjury and ſubornation by the ſtatute of the 5 El.

Perjury and ſubornation on the 5 El. c. 9.

As to ſubornation of perjury, in the firſt place, *Every perſon who ſhall unlawfully and corruptly procure any witneſs to commit any wilful and corrupt perjury; in any matter or cauſe depending in ſuit and variance, by any writ, action, bill, complaint, or information, touching any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages; in chancery, or in any court of record, leet, ancient demeſne court, hundred court, court baron, or court of chancery; or ſhall unlawfully and corruptly procure or ſuborn any witneſs which ſhall be ſworn to teſtify* in perpetuam rei memoriam, ——*ſhall forfeit* 40 l. *half to the king, and half to the party grieved who ſhall ſue for the ſame. And if he has not lands or goods worth* 40 l. *he ſhall be impriſoned half a year, and ſtand on the pillory an hour in open market. And he ſhall be diſabled to be a witneſs in any court of record.*

And

And as to perjury, *If any perſon, either by ſubornation or otherwiſe, ſhall wilfully and corruptly commit any wilful perjury, by his depoſition in any the courts before mentioned, or being examined* in perpetuam rei memoriam; *he ſhall forfeit* 20 l. *in like manner, and be impriſoned* 6 *months; and if he has not goods worth* 20 l. *he ſhall be ſet on the pillory in the market place by the ſheriff, and have both his ears nailed. And he ſhall be for ever diſabled to be a witneſs in any court of record.*

And *the judge of the court, where the perjury ſhall be, and the judges of aſſize, and juſtices of the peace in ſeſſions, may inquire, hear, and determine thereof, by inquiſition, preſentment, bill, or information, or otherwiſe.*

But this act ſhall not extend to any eccleſiaſtical court.

Alſo this ſtatute ſhall not reſtrain the authority of any judge, having abſolute power to puniſh perjury before the making thereof, but that every ſuch judge may proceed in the puniſhment of all offences puniſhable before the making of the ſaid ſtatute, in ſuch wiſe as they might have done, and uſed to do, to all purpoſes, ſo that they ſet not upon the offender leſs puniſhment, than is contained in the ſaid ſtatute. 5 El. c. 9.

Any witneſs] If the defendant perjureth himſelf in his anſwer in the chancery, exchequer chamber, or the like, he is not puniſhable by this ſtatute; for it extendeth but to witneſſes. 3 *Inſt.* 166.

By any writ, action, bill, complaint, or information] It hath been reſolved, that theſe words are to be extended to the latter clauſe concerning perjury, as well as to this concerning ſubornation; becauſe it cannot well be intended, that the makers of the act, who inflict a greater penalty on ſubornation of perjury, than on the perjury itſelf, ſhould mean to extend the purview of the law in relation to what they eſteemed the leſſer crime, farther than in relation to that which they eſteemed the greater. 1 *Haw.* 179. 5 *Co.* 99.

But it is to be obſerved, that perjury or ſubornation in an action depending by *indictment*, are not within this ſtatute; but only in an action depending by *writ, action, bill, complaint, or information.* 3 Inſt. 164.

Half to the party grieved] It hath been collected from this clauſe, that no falſe oath is within the meaning of this ſtatute, which doth not give ſome perſon a juſt cauſe of complaint: and upon this ground it hath been ſaid, that he who ſwears a thing which is true, but not known by him to be ſo, is not within this ſtatute; becauſe howſoever heinous

heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be ſaid to give him a juſt cauſe of complaint, who would take advantage againſt another from his want of legal evidence to make out the juſtice of his cauſe. Alſo from the ſame ground it ſeemeth clearly to follow, that no falſe oath can be within the ſtatute, unleſs the party againſt whom it was ſworn ſuffered ſome kind of diſadvantage by it; for otherwiſe it cannot be ſaid, that any one was grieved by it: and therefore that in every proſecution upon this ſtatute, it muſt appear upon the trial, that there was ſuch a ſuit depending, wherein the party might be prejudiced in the manner ſuppoſed. 1 *Haw.* 181.

Either by ſubornation, or otherwiſe] It is not neceſſary to ſet forth in the indictment, whether the party took the falſe oāth thro' the ſubornation of another, or without any ſuch ſubornation, theſe words being only ſuperfluity. 1 *Hawk.* 179.

Wilfully and corruptly] Theſe words are neceſſary in an indictment or action on this ſtatute, and cannot be ſupplied by adding *againſt the form of the ſtatute*, or by concluding *and ſo a wilful and corrupt perjury did commit.* 1 Haw. 178.

Juſtices in ſeſſions] And one juſtice may bind the offender over to the ſeſſions. *Dalt. c.* 70.

But becauſe the proſecution upon this ſtatute is more difficult than by indictment at the common law, offenders are ſeldom proſecuted upon this ſtatute, eſpecially at the ſeſſions; and it ſeems generally the ſafer way to proceed by indictment at the common law, at the aſſizes, or in the court of king's bench.

Shall not reſtrain] From this it ſeemeth undoubtedly to follow, that the court of king's bench, *&c.* proceeding upon an indictment or information of perjury or ſubornation of perjury at the common law, may not only ſet a diſcretionary fine on the offender, but alſo condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 *Haw.* 178.

III. Of matters common to them both.

1. The judge of aſſize (ſitting the court, or within 24 hours after) may direct any witneſs, if there ſhall appear to him a reaſonable cauſe, to be proſecuted for perjury; and

Judges may direct proſecutions for perjury.

and may aſſign the party injured, or other perſon undertaking ſuch proſecution, counſel, who are to do their duty *gratis:* and ſuch proſecution ſo directed ſhall be carried on without any duty or fees whatſoever. And the clerk of aſſize, or other proper officer of the court, ſhall give *gratis* to the party injured, or proſecutor, a certificate of the ſame being directed, together with the names of the counſel aſſigned him: Which certificate ſhall be ſufficient proof of ſuch proſecution being directed; provided that no ſuch direction or certificate ſhall be given in evidence on the trial. 23 *G.* 2. *c.* 11. *ſ.* 3.

On proſecution for perjury, it ſhall be ſufficient to ſet forth the ſubſtance of the offence.

2. And in every information or indictment for wilful and corrupt *perjury*, it ſhall be ſufficient to ſet forth the ſubſtance of the offence, and by what court, or before whom the oath was taken (averring ſuch court or perſon to have a competent authority to adminiſter the ſame) together with the proper averment or averments to falſify the matter wherein the perjury is aſſigned, without ſetting forth any part of the record or proceedings either in law or equity (other than as aforeſaid), or the authority of the court or perſon before whom the perjury was committed. 23 *G.* 2. *c.* 11. *ſ.* 1.

Likewiſe on a proſecution for ſubornation.

3. And in informations or indictments for *ſubornation* of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it ſhall be ſufficient to ſet forth the ſubſtance of the offence, without ſetting forth any part of the record or proceedings, or the commiſſion or authority of the court or perſon before whom the perjury was committed, or was agreed or promiſed to be committed. 23 *G.* 2. *c.* 11. *ſ.* 2.

Inſufficient indictment not quaſhed without pleading or demurrer.

4. The court generally will not quaſh an indictment for a crime of ſo enormous a nature as perjury, for inſufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 *Haw.* 258.

Evidence.

5. To convict a man of perjury, a probable evidence is not enough; but it muſt be a ſtrong and clear evidence, and the witneſſes muſt be more numerous than thoſe on the ſide of the defendant, for otherwiſe it is only oath againſt oath. 10 *Mod.* 194.

And the party prejudiced by the perjury, ſhall not be admitted to prove the perjury. L. *Raym.* 396.

Further puniſhment of perjury or ſubornation.

6. And for a further puniſhment of perjury or ſubornation of perjury, it is enacted by the 2 *G.* 2. *c.* 25. (which act is made perpetual by the 9 *G.* 2. *c.* 18.) that beſides the puniſhment already inflicted, the judge may order the offender

ſender to be ſent to the houſe of correction, not exceeding 7 years, to be kept to hard labour; or otherwiſe to be tranſported for any term not exceeding 7 years.

7. It ſeems that the court will not ordinarily at the prayer of the defendant grant a certiorari for the removal of an indictment of perjury; for ſuch crime deſerves all poſſible diſcountenance, and the certiorari might delay, if not wholly diſcourage the proſecution. 2 *Haw.* 287. Certiorari.

8. A perſon convicted of perjury is diſabled from being a juror. 2 *Haw.* 417. Or a witneſs. 2 *Haw.* 433. Perjured perſon not to be a juror, or a witneſs.

9. Quakers making ſolemn affirmation wilfully and corruptly, ſhall ſuffer as in caſes of perjury. 8 *G.* *c.* 6. *ſ.* 2. Quakers.

10. Perjury and ſubornation are excepted out of the general pardon of the 20 *G.* 2. *c.* 52. Pardon.

Perſonating bail. See Bail.

Petition.

BY the 13 *C.* 2. *c.* 5. No perſon ſhall ſollicit above 20 hands, to any petition to the king, or either houſe of parliament, for alteration of matters eſtabliſhed by law in church or ſtate, unleſs the matter thereof hath been conſented to by three or more juſtices of the county, or by the major part of the grand jury at the aſſiſes or ſeſſions; nor ſhall preſent any ſuch petition accompanied with more than ten perſons, on pain of a ſum not exceeding 100 *l.* and three months impriſonment, on conviction at the aſſizes or ſeſſions in ſix months, and proved by two witneſſes.

But this ſhall not extend to debar any perſons (not above ten in number), to preſent any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any addreſs to the king by the parliament.

Petit larceny. See Larceny.

Petit treaſon. See Treaſon.

Pewter and other metals.

Imported.

1. NO perſon ſhall buy, or take by exchange (or otherwiſe take into or within this realm to the intent to ſell the ſame, 33 *H.* 8. *c.* 4. *ſ.* 7.) any wares made out of the realm, of tin or mixed with tin, as diſhes, ſawcers, flagons, ſpoons, or any other thing made of tin or pewter; on pain of forfeiting the ſame, and the value thereof, half to the king, and half to the finder. 25 *H.* 8. *c.* 9. *ſ.* 1.

And the maſter and wardens of the pewterers, and where there are none, the head officer of the town may appoint ſearchers, who may ſeize the ſame. *ſ.* 2.

And perſons interrupting or diſturbing the ſaid ſeizure, ſhall forfeit 5 *l.* half to the king, and half to him that ſhall ſue. 33 *H.* 8. *c.* 4. *ſ.* 8.

Fineneſs in making.

2. No perſon ſhall caſt or work any pewter veſſel or braſs, but that it be as good fine metal as the pewter and braſs wrought in *London*, and as by the ſtatutes of the ſame ought to be; on pain of forfeiting the ſame, half to the king, and half to the finder. But this not to extend to braſs or pewter in the poſſeſſion of any perſon, other than the worker, or ſuch as have the ſame to ſell, and being of the crafts or miſteries. 19 *H.* 7. *c.* 6.

And no perſon ſhall make any hollow wares of pewter, to wit, ſalts and pots made of pewter called ley-metal, but after the aſſize of pewter and ley-metal within *London*; and the makers ſhall mark them with their own mark, that they may avow the ſame by them wrought; and the ſame not ſufficiently made and wrought, and not marked, found in poſſeſſion of the maker or ſeller, ſhall be forfeited; and if the ſame be ſold, the maker ſhall forfeit the value thereof, half to the king, and half to the finder or ſearcher. *id.*

And the maſter and wardens of the craft of pewterers, and where there are none ſuch, the head and governors of the city or borough, may appoint ſearchers; and the juſtices at *Michaelmas* ſeſſions ſhall appoint two perſons, having experience therein, to ſearch within the county. And of all ſuch unlawful pewter or braſs as they ſhall find, half ſhall be to the king, and half to the ſearchers. *id.*

And in default of the maſter and wardens not ſearching, any perſon having ſufficient knowledge in the ſaid occupations, by overſight of the mayor or other head officer of cities or boroughs may ſearch. *id.*

3. If

3. If any untrue metal or workmanſhip of tin or pewter be found in any wares brought to be ſold, the mayor of *London*, and the maſter and wardens of the pewterers, may ſearch the ſame in the ſaid city; and in all other cities and towns where there are wardens, the mayors and wardens ſhall have like authority; and where there are no wardens, then the head officers of cities or towns ſhall appoint ſearchers; and if ſuch new wares wrought of tin and pewter be found defective, and in the poſſeſſion of the ſeller, the perſon putting them to ſale ſhall forfeit the ſame, half to the king, and half to the ſearcher or finder. 4 *H.* 8. *c.* 7. *ſ.* 7. Offering to ſale.

4. No perſon uſing the crafts of pewterer and brazier, ſhall ſell or change any pewter or braſs, at any place, but only in open fair or market, or in his own dwelling houſe, except he be deſired by the buyer of ſuch ware; on pain of 10 l. half to the king, and half to him who ſhall ſeize or ſue. 19 *H.* 7. *c.* 6. 25 *H.* 8. *c.* 9. *ſ.* 6. Selling, where.

5. Perſons uſing the buying and ſelling of pewter or braſs, who ſhall occupy any falſe beams or weights, and every perſon uſing the ſame, ſhall forfeit 20s. half to the king, and half to him that ſhall ſue; and alſo the beams to him that ſhall ſeize them. 19 *H.* 7. *c.* 6. False weights.

And if the offender be not ſufficient to pay the forfeiture, the mayor or other head officer, where he ſhall be found, ſhall put him in the ſtocks, and ſo keep him till the next market day next adjoining, and in the market place put him in the pillory all the market time. *id.*

6. No perſon ſhall carry over ſea, any braſs, copper, latten, bell metal, pan metal, gun metal, nor ſhroff metal, whether it be clean or mixed (tin and lead only excepted); on pain of forfeiting double the value thereof (and 10 l. for every thouſand weight, 2 & 3 *Ed.* 6. *c.* 37.) half to the king, and half to him that ſhall ſue. 33 *H.* 8. *c.* 7. Exporting.

Pheaſants. See Game.

Phyſicians.

1. NO recuſant convict ſhall practiſe phyſick, nor uſe the trade of an apothecary, on pain of 100 l. 3 *J.* *c.* 5. *ſ.* 8. Recuſants not to practiſe phyſick.

2. Apothecaries within *London* and ſeven miles thereof, and alſo apothecaries in any other place who have ſerved Apothecary exempted from offices.

ſeven years apprenticeſhip, ſhall be exempted from the office of conſtable, ſcavenger, overſeer of the poor, and all other pariſh, ward, and leet offices, and from being put on any jury or inqueſt. 6 *W.* *c.* 4.

Surgeons exempted from offices.

3. By the 5 *H.* 8. *c.* 6. Surgeons ſhall be diſcharged of the conſtableſhip, watch, and all manner of office bearing any armour, and alſo of all inqueſts and juries *within London.*

And by the 18 *G.* 2. *c.* 15. All freemen of the ſurgeons company in *London*, ſhall be exempted from the office of conſtable, ſcavenger, overſeer of the poor, and other pariſh, ward, and leet offices, and from ſerving on juries and inqueſts. *ſ.* 10.

And Mr. *Hawkins*, ſpeaking of the former of theſe ſtatute, ſays, It ſeems that by the equity thereof, and the ancient cuſtom of the realm, *all* ſurgeons have been allowed the like privilege; that is, whether in *London* or elſewhere. 2 *Haw.* 64.

Phyſicians exempted from offices.

4. By the 32 *H.* 8. *c.* 40. The preſident of the commonalty and fellowſhip of the faculty of phyſick in *London*, and the commons and fellows of the ſame, ſhall be diſcharged of watch and ward there, and ſhall not be choſen conſtable, or any other officer. *ſ.* 1.

Yet it ſeems to have been holden, that the equity of this act, doth not extend to other phyſicians not mentioned in it; perhaps for this reaſon, becauſe phyſicians have no ſuch ſpecial cuſtom for their diſcharge, as ſurgeons are ſaid to have. 2 *Haw.* 64.

And it ſeemeth, that a practiſing phyſician, being choſen conſtable in purſuance of a cuſtom in reſpect of his lands in a town, has no remedy for his diſcharge; for that there are no precedents of this kind, and his calling is private; yet if he be choſen conſtable of a town, which hath ſufficient perſons beſides to execute this office, and no ſpecial cuſtom concerning it, perhaps he may be relieved by the king's bench. 2 *Haw.* 63.

Searching for drugs.

5. All juſtices, mayors, ſheriffs, bailiffs, conſtables, and other officers in *London*, ſhall aſſiſt the preſident of the college of phyſicians, and perſons by them authorized, in ſearching for faulty apothecary wares. 1 *Mar.* *ſeſſ.* 2. *c.* 9. *ſ.* 6.

Phyſician killing a patient.

6. If a phyſician gives a perſon a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a diſeaſe, and contrary to the expectation of the phyſician it kills him, this is no homicide; and the like of a ſurgeon. And I hold their opinion (ſays lord *Hale*) to be erroneous, that think if he be a licenſed ſurgeon or phyſician

phyſician, that occaſioneth this miſchance, that then it is felony; for phyſick and ſalves were before licenſed phyſicians and ſurgeons; and therefore if they be not licenſed according to the ſtatute of the 3 *H.* 8. *c.* 11. or 14 *H.* 8. *c.* 5. they are ſubject to the penalties in the ſtatutes, but god forbid that any miſchance of this kind ſhould make any perſon not licenſed guilty of murder or manſlaughter. Theſe opinions therefore may ſerve to caution ignorant people not to be too buſy in this kind in tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429.

Pick-pocket. See Larceny.
Pigeons. See Game.

Pillory and tumbrel.

1. PILLORY is derived from *pilaſtre*, a pillar; for it is a wooden pillar, wherein the neck of the offender is put and preſſed: which kind of puniſhment is very ancient, and was uſed by the *Saxons*. 3 Inſt. 219. Pillory and tumbrel, what.

The *tumbrel* ſeemeth to have been the ſame anciently with the *ducking ſtool*; an engine for the puniſhment of ſcolding women, by ducking them over head and ears in water, and eſpecially in muddy or ſtinking water, according to the etymology of lord *Coke*, who tells us, that the word *tumbrel* ſignifieth a dung cart. *Lamb.* 61. 3 *Inſt.* 219.

2. Every one that hath a leet or market, ought to have a pillory and tumbrel to puniſh offenders; and it ſeems that a leet may be forfeited for not taking care to have a pillory and tumbrel. 3 *Inſt.* 219. 2 *Haw.* 75. Who ſhall find them.

3. They that have been adjudged to the pillory or tumbrel, are ſo infamous, that they ſhall not be received to be jurors or witneſſes. 3 *Inſt.* 219. Infamy of the puniſhment.

4. And for that the judgment to the pillory or tumbrel doth make the delinquent infamous, the juſtices of the peace ſhould be well adviſed before they give judgment of any perſon to the pillory or tumbrel, unleſs they have good warrant for their judgment therein. Fine and impriſonment, for offences fineable by them, is a fair and ſure way. 3 *Inſt.* 219. Caution in inflicting it.

5. But by ſeveral ſtatutes the puniſhment of the pillory is ſpecially ordained; as in the caſe of bakers, foreſtallers, uſers of falſe weights, and many others. Inflicted by ſeveral ſtatutes.

Plague.

Quarentine enjoined.

1. ALL veſſels, perſons, and goods coming from any place, from whence the king, with the advice of his privy council, ſhall judge probable that the infection may be brought, ſhall be obliged to make their quarentine in ſuch places, for ſuch time, and in ſuch manner as ſhall be directed by him, or by his order made in council, and notified by proclamation, or publiſhed in the gazette. 26 *G.* 2. *c.* 6. *ſ.* 1.

Orders for quarentine to be read in churches.

2. And when the king ſhall make any orders concerning quarentine, and notify the ſame by proclamation, or in the gazette, the ſame ſhall be publickly read the next *ſunday*, and the firſt *ſunday* in every month afterwards (during the time ſuch orders ſhall continue) immediately after prayers, in all places ſet apart for divine worſhip, within ſuch places as ſhall be ſpecified in ſuch proclamation or orders. *id. ſ.* 20.

Watchmen to be appointed.

3. And the juſtices of the counties adjoining, or one of them, ſhall forthwith, when quarentine ſhall be appointed, cauſe watches to be kept by day and night, in the moſt proper and convenient places, within the ſeveral adjacent pariſhes; who ſhall not permit any perſon whatſoever to come on ſhore from, or go on board any ſhips under quarentine, except only ſuch as ſhall have the charge of ſeeing the quarentine duly performed, or as ſhall be licenſed by ſuch perſon having charge of the quarentine. 9 *An. c.* 2.

And if any ſuperintendant of the quarentine, or watchman, ſhall neglect his duty, he ſhall be guilty of felony without benefit of clergy. 26 *G.* 2. *c.* 6. *ſ.* 17.

Maſters of ſhips to give notice.

4. And if the plague ſhall appear on board any ſhip, being to the northward of *Cape Finiſterre*, the maſter ſhall immediately proceed to the harbour of [*St. Helen's Pool*, between the uninhabited iſlands of *St. Helen's*, *Tean*, and *North Withell*, or to ſuch other place as his majeſty by advice of his privy council ſhall appoint; 29 *G.* 2. *c.* 8.] where he ſhall make known his caſe to ſome officer of the cuſtoms; who ſhall immediately acquaint ſome cuſtom houſe officer of ſome near port of *England*; who ſhall with all poſſible ſpeed ſend intelligence thereof to a ſecretary of ſtate; and the ſhip ſhall remain there till his majeſty's pleaſure be known; nor ſhall any of the crew go on ſhore. But if he ſhall not be able to make the iſlands of *Scilly*, or ſhall be forced by weather or otherwiſe to go up either of the channels, he ſhall not enter any port, but remain

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in ſome open road, till he receives orders from his majeſty or his privy council; and ſhall prevent any of the crew from going out of the ſhip, and avoid all intercourſe with other ſhips or perſons. And the ſaid maſter, or any other perſon on board, who ſhall be diſobedient herein, ſhall be guilty of felony without benefit of clergy; and may be tried where the offence ſhall be committed, or where he ſhall be apprehended. 26 *G.* 2. *c.* 6. *ſ.* 2.

Veſſels to be examined.

5. And when any country or place is infected, or when any order ſhall be made by the king concerning quarentine, as often as any veſſel ſhall attempt to enter into any port, the principal officer of the cuſtoms there, or ſuch perſon as ſhall be authorized to ſee quarentine performed, ſhall go off, or cauſe ſome other perſon to go off, to ſuch veſſel; who ſhall at a convenient diſtance, demand of the commander, the name of the ſhip; the name of the commander; at what place the cargo was taken on board; what place the veſſel touched at in her voyage; whether ſuch places, or any, and which, were infected with the plague; how long ſhe hath been in her paſſage; how many perſons were on board when ſhe ſet ſail; whether any, and what perſons, during the voyage, have been or are infected; how many died in the voyage, and of what diſtemper; what veſſels he, or any of his company with his privity, went on board, or had any of their company come on board his ſhip, and to what place they belonged; and alſo the true contents of his lading, to the beſt of his knowledge: And if it ſhall appear on ſuch examination, or otherwiſe, that any perſon on board is infected, or that ſuch ſhip is obliged to perform quarentine; the officers of any of his majeſty's ſhips of war, or of any forts or garriſons, and all other his majeſty's officers whom it may concern, and others whom they ſhall call to their aſſiſtance, ſhall, on notice thereof, oblige ſuch ſhip to repair to the place appointed for quarentine, be it by firing of guns, or other force: And if ſuch veſſel ſhall come from any place infected, or have any perſon on board infected, and the maſter ſhall conceal the ſame, he ſhall be guilty of felony without benefit of clergy; and if he ſhall not make a true diſcovery in any other of the particulars, he ſhall forfeit 200 *l.* half to the king, and half to him that ſhall ſue. 26 *G.* 2. *c.* 6. *ſ.* 3.

Officer neglecting.

6. And if any officer of the cuſtoms, or other officer, ſhall neglect his duty herein; he ſhall forfeit his office, and 100 *l.* in like manner. 26 *G.* 2. *c.* 6. *ſ.* 11.

Maſter to deliver his credentials.

7. And the maſter, after his arrival at the place of quarentine, ſhall deliver on demand to the chief officer ap-

pointed to ſee quarentine duly performed, ſuch bill of health and manifeſt as he ſhall have received from any *Britiſh* conſul, together with his log-book and journal; on pain of 500 *l.* in like manner. 26 *G.* 2. *c.* 6. *ſ.* 4.

Obedience inforced.

8. And all perſons, liable to perform quarentine, ſhall be ſubject to ſuch orders as they ſhall receive from the officers authorized to ſee it performed; who ſhall have power to inforce obedience, and in caſe of neceſſity to call others to their aſſiſtance. 26 *G.* 2. *c.* 6. *ſ.* 9.

Ships boats may be ſeized.

9. And any officer of the cuſtoms, or others, directed to take care of the quarentine, may ſeize any boat belonging to ſuch veſſel, and detain the ſame till quarentiue be performed. 9 *An.* *c.* 2.

Penalty of quitting the ſhip.

10. And if the commander of the ſhip ſhall go himſelf, or permit any ſeaman or paſſenger to go on ſhore, or on board any other veſſel, during the quarentine, without licence of the perſon having charge of the quarentine; the ſhip and tackle ſhall be forfeited to the king. 9 *An.* *c.* 2.

And if any perſon ſhall come on ſhore, or go aboard any other ſhip; the perſons appointed for ſeeing quarentine duly performed, may compel him to return and continue during the quarentine: And ſuch perſon ſo leaving ſuch ſhip, and being thereof (after expiration of the quarentine) convicted by oath of one witneſs, before one juſtice near, ſhall forfeit not exceeding 20 *l.* to be paid immediately to ſuch juſtice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the pariſh where the conviction ſhall be; and in default of payment, he may commit him to the houſe of correction, to be kept to hard labour not exceeding one month. 9 *An.* *c.* 2.

And by the 26 *G.* 2. *c.* 6. If the maſter ſhall quit, or knowingly permit any perſon to quit the ſhip, by going on ſhore, or on board any other veſſel, before the quarentine ſhall be performed, unleſs in ſuch caſes as ſhall be permitted by the orders concerning quarentine; or if he ſhall not, in convenient time after notice, cauſe the veſſel and lading to be conveyed to the place appointed for quarentine, he ſhall forfeit 500 *l.* half to the king, and half to him that ſhall ſue: And if any perſon ſhall ſo quit ſuch ſhip, all perſons by any kind of force may compel him to return; and he ſhall for ſuch offence be impriſoned ſix months, and forfeit 200 *l.* half to the king, and half to him that ſhall ſue. *ſ.* 5.

Perſons going aboard.

11. And if any perſon ſhall go on board, and return from any ſhip, during the quarentine, without ſuch licence; he may be compelled by the perſons appointed as aforeſaid, to return and continue on board during ſuch quarentine;

rentine; and the maſter of ſuch ſhip ſhall there keep and maintain him. 9 *An. c.* 2.

12. When any part of *Great Britain*, *Ireland*, *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, *France*, *Spain*, *Portugal*, or the low countries ſhall be infected, the king by proclamation may prohibit all ſmall boats and veſſels under the burden of 20 tons, from ſailing out of port, till ſecurity be firſt given by the maſter, to the ſatisfaction of the principal officer of the cuſtoms, or chief magiſtrate of the port, by bond to the king with ſureties, in the penalty of 300 *l.* that he ſhall not go to or touch at any place mentioned in the proclamation; and that the maſter and every mariner and paſſenger ſhall, during the time aforeſaid, not go on board any other veſſel at ſea; and that he ſhall not permit any perſon to come on board ſuch boat or veſſel at ſea; and ſhall not receive any goods out of any other veſſel; for which bond no fee ſhall be taken. And if ſuch boat or veſſel ſhall ſail before ſuch ſecurity given, the ſame, together with the tackle and furniture, ſhall be forfeited to the king; and the maſter, and every mariner therein, being thereof convicted, on his appearance or default, on oath of one witneſs, by one juſtice where the offender ſhall be found, ſhall forfeit 20 *l.* half to the informer, and half to the poor of the pariſh where the offender ſhall be found, by diſtreſs; and for want of ſufficient diſtreſs to be committed to priſon for three months. 26 *G.* 2. *c.* 6. *ſ.* 19. In what caſe ſmall veſſels ſhall not be allowed to ſail.

13. Whenever the king, with the advice and conſent of parliament, ſhall direct lazarets to be provided, for receiving of perſons obliged to perform quarentine, or for airing of goods, it ſhall be lawful to erect the ſame, either in any waſte grounds or commons, or where there are not ſufficient, in the ſeveral grounds of any perſon whatſoever, not being a houſe, park, garden, orchard, yard, or planted walk, or avenue to a houſe, paying for the ſame as ſhall be agreed on between the perſons intereſted, and any two perſons appointed by the king under his ſign manual; and if they cannot agree, then the ſaid two perſons ſhall, 30 days before the ſeſſions give to the occupier a notice in writing, deſcribing the quantity of ground, and purporting that the conſideration for the ſame will be ſettled by a jury at ſuch ſeſſions. And the juſtices there, on proof of ſuch notice, ſhall charge the jury which ſhall attend there (or ſome other jury to be then and there impanelled and returned by the ſheriff without fee) and cauſe to be ſworn, well and truly to aſſeſs the value of ſuch grounds, to whom the parties may have their lawful challenges; and the verdict of the ſaid jury, and the judgment of the juſtices thereupon Lazarets to be appointed.

thereupon, ſhall be concluſive, and finally bind all parties; and thereupon the king ſhall hold ſuch grounds for ſuch term as he ſhall judge neceſſary, paying for the ſame ſuch rent or other conſideration as ſhall be ſo aſſeſſed. 26 *G.* 2. *c.* 6. *ſ.* 6.

And the officers authorized to put in execution ſuch orders as aforeſaid, ſhall cauſe all perſons obliged to perform quarentine, and all goods comprized in ſuch orders, to repair or be conveyed to ſome of the ſaid lazarets, or to ſuch other places as ſhall be provided according to ſuch orders. *id. ſ.* 7.

And if any perſon ſhall refuſe or neglect to repair, within convenient time after notice, to the lazaret, or other place appointed, or ſhall eſcape or attempt to eſcape from thence, before quarentine performed; the watchmen, and other perſons appointed to ſee quarentine performed, by force may compel him to repair or return thither: and every perſon ſo refuſing or neglecting to repair thither, and alſo every perſon actually eſcaping, ſhall be guilty of felony without benefit of clergy. *id. ſ.* 8.

Perſons entring lazarets, not to return till quarentine performed.

14. And if any perſon not infected nor liable to perform quarentine, ſhall enter any lazaret, or other ſuch place, and ſhall return or attempt to return, unleſs as permitted by ſuch orders; the watchmen, or other perſons appointed, by force may compel him to return and perform quarentine: and if he ſhall actually eſcape before he hath performed the ſame, he ſhall be guilty of felony without benefit of clergy. *id. ſ.* 10.

Aſſeſſment for relief of perſons in infected places.

15. And the mayor, head officers, and juſtices of the peace of every city, borough, town corporate, and places privileged, or any two of them, may aſſeſs every inhabitant, and all houſes of habitation, lands, tenements, and hereditaments, for the reaſonable relief of perſons infected with the plague, or inhabiting in infected houſes, and levy the ſame by warrant; and if the party to whom the warrant is directed ſhall not find any goods to levy the ſame; then upon return thereof, they ſhall by warrant cauſe the perſon to be arreſted, and committed to gaol till he ſhall pay. 1 *J. c.* 31. *ſ.* 2, 3.

And if the inhabitants of ſuch place ſhall find themſelves unable to relieve all ſuch perſons, then on certificate thereof by the ſaid magiſtrates or two of them, to the juſtices of the county of or near the ſaid city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at ſuch weekly ſums as they ſhall think reaſonable, to be levied by their

their warrant by ſale of goods, and in default thereof, by impriſonment as aforeſaid. *id. ſ.* 4.

And if the infection ſhall be in a town where there are no juſtices, or in a village or hamlet; then two juſtices of the county may aſſeſs the inhabitants of the county, within five miles of the place infected, at ſuch weekly ſums as they ſhall think fit, for the reaſonable relief of places infected; to be levied by their warrant by ſale of goods, and in default thereof, by impriſonment as aforeſaid. *ſ.* 5.

All which ſaid taxes ſhall be certified at the next quarter ſeſſions, for ſuch town or county reſpectively; and there they may order the ſame to continue, or be enlarged or extended to any other part of the county, or otherwiſe determined. *ſ.* 6.

Officer making default in levying the ſame, ſhall forfeit 10*s.* to be employed to the charitable uſes aforeſaid. *ſ.* 6. But it is not ſaid how this penalty ſhall be levied.

16. And the juſtices, mayors, and other head officers, may appoint within their limits ſearchers, watchmen, examiners, keepers, and buriers for the places infected; and give them directions, and ſwear them for the performance thereof. 1 *J. c.* 31. *ſ.* 9. Searchers for places infected.

17. If any perſon ſhall conceal from the officers of quarentine, or convey any letters or goods from any ſhip under quarentine, or from any lazaret; he ſhall be guilty of felony without benefit of clergy. 26 *G.* 2. *c.* 6. *ſ.* 18. Secreting goods under quarentine.

18. If any officer or other perſon ſhall embezil or damage any goods performing quarentine; he ſhall pay treble damages, with full coſts. 26 *G.* 2. *c.* 6. *ſ.* 11. Damaging goods.

19. After quarentine performed, and on proof thereof by the oaths of the maſter and two other perſons of the ſhip, or by the oaths of two credible witneſſes, before the cuſtomer, comptroller, or collector of that or the next port, or their deputies, or a juſtice near, and that the *veſſel* and every ſuch *perſon* are free from infection; and after producing a certificate thereof ſigned by the chief officer who ſuperintended the quarentine; ſuch officer of the cuſtoms, or juſtice, ſhall give a certificate thereof *(gratis)*, and thereupon the veſſel and every ſuch perſon ſhall be liable to no further reſtraint. 26 *G.* 2. *c.* 6. *ſ.* 13, 14. Diſcharge after quarentine performed.

And all *goods* liable to quarentine ſhall be opened and aired, as by ſuch orders ſhall be directed; and after ſuch order hath been complied with, and a certificate thereof given by the chief officer appointed to ſuperintend the quarentine and airing of ſuch goods, and proof made thereof by the oaths of two witneſſes, before the cuſtomer, comptroller, or collector of the next port, or any of their deputies,

ties, or any juſtice living near; on certificate and return of ſuch proof by ſuch cuſtom houſe officer to the commiſſioners of the cuſtoms, they or two of them by their order ſhall diſcharge the ſame. *ſ.* 15.

And if any perſon ſhall take any fee for ſuch oath, order, or certificate; he ſhall forfeit 100 *l.* half to the king, and half to him that ſhall ſue. *ſ.* 16.

And if any ſuperintendant of the quarentine, or watchman, ſhall in ſuch caſe give a falſe certificate; he ſhall be guilty of felony without benefit of clergy. *ſ.* 17.

Note; the abovementioned act of the 9 *An.* was repealed by the 7 *G. ſt.* 1. *c.* 3. but was revived by the 8 *G. c.* 8. which enacts, that neither the ſaid ſtatute of the 7 *G.* nor any thing therein contained, ſhall continue in force longer than *Mar.* 25. 1723.

Players.

1. EVERY perſon who ſhall for hire, gain, or reward, act, or cauſe to be acted, any play or other entertainment of the ſtage, or any part therein, if he ſhall have no legal ſettlement where he acts, without authority from the king or the lord chamberlain, ſhall be deemed a rogue and vagabond within the 12 *An.* (which act is repealed; but the ſame is re-enacted by the 17 *G.* 2. *c.* 5.) 10 *G.* 2. *c.* 28. *ſ.* 1.

Or otherwiſe he ſhall forfeit 50 *l.* in which caſe he ſhall not alſo ſuffer as a vagrant. *ſ.* 2.

2. And if any play, or part thereof, be acted in any place where wine, ale, beer or other liquors ſhall be ſold, the ſame ſhall be deemed to be acted *for gain, hire, and reward.* ſ. 7.

3. And no perſon ſhall for hire, gain, or reward, act or cauſe to be acted any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unleſs a true copy thereof be ſent to the lord chamberlain, 14 days before the acting, together with an account when and where it is intended to be acted, ſigned by one of the managers. *ſ.* 3.

And the lord chamberlain may prohibit the ſame as he thinks fit; and if any perſon ſhall act without ſuch copy being ſent, or againſt ſuch prohibition, he ſhall forfeit 50 *l.* and the licence of the playhouſe ſhall be void. *ſ.* 4.

4. And

4. And no perſon ſhall be authorized to act, except within the liberties of the city of *Weſtminſter*, and where the king ſhall reſide. *ſ.* 5.

5. All the ſaid pecuniary penalties may be recovered in the courts at *Weſtminſter*; or before two juſtices, by the oath of one witneſs, or confeſſion, to be levied by diſtreſs; and for want of ſufficient diſtreſs, the offender to be committed to the houſe of correction, not exceeding ſix months, to be kept to hard labour: or to the common gaol, not exceeding ſix months, without bail or mainprize: Perſons aggrieved by order of the juſtices may appeal to the next ſeſſions: The ſaid penalties to be diſtributed, half to the informer, and half to the poor. *ſ.* 6.

Plate. See Exciſe.

Pluries capias. See Proceſs.

Poiſon. See Homicide.

Polygamy.

BIGAMY is, where a man has two wives ſucceſſively, Polygamy where he has ſeveral wives at the ſame time. 3 *Inſt.* 88. *Stam.* 134.

By the ſtatute of the 1 *J. c.* 11. *If any perſon within his majeſty's dominions of* England *and* Wales, *being married, ſhall marry any perſon, the former huſband or wife being alive; ſuch offence ſhall be felony* (but within clergy).

If the firſt marriage was beyond ſea, and the latter in *England*, the party may be indicted here, becauſe the latter marriage makes the offence; but if the firſt marriage was in *England*, and the latter beyond ſea, it ſeemeth that the offender cannot be indicted here, becauſe the offence was not within the kingdom. *Kely.* 79, 80.

But *this act ſhall not extend to any perſon, whoſe huſband or wife ſhall be continually remaining beyond the ſeas, by the ſpace of ſeven years together.* id.

And this, altho' the party in *England* hath notice, that ſuch huſband or wife is living. 1 *H. H.* 693.

Nor to any perſon whoſe huſband or wife ſhall abſent him or her ſelf, the one from the other, by the ſpace of ſeven years together, in any part of his majeſty's dominions, the one of them not knowing the other to be living within that time. id.

Nor

Nor to any perſon who ſhall be, at the time of ſuch marriage, divorced by ſentence in the eccleſiaſtical court. id.

And this divorce is to be underſtood not only *a vinculo matrimonii*, as for precontract, conſanguinity, or affinity, which diſſolveth the marriage, and therefore needeth not this proviſo; but alſo, and chiefly *a menſa & thoro*, as for adultery, which diſſolveth not the marriage, yet in reſpect of the generality of the words, a perſon divorced only *a menſa & thoro* is privileged from being a felon in marrying again, altho' the ſecond marriage is void. 3 *Inſt.* 89. 1 *H. H.* 694.

Nor to any perſon whoſe former marriage hath been, by ſentence in the eccleſiaſtical court, declared to be void, and of none effect. id.

Nor to any perſon, by reaſon of any former marriage made within age of conſent. id. That is, either the woman being under 12, or the man under 14. 3 *Inſt.* 89.

On a proſecution upon this ſtatute, the firſt and true wife is not to be allowed as a witneſs againſt the huſband; but it ſeems clear, that the ſecond wife may be admitted to prove the ſecond marriage, for ſhe is not his wife ſo much as *de facto*. 1 *H. H.* 693.

Pond. See Game.

Here endeth the Second Volume.