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ECCLESIASTICAL
LAW.

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He admittas.

*Ne admittas* (so called from those words in the writ, *Prohibemus ne admittas*) is a writ directed to the bishop at the suit of one who is patron of any church, and he doubts that the bishop will collate a clerk of his own, or admit a clerk presented by another, to the same benefice: then he that doubts it shall have this writ, to prohibit the bishop that he shall not collate or admit any to that church, pending the suit. *Terms of the L.*

New style. See *Kalender*.

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**Nocturn.**

*Nocturn*, was a service so called, from the ancient christians rising in the night to perform the same. *Gib.* 263.

Nomination to a benefice. See *Benefice*.
Non-conformists. See *Dissenters*.
Non-residence. See *Residence*.
Notable goods. See *Wills*.

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**Notary publick.**

1. A *Notary* was anciently a scribe, that only took notes or minutes, and made short draughts of writings, and other instruments, both publick and private.
But at this day we call him a notary publick, who confirms and attests the truth of any deeds or writings, in order to render the same authentic. *Ayl. Par.* 382.

The law books give to a notary several names or appellations; as, actuarius, registrarius, scrinarius, and such like. All which words are put to signify one and the same person. But in England, the word *registrarius* is confined to the officer of some court, who has the custody of the records and archives of such court; and is often-times distinguished from the *actuary* thereof. But a registrar ought always to be a notary publick; for that seems to be a necessary qualification of his office.

2. A notary publick is appointed to this office by the archbishop of Canterbury; who in the instrument of appointment decrees, that "full faith be given, as well in "as out of judgment, to the instruments by him to be "made." Which appointment is also to be registered and subscribed by the clerk of his majesty for faculties in chancery. *1 Oughtb.* 486. *Ayl. Par.* 385.

3. A notary on his appointment must swear, "that he "will faithfully exercise the office of notary publick; "that he will faithfully make contracts, wherein the consent of parties is required, by adding or diminishing nothing, without the will of the parties, that may alter the substance of the fact; that if in making any instrument the will of one party only is required, he will in such case add or diminish nothing that may alter the substance of the fact, against the will of such party; that he will not make instruments of any contract, in which he shall know there is a violence or fraud; that he will reduce contracts into an instrument or register; and after he shall have so reduced the same, that he will not maliciously delay to make a publick instrument thereupon, against the will of him or them, on whose behalf such contract is to be so drawn: Saving to himself his just and accustomed fees."

4. A notary publick (or actuary) that writes the acts of court, ought not only to be chosen by the judge, but approved also by each of the parties in suit; for tho' it does of common right belong to the office of the judge, to assume and chuse a notary for reducing the acts of court in every cause into writing, yet he may be refused by the litigants: for the use of a notary was intended, not only on account of the judge, to help his memory in the cause, but also that the litigants might not be injured by the judge. *Ayl. Par.* 382.
And particularly, the office of a notary in a judicial cause is employed about three things: First, He ought to register and inroll all the judicial acts of the court, according to the decree and order of the judge, setting down in the act the very time and place of writing the same. Secondly, He ought to deliver to the parties, at their especial request, copies and exemplifications of all such judicial acts and proceedings, as are there enacted and decreed. And thirdly, He ought to retain and keep in his custody the originals of such acts and proceedings, commonly called the protocols (περιτα κωδα, the notes, or first draughts.)

5. As a notary is a publick person, so consequently all instruments made by him are called publick instruments; and a judicial register or record made by him, is evidence in every court, according to the civil and canon law. And a bishop's register establishes a perpetual proof and evidence, when it is found in the bishop's archives; and credit is given not only to the original, but even to an authentic copy exemplified. Ayl. Par. 386.

And one notary publick is sufficient for the exemplification of any act; no matter requiring more than one notary to attest it. Id.

And the rule of the canon law is, that one notary is equal to the testimony of two witnesses. Gibs. 996.

6. By the several stamp acts, the admisision of a notary shall be upon a treble 40 s stamp.

And every notarial act shall be on a 2 s 6 d stamp.

Novel disceifin.

The Writ of assise of novel disceifin (novae disceifinae) lieth, where tenant for life, or tenant in fee simple, or in tail, is disceifed of his lands or tenements, or put out thereof against his will. F. N. B. 408.

November the fifth. See Holidays.

Nuncupative will. See Wills.
Oaths.

1. **N**ONE shall bring into dispute the determinations of the church, concerning oaths to be taken in the ecclesiastical or in the temporal courts; on pain of being declared an heretic. *Arund.* *Lind.* 297.

As we confess that vain and rash swearing is forbidden christian men by our lord Jesus Christ, and James his apostle; so we judge that christian religion doth not prohibit, but that a man may swear when the magistrate requireth, in a cause of faith and charity, so it be done according to the prophet’s teaching, in justice, judgment, and truth. *Art.* 39.

The giving of every oath must be warranted by act of parliament, or by the common law time out of mind.

2 *Inf.* 73.

2. The oath *ex officio*, is an oath whereby any person may be obliged to make any presentment of any crime or offence, or to confess or accuse himself or herself, of any criminal matter or thing, whereby he or she may be liable to any censure, penalty, or punishment whatsoever.

By a canon of archbishop Boniface: *Laymen shall be compelled by excommunication, if need be, to take an oath to speak the truth, when enquiry shall be made by the prelates and judges ecclesiastical, for the correction of sins and excesses.* *Lind.* 109.

Afterwards, *E.* 47. In the time of the parliament, the lords of the council at Whitehall demanded of Popham and Coke chief justices, upon motion made by the commons in parliament, in what cases the ordinary may examine any person *ex officio* upon oath. And upon good consideration and view of the books, they answered to the lords of the council at another day in the council chamber: 1. That the ordinary cannot restrain any man, ecclesiastical or temporal, to swear generally to answer to such interrogatories as shall be administered unto him; but ought to deliver to him the articles upon which he is to be examined, to the intent that he may know whether he ought by the law to answer to them. And so is the course of the chancery; the defendant hath a copy of the bill delivered unto him, or otherwise he need not to answer it. 2. That no man, ecclesiastical or temporal, shall be examined upon the secret thoughts of his heart, or of his secret opinion; but something ought to be objected against him, which he hath spoken or done. 3. That no layman may be examined *ex officio*, except in two
Oaths.

two causes (matrimonial and testamentary); and that was grounded upon great reason: for laymen for the most part are not lettered, wherefore they may easily be inveigled and intrapped, and principally in heresies and errors. 12 Co. 26.

Again, H. 13 f. Dighton and Holt's case. They were committed by the high commissioners, because they refused to take the oath ex officio; whereupon an habeas corpus being awarded, it was returned, that they were committed, because they being convicted for flandrous words, against the book of common prayer and the government of the church, and being tendred the oath to be examined upon these causes, they refused, and were therefore committed. And after three terms deliberation, the court now gave their resolution, that they ought to be delivered. And the reason thereof Coke chief justice declared to be, because this examination is made to cause them to accuse themselves of the breach of a penal law; which is against law, for they ought to proceed against them by witnesses, and not informe them to take an oath to accuse themselves. Cro. Jf. 388.

Finally, by the statute of 13 C. 2. c. 12. it is enacted, that, it shall not be lawful for any person, exercising ecclesiastical jurisdiction, to tender or administer to any person whatsoever, the oath usually called the oath ex officio, or any other oath, whereby such person to whom the same is tendred or administered, may be charged or compelled to confess, or accuse, or to purge him or herself of any criminal matter or thing, whereby he or she may be liable to censure or punishment.

But in other cases, where the course of the ecclesiastical courts hath been, to receive answers upon oath, they may still receive them. And therefore in the case of Hern and Brown, T. 31 C. 2. where a suit was for payment of the proportion afoisted towards the repair of the church, the defendant offering to give in his answer, but not upon oath, prayed a prohibition, because it was refused. The court, after hearing arguments, denied the prohibition; for they said, it was no more than the chancery did to make defendants answer upon oath in such like cases. GibJ. 1011. I Ventr. 339.

And some years before that in the case of Goulton and Wainright, it was held by the court, that if articles ex officio are exhibited in the spiritual court for matters criminal, and the party is required to answer upon oath, he may have a prohibition; but if it be a civil matter, he cannot
cannot do so, for then he is bound to answer. Gilb. I 101. 1 Sid. 374.

3. The oath of *Calumny* was required by the Roman laws, of all persons engaged in any lawsuit, obliging both plaintiffs and defendants, at the beginning of the cause, to swear that their demands and their defences were sincere and upright, without any intention to give unnecessary trouble, or to use quirks and cavils. 1 Domat 439.

And by a legatine constitution of Otho it is thus ordained: The oath of calumny, in causes ecclesiastical and civil, for speaking the truth in spirituals whereby the truth may be more easily discovered, and causes more speedily determined, we ordain for the future to be taken in the kingdom of England, according to the canonical and legal sanctions; the custom obtained to the contrary notwithstanding. Athon 60.

*The oath of calumny*] Which oath was this: “You shall swear, That you believe the cause you move his just: That you will not deny any thing you belive is truth, when you are asked of it: That you will not (to your knowledge) use any fallie proof: That you will not out of fraud request any delay, so as to protract the suit: That you have not given or promised any thing, neither will give or promise any thing, in order to obtain the victory, except to such persons, to whom the laws and the canons do permit: So help you God.” Confet 91.

*Of calumny*] Jusjurandum calumniae; sc. vitandae: for the avoiding of calumny. Athon 60.

*To be taken*] And this both by the plaintiff and the defendant. Which if they shall refuse respectively, the plaintiff in such case shall lose his cause, and the defendant shall be taken as having confessed. Athon 60.

*The custom obtained to the contrary notwithstanding*] By this it appeareth that by the custom of the realm of England, the oath of calumny was not to be administrd. Nevertheless this custom was not so general as in this canon is alleged. The cause was thus: Laymen were free by the custom of the realm from taking of that oath, unless it were in causes matrimonial and testamentary; and in those two causes, the ecclesiastical judge might examine the parties upon their oath, because contracts of matrimony, and the estates of the dead, are many times secret, and
And do not concern the shame and infamy of the party, as adultery, incontinency, simony, hereby and such like. And this appeareth by two writs in the register, directed to the sheriff, to prohibit the ordinary from calling laymen to that oath against their wills, except in those two cases. 2 Infr. 657. 12 Co. 26. Gibb. 1611.

But this Custom extended not to those of the clergy, but to lay people only; for that they of the clergy, being presumed to be learned men, were better able to take the oath of calumny. 2 Infr. 657.

But if, in a penal law, the jurisdiction of the ordinary be saved, as by 1 Eliz. for hearing of masses, or by 13 El. for usury, or the like, neither clerk nor layman shall be compelled to take the oath of calumny; because it may be an evidence against him at the common law, upon the penal statute. 2 Infr. 657. 12 Co. 27.

This oath had long continuance in the ecclesiastical court: and it had the warrant of an act of parliament, in 2 H. 4. c. 15. whereby it was enacted, that dioecesans shall proceed according to the canonical sanctions; which act was repealed by 25 H. 8. c. 14. but was revived in the reign of Queen Mary, and then all the martyrs who were burnt were examined upon their oaths; and then again by the 1 Eliz. c. 1. it was finally repealed. And the matter touching this oath at this day standeth thus: It is confessed, as well by the said provincial constitution of Otho, as by the register, that the said constitution was against the custom of the realm: and no custom of the realm can be taken away by a canon of the church, but only by act of parliament; and especially in case of an oath, which is so sacred a thing, and which generally concerneth all the nobility, gentry, and commonalty of the realm of both sexes: And by the statute of the 25 H. 8. c. 19. no canon against the king's prerogative, the law, statutes, or custom of the realm is of force; which is but declaratory of the common law. 2 Infr. 658. 12 Co. 29.

So that the result of the matter, upon these premises, will be this: So far as this constitution was against the custom of the realm, it is of no avail: So far as it is warranted by the custom, it is still of force; and consequently extendeth to the clergy, and to laymen in cases matrimonial and testamentary, and also to persons who take the said oath voluntarily, and not by compulsion.
The voluntary or decisive oath.

4. The voluntary or decisive oath, is given by one party to the other, when one of the litigants, not being able to prove his charge, offers to stand or fall by the oath of his adversary; which the adversary is bound to accept, or to make the same proposal back again, otherwise the whole shall be taken as confessed by him. *Wood Civ. L. 314.*

Path of truth.

And this seemeth to have some foundation in the common law, in what is called waging of law; which is a privilege that the law giveth to a man, by his own oath to free himself, in an action of debt upon a simple contract. *1 Inst. 155, 157. 2 Inst. 45.*

But this oath, in the ecclesiastical courts, is now obsolete, and out of use. *1 Ought. 176.*

Oath of malice.

5. The oath of truth, is when the plaintiff or defendant is sworn upon the libel or allegation, to make a true answer of his knowledge as to his own facts, and of his belief of the facts of others. This differs from the former; for it is not decisive; and the plaintiff or defendant may proceed to other proofs, or prove the contrary to what is sworn. *Wood Civ. L. 314.*

6. The oath of malice, is when the party proponent swears, that he doth not propose such a matter or allegation, out of malice, or with an intent unneceffarily to protract the cause. *1 Ought. 158.*

And this oath may be administered at any time during the suit, at the judge's discretion, whether the parties consent to it or not. *Id.*

Suppleatory oath.

7. The necessary or suppleatory oath, is given by the judge to the plaintiff or defendant, upon half proof already made. This being joined to the half proof supplies, and gives sufficient power to the judge to condemn or absolve. It is called the necessary oath, because it is given out of necessity, at the instance of the party, whether the other party will consent to it or not. But when the judge doth administer it, he ought first to be satisfied, that there is an half proof already made, by one unexceptionable witness, or by some other sort of proof. If the cause is of an high nature, and there is a temptation to perjury; or if it is a criminal cause; or if more witnesses might be produced to the same fact; then this oath cannot take place. *Wood Civ. L. 314. Ayl. Par. 391.*

Before
Before the delegates at serjeants Inn, Jan. 22. 1717.

William and Lady Bridget Osborne. The question below was, whether Mr Williams was married to the lady Bridget Osborne; the minister who performed the ceremony, having formerly confessed it extrajudicially, but now denying it upon oath. So that there being variety of evidence on both sides, the judge upon hearing the cause required, according to the method of ecclesiastical courts, the oath of the party, which the civilians term the supplenary oath, that he was really married as he supposeth in his libel and articles. The accepting this oath (as was agreed on both sides) is discretionary in the judge, and is only used where there is but what the civilians esteem a semiplena probatio; for if there be full proof, it is never required; and if the evidence doth not amount to a half proof, it is never granted, because this oath is not evidence strictly speaking, but only confirmation of evidence; and if that evidence doth not amount to a half proof, a confirmation of it by the party's own oath will not alter the case. Upon admitting the party to his supplenary oath, the lady appeals to the delegates. So that the question now was not upon the merits, whether there really was a marriage or not, but only upon the course of the ecclesiastical courts, whether the judge in this case ought to have admitted Mr. Williams to his supplenary oath, as a person that had made an half proof of that which he was then to confirm. The questions before the delegates were two: First, whether the supplenary oath ought to be administered in any case to enforce a half proof: And, secondly, admitting it might, whether the evidence in this case amounted to a half proof, so as to intitle Mr. Williams to pray that his supplenary oath might be received. As to the first, it was argued to be against all the rules of the common law, that a man should be a witnesses in his own cause. It is not allowed in the temporal courts in any case but that of a robbery, which being presumed to be secret, the party is admitted to be a witnesses for himself. In the temporal courts no man can be examined that has any interest, tho' he be no party to the suit. On the other side many authorities and precedents were cited out of the civil law, to prove this practice of allowing a supplenary oath. And therefore the court held, that by the canon and civil law, the party agent, making a half proof, was intitled to pray that his supplenary oath might be received: And tho' it be against the rules of the common law, yet this being
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ing a cause of ecclesiastical cognizance, the civil and not
the common law is to be the measure of their proceed-
ings; and therefore this practice being agreeable to the
civil law, is well warranted in all cases where the civil
law is the rule, and the exercise of it lies in the discre-
tion of the judge. Secondly, It being therefore establi-
ed, that a person making half proof is intituled to his oath,
the next question was, what is, according to the notion
of the civilians and canonists, a half proof. With them
it was argued on the behalf of the lady, that nothing is
estemed as a full proof, unless there be two positive
unexceptionable witnesses to the very matter of fact, as
to the marriage; that a half proof, which is the next
degree of evidence, is what is affirmed by the oath of one
witness as to the principal fact, and confirmed by con-
current circumstances: It must be by one witness; it must
be evidence that concludes necessarily, and not by pre-
sumption; there must be no presumption to encounter it;
and the witness must be of good repute: That matrimo-
nial causes require the greatest certainty; and where that
is the sole question, the proof ought to be fuller, than
where it comes in by incident, as on granting administra-
tion. To this it was answered on the other side, that
half proof implies no more than what the common lawyers
call presumptive evidence; and that is properly called
presumptive evidence, which hath no one positive witnes-
s to support it, but relies only on the strength of circum-
stances. And when there is one witness, who deposeth
directly to the principal fact, this immediately ceaseth to
bear the name of presumption, and assumes that of posi-
tive evidence. And that which in the temporal courts
pallateth for positive evidence, is the same degree of evi-
dence with the full proof of the canonists and civilians.
The suppletory oath doth ex vi termini import, that there
has been no one positive witness to the principal fact; and
he that demands to be admitted to take his oath, doth there-
by admit that he hath produced no conclusive evidence to
the point in issue, and therefore the party himself supplies
the place of the witness. There is no fixing the bounds of
an half proof; for in many cases circumstances may over-
bear positive evidence: and then if those circumstances
should not be esteemed to amount to an half proof,
when the positive evidence would exceed it; that would
be to overthrow the positive evidence, by that which is
not so strong. Half proof therefore they concluded to be,
that degree of evidence which would incline a reasonable
man
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man to either side of the question; and implies in the notion of it, that a positive witnes hath not depos'd to the principal fact. And in this case, tho' there was no positive conclusive evidence, but only such as depended on circumstances, as confessions, and letters, and unusual familiarities; yet the court thought it amounted to an half proof, and consequently that the dean of the arches had done right, in admitting Mr. Williams to his supple-tory oath: And therefore they dismissed the appeal, with 15l costs. Str. 80.

The party praying this oath, must exhibit a schedule ingrossed, with his hand to it, wherein is written so much as is proved more than half proof, or half proof; and must take his oath to speak the truth of his own certain knowledge. 1 Ought. 177.

8. By the ancient canon law, a proctor having a spe-cial proxy, may take the oath of calumny, and may swear in animam domini; upon the soul of his client. Wood Civ. L. 298.

But by Can. 132. It is ordained, that forasmuch as in the probate of testament and suits for administration of the goods of persons dying intestate, the oath usually taken by proctors of courts, In animam confituentis, is found to be inconvenient; therefore from henceforth every executor, or suiter for administration, shall person-ally repair to the judge in that behalf, or his surrogate, and in his own person (and not by proctor) take the oath accustomed in these cases.

9. The oath in litem, or of damages, is that by which the plaintiff estimates the damages in the loss of any thing; and which the judge may allow or moderate. Wood Civ. L. 314.

10. The oath of expences and costs, is where the litigant (which gained the sentence or decree), upon the taxing of costs, affirms upon his oath that these charges were necessarily expended by him in the prosecution of his suit. Wood Civ. L. 314.

All these oaths are unknown to the common law, but they are all used in the courts governed by the civil or canon law. Wood Civ. L. 314.

But they are only made use of in civil causes, and cannot be properly applied to criminal. Wood Civ. L. 333.

But the oath next following regardeth only criminal cases: That is to say,
Oath of purgation.

11. The oath of purgation; which oath was administered where the defendant was suspected to be guilty; and if he swore that he was innocent, and produced honest men for his compurgators, he was to be discharged. If he could not bring such compurgators, to swear that they also believed him innocent, he was esteemed as convicted of such crime. Wood Civ. L. 332.

But by the aforesaid act of the 13 C. 2. c. 12. It shall not be lawful for any person exercising ecclesiastical jurisdiction, to tender or administer to any person, any oath whereby such person to whom the same is tendered or administered, may be charged or compelled to confess, or accuse, or to purge him or herself of any criminal matter or thing, whereby he or she may be liable to censure or punishment.

12. Besides the above recited, there are also divers other oaths of use in the courts: As, the oath of the proctor, that he hath not questioned the witnesses; the oath of the proctor, concerning his bill of costs; the oath of the party, for the obtaining of absolution, that he will stand to the law, and obey the commands of the church; the oath of the party, on his being admitted in forma pauperis; the oath of the party, concerning matter newly come to his knowledge; the oath of the party, that he believes he can prove the matter alleged; the oath of a creditor, concerning his debt; the oath of an executor, administratrix, accountant, churchwardens, quēstmen, curates, preachers, schoolmasters, physicians, surgeons, midwives, and other such like. 1 Ought. 176.

13. The oath of allegiance is very ancient; and by the common law, every freeman at his age of twelve years was required, in the leet (if he were in any leet), or in the tourn (if he were not in any leet), to take the oath of allegiance. 2 Inst. 73.

But the clergy, not being bound to attend at the tourn or leet, were consequently so far exempted from taking this oath of allegiance. 2 Inst. 121. 1 H. H. 64.

But they were bound nevertheless to do homage to the king, for the lands held of him in right of the church. 1 H. H. 71, 72.

14. The oath of supremacy came in after the reformation, in consequence of abolishing the papal authority. And this oath all clergymen especially were bound to take.

15. The oath of abjuration came in after the revolution; received some alterations in the first year of queen Anne.
Anne; and again in the first year of king George the first; and so continues to this time. And this oath, together with the oaths of allegiance and supremacy, all clergymen as well as others are bound to take, on their being promoted to offices.

16. In all cases wherein by any act of parliament an oath shall be allowed, authorized, or required, the solemn affirmation or declaration of any of the people called quakers shall be allowed instead of such oath, altho' no particular or express provision be made for that purpose in such act. 22 G. 2. c. 46. s. 36.

And if any person making such affirmation or declaration, shall be lawfully convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing, which if the same had been depofed upon oath in the usual form, would have amounted to wilful and corrupt perjury; he shall suffer as in cases of perjury. id.

But no quaker by virtue hereof shall be qualified or permitted to give evidence in any criminal cases, or to serve on juries, or to bear any office or place of profit in the government. s. 37.

17. By the 22 G. 2. c. 30. Every person being a member of the protestant episcopal church, known by the name of Unitas fratrum, or the united brethren, which church was formerly settled in Moravia and Bohemia, and are now in Prussia, Poland, Silesia, Lusatia, Germany, the United provinces, and also in his majesty's dominions, who shall be required to take an oath, shall be allowed instead of such oath to make their solemn affirmation: But this not to qualify them to give evidence in a criminal cause, or to serve on juries.

18. Such oaths ought to be imposed on heathens and Jews, which they allow to be obligatory. Wood Civ. L. 313.

Thus a Jew is to be sworn upon the old testament; and perjury upon the statute may be assigned upon this oath. 2 Kebr. 314.

And 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.

Thus also Mahometans shall be sworn upon the Koran. Str. 1104.

In the case of Omichund and Barker, H. 18 G. 2. a commission issued out of chancery, to take the answer of Omichund the defendant, and the depofitions of several witnesses, who were heathens of the Gentou religion, in
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their own country manner, at Calcutta in the East-Indies; and the commission being executed and returned, the depositions were allowed to be read in the court of chancery, by lord Hardwicke, afflicted by the two lords chief justices and the lord chief baron. The manner of taking which oath was thus: There were three bramins or priests present, and the oath being interpreted to each witness, the witness touched the feet of one of the bramins, and two being bramins or priests did touch his hand. 2 Abr. Eq. Cas. 397.

At the rebel assizes at Carlisle, in the year 1745, many of the Scotch witnesses refusing to be sworn otherwise than in their own country manner; the judges so far submitted, as to allow them to be sworn after the Scotch manner for finding the bills by the grand jury, but did not admit it upon the trials.

19. By the 25 C. 2. c. 2. 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 divine service and sermon:

And in the court where he takes the oaths (as hereunder mentioned) 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. 3, 2, 3, 9.

Any office civil or military] Ecclesiastical offices do not seem to be included within this description; and consequently it seemeth not requisite for clergymen, in qualifying for ecclesiastical offices, to produce any certificate of their having received the sacrament, nor to make or subscribe the declaration against transubstantiation. But they are to take the oaths in like manner as civil officers, by the 1 G. 2. c. 13, which enacteth as follows:

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; all ecclesiastical
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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 others; preachers and teachers of separate congregations,—shall (within six kalendar months after such admission, 9 G. 2. c. 26. f. 3.) take and subscribe the oaths of allegiance, supremacy, and abjuration, in one of the courts at Westminster, or at the general or quarter sessions. f. 2. And this to be between the hours of nine and twelve in the forenoon, and no other. 25 C. 2. c. 2. f. 2.

But this not to extend to churchwardens, nor to any like inferior civil office. 1 G. f. 2. c. 13. f. 20.

And every person making default herein, shall be incapable to hold his office: and if he shall execute his office, after the time 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 500l to him who shall sue. 1 G. f. 2. c. 13. f. 8.

But 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 same purpose, in some act, every two or three years.

In like manner by the 20 G. 2. c. 48. persons who had omitted to subscribe the declaration against popery, of the 30 C. 2. were indemnified, if they subscribed on or before Dec. 1. 1747.

And persons forfeiting their office may take a new grant thereof, on their taking the oaths, and conforming; provided it was not filled up before. 1 G. f. 2. c. 13. f. 14.

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 twelve months, the king shall appoint and nominate. 1 G. f. 2. c. 13. f. 12, 13.

20. The oath of allegiance by the 1 G. f. 2. c. 13. is this:

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.

The oath of supremacy by the same statute:

I A. B.
Oaths.

I A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm: So help me god.

The oath of abjuration, by the same act is this:

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 thereto 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 title 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 title and title of king of 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 traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity: And I will do my utmost endeavours, to disclose and make known, to his majesty and his successors, all treasons and traitorous 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, intituled, 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, electresses and duchesses 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.
The declaration against transubstantiation, by the 25 C. 2. e. 2. is this:

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.

The declaration against popery, by the 30 C. 2. f. 2.
c. 1. is as follows:

I A. B. do solemnly and sincerely, in the presence of god, profefs, teftify, 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 superflitious and idolatrous: And I do solemnly in the presence of god profefs, teftify, 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 reversion 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, altho’ the pope, or any other person or persons, or power whatsoever, shall dispense with or annul the same, or declare that it was null and void from the beginning.

Or without any hope of dispensation,—or without thinking that I am or can be acquitted &c.] By this disjunctive [or] here twice occurring, this declaration seemeth to be rendered somewhat loose and unconnected, and leaveth scope for equivocation. The word [and] seemeth to have been intended, and would render the declaration more compact.

21. By the § 8 G. c. 6. The quakers solemn affirmation, instead of an oath, is this:

I A. B. do solemnly, sincerely, and truly declare and affirm.

By the same act, instead of the oaths of allegiance and supremacy, quakers shall be allowed to make the following declaration of fidelity:

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 profefs, teftify and declare, that I do from
Daths.

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 subjectts, 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, prebeminence, or authority, ecclesiastical or spiritual, within this realm.

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 title 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 title and title of king of Great Britain, hath not any right or title whatsoever 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 traitorous 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 traitorous conspiracies, 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, intituled, 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, intituled, 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, electores and dutches 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.
Daths.

And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.

The quakers profession of their belief, by the 1 W. c. 18. is this:

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.

22. The affirmation of the Moravians shall be in these words, "I A. B. do declare, in the presence of almighty God, the witness of the truth of what I say." 22 G. 2. c. 30.

Obit.

An obit was an office performed at funerals, when the corpse was in the church, and before it was buried; which afterwards came to be anniversary, and then money or lands were given towards the maintenance of a priest who should perform this office every year. Nels. Tit. Obit. Ayl. Par. 395.

Oblations. See Offerings.
Obventions. See Offerings.

Offerings.

Offerings, oblations, and obventions are one and the same thing; tho' obvention is the largest word. And under these are comprehended, not only those small customary sums commonly paid by every person when he receives the sacrament of the Lord's supper at Easter, which in many places is by custom 2d. from every communicant, and in London 4d. an house; but also the customary payments for marriages, christnings, churchings, and burials. Watf. c. 52.
Concerning which, it is enacted by the statute of the 2 & 3 Ed. 6. c. 13. that all persons which by the laws or customs of this realm ought to make or pay their offerings, shall yearly well and truly content and pay the same to the parson, vicar, proprietor, or their deputies or farmers, of the parishes where they shall dwell or abide; and that, at such four offering days, as at any time heretofore within the space of four years last past hath been used and accustomed for the payment of the same; and in default thereof, to pay for the said offerings at Easter the next following. f. 10.

The four offering days are Christmas, Easter, Whitsun-tide, and the feast of the dedication of the parish church. Gibs. 739.

Concerning the offerings at Easter; it is directed by the rubrick at the end of the communion office, that yearly at Easter, every parishioner shall reckon with the parson, vicar or curate, or his or their deputy or deputies, and pay to them or him all ecclesiastical duties, accustomedly due, then at that time to be paid.

And it hath been decreed, that Easter offerings are due of common right, and not by custom only. Bumb. 173, 198.

So in the case of Carthew and Edwards, T. 1749; it was decreed by the court of exchequer, that Easter offerings were due to the plaintiff of common right, after the rate of 2d a head for every person in the defendant's family of 16 years of age and upwards, to be paid by the defendant.

Besides the oblations on the four principal festivals, there were occasional oblations upon particular services: of which there were some free and voluntary, which the parishioners or others were not bound to perform, but ab libitum; there were others by custom certain and obligatory, as those for marriages, chriftnings, churching of women, and burials. Deg. p. 2. c. 23.

Those offerings which were free and voluntary are now vanished, and are not comprehended within the aforesaid statute; but those that were customary and certain, as for communicants, marriages, chriftnings, churching of women, and burials, are confirmed to the parish priests, vicars, and curates of the parishes where the parties live that ought to pay the same. Deg. p. 2. c. 23.

Particularly, at the burial of the dead, it was a custom for the surviving friends, to offer liberally at the altar, for the pious use of the priest, and the good estate

And from hence the custom still continueth in many places, of bestowing alms to the poor on the like occasions.

These oblations were anciently due to the parson of the parish, that officiated at the mother church or chapel that had parochial rites; but if they were paid to other chapels that had not any parochial rites, the chaplains thereof were accountable for the same to the parson of the mother church. God. 427.

By the statute of circumscripte agatis, 13 Ed. 1. If a parson demand of his parishioners oblations due and accustomed, such demand shall be made in the spiritual court; in which case the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

But Sir Simon Degge conceiveth, that an action also may be formed upon the statute at the common law. Deg. p. 2. c. 23.

However, it is certain, that by the small tithe act of the 7 & 8 W. c. 6, offerings, oblations, and obventions may be recovered before the justices of the peace.

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Official.

OFFICIAL principal is an officer, whose office is usually annexed to that of Chancellor; and is therefore treated of under that title.

There is also an official to the archdeacon; unto whom he standeth in the like relation, as the chancellor doth to the bishop.

Old Style: See Kalendar.

Option. See Bishops.

Oratory. See Chapel.
**Ordinal.**

**ORDINAL, ordinale,** was that book which ordered the manner of performing divine service: and seemeth to be the same which was called the pie or portuis, and sometimes portiforium. Lind. 251.

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**Ordinary.**

**ORDINARY, ordinarius** (which is a word we have received from the civil law), is he who hath the proper and regular jurisdiction, as of course and of common right; in opposition to persons who are extraordinarily appointed. Swinb. 380.

In some acts of parliament we find the bishop to be called ordinary, and so he is taken at the common law, as having ordinary jurisdiction in causes ecclesiastical; albeit in a more general acceptation, the word ordinary signifieth any judge authorized to take cognizance of causes in his own proper right, as he is a magistrate, and not by way of deputation or delegation. God. 23.

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**Ordination.**

I. Of the order of priests and deacons in the church.

II. Of the form of ordaining priests and deacons, annexed to the book of common prayer.

III. Of the time and place for ordination.

IV. Of the qualification and examination of persons to be ordained.

V. Of oaths and subscriptions previous to the ordination.

VI. Form and manner of ordaining deacons.

VII. Form
Ordination.

VII. Form and manner of ordaining priests.
VIII. Fees for ordination.
IX. SimoniacaL promotion to orders.
X. General office of deacons.
XI. General office of priests.
XII. Exhibiting letters of orders.
XIII. Archbishops Wake's directions to the bishops of his province, in relation to orders.

I. Of the order of priests and deacons in the church.

1. The word priest is nearly the same in all the chritian languages: the Saxon is preost, the German priest, the Belgic prist, the Swedish prist, the Gallic, preste, the Italian prete, the Spanish preísle; all evidently enough taken from the Greek πρεσβυτέρος. Jun. Etym.

In like manner, the word deacon, with little variation, runneth through all the same languages; deduced from the Greek διάκονος. id.

2. Art. 35. Orders are not to be accounted for a sacrament of the gospel; as not having the like nature of sacraments with baptism and the lords supper; for that they have not any visible sign or ceremony ordained of God.

3. It is evident unto all men diligently reading the holy scripture and ancient authors, that from the apostles time there have been these orders of ministers in Christ's church; bishops, priests, and deacons. Which offices were evermore had in such reverend estimation, that no man might presume to execute any of them, except he were first called, tried and examined, and known to have such qualities as are requisite for the same; and also by publick prayer with imposition of hands, were approved and admitted thereunto by lawful authority. Preface to the forms of consecration and ordination.

Bishops, priests, and deacons] Besides these, the church of Rome hath five others; viz. subdeacons, acolyths, exorcists, readers, and ostiaries. 1. The subdeacon, is he who delivereth the vellels to the deacon, and assisteth him in the administration of the sacrament of the lord's supper. 2. The acolyth, is he who bears the lighted candle whilst the gospel is in reading, or whilst the priest consecrateth the host. 3. The exorcist, is he who adjureth evil spirits...
in the name of almighty god to go out of persons troubled therewith. 4. The reader, is he who readeth in the church of god, being also ordained to this, that he may preach the word of god to the people. 5. The ordinary, is he who keepeth the doors of the church, and tolleth the bell. These, tho' some of them ancient, were human institutions, and such as come not under the limitation which immediately precedes, [from the apostles time]; for which reason, and because they were evidently instituted for convenience only, and were not immediately concerned in the sacred offices of the church, they were laid aside by our first reformers. Gibs. 99.

That no man might presume to execute any of them] And to this purpose, the rule laid down in the canon law is, that if any person, not being ordained, shall baptize, or exercise any divine office, he shall for his rashness be cast out of the church, and never be ordained. Gibs. 138.

Except he were first called] Accordingly in the several offices, the person to be admitted is first examined by the archbishop or bishop, whether he thinks or is persuaded that he is truly called thereunto, according to the will of Christ, and the due order of this realm.

Tried, examined, and known] By the office of ordination, when the archdeacon or his deputy presenteth unto the bishop the persons to be ordained, the bishop saith, "Take heed that the persons whom you present unto us, be apt and meet for their learning and godly conversation, "to exercise their ministry duly to the honour of god "and the edifying of his church". To which he answereth, "I have enquired of them, and also examined "them, and think them so to be."

Imposition of hands] This was always a distinction between the three superior, and the five forementioned inferior orders; that the first were given by imposition of hands, and the second were not. Gibs. 99.

II. Of the form of ordaining priests and deacons, annexed to the book of common prayer.

1. In the liturgy established in the second year of king Edward the sixth, there was also a form of consecrating and ordaining of bishops, priests, and deacons; not much differing from the present form.

2. After-
2. Afterwards, by the 3 & 4 Ed. 6. c. 10. it was all other forms enacted, that all books heretofore used for service of the church, other than such as shall be set forth by the king's majesty, shall be clearly abolished. 1. i.

3. And by the 5 & 6 Ed. 6. c. 1. it is thus enacted: The king, with the affent of the lords and commons in parliament, hath annexed the book of common prayer to this present statute; adding also a form and manner of making and confecrating of archbishops bishops priests and deacons, to be of like force and authority as the book of common prayer. 5 & 6 Ed. 6. c. 1. f. 5. 8 El. c. 1.

4. And by Art. 36. The book of confecration of archbishops and bishops and ordering of priests and deacons, lately set forth in the time of Edward the sixth, and confirmed at the same time by authority of parliament, doth contain all things necessary to such confecration and ordering; neither hath it any thing, that of it self is superstitious and ungodly. And therefore whosoever are confecrated or ordered according to the rites of that book, since the second year of the forenamed king Edward unto this time, or hereafter shall be confecrated or ordered according to the same rites; we decree all such to be rightly, orderly, and lawfully confecrated and ordered.

5. And by Can. 8. Whosoever shall affirm or teach, that the form and manner of making and confecrating bishops priests and deacons, containeth any thing that is repugnant to the word of god; or that they who are made bishops priests or deacons in that form, are not lawfully made, nor ought to be accounted either by themselves or others to be truly either bishops priests or deacons, until they have some other calling to those divine offices; let him be excommunicated ipso facto, not to be restored, until he repent, and publicly revoke such his wicked errors.

6. And by the act of uniformity of the 13 & 14 C. 2. By act of parliament. c. 4. it is enacted as followeth: All ministers in every place of publick worship shall be bound to use the morning and evening prayer, administration of the sacraments, and all other the publick and common prayer, in such order and form as is mentioned in the book annexed to this present act, and intitled, The book of common prayer and administration of the sacraments, and other rites and ceremonies of the church of England; together with the psalter or psalms of David, pointed as they are to be sung or said in churches; and
III. Of the time and place for ordination.

1. By Can. 31. Forasmuch as the ancient fathers of the church, led by example of the apostles, appointed prayers and fasts to be used at the solemn ordering of ministers; and to that purpose allotted certain times, in which only sacred orders might be given or conferred: we, following their holy and religious example, do constitute and decree, that no deacons or ministers be made and ordained, but only upon the sundays immediately following jejunia quatuor temporum, commonly called ember-weeks, appointed in ancient time for prayer and fasting (purposely for this cause at the first institution), and so continued at this day in the church of England.

And by the preface to the forms of consecration and ordination, it is prescribed, that the bishop may at the times appointed in the canon, or else upon urgent occasion on some other sunday or holiday in the face of the church, admit deacons and priests.

But this might not be done, at other times than is directed by the canon; at the sole discretion of the bishop; but he was to have the archbishop's dispensation or licence, as the practice was: and this was understood to be a special prerogative of the see of Rome in the times of poverty. But as the rubrick made in the time of king Edward the sixth, and continued in the last revival of the common prayer, seems to leave it to the judgment of the bishop, without any direction to have recourse to the archbishop; it may be a question, whether such dispensation be now necessary. Gib. 139.

2. And this to be done in the cathedral, or parish church where the bishop resideth. Can. 31.

So that the bishop's jurisdiction as to conferring of orders is not confined to one certain place, but he may ordain at the parish church where he shall reside; and the
Irish bishops do sometimes ordain in England; but, regularly, leave ought to be obtained of the bishop, within whose diocese the ordination is performed. *Johns. 34.*

And this is agreeable to the rule of the ancient common law; which directeth, that a bishop shall not ordain within the diocese of another, without the licence of such other bishop. *Gibs. 139.*

IV. Of the qualification and examination of persons to be ordained.

1. By Can. 34. No bishop shall admit any person into sacred orders, except he, desiring to be a deacon, is three and twenty years old; and to be a priest, four and twenty years compleat.

And by the preface to the form of ordination: None shall be admitted a deacon, except he be twenty three years of age, unless he have a faculty; and every man which is to be admitted a priest, shall be full four and twenty years old.

*Unles[s be have a faculty]* So that a faculty or dispensation is allowed, for persons of extraordinary abilities, to be admitted deacon sooner. *Gibs. 145.*

Which faculty (as it seemeth) must be obtained from the archbishop of Canterbury.

And by the statute of the 13 El. c. 12. *None shall be made minister, being under the age of four and twenty years.*

And in this case there is no dispensation. *Gibs. 146.*

Note, here it may be proper to observe once for all, the equivocal signification of the word minister, both in our statutes, canons, and rubrick in the book of common prayer. Oftentimes it is made to express the person officiating in general, whether priest or deacon; at other times it denoteth the priest alone, as contra-distinguished from the deacon; as particularly here in this statute, and in Can. 31. foregoing. And in such cases, the determination thereof can only be ascertained from the connexion and circumstances.

E. 1 Fac. 2. Roberts and Pain. A person being presented to the parish church of Christ-church in Bristol, was libelled against, because he was not twenty three years of age when made deacon, nor twenty four when made priest. A prohibition was prayed, upon this suggestion, that if the matter was true, a temporal loss, to
Oordination.

2. Otho. Seeing it is dangerous to ordain any without a certain and true title; we do establish, that before the conferring of orders by the bishop, a diligent search and enquiry be made thereof. Ath. 16.

Can. 33. It hath been long since provided, by many decrees of the ancient fathers, that none should be admitted either deacon or priest, who had not first some certain place where he might use his function: According to which examples we do ordain, that henceforth no person shall be admitted into sacred orders, except (1) he shall at that time exhibit to the bishop, of whom he desires imposition of hands, a presentation of himself to some ecclesiastical preferment then void in the diocese; or (2) shall bring to the said bishop a true and undoubted certificate, that either he is provided of some church within the said diocese where he may attend the cure of souls, or (3) of some minister's place vacant either in the cathedral church of that diocese or in some other collegiate church therein also situate, where he may execute his ministry; or (4) that he is a fellow, or in right as a fellow, or (5) to be a conduit or chaplain in some college in Cambridge or Oxford; or (6) except he be a master of arts of five years standing, that lieth of his own charge in either of the universities; or (7) except by the bishop himself that doth ordain him minister, he be shortly after to be admitted either to some benefice or curatehip then void. And if any bishop shall admit any person into the ministry that hath none of these titles, as is aforesaid; then he shall keep and maintain him with all things necessary, till he do prefer him to some ecclesiastical living: And if the said bishop shall refuse so to do, he shall be suspended by the archbishop, being assisted with another bishop, from giving of orders by the space of a year.

No person, &c.] By this branch of the canon, which is negative and exclusive, one sort of title that was here-tofore very common, is in great measure taken away, viz. the title of his patrimony, which we meet with very frequently among the acts of ordination in our ecclesiastical records; and not only fo, but the title of a pension or allowance in money, which is frequently specified; and sometimes the title of a particular person (of known abilities and there named) without any such specification of an annual sum. And at such titles, after the estate,
Ordination.

(Ifum, or the like, is often added in the acts of ordination (especially when it was small) that the party therewith acknowledged himself content; which declaration so made and entred, was understood to be a discharge of the bishop ordaining, from any obligation to provide for him. Gibs. 140.

In the cathedral church] This is only an affirmation of what was the law of the church before; the title of vicar choral being frequently entred as a canonical title, in the acts of ordination. Gibs. 140.

Or that he is a fellow] This also, as to fellows of colleges, appears to have been all along the law of the church of England, by the frequent entries of that title, as received and admitted in the acts of ordination. Gibs. 140.

Chaplain in some college] This seems to be a title founded on this canon, from the silence of the ancient books relating thereunto. Gibs. 140.

Master of arts of five years standing] This also seems to be a new title established by the canon. Gibs. 140.

Shall keep and maintain him] This was injoined by a canon of the third council of Lateran; which canon was taken into the body of laws made in a council held at London, in the year 1200. And in the time of archbishop Winchelsey, there is in the register an order from the archbishop to one of his comprovincial bishops, to provide one of a benefice, whom he had ordained without title; and a citation of the executors of a bishop deceased, to oblige them to provide for one, whom the bishop had so ordained; and there is an order to a bishop, to oblige a clergyman, who had given a title of a certain annual sum, to pay it till the clerk should be provided for; and a citation to Merton college, to shew cause, why they should not be obliged to maintain one, to whom they had given a title at his ordination. In like manner, the observance of this canon made in the year 1603 (or rather of the common law of the church of which this canon is only an affirmation) was specially inforced upon the bishops by king Charles the first and archbishop Laud, upon this pain or penalty of maintaining the person, if they should ordain any without such title. And in ancient times, the names of the persons who granted the titles were entred in the acts of ordination,
tion, as standing engaged; as a testimony against the
person intitling, in case the clerk (ordained upon such
title) should at any time want convenient maintenance.
Gib's. 141.

And whereas the laws of the church in this particular
might be eluded, by a promise on the part of the person
ordained, not to insist upon such maintenance; we find
that case considered in the ancient Gloss, and there it
seems to be determined, that the same being a publick
right cannot be released. And before that, it had been
made part of the body of the canon law, that persons
having made such promise, unless compassionately dis-
pensed withal, ought not to be admitted to a higher
order, nor to minister in the order already taken. id.

In case of letters dimissory, the rule of the canon law
is, that the bishop whose business it was to see that there
was a good title, shall be liable to the penalty for a per-
son ordained without sufficient title, altho' another bishop
ordained such person. id.

3. By a constitution of Otho, it is thus enjoined: See-
ing it is dangerous to ordain persons unworthy, void of
understanding, illegitimate, irregular, and illiterate; we
do decree, that before the conferring of orders by the
bishop, strict search and inquiry be made of all these
things. Ath. 16.

And by a constitution of archbishop Reynolds; no simo-
niac, homicide, person excommunicate, usurer, sacrile-
gious person, incendiary, or falsifier, nor any other hav-
ing canonical impediment, shall be admitted into holy or-
ders. Lind. 33.

Canonical impediment] As, suppose, of bigamy; or any
other which proceeds rather from defect than crime. id.

And by several constitutions of Edmund archbishop, the
following impediments and offences are declared to be
causes of suspension from orders received, and consequently
so far forth are objections likewise, if known beforehand,
against being ordained at all; viz.

They who are born of not lawful matrimony, and
have been ordained without dispensation; shall be sus-
pended from the execution of their office, till they ob-
tain a dispensation:

They who have taken holy orders, in the conscience of
any mortal sin, or for temporal gain only; shall not exe-
cute their office, till they shall have been expiated from
the like sin by the sacrament of penance:  

Again,
Again, all who appear to have contracted irregularity in the taking of orders, or before or after, unless dispensed withal by those who have power to dispense with the same; shall be suspended from the execution of their office, until they shall have lawful dispensations: By irregulars as to the premises, we understand homicides, advocates in causes of blood, simonists, makers of simoniacl contracts; and who being infected with the contagion, have knowingly taken orders from heretics, schismaticks, or persons excommunicated by name.

Also bigamists, husbands of lewd women, violaters of virgins consecrated to god, persons excommunicate, and persons having taken orders surreptitiously, forcers, burners of churches, and if there be any other of the like kind.

And he who did examine the parties, was to inquire into all these particulars. Lind. 26.

But this is not now required; but all the same, so far as they concern a man's capacity, learning, piety, and virtue, are included in the following directions in the preface to the form of ordaining deacons, which is in some degree an enlargement of the foregoing restrictions: viz.

The bishop knowing, either by himself, or by sufficient testimony, any person to be a man of virtuous conversation, and without crime; and after examination and trial, finding him learned in the Latin tongue, and sufficiently instructed in holy scripture, may admit him a deacon.

And by Can. 34. the direction is this: No bishop shall admit any person into sacred orders, except he hath taken some degree of school in either of the two universities; or at the least, except he be able to yield an account of his faith in Latin according to the thirty nine articles.

And with respect unto priest's orders in particular, it is thus directed by the statute of the 13 El. c. 12. None shall be made minister, unless it appear to the bishop that he is of honest life, and professeth the doctrine expressed in the thirty nine articles; nor unless he be able to answer, and render to the ordinary an account of his faith in Latin, according to the said articles, or have special gift or ability to be a preacher.

So that if these requisites be observed, those others are not now required, further than they fall in with these.

And the ordinary way by which all this must appear to the bishop, must be by a written testimonial; concerning which it is directed by Can. 34. aforesaid, with respect both unto deacon's and priest's orders, that no bishop shall admit any person into sacred orders, except he shall then exhibit:
exhibit letters testimonial of his good life and conversation, un-
der the seal of some college of Cambridge or Oxford, where
before he remained, or of three or four grave ministers, toge-
ther with the subscription and testimony of other credible per-
sons, who have known his life and behaviour for the space of
three years next before.

And with respect unto priest’s orders in particular, it is
enacted by the aforesaid statute of the 13 El. c. 12. that
none shall be made minister, unless he firft bring to the bishop
of that diocese, from men known to the bishop to be of good
religion, a testimonial both of his honest life, and of his pro-
\[\text{...]

Some of the canons abroad do further require, that
proclamation be thrice made in the parish church where
the person who offereth himself to be ordained inhabiteth,
in order to know the impediments if any be; which the
minister of such parish is to certify to the bishop or his
official: Particularly, the council of Trent requires this,
and that it be done by the command of the bishop, upon
signification made to him, a month before, of the name of
the person who desires to be ordained: Not unlike to
which is this clause in the articles of queen Elizabeth
published in the year 1564, viz. “against the day of
giving orders appointed, the bishop shall give open
monitions to all men, to except against such as they
know, not to be worthy, either for life or conversa-
tion.” Gibs. 147.

Agreeable unto which are archbishop Wake’s directions
to the bishops of his province in the year 1716, subjoin-
ed at the end of this title, which altho’ they have not the
authority of a law properly so called, yet since it is said
to be discretionairy in the bishop whom he will admit to
the order of priest or deacon, and that he is not obliged
to give any reason for his refusal (1 Still. 334. John’s
46. Wood b. 1. c. 3.) this implieth, that he may insist
upon what previous terms of qualification he shall think
proper, consistent with law and right. And by the sta-
tute, rubrick, and canon aforesaying, he is not required,
but permitted only, to admit persons so and so qualified;
and prohibited to admit any without, but not injoined to
admit any persons altho’ they have such and such qualifica-
tions.

4. By Can. 35. The bishop, before he admit any per-
son to holy orders, shall diligently examine him, in the
presence of those ministers that shall assist him at the im-
position of hands; and if the bishop have any lawful im-
pediment,
pediment, he shall cause the said ministers carefully to examine every such person so to be ordered. And if any bishop or suffragan shall admit any to sacred orders who is not so examined, and qualified as before we have ordained [viz. in Can. 34]; the archbishop of his province having notice thereof, and being assisted therein by one bishop, shall suspend the said bishop or suffragan so offending, from making either deacons or priests for the space of two years.

Of common right, this examination pertaineth to the archdeacon, faith Lindwood; and so faith the canon law, in which this is laid down, as one branch of the archidiaconal office. Which thing is also supposed in our own form of ordination, both of priests and deacons, where the archdeacon's office is to present the persons that are apt and meet. Gibs. 147.

And for the regular method of examination, we are referred by Lindwood, to the canon upon that head, inferred in the body of the canon law; viz. When the bishop intends to hold an ordination, all who are delirious to be admitted into the ministry, are to appear on the fourth day before the ordination; and then the bishop shall appoint some of the priests attending him, and others skilled in the divine law, and exercised in the ecclesiastical functions, who shall diligently examine the life, age, and title of the persons to be ordained; at what place they had their education; whether they be well learned; whether they be instructed in the law of god. And they shall be diligently examined for three days successively; and so on the saturday, they who are approved, shall be presented to the bishop. Gibs. 147.

5. By a constitution of archbishop Reynolds: Persons Letters dimissory of religion shall not be ordained by any but their own bishop, without letters dimissory of the said bishop; or, in his absence, of his vicar general. Lind. 32.

And by Can. 34. No bishop shall henceforth admit any person into sacred orders, which is not of his own diocece, except he be either of one of the universities of this realm, or except he shall bring letters dimissory from the bishop of whole diocece he is.

Of one of the universities] That is, a member of some college, so as that he may be ordained ad titulum collegii sui. Grey. 45.

In the ancient acts of ordination, the fellows of New-college, St. Mary Winton, and King's college in Cambridge, are mentioned, as possessed of a special privilege.
from the pope, to be ordained by what bishops they pleased; and they are said to be sufficient dimissi, in virtue of that privilege, and without letters dimissory. But it doth not appear by our books, that this was then that general right of all colleges in the two universities, to which they are intituled by virtue of this canon. Gibs. 142.

And by a constitution of Richard Wetherfield, archbishop of Canterbury; A bishop ordaining one of another diocefe, without special licence of the bishop of that diocefe, shall be suspended from the conferring of that order to which he shall ordain any such person, until he shall have made a proper satisfaction. Lind. 32.

And by Can. 35. If any bishop or suffragan shall admit any to sacred orders, who is not fo qualified—as before we have ordained; the archbishop of his province, having notice thereof, and being affifted therein by one bishop, shall suspend the said bishop or suffragan for offending, from making either deacons or priests, for the space of two years: (and by the ancient canon law, from granting letters dimissory to the persons of his diocefe who are to be ordained. Gibs. 143.)

And they who shall be promoted to holy orders, by other than their own bishop, without licence of their own bishop, shall be suspended from the exercise of such order, until they shall obtain a dispensation. Edm. Lindw. 26.

But a dispensation in such case by their own bishop shall be sufficient, who may ratify such ordination. Lindw. 26.

And in our ecclesiastical records, we find several persons dispensed with, in form, for obtaining orders without such letters, as a great irregularity; which was look ed upon as needful for the ratification of the order received. Gibs. 142.

The archbishop, as metropolitan, may not grant letters dimissory; but this is to be understood with an exception to the time of his metropolitical visitation of any diocefes, during which he may both grant letters dimissory, and ordain the clergy of the diocefe visited. Gibs. 143.

So neither the archdeacon, nor official, may grant letters dimissory. Concerning the archdeacon, the canon law is expres: And as to the officials, they are excluded by the same constitution that excludes the religious; and the ancient gloss, speaking of officials, says, Altho' it cannot be denied that they have ordinary jurisdiction, yet recourse is not to be had to them in every thing,—for they cannot grant letters commendatory for orders. Gibs. 143.
During the vacancy of any see; the right of granting letters dimiffory within that see, rests in the guardian of the spiritualities; and, in consequence, the right of ordaining also, where such guardian is of the episcopal order. Gibs. 143.

A bishop being in parts remote; he who is specially constituted vicar general for that time, hath power to grant letters dimiffory; and the reason is, because during that time the whole episcopal jurisdiction is vested in him: as it is also in persons who enjoy jurisdictions entirely exempt from the bishop, and who therefore may likewise grant them. Gibs. 143.

The persons to whom letters dimiffory may be granted by any bishop, are either such who were born in the diocefe, or are promoted in it, or are resident in it. This appears from Lindwood, in his commentary upon the foregoing constitution of archbishop Reynolds; whose observation is taken from the body of the canon law. But altho' this is laid down disjunctively, so as letters dimiffory granted in any of the three cases will be good; yet it appears in practice, that heretofore they were judged to come more properly from the bishop in whose diocefe he was promoted, or in which his title lay. And the reason was, because the bishop in whose diocefe the person was born, or had long dwelt, is presumed to have the best opportunity of knowing the conversation of the person to be ordained. Gibs. 143.

The fitness of the persons to be ordained (as to life, learning, title, and the like) ought to appear, before the granting of letters dimiffory. This is supposed (as to conversation at least) in what hath been said before; and as to the title, it was not only inquired into by the bishop granting the letters; but frequently remained with him; of which special notice was taken in the body of such letters. And the bishop who grants the letters dimiffory is to make this inquiry, and not the bishop to whom such letters are transmitted; for he is to presume that the persons recommended to him are fit and sufficient. Gibs. 144.

Letters dimiffory may be granted at once to all orders, and directed to any catholick bishop at large. And this hath been the practice in the church of England, both before and since the reformation; as appears by innumerable instances, in the acts of ordination, of litterae dimifforie ad omnes; and by the forms of the letters dimiffory (whether ad omnes or not) which are directed in that general style. But other churches, to prevent the inconve-
nences of this practice (especially where such letters are granted without previous examination), have expressly forbid them both. Gibs. 144.

V. Of oaths and subscriptions previous to the ordination.

1. By the 1 El. c. 1. and 1 W. c. 8. Every person taking orders, before he shall receive or take any such orders, shall take the oaths of allegiance and supremacy, before the ordinary or commissary.

2. And by the 13 El. c. 12. None shall be admitted to the order of deacon, or ministry; unless he shall first subscribe to the thirty nine articles. f. 5.

3. And by Can. 36. No person shall be received into the ministry, except he shall first subscribe to these articles following:

(1) That the king's majesty, under god, is the only supreme governor of this realm, and of all other his highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate hath, or ought to have any jurisdiction, power, superiority, preeminence or authority, ecclesiastical or spiritual, within his majesty's said realms, dominions, and countries.

(2) That the book of common prayer, and of ordering of bishops, priests, and deacons, containeth in it nothing contrary to the word of god, and that it may lawfully be used, and that he himself will use the form in the said book prescribed in publick prayer, and administration of the sacraments, and none other.

(3) That he alloweth the book of articles of religion agreed upon by the archbishops and bishops of both provinces, and the whole clergy, in the convocation holden at London, in the year of our lord god one thousand five hundred sixty and two; and that he acknowledgeth all and every the articles therein contained, being in number nine and thirty, besides the ratification, to be agreeable to the word of god.

Which subscription, as it seemeth by the same and the following canon, must be before the bishop himself.

And for the avoiding of all ambiguities, such person shall subscribe in this form and order of words, setting down both his christian and surname, viz. "I N. N. do willingly and ex animo subscribe to these three articles, above mentioned, and to all things that are contained in them." Can. 36.
And if any bishop shall ordain any, except he shall first have to subscribed; he shall be suspended from giving of orders for the space of twelve months. Can. 36.

VI. Form and manner of ordaining deacons.

1. The ordination (as well of deacons as of ministers) shall be performed in the time of divine service, in the presence not only of the archdeacon, but of the dean and two prebendaries at the least, or (if they shall happen by any lawful cause to be let or hindered) in the presence of four other grave persons, being masters of arts at the least, and allowed for publick preachers. Can. 31.

And by the statute of the 21 H. 8. c. 13. for pluralities; it is allledged as one reason why a bishop may retain fix chaplains, because he must occupy fix chaplains at the giving of orders. f. 24.

However, in practice, a less number than is required either by the said statute or by the aforesaid canon, is sometimes admitted; and this (as it is said) by virtue of the rubrick in the office of ordination, which directs that the bishop with the priests present shall lay their hands upon the persons to be ordained; implying, as is supposed, that if there are but two priests present, it sufficeth by this rubrick, which is established by the act of parliament of the 13 & 14 C. 2. But the words do not seem so much to be restrictive of the number before required, as directory what that number as by law before required in this respect shall do.

2. And at the time of ordination, the bishop shall say unto the people, Brethren, if there be any of you, who knoweth any impediment, or notable crime, in any of these persons presented to be ordered deacons, for the which he ought not to be admitted to that office; let him come forth in the name of god, and shew what the crime or impediment is. Form of ordination.

And if any great crime or impediment be objected, the bishop shall forcafe from ordering that person, until such time as the party accused shall be found clear of that crime. Id.

3. And before the gospel, the bishop sitting in his chair, shall cause the said oaths of allegiance and supremacy to be (again) ministr'd unto every of them that are to be ordered. Form of ordin. 1 W. c. 8.

4. Then the bishop, laying his hands severally upon the head of every one of them, humbly kneeling before him,
Ordination.

him, shall say, "Take thou authority to execute the office of a deacon in the church of God committed unto thee; in the name of the father, and of the son, and of the holy ghost. Amen."

Then shall the bishop deliver to every one of them the new testament, saying, "Take thou authority to read the gospel in the church of God, and to preach the name, if thou be thereto licensed by the bishop himself." Form of ord. 

5. Finally, it must be declared unto the deacon, that he must continue in that office of a deacon the space of a whole year (except for reasonable causes it shall otherwise seem good unto the bishop), to the intent he may be perfect, and well expert in the things appertaining to the ecclesiastical administration; in executing whereof, if he be found faithful and diligent, he may be admitted by his diocesan to the order of priesthood. Form of ord.

VII. Form and manner of ordaining priests.

1. Can. 32. The office of a deacon being a step or degree to the ministry, according to the judgment of the ancient fathers and the practice of the primitive church, we do ordain and appoint, that hereafter no bishop shall make any person, of what qualities or gifts soever, a deacon and a minister both together upon one day; but the order in that behalf prescribed in the book of making and sanctifying bishops priests and deacons, be strictly observed. Not that always every deacon should be kept from the ministry for a whole year, when the bishop shall find good cause to the contrary; but that there being now four times appointed in every year for the ordination of deacons and ministers, there may ever be some time of trial of their behaviour in the office of deacon, before they be admitted to the order of priesthood.

2. At the time of ordination, the bishop shall say unto the people; Good people these are they whom we purpose, god willing, to receive this day unto the holy office of priesthood: for after due examination, we find not to the contrary but that they be lawfully called to their function and ministry, and that they be persons meet for the same. But yet if there be any of you, who knoweth any impediment, or notable crime in any of them, for the which he ought not to be received into this holy ministry,
ministry, let him come forth in the name of god, and shew what the crime or impediment is.

And if any great crime or impediment be objected, the bishop shall furcease from ordering that person, until such time as the party accused shall be found clear of that crime. Form of ordin.

3. Then the bishop, sitting in his chair, shall minister to every one of them the oaths aforesaid of allegiance and supremacy. Id. 1 W. c. 8.

4. Then the bishop, with the priests present, shall lay their hands severally upon the head of every one that receiveth the order of priesthood; the receivers humbly kneeling upon their knees, and the bishop saying, "Receive the holy ghost for the office and work of a priest in the church of god, now committed unto thee by the imposition of our hands: Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained. And be thou a faithful dispenser of the word of god, and of his holy sacraments: In the name of the father, and of the son, and of the holy ghost."

Then the bishop shall deliver to every one of them kneeling, the bible into his hand, saying, "Take thou authority to preach the word of god, and to minister the holy sacraments in the congregation, where thou shalt be lawfully appointed thereunto."

[With the priests present] By Can. 35. They who assist the bishop in laying on of hands, shall be of the cathedral church, if they may be conveniently had, or other sufficient preachers of the same diocefe, to the number of three at the least.

VIII. Fees for ordination.

1. By a constitution of archbishop Stratford: For any letters or orders, the bishops clerks or secretaries shall not receive above 6d; and for the sealing of such letters, or to the marshals of the bishop's house for admittance, to porters, hospitaliers, or shavers, nothing shall be paid: on pain of rendring double within a month; and for default thereof, the offender, if he is a clerk beneficed, shall be suspended from his office and benefice; if he is not beneficed, or a lay person, he shall be prohibited from the entrance of the church till he comply. Lind. 222.
Ordination.

Marshals] They who govern the hall and inner parts of the house. Lind. 222.

Hostiaries] Lindwood understandeth this word to signify the same as ostiaries, or persons appointed to keep the doors, and the word janitores (porters) next afo foregoing to signify those who keep the gates; whereas more properly, it seems that janitores (or porters) doth express both of those; and that the word hostiarii (as Dr Gibson observeth) doth denote those persons who prepared the host: for there is in the Roman pontifical a rubrick in the ordination of priests, that the bishop shall deliver to the person to be ordained, the cup with wine and water, and the paten laid upon it with the host, the bishop laying unto him, Take thou authority to offer sacrifice to god; and to celebrate masses as well for the living as for the dead, in the name of god. Gibs. 153.

Shavers] Whose office was to shave the crowns of persons to be ordained. Lindw. 222.

2. And by Can. 135. No fee or money shall be received either by the archbishop or any bishop or suffragan, either directly or indirectly, for admitting any person into sacred orders; nor shall any other person or persons under the said archbishop bishop or suffragan, for parchment, writing, wax, sealing, or any other respect thereunto appertaining, take above 10 lb: under such pains as are already by law prescribed.

Or any other respect thereunto appertaining——above 10 lb.] It is not lawful, faith John de Athon, to give any thing to the notary performing the duty of his office in the act of ordination; nevertheless he says, it is otherwise as to that notary or register who writes letters testimonial for those that are ordained, for his just salary, or somewhat more for his extraordinary trouble; altho' this may more securely be given voluntarily, without a preceding compact. Otho. De scrutiny, ordin. v. Scriptura.

And some of the modern constitutions abroad agreeing to the reasonableness of this, have by way of restraint upon the officer, fixed the fee of writing and the other particulars, in like manner as this canon and the foregoing constitution of archbishop Stratford have done in our church. For the letters testimonial of ordination are no part of the ordination, but only taken afterwards for the security of the person ordained; and therefore the same,
Ordination

John de Athon, in the place abovementioned says: It is safe (not, necessary) for the persons ordained, to have with them the said writing or letters testimonial of ordination, under the bishop's seal, containing the names of the person ordaining and of the person ordained, and the taking of such orders, and the time and place of ordination, and the like. Gibs. 154.

IX. Simoniacal promotion to orders.

By the 31 El. c. 6. If any person shall receive or take any money fee reward or any other profit directly or indirectly, or shall take any promise agreement covenant bond or other assurance to receive or have any money fee reward or any other profit directly or indirectly, either to himself or to any other of his friends, (all ordinary and lawful fees only excepted,) for or to procure the ordaining or making of any minister, or giving of any orders, or licence to preach; he shall forfeit 40l, and the person so corruptly ordained 10l. and if at any time within seven years next after such corrupt entrance into the ministry or receiving of orders, he shall accept any benefit or promotion ecclesiastical, the same shall be void immediately upon his induction investiture or installation, and the patron shall present or collate or dispose of the same as if he were dead: one moiety of which forfeitures to be to the king, and the other to him that shall sue. I. 10.

X. General office of deacons.

It appertaineth to the office of a deacon, in the church where he shall be appointed to serve, to assist the priest in divine service, and specially when he ministreth the holy communion, and to help him in the distribution thereof, and to read holy scriptures, and homilies in the church; and to instruct the youth in the catechism; in the absence of the priest to baptize infants; and to preach, if he be licensed thereto by the bishop himself; And furthermore it is his office, where provision is so made, to search for the sick poor and impotent people of the parish, and to intimate their estates names and places where they dwell, unto the curate; that by his exhortation they may be relieved with the alms of the parishioners or others. Rubr. in the form of ord. 

To assist the priest in divine service] Anciently, he officiated under the presbyter, in saying responses, and repeating the confession, the creed, and the lord's prayer after
after him, and in such other duties of the church as now properly belong to our parish clerks; who were heretofore real clerks, attending the parish priest in those inferior offices. Gibs. 150.

And [spefically when he miniftreth the holy communion] But by the 13 & 14 C. 2. c. 4. No person shall presume to confecrate the sacrament of the lord's supper, before such time as he shall be ordained priest; on pain of 100l. half to the king, and half to be equally divided between the poor of the parish where the offence shall be committed and him who shall sue in any of his majesty's courts of record; and to be disabled from being admitted to the order of priest for one whole year then next following. f. 14.

But this not to extend to foreigners or aliens of the foreign reformed churches allowed by the king. f. 15.

Also, by the act of toleration this shall not extend to qualified protestant difenting minifters.

And to read the holy scriptures] This power is expressly given to him in the act of ordination before mentioned.

To search for the fick, poor, and impotent] This is the most ancient duty of a deacon, and the immediate cause of the institution of the order. This rule was made in England while the poor subsisted chiefly by voluntary charities, and before the settlement of rates or other fixed and certain provisions; purfuant to which provision, our laws have devolved that care upon the churchwardens and overseers of the poor; which laft office was created on purpose for that end. Gibs. 159.

And to intimate their estates, names, and places where they dwell, unto the curate] That is, to the rector or vicar, who hath the care of souls.

And here it is obvious to remark the ambiguity of the word curate, as was before observed of the word minifter: sometimes it expresseth the person, whether priest or deacon, who officiath under the rector or vicar, employed by him as his affiftant, or to supply the place in his absence; sometimes it denoteth the person officiating in general, whether he be rector, vicar, or affiftant curate, or whosoever perfometh the service for that time; sometimes it denoteth exclusively (as in this place) the rector, vicar, or person beneficed, who hath curam animarum.
Ordination.

So far the office of a deacon is to be collected from the rubrick in the form of ordination, and from the form it self. And forasmuch as he is hereby permitted to baptize, to catechize, to preach, to assist in the administra-

tion of the lord's supper; to also by parity of reason he hath used to solemnize matrimony, and to bury the dead. *Watf. c. 14.

And in general it seemeth, that he may perform all the other offices in the liturgy, which a priest can do, except only confecrating the sacrament of the lord's supper (as hath been said), and except also the pronouncing of the absolution.

Indeed it is not clear from the rubrick in the book of common prayer; whether, or how far, a deacon is prohhibited thereby to pronounce the absolution. For altho' it is there directed, that the same shall be pronounced by the priest alone; yet the word [alone] in that place seemeth only to intend, that the people shall not pronounce the absolution after the priest, as they did the confession just before: and the word priest, throughout the rubrick, doth not seem to be generally appropriated to a person in priest's orders only; on the contrary, almost immediately after it is directed, that the priest shall say the gloria patri, and then afterwards that the priest shall say the suffrages after the lord's prayer (which, by the way, in most of the occasional offices are called by mistake the suffrages after the creed, or the suffrages next after the creed), and it is not supposed that these expressions are to be understood of the priest alone, exclusive of a deacon who may happen to perform the service. And here also we may obserue the ambiguous signification of the word priest, as before was observed of the words minister and curate: sometimes it is understood to signify a person in priest's orders only; at other times, and especially in the rubrick, it is used to signify the person officiating whether he be in priest's or only in deacon's orders: and in general, the words priest, minister, and curate seem indiscriminately to be applied throughout the liturgy, to denote the clergyman who is officiating, whether he be rector, vicar, assistant curate, priest, or deacon.

But the argument to evince that the priest only, and not a deacon, hath power to pronounce the absolution, seemeth most evidently to be deduced from the acts of ordination before mentioned. To the deacon, it is said: "Take thou authority to read the gospel, and to preach:"

To the priest, it is said, "Receive the holy ghost —

"Whole
"Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained."

Moreover; until a person is admitted to the order of priesthood, he is not capable of any benefice or ecclesiastical promotion. *Gilb. 146.*

And by the statute of the 13 & 14 C. 2. c. 4. no person shall be capable to be admitted to any parsonage vicarage benefice or other ecclesiastical promotion or dignity, before he be ordained priest; on pain of 100l. half to the king, and half to be equally divided between the poor and the informer. *f. 14.*

Neither is a person that is merely a layman, or that is only a deacon, capable of a donative; for altho' that he who hath a donative may come into the same by lay donation, and not by admission and institution; yet his function is spiritual. *1 Inf. 344.*

So that he who is no more than a deacon, can only use his orders either as a chaplain to some family, or as a curate to some priest, or as a lecturer without title: for the prebendaries of some prebends in cathedral and collegiate churches, are to read lectures there, by the appointment of the founders thereof, and may from thence be called lecturers; but these places are of the number of ecclesiastical promotions, to which the incumbents are admitted by collation or institution, of which a deacon as aforesaid is not therefore capable; yet the king's professor of the law within the university of Oxford, may have and hold the prebend of Shipton within the cathedral church of farum, united and annexed to the place of the same king's professor for the time being, altho' that the said professor be but a layman. *Watf. c. 14. 13 & 14 C. 2. c. 4. f. 29.*

XI. General office of priests.

A priest by his ordination receiveth authority to preach the word of God, and to consecrate and administer the holy communion, in the congregation where he shall be lawfully appointed thereunto.

Yet notwithstanding, by *Can. 36.* he may not preach without a licence either of the archbishop, or of the bishop of the diocese where he is placed, under their hands and seals, or of one of the two universities under their seals likewise.

But a licence by the bishop of any diocese is sufficient, altho' it be only to preach within his diocese; the statute...
not requiring any licence by the bishop of the diocese where the church is. *Wats.* c. 14.

Dr. Watson says, that if a person, who is a mere layman, be admitted and instituted to a benefice with cure, and doth administer the sacrament, marry, and the like; these, and all other spiritual acts performed by him during the time he continues parson in fact, are good; so that the persons baptized by him are not to be rebaptized, nor persons married by him to be married again, to satisfy the law. *Wats.* c. 14. *Cro. El.* 775.

XII. Exhibiting letters of orders.

1. *Can.* 137. Every parson, vicar, and curate, shall at the bishop's first visitation, or at the next visitation, after his admission, shew and exhibit unto him his letters of orders, to be by him either allowed, or (if there be just cause) disallowed and rejected; and being by him approved, to be signed by the register; the whole fees for which, to be paid but once in the whole time of every bishop, and afterwards but half the said fees.

2. *Arund.* No curate shall be admitted to officiate in another diocese, unless he bring with him his letters of orders.

3. *Can.* 39. No bishop shall institute any to a benefice, who hath been ordained by any other bishop, except he first shew unto him his letters of orders.

4. By the 4 *H. 7.* c. 13. If any person at the second time of asking his clergy, because he is within orders, hath not there ready his letters of orders, or a certificate of his ordinary witnessing the same; the justices afore whom he is arraigned, shall give him a day to bring in his said letters or certificate; and if he fail in so doing, he shall lose the benefit of his clergy, as he shall do that is without orders.

XIII. Archbishop Wake's directions to the bishops of his province, in relation to orders.

It is judged proper here to subjoin archbishop *Wake's* letter to the bishops of the province of Canterbury, dated June 5, 1716, which although it concerneth other matters besides those of ordination, yet since the due conferring of orders appeareth to be the principal regard thereof it seemeth best to insert the same entire in this place; and to refer to it here at large from those other titles, unto which it hath some relation.
As to its authority, it is certain (as hath been observed before) that in it self it hath not the force of law, nor is it so intended, or to be of any binding obligation to the church, further than the archbishops and bishops from time to time shall judge expedient; I mean, as to those parts of it which only concern matters that the law hath left indefinite, and discretionary in the archbishops and bishops. Other parts thereof are only inforcements of what was the law of the church before; and those, without doubt, are of perpetual obligation; not by the authority of these injunctions, but by virtue of the laws upon which they are founded.

My very good lord,

Being by the providence of god called to the metropolitical fee of this province, I thought it incumbent upon me to consult as many of my brethren the bishops of the same province, as were here met together during this session of parliament, in what manner we might best employ that authority which the ecclesiastical laws now in force, and the custom and laws of this realm, have vested in us, for the honour of god, and for the edification of his church, committed to our charge: And upon serious consideration of this matter, we all of us agreed in the same opinion, that we should, by the blessing of god upon our honest endeavours, in some measure promote these good ends, by taking care (as much as in us lieth) that no unworthy persons might hereafter be admitted into the sacred ministrv of the church; nor any be allowed to serve as curates, but such as should appear to be duly qualified for such an employ; and that all who officiated in the room of any absent ministers, should reside upon the cures which they undertook to supply; and be ascertained of a suitable recompence for their labours.

In pursuance of those resolutions, to which we unanimously agreed, I do now very earnestly recommend to you;

(1) That you require of every person who desires to be admitted to holy orders, that he signify to you his name and place of abode, and transmit to you his testimonial, and a certificate of his age duly attested, with the title upon which he is to be ordained at least twenty days before the time of ordination; and that he appear on Wednesday, or at farthest on Thursday in ember-week, in order to his examination.

(II)
(II) That if you shall reject any person, who applies for holy orders, upon the account of immorality proved against him, you signify the name of the person so rejected, with the reason of your rejecting him, to me, within one month; that so I may acquaint the rest of my suffragans with the case of such rejected person before the next ordination.

(III) That you admit not any person to holy orders, who having refused any considerable time out of the university, does not send to you, with his testimonial, a certificate signed by the minister, and other credible inhabitants of the parish where he so refused, expressing that notice was given in the church, in time of divine service, on some Sunday, at least a month before the day of ordination, of his intention to offer himself to be ordained at such a time; to the end that any person who knows any impediment, or notable crime, for which he ought not to be ordained, may have opportunity to make his objections against him.

(IV) That you admit not letters testimonial, on any occasion whatsoever, unless it be therein expressed, for what particular end and design such letters are granted; nor unless it be declared by those who shall sign them, that they have personally known the life and behaviour of the person for the time by them certified; and do believe in their conscience, that he is qualified for that order, office, or employment, to which he desires to be admitted.

(V) That in all testimonials sent from any college or hall, in either of the universities, you expect that they be signed, as well as sealed; and that among the persons signing, the governor of such college or hall, or in his absence, the next person under such governor, with the dean, or reader of divinity, and the tutor of the person to whom the testimonial is granted, (such tutor being in the college, and such person being under the degree of master of arts,) do subscribe their names.

(VI) That you admit not any person to holy orders upon letters dimissory, unless they are granted by the bishop himself, or guardian of the spiritualities sede vacante; nor unless it be expressed in such letters, that he who grants them, has fully satisfied himself of the title and conversation of the person to whom the letter is granted.

(VII) That you make diligent inquiry concerning curates in your diocese, and proceed to ecclesiastical censures against those who shall presume to serve curies without being first duly licensed thereto; as also against all such incumbents who shall receive and employ them, without first obtaining such licence.

(VIII) That you do not by any means admit of any minister, who removes from any other diocese, to serve as a curate in yours.
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yours, without testimony of the bishop of that diocese, or ordinary of the peculiar jurisdiction from whence he comes, in writing, of his honesty, ability, and conformity to the ecclesiastical laws of the church of England.

(IX) That you do not allow any minister to serve more than one church or chapel in one day, except that chapel be a member of the parish church, or united thereto; and unless the said church or chapel where such a minister shall serve in two places, be not able in your judgment to maintain a curate.

(X) That in the instrument of licence granted to any curate, you appoint him a sufficient salary, according to the power vested in you by the laws of the church, and the particular direction of a late act of parliament for the better maintenance of curates.

(XI) That in licences to be granted to persons to serve any cure, you cause to be inserted, after the mention of the particular cure provided for by such licences, a clause to this effect [or in any other parish within the diocese, to which such curate shall remove with the consent of the bishop.]

(XII) That you take care, as much as is possible, that who- ever is admitted to serve any cure, do reside in the parish where he is to serve; especially in livings that are able to support a resident curate: and where that cannot be done, that they do at least reside so near to the place, that they may conveniently perform all their duties both in the church and parish.

These, my lord, were the orders and resolutions, to which we all agreed; and which I do hereby transmit to you; desiring you to communicate them to the clergy of your diocese, with an assurance that you are resolved, by the grace of God, to direct your practice in these particulars, agreeably thereunto. And so commending you to the blessing of God in these, and all your other pious endeavours, for the service of his church, I heartily remain,

my very good lord,

your truly affectionate brother,

W. Cant.

(I) That you require of every person &c.] By this first article six things are required: viz.

(1) That be signify to you his name and place of abode] It may be so ordered, that this shall be set forth in the testimonial, or title, or both; but it seemeth rather, that by this article a distinct instrument is required for the signification thereof.
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(2) *And transmit to you his testimonial*] According to the 34th canon, and the fourth and fifth articles of these directions.

(3) *And a certificate of his age duly attested*] That is, from the register book, under the hands of the minister and churchwardens of the parish where he was baptized; or, where that cannot be had, by other sufficient testimony.

(4) *With the title upon which he is to be ordained*] According to the tenor of the thirty third canon before mentioned.

(5) *At least twenty days before the time of ordination*] By the canons aforesaid, the title and testimonial are required to be exhibited at the time of ordination: but by these directions, they are to be transmitted for so long time before, as that there may be opportunity to make inquiry, if needful, into any of the particulars therein contained.

(6) *And that he appear on Wednesday, or at farthest on Thursday in ember-week*] This is agreeable to the canon law before-mentioned out of Lindwood, that he shall appear on the fourth day before the ordination.

(II) *That if you shall reject &c.*] This second article, of signifying the names of persons rejected for immorality to the archbishop, is a prudent caution; and was not provided for before by any law.

(III) *That you admit not any person &c.* This article, concerning notice to be given in the church, is also a reasonable provifion, and agreeable to foreign practice (as hath been observed) altho' not particularly injoined by any law of our church.

In the present directions, as delivered by the archbishops of late years, there is an alteration in this article: Instead of the expression, that the minister and others shall certify "that notice was given in the church of his intention to offer himself to be ordained at such a time, to the end that any person who knows any impediment or notable crime, for the which he ought not to be ordained, may have opportunity to make his objections against him," (that is, to the bishop, as it seemeth;)—it now runs, that they shall certify "that such notice was given, and that upon such notice given no objections have come to their knowledge, for the which he ought not to be ordained," (which implies the objections to be notified to the persons signing the certificate.)

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(IV) That you admit not letters testimonial &c.] This and the next article concerning testimonials, are supplementary to the thirty fourth canon; and for their obligation do depend on these injunctions, and not on any fixed law; and therefore may be varied from time to time, as the archbishops and bishops shall see caufe.

(V) That in all testimonials sent from any college &c.] By the canon, the common seal only of the college was required, which indeed of it self (as in all other bodies corporate) doth imply a consent of the major part of the society: This article doth further require a quorum (as it were); namely, that of the said major part, the head of the college, the dean, and the tutor, be three; and the fame to appear by the subscription of their names. So that ordinarily it feemeth to be in the power of any one of those three, to prohibit any person of their college from being ordained; which thing perhaps may require some farther consideration. And it is much to the honour of the universities, that for so long time there have been no instances of the abuse of this power.

(VI) That you admit not any person into holy orders upon letters dimifory &c.] This article concerning letters dimifory, is only an admonition to put in due execution, what was the law of the church before.

(VII) That you make diligent inquiry concerning curates in your diocese who shall presume to serve cure without being first duly licensed] The substance of this article, concerning the licencing of curates, was injoined before by several canons of the church.

(VIII) That you do not by any means admit of any minister who removes from another diocese, to serve as a curate in yours, without testimony of the bishop of that diocese, of his honesty, ability, &c.] This article, concerning curates bringing testimonials from other dioceses, is nearly in the words of the forty eighth canon.

In the present rules, instead of the word honesty (which is taken from the canon), are inserted the words good life.

(IX) That you do not allow any minister to serve more than one church or chapel in one day.] This article also is in the words of the forty eighth canon.

(X) That in the instrument of licence granted to any curate, you appoint him a sufficient salary, according to the power vested in you by the laws of the church] There feemeth to be no particular law of the church, by which any certain sum is limited for the stipend of curates in general, but such as are obsolete and ineffectual by reason of the great alteration
tion in the value of money. But the ordinary may refuse to licence the curate, unless the incumbent shall in his nomination and appointment promise to pay unto the curate such a certain annual sum.

And the particular direction of a late act of parliament] Which act is that of the 12 An. 9. 2. c. 12. for the curates of non-residents only; by which the ordinary hath power, according to the value of the living and the difficulty of the cure, to appoint a salary not exceeding fifty pounds a year, nor less than twenty.

(XI) The clause to be inserted in the licence, that the same shall serve for any other parish within the diocese, is not enjoined by any express law, but is very reasonable, being intended for the benefit of curates, that having been once examined and approved by the ordinary, they shall not need to be at the expense of a new licence for any other place unto which they shall remove within the diocese.—Which clause is omitted out of the present directions, supposing it perhaps to be unnecessary, in a matter the utility whereof is self-evident.

(XII) This article concerning the curate's residence within the parish, is agreeable to the ancient laws of the church: and if the curate shall not comply with the ordinary's directions therein, the said ordinary may withdraw his licence.

To these directions, two others have been subjoined of late years:

One is, That you be very cautious in accepting resignations; and endeavour, with the utmost care, by every legal method, to guard against corrupt and simoniacal presentations to benefices.—This seemeth to be intended to counteract the purpose of bonds of resignation; for if the bishop will not accept, the resignation is ineffectual.

The Other is, That your clergy be required to wear their proper habits, preserving always an evident and decent distinction from the laity in their apparel; and to shew, in their whole behaviour, that seriousness gravity and prudence, which becomes their function; abstaining from all unsuitable company and diversions.—The word canonical, with respect to the habit, seemeth here to have been purposefully omitted; since no certain standard of dress can be conveniently limited by any canon or other law; and therefore general directions can only be applicable in such cases.
Upon the whole, with respect to the matter before us, whilst these directions continue to be the rule in practice, there are these five instruments to be transmitted to the bishop, at least twenty days before the time of ordination, by every person desiring to be ordained; viz.

Firstly, a signification of his name and place of abode.
Secondly, a certificate of publication having been made in the church, of his design to enter into holy orders.
Thirdly, Letters testimonial of his good life and behaviour.
Fourthly, Certificate of his age.
Fifthly, The title upon which he is to be ordained.

And moreover, if he comes for priest's orders, he must exhibit to the bishop his letters of orders for deacon.

Form of a Title for orders.

There is no particular form of a title prescribed by any canon or other law: that which is most usual and approved seemeth to be as followeth:

To the right reverend father in god Richard lord bishop of London.

These are to certify your lordship, that I A. B. rector [or, vicar] of in the county of , and your lordship's diocese of London, do hereby nominate and appoint C. D. to perform the office of a curate in my church of aforesaid, and do promise to allow him the yearly sum of for his maintenance in the same, and to continue him to officiate in my said church until he shall be otherwise provided of some ecclesiastical preferment, unless by fault by him committed he shall be lawfully removed from the same. And I do solemnly declare, that I do not fraudulently give this certificate only to intitle the said C. D. to receive holy orders, but with a real intention to employ him in my said church according to what is before expressed. Witness my hand this day in the year of our lord .

Form of a testimonial for orders.

The canon and the statute before mentioned, evidently make a distinction between the testimonial for deacon's, and the testimonial for priest's orders. In pursuance whereof, for deacon's orders, no more by the canon seemeth to be required than this:
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If it is from a college;

We the master and fellows of ——— college in—— do hereby testify, that A. B. whose life and behaviour we have known for the space of three years now last past, is a person of good life and conversation. Given under the seal of our college, the ——— day of ——— in the year of our Lord——

If it is not from a college;

We whose names and seals are hereunto set, do hereby testify, that A. B. whose life and behaviour we have known for the space of three years now last past, is a person of good life and conversation. Given under our hands and seals the ——— day of—— in the year of our Lord——

But something more is required in the testimonial for priest's orders by the aforesaid statute of the 13 El. c. 12.

As thus:

We ——— do hereby testify, that A. B. whose life and behaviour we have known for the space of three years now last past, is a person of good and honest life and conversation, and professeth the doctrine expressed in the articles of religion agreed upon by the archbishops and bishops of both provinces, and the whole clergy in the convocation holden at London in the year of our Lord one thousand five hundred and sixty two. Given under ———

But by the aforesaid directions of archbishop Wake, somewhat further is required in the testimonial both for deacon's and for priest's orders; namely, (1) that the same do express for what particular end and design it is granted; and (2) that the persons signing the same do declare therein, that they have personally known the life and behaviour of the person for the time by them certified; and (3) that they do believe in their conscience, that he is qualified for that order, office, or employment, to which he desires to be admitted; and (4) that if the testimonial is from a college, it be signed as well as sealed by the particular members of the college therein specified.

It doth not appear to have been clearly understood, what the intention was in directing that the testimonial should express for what particular end and design it is granted; the causes usually alleged are, that it is a man's duty to bear witness to the truth; that the party hath required such testimonial; and that they are willing to comply with such request; But these (such as they are) are general reasons, and do not at all express the special end and design of granting such a particular testimonial.

However,
However, the usual form of a testimonial, according to Mr Edon, is to this effect:

To all Christian people to whom these presents shall come.

Whereas piety and humanity do oblige us to bear witness to the truth; and whereas A. B. bachelor of arts, hath requested our letters testimonial of his laudable life and probity of manners to be granted to him: We being willing to comply with his so just a request, do testify by these presents, that the aforenamed A. B. having been personally known to us for the space of three years last past hath led his life piously, soberly, and honestly; hath diligently applied himself to his studies; and hath not (so far as we know) ever held, written, or taught any thing, but what the church of England approves of and maintains; and moreover we think him worthy (if it shall so seem good to those whom it may concern) to be promoted to the holy order of deacon (or, priest.) In witness whereof we have hereunto set our hands, the day of in the year of our lord—

Or thus (according to Dr. Grey):

To the right reverend father in God Richard lord bishop of Lincoln.

Whereas A. B. of college in desiring to be admitted to the holy order of deacon (or, priest,) hath requested our letters testimonial of his laudable life and integrity of manners to be granted to him; We whose names are under written do testify by these presents, that the aforenamed A. B. for three years last past, of our personal knowledge, hath led his life piously soberly and honestly, hath diligently applied himself to the study of good learning, and hath not (so far as we know) held or published any thing but what the church of England approves of and maintains; and moreover we think him worthy to be admitted to the holy order of deacon (or, priest.) In witness whereof we have hereunto subscribed our names, the day of in the year of our lord—

But in order to accommodate the same more strictly to the aforesaid canon, statute, and directions of archbishop Wake; perhaps the form might be more regularly thus:

To the right reverend father in God Charles lord bishop of Carlisle.

Whereas our beloved in Christ, A. B. bachelor of arts, hath declared unto us his intention of offering himself a candidate for the holy order of deacon; and for that end hath requested
Testimonial of his good and honest life and conversation and other due qualifications, to be granted to him; we, whose names and seals are hereunto set, do testify by these presents, that we have personally known the life and behaviour of the aforesaid A. B. for the space of three years now last past, and that he hath, during the said time, been a person of good and honest life and conversation; and that he professeth the doctrine expressed in the articles of religion agreed upon by the archbishops and bishops of both provinces, and the whole clergy in the convocation holden at London, in the year of our lord one thousand five hundred and sixty two: And we do believe in our consciences, that the said A. B is qualified to be admitted (if it shall so please your lordship) to the holy order of deacon (or, priest). Given under our hands and seals the day of in the year of our lord

Hath declared unto us his intention of offering himself a candidate for the holy order of deacon] This, according to the archbishop's directions, feemeth to express the particular end and design for which the testimonial is granted.

That we have personally known the life and behaviour &c.] And not by way of recital, whose life and behaviour we have known, or having been personally known unto us, or the like; for the archbishop's directions in this case do require a positive declaration.

And that he hath during the said time been a person of good and honest life and conversation] This is required by the canon and the statute aforesaid: And herein the persons signing the testimonial do undertake for his behaviour.

And that he professeth the doctrine &c.] Herein they undertake for his orthodoxy: and this by the statute aforesaid is required to be peremptory and express; and not, so far as we know, or the like; for it is possible they may not have used the proper means of information.

And we do believe in our consciences &c.] In order to the forming of which belief, some sort of previous examination of the party, by the persons signing the testimonial, feemeth to be implied: And herein they undertake for his learning. Whereas, before; for deacon's orders, they did only take upon them, the knowledge of his behaviour; for priest's orders, of his behaviour and orthodoxy; but now, for both, by these directions, they are to take upon them the knowledge of his behaviour, orthodoxy, and learning.
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Tho this last is most properly the bishop's province; and not at all the less so, notwithstanding such testimonial.

Organ. See Church.
Ornaments of the church. See Church.

Osculatory.

The osculatory, was a tablet or board, with the picture of Christ, or the blessed virgin, or some other of the saints, which after the consecration of the elements in the eucharist, the priest first kissed himself, and then delivered it to the people for the same purpose.

Ostiary.

Ostiary, is one of the five inferior orders in the Romish church; whose office it is, to keep the doors of the church, and to toll the bell. Gibs. 99.

Overseers of a will. See Wills.
Oxford. See Colleges.

Pall.

The pall, pallium episcopale, is a hood of white lamb's wool, to be worn as doctors hoods upon the shoulders, with four crosses woven into it. And this pallium episcopale is the arms belonging to the see of Canterbury. God. 23. 1 Warn. 45.
Pannage.

PANNAGE, pannage (perhaps from pafco, to feed), is the fruit of trees which the wine or other cattle feed upon in the woods; as acorns, crabs, mast of beech, chestnuts, and other nuts and fruits of trees in the woods: which is treated of under the title Tithes.

Sometimes also pannage is used to signify the money which is paid for the pannage itself.

Papish. See Popery.

Paraphernalia.

PARAPHERNALIA, from παρα πρατερ, and φησιν δος, are the woman's apparel, jewels, and other things, which in the life time of her husband she wore as the ornaments of her person, to be allowed at the discretion of the court, according to the quality of her and her husband. Law of Test. 383.

Which is treated of under the title Wills.

Pardon.

1. It seemeth 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 likewise discharge any suit in such court ad instaniam partis pro reformatione morum or salute animae, as for defamation, or laying violent hands on a clerk, or such like; for such suits are in truth the suits of the king, tho' prosecuted by the party. 2 Haw. 394.

2. 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. *id.*

3. Also, if a person be imprisoned on a writ de excommunicato capiendo, for his contumacy in not paying costs, and afterwards the king pardons all contempts, it seems that he shall be discharged of such imprisonment, without any scire facias against the party; because it is grounded on the contempt, which is wholly pardoned: and the party must begin anew to compel a payment of the costs. *2 Haw.* 394.

4. 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. Also it is agreed, that after costs are taxed in a suit in such court at the prosecution of the party, whether for a matter of private interest, or pro reformatione morum or saluté animae, as for defamation, or the like, they shall not be discharged by a subsequent pardon. *id.*

5. A person admitted to the benefit of clergy, is not to be deprived in the spiritual court, for the crime for which he hath had his clergy. For a pardon frees the party from all subsequent punishment, and consequently from deprivation. *2 Haw.* 364.

6. By the statute of the 20 G. 2. c. 52. (which is the last act of general pardon) all contempts in the ecclesiastical court in matters of correction are pardoned; but not in causes which have been commenced for matters of right.

## Parish.

1. At first there were no parochial divisions of cures here in England, as there are now. For the bishops and their clergy lived in common; and before that the number of christians was much increased, the bishops sent out their clergy to preach to the people, as they saw occasion. But after the inhabitants had generally embraced christianity, this itinerant and occasional going from place to place, was found very inconvenient, because of the constant offices that were to to be administered, and the
the people not knowing to whom they should resort for spiritual offices and directions. Hereupon the bounds of parochial cures were found necessary to be settled here, by those bishops who were the great instruments of converting the nation from the Saxon idolatry. At first they made use of any old British churches that were left standing; and afterwards from time to time in successive ages, churches were built and endowed by lords of manors and others, for the use of the inhabitants of their several manors or districts, and consequently parochial bounds affixed thereunto. 1 Still. 88, 89.

And it was this which gave a primary title to the patronage of laymen; and which also oftentimes made the bounds of a parish commensurate to the extent of a manor. Ken. Impropr. 5, 6, 7.

Many of our writers have ascribed the first institution of parishes in England to archbishop Honorius, about the year 636; wherein they build all on the authority of archbishop Parker. But Mr. Selden seems rightly to understand the expression provinciam suam in parochias divitit, of dividing his province into new dioceses; and this sense is justified by the author of the defence of pluralities. The like distinction of parishes which now obtains, could never be the model of Honorius, nor the work of any one age. Some rural churches there were, and some limits prescribed for the rights and profits of them. But the reduction of the whole country into the same formal limitations was gradually advanced, being the work of many generations. However at the first foundation of parochial churches (owing sometimes to the sole piety of the bishop, but generally to the lord of the manor) they were but few and consequently at a great distance: so as the number of parishes depending on that of churches, the parochial bounds were at first much larger, and by degrees contracted. For as the country grew more populous, and persons more devout, several other churches were founded within the extent of the former, and then a new parochial circuit was allotted in proportion to the new church, and the manor or estate of the founder of it. Thus certainly began the increase of parishes, when one too large and diffuse for the resort of all inhabitants to the one church, was by the addition of some one or more new churches cantoned into more limited divisions. This was such an abatement to the revenue of the old churches, that complaint was made of it in the time of Edward the confessor: "Now (they say) there be three or four churches,
"churches, where in former times there was but one; "and so the tithes and profits of the priests are much diminishejustice.
Ken. Par. Ant. 586, 587.

And now, the settling the bounds of parishes depends upon ancient and immemorial custom. For they have not been limited by any act of parliament, nor set forth by special commissioners; but have been established, as the circumstances of times and places and persons did happen, to make them greater or lesser. I Still. 243.

In some places parishes seem to interfere, when some place in the middle of another parish belongs to one that is distant; but that hath generally happened by an unity of possession, when the lord of a manor was at the charge to erect a new church, and make a distinct parish of his own demesnes, some of which lay in the compass of another parish. I Still. 244.

But now care is taken (or ought to be) by annual perambulations to preserve those bounds of parishes, which have been long settled by custom. I Still. 244.

2. By a constitution of archbishop Winchelsey; the parishioners shall find at their own charge banners for the ro-gations. Lind. 252.

And upon the account of perambulations being performed in rogation week, the rogation days were anciently called gange-days; from the saxon gan or ganguan, to go.

M. 37 & 38 El. Goodday and Michell. Trespasses for breaking his close, and for breaking down two gates, and three perches of hedge. The defendant justified; for that the said close was in the parish of Rudham, and that all the parishioners there for time immemorial had used to go over the said close upon their perambulation in rogation week; and because the plaintiff stopped the two gates and obstructed three perches of hedge in the said way, the defendant being one of the parishioners broke them down. And by the court; It is not to be doubted, but that parishioners may well justify the going over any man's land in the perambulation, according to their usage, and abate all nuisances in their way. Cro. Eliz. 441.

In the perambulation of a parish, no refreshment can be claimed by the parishioners, as due of right from any house or lands in virtue of custom. The making good such a right on that foot, hath been twice attempted in the spiritual courts; but in both cases, prohibitions were granted, and the custom declared to be against law and reason.
Thee perambulations (tho’ of great use in order to preserve the bounds of parishes) were in the times of poverty accompanied with great abuses; viz. with feastings and with superstition; being performed in the nature of processions, with banners, hand bells, lights, saying at crosses, and the like. And therefore when processions were forbidden, the useful and innocent part of perambulations was retained, in the injunctions of queen Elizabeth; wherein it was required, that for the retaining of the perambulation of the circuits of parishes, the people should once in the year, at the time accustomed, with the curate and the substantial men of the parish, walk about the parishes, as they were accustomed, and at their return to the church make their common prayers. And the curate in their said common perambulations, was at certain convenient places to admonish the people, to give thanks to God (in the beholding of his benefits), and for the increate and abundance of his fruits upon the face of the earth; with the saying of the 103d psalm.

At which time also the said minister was required, to inculcate these or such like sentences, Cursed be he which translhalt the bounds and doles of his neighbour; or such other order of prayers, as should be lawfully appointed. Gibs. 213.

But the superstitions here laboured against, were not so easily suppress’d; as may be gathered from the endeavours used to suppress them so late as the time of archbishop Grindal. And now, since that hath been long effect’d, it were to be wished, that perambulations were held more regularly and frequently than now they are; to the end the limits of parishes may be the better kept up and ascertained. Gibs. 213.

3. The bounds of parishes, tho’ coming in question in a spiritual matter, shall be tried in the temporal court. This is a maxim, in which all the books of common law are unanimous; altho’ our provincial constitutions do mention the bounds of parishes, amongst the matters which merely belong to the ecclesiastical court, and cannot belong to any other. Gibs. 212.

And in the 14 C. when a prohibition was prayed to the spiritual court, for proceeding to determine a case of tithes, the right to which depended on the lands lying in this or that vill; it was denied by the whole court of king’s bench, who declared, that the bounds of vills...
vills are triable in the ecclesiastical court. Gibs. 212.
——But this was between two spiritual persons, the rector and vicar. 2 Roll's Abr. 312.

And in the case of Ives and Wright, H. 15 Car. If the bounds of a village in a parish come in question in the ecclesiastical court, in a suit between the parson improper and the vicar of the same parish, as if the vicar claim all the tithes within the village of D. within the parish, and the parson all the tithes in the residue of the parish, and the question between them is, whether certain lands, whereof the vicar claims the tithe, be within the village of D. or not; yet inasmuch as it is between spiritual persons, viz. between the parson and vicar, altho' the parson be a layman, and the parsonage appropriate a lay-fee, yet it shall be tried in the ecclesiastical court. And in this case the prohibition was denied. 2 Roll's Abr. 312.

And by the 17 G. 2. c. 37. it is enacted, that where there shall be any dispute, in what parish or place, improved wastes and drained and improved marsh lands lie, and ought to be rated; the occupiers of such lands, or houses built thereon, tithes arising therefrom, mines therein, and saleable underwoods, shall be rated to the relief of the poor and to all other parish rates within such parish and place which lies nearest to such lands: and if on application to the officers of such parish or place to have the same assized, any dispute shall arise; the justices of the peace at the next sessions after such application made, and after notice given to the officers of the several parishes and places adjoining to such lands, and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assized; whose determination therein shall be final. But this shall not determine the boundaries of any parish or place, other than for the purpose of rating such lands to the relief of the poor, and other parochial rates. f. 1, 2.

And by the 2 & 3 Ed. 6. c. 13. Every person who shall have any beasts or other cattle tithable, depafturing in any waste or common, whereof the parish is not certainly known, shall pay the tithes thereof where the owner of the cattle dwells. f. 3.
Parish clerk.

1. Boniface. We do decree, that the offices for parish clerk, holy water be conferred upon poor clerks. Lind. 142.

For the understanding of which constitution, it is to be observed, that parish clerks were heretofore real clerks; of whom every minister had at least one, to assist under him, in the celebration of divine offices; and for his better maintenance, the profits of the office of aquæbajalus (who was an assistant to the minister in carrying the holy water) were annexed unto the office of the parish clerk by this constitution: so as, in after times, aquæbajalus was only another name for the clerk officiating under the chief minister.

2. Can. 91. And the said clerk shall be twenty years of age at the least; known to the parson, vicar, or minister, to be of honest conversation, and sufficient for his reading, writing, and also for his competent skill in singing (if it may be).

3. All incumbents once had the right of nomination of the parish clerks, by the common law and custom of the realm. Gibs. 214.

And by the aforesaid constitution of archbishop Boniface;—Because differences do sometimes arise between rectors and vicars and their parishioners, about the conferring of such offices, we do decree, that the same rectors and vicars, whom it more particularly concerneth to know who are fit for such offices, shall endeavour to place such clerks in the aforesaid offices, who according to their judgment are skilled and able to serve them agreeably in the divine administration, and who will be obedient to their commands.

And by Can. 91. No parish-clerk upon any vacation shall be chosen within the city of London or elsewhere, but by the parson or vicar; or where there is no parson or vicar, by the minister of that place for the time being: which choice shall be signified by the said minister vicar or parson, to the parishioners the next Sunday following in the time of divine service.

Since the making of which canon, the right of putting in the parish clerk hath often been contested between incumbents and parishioners, and prohibitions prayed, and always obtained, to the spiritual court for maintaining the authority of the canon in favour of the incumbent,
incumbent, against the plea of custom in behalf of the parishioners. Gibs. 214.

Thus, E. 8 Ja. Cundicef and Plomer. The parishioners of the parish of St. Alphage in Canterbury, did prescribe to have the election of their parish clerk, and by the canon the election of the clerk is given to the vicar: It was adjudged in this case, that the prescription should be preferred before the canon; and a prohibition was awarded accordingly. Hughes 275.

T. 21 Ja. Jermyf's cafe. Jermyn, rector of the parish of St. Katherine's in Coleman street, and Hammond as clerk there, sued in the spiritual court to have the said clerk establisbfed there, being placed there by the parfon according to the late canon; where the parishioners disturbed him upon a pretence of a custom to place the clerk there by the election of their vestry. And upon this surmise of a custom, the churchwardens and parishioners prayed a prohibition; and after divers motions, a prohibition was granted: for they held that it was a good custom, and that the canon cannot take it away. Cro. 9a. 670.

4. Parish clerks after having been duly chosen and appointed, are usually licensed by the ordinary. Johnf. 204.

And when they are licensed, they are sworn to obey the minister. Johnf. 205.

And if a parish clerk hath been used time out of mind to be chosen by the vestry, and after admitted and sworn before the archdeacon, and he refuse to swear such parish clerk so elected, but adfiteth another chosen by the parfon; a writ may be awarded to him commanding him to swear him. 2 Roll's Abr. 234. Viner. Mandamus H. 3. 3 Bac. Abr. 531.

And in the case of K. and Henchman, official of the consistory court of the bishop of London, a mandamus was granted, to admit one Robert Trott to the office of parish clerk of Clerkenwell, being elected by the parish; it being shewn that the official had usually admitted to that office. 3 Bac. Abr. 531.

5. By the aforesaid constitution of archbishop Boniface; If the parishioners shall maliciously withhold the accustomed alms from the aquæbajalus, they shall be earnestly admonished to render the same; and if need be, shall be compelled by ecclesiastical censure.

Alms]
Parish clerk.

Alms] By which word we may understand, that such clerks cannot claim any thing by way of a certain allowance or endowment by reason of their office of aqvebajalus: But their sustentation ought to be collected and levied according to the manner and custom of the country. Lindw. 143.

Acquainted alms] For this custom ought to be considered according to the manner anciently observed; which also, inasmuch as it concerneth the increase of divine worship, ought not to be changed at pleasure: but hereunto the parishioners may be compelled by the bishop. Lindw. 143.

And custom of this kind is good and laudable, that every master of a family (for instance) on every lord's day give to the clerk bearing the holy water somewhat according to the exigency of his condition; and that on christmals day he have of every house one loaf of bread, and a certain number of eggs at Easter, and in the autumn certain sheaves. Also that may be called a laudable custom, where such clerk every quarter of the year receiveth something in certain in money for his sustenance, which ought to be collected and levied in the whole parish. For such laudable custom is to be observed; and to this the parishioners ought to be compelled: for having paid the same for so long a time, it shall be presumed that at first they voluntarily bound themselves thereunto. Lindw. 143.

Admonished] Not only by the ministers, but also and more especially by the ordinary of the place. Lindw. 143.

By ecclesiastical censure] Of which there are three kinds; suspension, excommunication, and interdict. Lindw. 143.

And by Can. 91. The said clerks shall have and receive their ancient wages, without fraud or diminution, either at the hands of the churchwardens, at such times as hath been accustomed, or by their own collection, according to the most ancient custom of every parish.

Ancient wages] In case such customary allowance is denied, the foregoing constitution, and the practice thereupon, direct where it is to be sued for, viz. before the ordinary in his ecclesiastical court. That constitution (as we see) calls those wages accustomed alms; and in the register there is a consultation provided in a case of the same nature, for what the writ calls largitio charitativo (as being originally a free gift), which by parity of reason
son may be fairly extended to the present case. Gibs. 214.

But by the common law; If a parish clerk claim by custom to have a certain quantity of bread at Christmas, of every inhabitant of the parish, or the like, and sue for this in the spiritual court; a prohibition lieth. 2 Roll’s Abr. 286.

H. 12 G. 2. Pitts and Evans. A prohibition was granted to a suit in the spiritual court by the clerk of St. Magnus for 1s 4d. assessed on the defendant’s house at a vestry in 1672, to be paid to the parish clerk. For by the court, he is a temporal officer; or if not, yet he could not sue there for such a rate: for if it is due by custom, he may maintain an affirmavit; if not, a quantum meruit, or a bill in equity. Str. 1108.

M. 3 An. Parker and Clerke. The clerk of a parish libelled against the churchwardens, for so much money due to him by custom every year, and to be levied by them on the respective inhabitants in the said parish; and after sentence in the spiritual court, the defendants suggested for a prohibition, that there was no such custom as the plaintiff had set forth in his libel. It was objected against granting the prohibition, that it was now too late, because it was after sentence, especially since the custom was not denied; for if it had, and that court had proceeded, then, and not before, it had been proper to move for a prohibition. But by Holt chief justice; it is never too late to move the king’s bench for a prohibition, where the spiritual court had no original jurisdiction, as they had not in this case, because a clerk of a parish is neither a spiritual person, nor is his duty in demand spiritual, for it is founded on a custom, and by consequence triable at law; and therefore the clerk may have an action on the case against the churchwardens for neglecting to make a rate, and to levy it, or if it had been levied and not paid by them to the plaintiff. 6 Mod. 252. 3 Salk. 87.

6. The parish clerk ought to be deprived by him that placed him in his office; and if he is unjustly deprived, a mandamus will lie to the churchwardens to restore him: for the law looks upon him as an officer for life, and one that hath a freehold in his place, and not as a servant; and therefore will not suffer the ecclesiastical court to deprive him, but only to correct him for any misdemeanor by ecclesiastical censures. 2 Roll’s Abr. 234. Gibs. 214.

Ged. 192.

T. 13 G.
Parish clerk.

T. 13 G. Townsend and Thorpe. The plaintiff declared in prohibition, that he was indicted for an assault with intent to commit sodomy, notwithstanding which he was proceeded against in the spiritual court for the same offence, and for drunkenness. The defendant pleaded, that the plaintiff was a parish clerk, and that the suit there was not only to punish him for the incontinency, but also to deprive him of his office. Demurrer thereupon. And as it was going to be argued, the court proposed to stay till the indictment was tried; and it having been tried, and the defendant convicted and pilloried, the court, without ordering the declaration to be amended, granted a consultation as to the proceeding to deprive, and confirmed the prohibition as to any other punishment. They said, he was an ecclesiastical officer as to every thing but his election. Str. 776.

M. 6 G. 2. Peak and Bourne. The plaintiff declared in prohibition, that he was sued in the spiritual court for executing the office of deputy parish clerk, without the licence of the ordinary. On demurrer, three points were made: 1. Whether a parish clerk be a temporal or a spiritual officer. 2. Whether he can make a deputy. 3. Whether the licence of the ordinary is requisite. It was argued three several times upon all the points. But the court in giving judgment founded themselves only upon the last; as to which they held, that a licence was not necessary, and therefore gave judgment for the plaintiff in prohibition. They said the canon did not require it, and indeed it would be a transferring the right of appointment to all intents and purposes to the ordinary. As to the two other points, the court strongly inclined that he was a temporal officer as to the right of his office; and that he might make a deputy. And as to the first, when the court were pressed with their own authority in Townshend and Thorpe, they said it was a hafty opinion, into which they were transported by the enormity of the case. Str. 942.

T. 30 & 31 G. 2. Tarrant and Haxby. A motion was made for a prohibition to the consistory court of York, to stay their proceedings against Tarrant the present parish clerk of St Olith in York; which proceedings were there instituted at the instance of Haxby the deprived parish clerk, for the restoration of the said Haxby. It was urged that the office is temporal; and therefore that the spiritual court hath no jurisdiction concerning his deprivation. This Haxby, they said, was deprived by the parson and
the whole parish, for drunkenness during divine service, and other misdemeanors: Whereupon, the parson appointed Tarrant in his room. Against whom, Haxby libelled in the consistory court; where there was a monition, and they were proceeding to restore Haxby. And all this was suggested. Upon which, a rule was granted to shew cause. And now cause was to have been shewn. But the counsel, being satisfied that it was too strong against them, gave it up. And the rule for the prohibition was made absolute. Bur. 367.

Parochial library. See Library.

Parson.

Parson, persona, properly signifies the rector of a parish church; because during the time of his incumbency he represents the church, and in the eye of the law sustains the person thereof, as well in suing, as in being sued, in any action touching the same. God. 185.

Parson imparsonée (persona impersonata) is he that as lawful incumbent is in actual possession of a parish church, and with whom the church is full, whether it be prescriptive or inappropriate. 1: Inf. 300.

The law concerning parsons, as distinct from vicars, is treated of under the title Appropriation.

Patriarch.

Patriarch is the chief bishop over several countries or provinces, as an archbishop is of several dioceses; and hath several archbishops under him. God. 20.

Patron, patronage. See Advowson.
Peculiar.

1. EXEMPT jurisdictions are so called, not because they are under no ordinary; but because they are not under the ordinary of the diocese, but have one of their own. These are therefore called peculiars, and are of several sorts. 1 Still. 336.

2. As, first, Royal peculiar; which are the king’s Royal peculiar, free chapels, and are exempt from any jurisdiction but the king’s, and therefore such may be resigned into the king’s hands as their proper ordinary; either by ancient privilege, or inherent right. 1 Still. 337. Lindes. 125.

3. Peculiars of the archbishops, exclusive of the bishops and archdeacons; which sprung from a privilege they had, to enjoy jurisdiction in such places where their seats and possessions were: and this was a privilege no way unfit or unreasonable, where their palaces were, and they oftentimes repaired to them in person; as anciently the archbishops appear to have done, by the multitude of letters dated from their several seats. Gibs. 978.

In these peculiars (which, within the province of Canterbury, amount to more than a hundred, in the several dioceses of London, Winchester, Rochester, Lincoln, Norwich, Oxford, and Chichester) jurisdiction is administered by several commissaries; the chief of whom is the dean of the arches, for the thirteen peculiars within the city of London. And of these Lindwood observes, that their jurisdiction is archidiaconal. Gibs. 978.

4. Peculiars of bishops, exclusive of the jurisdiction of the bishop of the diocese in which they are situate. Of which sort, the bishop of London hath four parishes within the diocese of Lincoln; and every bishop, who hath a house in the diocese of another bishop, may therein exercise episcopal jurisdiction. And therefore Lindwood says, the signification of bishoprick is larger than that of diocese, because a bishoprick may extend into the diocese of another bishop, by reason of a peculiar jurisdiction which the bishop of another diocese may have therein. Gibs. 978.

5. Peculiars of bishops in their own diocese, exclusive of archidiaconal jurisdiction. Of which, Lindwood writes thus: There are some churches, which altho’ they be situate within the precincts of an archdeaconry, yet are not subject to the archdeacon; such as churches regular of monks, canons, and other religious; so also if the Archbishops peculiar.
archbishop hath reserved specially any churches to his own jurisdiction, so as that within the same the archdeacon shall exercise no jurisdiction; as it is in many places, where the archbishops and bishops do exercise an immediate and peculiar jurisdiction. Gibs. 978.

As to the former of these, the jurisdiction over religious houses; the archdeacons were excluded from that by the ancient canon law, which determines, that archdeacons shall have no jurisdiction in monasteries, but only by general or special custom; and if the archdeacon could not make out such custom, he was to be excluded from jurisdiction, because he could not claim any authority of common right. As to the other, namely, the exempting of particular parishes from archidiaconal jurisdiction; there are not only many instances of such exemptions in the ecclesiastical records, but the parishes themselves continue to exempt, and remain under the immediate jurisdiction of the archbishop, as in other places of the bishop. Gibs. 978.

6. Peculiars of deans, deans and chapters, prebendaries, and the like; which are places wherein by ancient compositions the bishops have parted with their jurisdiction as ordinaries, to those societies; probably because the possessions of the respective corporations, whether sole or aggregate, lay chiefly in those places: the right of which societies was not original, but derived from the bishop; and where the compositions are lost, it depends upon prescription. Gibs. 978. 1 Still. 337.

M. 8 W. Robinson and Godfale. Upon motion for a prohibition to stay a suit in the bishop's court, upon suggestion that the party lived within a peculiar archdeaconry; it was resolved by the court, that where the archdeacon hath a peculiar jurisdiction, he is totally exempt from the power of the bishop, and the bishop cannot enter there and hold court; and in such case, if the party who lives within the peculiar be sued in the bishop's court, a prohibition shall be granted: but if the archdeacon hath not a peculiar, then the bishop and he have concurrent jurisdiction, and the party may commence his suit, either in the archdeacon's court or the bishop's, and he hath election to cause which he pleaseth: and if he commence in the bishop's court, no prohibition shall be granted; for if it should, it would confine the bishop's court to determine nothing but appeals, and render it incapable of having any causes originally commenced there, L. Raym. 123.
It seems to be true doctrine, that no exemptions granted to persons or bodies under the degree of bishop, extend to a power of employing any bishop they can procure, to perform for them such acts as are merely episcopal, unless special words be found in their grants of exemption, empowering and warranting them to do; but that all such acts are to be performed by the bishop of the diocese within which they are situated, after the exemption as much as before: Or, in other words, that the exemptions in which no such clause is found, are only exemptions from the exercise of such powers, as the persons or bodies are capable of exercising. Thus it is in granting letters dimissory (as hath been shewed before, in the title Disjunction.) And thus it seems to have been understood, in the act of consecrating churches and churchyards, and reconciling them when polluted; by a licence which we find the dean of Windsor had from the guardian of the spiritualities of Salisbury, to employ any catholic bishop to reconcile the cloyster and yard of the said free chapel, when they had been polluted by the shedding of blood. Gibs. 978.

In the time of archbishop Winchelsey, upon an appeal to Rome, in a controversy concerning Pagham, a peculiar of the archbishop of Canterbury; it was said, in the representation to the pope, to be of Canterbury diocese; which was objected against in the exceptions on the other side, because in truth and notoriety it is in the diocese of Chichester. Which was a just exception in point of form; because the proper style of those peculiars, as often as they are mentioned in any instrument, is, of or in such a diocese (namely, the diocese in which they are situated) and of the peculiar and immediate jurisdiction of the archbishop. Gibs. 979.

7. Peculiars belonging to monasteries; concerning which, it is enacted by the 31 H. 8. c. 13. that such of the late monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and all churches and chapels to them belonging, which before the dissolution were exempted from the visitation and other jurisdiction of the ordinary, shall from henceforth be within the jurisdiction and visitation of the ordinary, within whose diocese they are situate, or within the jurisdiction and visitation of such persons as by the king shall be limited and appointed. 
Such exemptions were commonly granted at Rome, to those who solicited for them; especially to the larger monasteries, and such who had wealth enough to solicit powerfully: but the right of visitation being of common right in the bishop, the religious who had obtained such exemptions, were liable to be cited, and were bound upon pain of contumacy, either to submit to his visitation, or to exhibit their bulls of exemption, to the end they might be viewed and examined, and the bishop might see of what authority and extent they were. And whereas this statute vests a power in the king, to subject any of those religious houses which were heretofore made exempt, to such jurisdiction as he should appoint, exclusive of the ordinary; there can be no doubt, but that the persons who claim exemption from the visitation of the ordinary in virtue of such appointment, are obliged upon pain of ecclesiastical censures (in like manner as the religious were) to submit the evidences of their exemption to the examination of the ordinary; without which, it is impossible for him to know how far his authority extends. Gibb. 977.

8. By the 25 H. 8. c. 19. All appeals to be had from places exempt, which heretofore, by reason of grants or liberties of such places exempt, were to the bishop or see of Rome, shall be to the king in chancery; which shall be definitively determined by authority of the king's commission: so that no archbishop or bishop shall intermit or meddle with any such appeals, otherwise than they might have done before the making of this act. f. 6.

9. By the 25 H. 8. c. 21. Visitations of places exempt, which heretofore were visited by the pope, shall not be by the archbishop of Canterbury; but in such cases, redress visitation and confirmation shall be by the king, by commissio under the great seal.

And by the statute of the 1 G. 2. c. 10. All donatives which have received or shall receive the augmentation of the governors of queen Anne's bounty, shall thereby and from thenceforth become subject to the jurisdiction of the bishop of the diocese: and that no prejudice may thereby arise to the patrons of such donatives, it is provided, that no such donative shall be so augmented, without content of the patron under his hand and seal.

Penance.
Penance.

1. **Penance** is an ecclesiastical punishment, used in the discipline of the church, which doth affect the body of the penitent; by which he is obliged to give a publick satisfaction to the church, for the scandal he hath given by his evil example. So in the primitive times, they were to give testimonies of their reformation, before they were re-admitted to partake of the mysteries of the church. In the case of incest, or incontinency, the sinner is usually injoined to do a publick penance in the cathedral, or parish church, or publick market, barelegged and bareheaded in a white sheet, and to make an open confession of his crime in a prescribed form of words; which is augmented or moderated according to the quality of the fault, and the discretion of the judge. So in smaller faults and scandals, a publick satisfaction or penance, as the judge shall decree, is to be made before the minister, churchwardens, or some of the parishioners, respect being had to the quality of the offence, and circumstances of the fact; as in the case of defamation, or laying violent hands on a minister, or the like. *God. Append. 18.*

And as these censures may be moderated by the judge's discretion, according to the nature of the offence; so also they may be totally altered by a commutation of penance: and this hath been the ancient privilege of the ecclesiastical judge, to admit that an oblation of a sum of money for pious uses shall be accepted in satisfaction of publick penance. *Id. 19.*

But penance must be first injoined, before there can be a commutation; otherwise it is a commutation for nothing. *God. 89.*

2. Lindwood and other canonists mention three sorts of penance:

1. Private; injoined by any priest in hearing confessions.

2. Publick; injoined by the priest for any notorious crime, either with or without the bishop's licence according to the custom of the country.

3. Solemn penance; concerning which it is ordained by a constitution of archbishop *Peccham*, as followeth: Whereas, according to the sacred canons, greater sins, such as incest and the like, which by their scandal raise a clamour in a whole city, are to be chastised with solemn penance;
Penance.

Penance; yet such penance seemeth to be buried in oblivion by the negligence of some, and the boldness of such criminals thereby is increased; we do ordain, that such solemn penance be for the future imposed, according to the canonical sanctions. Lindw. 339.

And this penance could be injoined by the bishop only; and did continue for two, three, or more years. But in latter ages, for how many years soever this penance was inflicted, it was performed in Lent only. At the beginning of every Lent, during these years, the offender was formerly turned out of the church; the first year, by the bishop; the following year by the bishop; or priest. On every Maundy Thursday, the offender was reconciled and absolved, and received the sacrament on Easter-day, and on any other day till Low-Sunday: This was done either by the bishop or priest. But the last final reconciliation, or abolution could be passed regularly by none but the bishop. And it is observable, that even down to Lindwood's time, there was a notion prevailed, that this solemn penance could be done but once: If any man relapsed after such penance, he was to be thrust into a monastery, or was not owned by the church; or however ought not to be owned according to the strictness of the canon; tho' there is reason to apprehend, that it was often otherwise in fact. And indeed this solemn penance was so rare in those days, that all which hath been said on this subject was rather theory than practice, except perhaps in case of heresy. *John*. Pech.

3. Boniface. We do ordain, that laymen shall be compelled by the sentence of excommunication, to submit to canonical penances, as well corporal as pecuniary, inflicted on them by their prelates. And they who hinder the fame from being performed, shall be coerced by the sentences of interdict and excommunication. And if distresses shall be made on the prelates upon this account, the distrainters shall be proceeded against by the like penalties. Lind. 321.

Which corporal penances Lindwood specificeth in divers instances; as, thrusting them into a monastery, branding, fuffigation, imprisonment. Lind. 321.

Otho. We do decree, that the archdeacons for any mortal and notorious crime, or from whence scandal may arise, shall not take money for the fame of the offenders, but shall inflict upon them condign punishment. Athon. 125.

Stratford.
Stratford. Because the offender hath no dread of his fault; when money buys off the punishment; and the archdeacons, and their officials, and some that are their superiors, when their subjects of the clergy or laity commit relapses into adultery, fornication, or other notorious excesses, do for the sake of money remit that corporal penance, which should be inflicted for a terror to others; and they who receive the money apply it to the use of themselves, and not of the poor, or to pious uses; which is the occasion of grievous scandal, and ill example: Therefore we do ordain, that no money be in any wise received for notorious sin, in case the offender hath relapsed more than twice; on pain of restoring double of what shall have been so received within one month after the receipt thereof, to be applied to the fabric of the cathedral church; and of suspension ab officio, which they who receive the same, and do not restore double thereof within one month as aforesaid, shall ipso facto incur. And in commutations of corporal penances for money (which we forbid to be made without great and urgent caufe), the ordinaries of the places shall use so much moderation, as not to lay such grievous and excessive publick corporal penances on offenders, as indirectly to force them to redeem the same with a large sum of money. But such commutations, when they shall hereafter be thought fit to be made, shall be so modest, that the receiver be not thought rapacious, nor the payer too much aggrieved; under the penalties before mentioned.

Lind. 323.

4. By the statute of Circumspecte agatis, 13 Ed. 1. By statute.

4. The king to his judges sendeth greeting: Use your selves circumspectly concerning the bishops and their clergy, not punishing them if they hold plea in court chriillian of such things as be mere spiritual, that is to wit, of penance injoined by prelates for deadly sin, as fornication, adultery, and such like; for the which, sometimes corporal penance, and sometimes pecuniary is injoined: in which cases the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

By the statute of Articuli cleri, 9 Ed. 2. 4. 1. c. 2. If a prelate injoin a penance pecuniary to a man for his offence, and it be demanded; the king's prohibition shall hold place: But if prelates injoin a penance corporal, and they which be so punished will redeem upon their own accord such penances by money; if money be de-
manded before a spiritual judge, the king’s prohibition shall hold no place.

And by the same statute, c. 3. If any lay violent hands on a clerk, the amends for the peace broken shall be before the king, and for the excommunication before a prelate, that corporal penance may be injoined; which if the offender will redeem of his own good will, by giving money to the prelate, or to the party grieved, it shall be required before the prelate, and the king’s prohibition shall not lie.

**Before the prelate**] It seems to be agreed by the canons, that archdeacons may not inflict pecuniary penalties, unless warranted by prescription. Gibs. 1046.

5. Dr Ayliffe says, that anciently the commutation money was to be applied to the use of the church, as fines in cases of civil punishment are converted to the use of the publick. Ayl. Par. 413.

By several of the canons made in the time of queen Elizabeth, and in the year 1640, it was to be applied to pious and charitable uses; and the Reformatio legum directed, that it should be to the use of the poor of the parish where the offence was committed, or the offender dwelled. And there was to be no commutation at all, but for very weighty reasons, and in cases very particular. And when commutation was made, it was to be with the privity and advice of the bishop. In archbishop Whitgift’s register we find that the commutation of penance, without the bishop’s privity, was complained of in parliament. And it was one of king William’s injunctions, that commutation be not made, but by the express order and direction of the bishop himself declared in open court. And by the canons of 1640, if in any case the chancellor, commissary, or official should commute penance without the privity of the bishop; he was at least to give a just account yearly to the bishop, of all commutation money in that year, on pain of one year’s suspension. Gibs. 1045.

In the reign of queen Anne, this matter was taken into consideration by the convocation, who made the following regulations; viz.—That no commutation of penance be hereafter accepted or allowed of, by any ecclesiastical judge, without an express consent given in writing by the bishop of the diocese, or other ordinary having exempt jurisdiction; or by some person or persons to be especially deputed by them for that purpose: and that
that all commutations, or pretended commutations, accepted or allowed otherwise than is hereby directed, be ipso facto null and void.—And that no sum of money, given or received for any commutation of penance, or any part thereof, shall be disposed of to any use, without the like consent and direction in writing, of the bishop, or other ordinary having exempt jurisdiction, if the cause hath been prosecuted in their courts; or of the archdeacon, if the cause hath been prosecuted in his court. And all money received for commutation, pursuant to the foregoing directions, shall be disposed of to pious and charitable uses, by the respective ordinaries above named: Whereof at the least one third part shall by them be disposed of in the parish where the offenders dwell. And that a register be kept in every ecclesiastical court, of all such commutations, and of the particular uses to which such money hath been applied. And that the account so registered, be every year laid before the bishop, or other ordinary exempt having episcopal jurisdiction, in order to be audited by them. And that any ecclesiastical judge or officer offending in any of the premisses, be suspended for three months for the said offence. Gibs. 1046.

But as none of these regulations are now in force, nor of the said canons made in the time of queen Elizabeth and in the year 1640; Mr Oughton says, generally, that commutation money is to be given to the poor where the offence was committed, or applied to other pious uses at the discretion of the judge. 1 Ought. 213.

About the year 1735, the bishop of Chester cited his chancellor to the archbishop’s court at York, to exhibit an account of the money received for commutations, and to shew cause why an inhibition should not go against him, that for the future he should not presume to dispose of any sum or sums received on that account, without the consent of the bishop. In obedience to this, an account was exhibited without oath; and that being objected to, a fuller was exhibited upon oath. And upon the hearing, several of the sums in the last account were objected to as not allowable, and an inhibition prayed to the effect above. But the archbishop’s chancellor refused to grant such inhibition; and was of opinion, that the bishop could only oblige an account: and so dismissed the chancellor without costs.

Pension.
PENSIONS are certain sums of money paid to clergymen in lieu of tithes. And some churches have settled on them annuities or pensions payable by other churches.

Thus in the Registrum Honoris de Richmond, we find a pension paid out of Coram or Coverham abbey in the county of York (unto which the church of Sedbergh was appropriated), to the prior of Connyfee (unto whose priory the church of Orton was appropriated) for the said church of Sedberwe, 20 s. Appendix 94.

These pensions are due by virtue of some decree made by an ecclesiastical judge upon a controversy for tithes, by which the tithes have been decreed to be enjoyed by one, and a pension instead thereof to be paid to another; or they have arisen by virtue of a deed made by the consent of the parson, patron, and ordinary. F. N. B. 117.

At the dissolution of monasteries there were many pensions issuing out of their lands, and payable to several ecclesiastical persons; which lands were vested in the crown by the statutes of dissolution; in which statutes there is a saving to such persons of the right which they had to those pensions: but notwithstanding such general saving, those who had that right were disturbed in the collecting and receiving such pensions; and therefore by another statute, to wit, the 34 & 35 H. 8. c. 19, it was enacted, that pensions, portions, corrodies, indemnities, synodies, proxies, and all other profits due out of the lands of religious houses dissolved, shall continue to be paid to ecclesiastical persons by the occupiers of the said lands. And the plaintiff may recover the thing in demand; and the value thereof in damages in the ecclesiastical court, together with costs. And the like he shall recover at the common law, when the cause is there determinable.

By the statute of Circumspete agatis, 13 Ed. 1. ft. 4. If a prelate of a church, or a patron, demand of a parson a pension due to him; all such demands shall be made in the spiritual court: in which case, the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

In pursuance of which, the general doctrine is, that pensions, as such, are of a spiritual nature, and to be
Pension.

sued for in the spiritual court; and accordingly when they have come in question, prohibitions have been frequently denied, or consultations granted; even tho' they have been claimed upon the foot of prescription. Gibs. 706.

But lord Coke says, if a pension be claimed by prescription, there, seeing a writ of annuity doth lie, and that prescriptions must be tried by the common law, because common and canon law therein do differ, they cannot sue for such a pension in the ecclesiastical court. 2 Inl. 491.

But this hath sometimes been denied to be law: And in the case of Jones and Stone, T. 12 W. Holt chief justice said, he could never get a prohibition to stay a suit in the spiritual court against a parson for a pension by prescription. Watf. c. 56. 2 Salk. 550.

In the case of Dr Gooche and the bishop of London, M. 4 G. 2. The bishop libelled in the spiritual court, suggesting that Dr Gooche, as archdeacon of Essex, is to pay 10l due to the bishop as a prescription, for the exercise of his exterior jurisdiction. The Dr moved for a prohibition, alleging that he had pleaded there was no prescription; and then that being denied, a prohibition ought to go for defect of trial. On the contrary, it was argued for the bishop, that the libel being general, it must not be taken that he goes upon a prescription; but it is to be considered in the same light as the common case of a pension, which is suable for in the spiritual court; and the nature of the demand shews it must have its original from a composition, it being a recompence for the archdeacon's, being allowed to exercise a jurisdiction, which originally did belong to the ordinary. And by the court: The bishop may certainly intitle himself ab antiquo, without laying a prescription; and as it is only laid in general, there is no ground for us to interpose, till it appears by the proceedings that a prescriptive right will come in question; if they join issue on the plea, it will then be proper to apply; but at present there ought to be no prohibition. Str. 879.

M. 1724. Bailey and Cornes. In the exchequer: A bill was preferred for a pension only, payable to the preacher of Bridgnorth; and upon hearing of the cause (which was afterwards ended by compromise) it seemed to be admitted, that a bill might be brought for a pension only. Bumb. 183.

A bishop may sue for a pension before a chancellor, and an archdeacon before his official. Wood b. 2. c. 2.
If a suit be brought for a pension, or other thing due of a parsonage, it seems that the occupier (tho' a tenant) ought to be sued; and if part of the rectory be in the hand of the owner, and part in the occupation of a tenant, the suit is to be against them both. *Wats.* c. 53.

And tho' there is neither house, nor glebe, nor tithes, nor other profits but only of after-offerings, burials, and christnings; yet the incumbent is liable to pay the pension. *Hardr.* 230.

If an incumbent leave arrearages of a pension, the successor shall be answerable; because the church itself is charged, into whatsoever hand it comes. *Cro. Eliz.* 810.

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**Pentecostals.**

PENTECOSTALS, otherwise called *Whitfun-farthings*, took their name from the usual time of payment, at the feast of pentecost. These are spoken of in a remarkable grant of King Henry the eighth to the dean and chapter of Worcester; in which he makes over to them all those oblations and obventions, or spiritual profits commonly called whitun-farthings, yearly collected or received of divers towns within the archdeaconry of Worcester, and offered at the time of pentecost. From hence it appears that pentecostals were oblations; and as the inhabitants of chapelries were bound, on some certain festival or festivals, to repair to the mother church, and make there oblation there, in token of subjection and dependance; so, as it seems, were the inhabitants of the diocese obliged to repair to the cathedral (as the mother church of the whole diocese) at the feast of pentecost. Something like this was the coming of many priests and their people in procession to the church of St Austin in Canterbury, in whitun-week, with oblations and other devotions: and in the register of Robert Read, who was made bishop of Chichester in the year 1396, there is a letter to compel the inhabitants of the parishes within the archdeaconry of Chichester, to visit their mother church in whitun-week. *Gilf.* 976. *Warn.* 339.

These
These oblations grew by degrees into fixed and certain payments, from every parish and every house in it; as appears not only from the aforementioned grant of King Henry the eighth, but also from a remarkable passage in the articles of the clergy in convocation in the year 1399; where the sixth article is, a humble request to the archbishops and bishops, that it may be declared, whether pence, the holy loaf, and pentecostals were to be paid by the occupiers of the lands, tho' the tenements were fallen or not inhabited, according to the ancient custom, when every parish paid a certain quota. *Gibf.* 976.

These are still paid in some few dioceses; being now only a charge upon particular churches, where by custom they have been paid. *Ken, Par. Ant.* 596. *Deg.* p. 2. c. 15.

And if they be denied, where they are due, they are recoverable in the spiritual court. *Gibf.* 977.

**Perambulation.** See Parish.

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**Perinde valere.**

*Perinde valere* was a writ of dispensation granted by the pope to a clerk admitted to a benefice, although uncapable; taking that name from the words of the dispensation, which made it *perinde valere*, that is, to be as effectual to the party, as if he were capable. *Gibf.* 87.

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**Perjury.**

If perjury be committed in a temporal cause, it is punishable only in the temporal courts; but where it is committed in a spiritual cause, the spiritual judge hath authority to inflict canonical punishment, and prohibition will not go. *Gibf.* 1013. *1 Oughb.* 9.

For by the statute of Circumspécte agatis, 13 Ed. 1. f. 4.—— For breaking an oath, it hath been granted, that it shall be tried in a spiritual court, when money is not demanded, but a thing done for the punishment of
Perjury.

In which case the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

For altho' the case be spiritual, and the perjury is committed in the spiritual court; yet the judge there can only punish pro salute animae: but the party grieved by such perjury, must recover his damages at the common law. *Gib.* 1013.

In the statute of perjury, 5 Eliz. c. 9. there is a proviso, that the same shall not extend to any spiritual or ecclesiastical court, but such offender as shall be guilty of perjury or subornation of perjury, shall and may be punished by such usual and ordinary laws as heretofore hath been, and yet is used and frequented in the said ecclesiastical courts. *s. 11.*

In the statute of the 5 Eliz. c. 23. concerning the writ de excommunicado capiendo, perjury in the ecclesiastical court is specified as an offence (amongst others) for which a person may be excommunicated.

*E. 11 W.* Bishop of *St David's* case. By Holt chief justice: It hath been a question, whether perjury in the spiritual court can be tried in the temporal; and in all the cases where it hath been, the persons have been acquitted, and so it hath been ended, but it is not yet settled. *L. Raym.* 451.

*M. 4 Geo. K.* and *Lewis.* An information was moved for against a clergyman, for perjury at his admission to a living, upon an affidavit that the presentation was simoniacal. But the court refused to grant it, till he had been convicted of the simony. *Str.* 70.

Perpetual curate. See *Curate.*

Pews in the church. See *Church.*

Peter-pence.

Peter-pence was an annual tribute of one penny, paid at Rome out of every family, at the feast of St Peter. *Gib.* 87.
Physicians.

1. **Wethershed.** Forasmuch as the soul is far more precious than the body, we do prohibit under the pain of anathema, that no physician for the health of the body, shall prescribe to a sick person any thing which may prove perillous to the soul. But when it happens that he is called to a sick person, he shall first of all effectually persuade them to send for the physicians of the soul; that after the sick person hath taken care for his spiritual medicament, he may with better effect proceed to the cure of his body. And the transgressors of this constitution, shall not escape the punishment appointed by the council. Lind. 330.

That is, by the council of Lateran under Innocent the third; from the canons of which council this constitution was taken: which punishment is, a prohibition from the entrance of the church until they shall have made competent satisfaction. Johnf. Wethersh.

2. By the 3 H. 8. c. 11. Forasmuch as the science and cunning of phystick and surgery (to the perfect knowledge whereof be requisite both great learning and ripe experience) is daily within this realm exercised by a great multitude of ignorant persons, of whom the greater part have no manner of insight in the same nor in any other kind of learning, some also can no letters on the book; so far forth, that common artificers, as smiths, weavers, and women, boldly and accustomedly take upon them great cures, and things of great difficulty, in the which they partly use sorcery and witchcraft, partly apply such medicines unto the disease as be very noious, and nothing meet thereof; to the high displeasure of god, great infamy to the faculty, and the grievous hurt and destruction of many of the king's liege people, most especially of them that cannot discern the uncunning from the cunning: Be it therefore (to the surety and comfort of all manner of people) enacted, that no person within the city of London, nor within seven miles of the same, shall take upon him to exercise and occupy as a phyfician or surgeon, except he be first examined approved and admitted by the bishop of London or by the dean of Paul's for the time being, calling to him of them four doctors of phystick, and for surgery other expert persons in that faculty,
Physicians.

faculty, and for the first examination such as they shall think convenient, and afterwards always four of them that have been so approved; upon pain of forfeiture, for every month that they do occupy as physicians or surgeons, not admitted nor examined after the tenor of this act, of 5l, half to the king, and half to him that shall sue. And that no person out of the said city and precinct of seven miles of the same, except he have been as is aforesaid approved in the same, take upon him to exercise and occupy as a physician or surgeon, in any diocese within this realm; unless he be first examined and approved by the bishop of the same diocese, or (he being out of the diocese) by his vicar general, either of them calling to them such expert persons in the said faculties as their discretion shall think convenient, and giving their letters testimonial under their seal to him that they shall so approve; upon like pain to them that occupy contrary to this act (as is above said), to be levied and employed after the form before expressed.

Provided, that this act shall not be prejudicial to the universities of Oxford or Cambridge, or either of them; or to any privileges granted to them.

3. By the 14 & 15 H. 8. c. 5. Physicians in London and within seven miles thereof are incorporated; with power to make statutes for the government of the society: and no physician shall practice within the said limits, till admitted by the president and community under their common seal; on pain of 5l a month, half to the king, and half to the society. And four censors are to be chosen yearly, who shall have the ordering of the practitioners within the said limits; and the supervising of medicines; with power to fine and imprison.

And it is further enacted, that whereas in dioceses of England out of London, it is not light to find always men able sufficiently to examine (after the statute) such as shall be admitted to exercise physic in them; therefore no person shall be suffered to exercise or practice in physic through England, until such time as he be examined at London, by the president and three of the elects of the said society; and to have from them letters testimonial of their approving and examination; except he be a graduate of Oxford or Cambridge, which hath accomplished all things for his form without any grace.

But as to surgeons, the law remaineth as before; that they shall be licensed by the bishop of the diocese or his vicar general respectively.
Physicians.

In the case of the college of physicians against Levett, E. 11 W. The plaintiffs brought an action of debt against the defendant for 25l, for having practised physick within London five months without licence. Upon nil debet pleaded, it was tried before Holt chief justice at Guildhall; and the defence was, that he was a graduate doctor of Oxford. But it was ruled by Holt, upon consideration of all the statutes concerning this matter, that he could not practise within London or seven miles round, without licence of the college of physicians. And by his direction a verdict was given for the plaintiffs. L. Raym. 472.

And the like was adjudged on a special verdict, M, 4 Geo. 1717; in the case of Dr West, who was a graduate of Oxford. id.

4. By the 34 & 35 H. 8. c. 8. Where by the statute of 3 H. 8. c. 11. for the avoiding of forceries witchcrafts and other inconveniences, it was enacted, that no person within the city of London nor seven miles thereof should take upon him to exercise as physician or surgeon, except he be first examined approved and admitted by the bishop of London and other, under the penalties in the same act mentioned; since the making of which act, the company and fellowship ofsurgeons in London, minding only their own lucre, and nothing the profit or ease of the diseased or patient, have sued and troubled divers honest persons, as well men as women, whom god hath endowed with the knowledge of the nature kind and operation of certain herbs roots and waters, and the using and ministring of them to such as be pained with customary diseases, as women’s breasts being sore, a pin and the web in the eye, uncomes of hands, burning, scaldings, sore mouths, the stone, strangury, saucelim, and morphew, and such other like diseases; and yet the said persons have not taken any thing for their pains or cunning, but have ministr’d the same to poor people only for neighbourhood and god’s sake, and of pity and charity; and it is now well known, that the surgeons admitted will do no cure to any person, but where they shall know to be rewarded with a greater sum or reward than the cure extendeth unto; for in case they would minster their cunning unto fore people unrewarded, there should not so many rot and perish to death for lack or help of surgery, as daily do; but the greater part of surgeons admitted, be much more to be blamed, than those persons that they trouble; for altho’ the most part of the
persons of the said craft of surgeons have small cunning, yet they will take great sums of money, and do little therefore, and by reason thereof they do oftentimes impair and hurt their patients, rather than do them good: In consideration whereof, and for the ease comfort and health of the king’s poor subjects, it is enacted, that it shall be lawful to every person being the king’s subject, having knowledge and experience of the nature of herbs roots and waters, or of the operation of the same, by speculation or practice, to use and minister in and to any outward sore, uncome wound, apostemations, outward swelling or disease, any herb or herbs, ointments, baths, pultes, and emplasters, according to their cunning experience and knowledge, in any of the diseases fores and maladies aforesaid, and all other like the same, or drinks for the stone and strangury, or agues; without suit, trouble, penalty, or loss of their goods: the foresaid statute, or any other act, ordinance, or statute notwithstanding.

Pie.

The pie was a table to find out the service belonging to each day. Gib. 263.

Pious uses. See Charitable uses.
Plays in the church or churchyard. See Church.
Plays in the universities. See Colleges.

Plough-alms.

The plough-alms was a kind of oblation, being most commonly a penny for every plough, to be paid between easter and whitsuntide. 2 Still. 177.
Plurality.

1. By a canon made in the council of Lateran, hol-den under pope Innocent the third, in the year of our lord 1215, it is ordained, that whosoever shall take any benefice with cure of souls, if he shall before have obtained a like benefice, shall into jure be deprived thereof; and if he shall contend to retain the same, he shall be deprived of the other: and the patron of the former, immediately after his accepting of the latter, shall descend the same upon whom he shall think worthy. Hughes, c. 16. Gibs. 903.

Othob. Before institution, it shall be inquired, whether the presentee hath any other benefice with cure of souls; and if he hath such benefice, it shall be inquired, whether he hath a dispensation: And if he hath not a sufficient dispensation, he shall by no means be admitted, unless he do first make oath, that immediately upon his taking possession of the benefice unto which he is instituted, he will resign the rest. Whereupon he who granteth institution shall immediately give notice to the bishops in whose dioceses such former benefices shall be, and also to the patrons that they may dispose of the same. Athon, 129.

Othob. When confirmation is to be made of the election of a bishop, amongst other articles of inquiry and examination according to the direction of the canons, it shall be diligently inquired, whether he who is elected had before his election several benefices with cure of souls; and if he be found to have had such, it shall be inquired whether he hath had a dispensation; and whether the dispensation (if he shall exhibit any) is a true dispensation, and extendeth to all the benefices which he possessed. Athon, 133.

According to which constitution we find, in the times of the archbishops Peccham and Winchelsea, that confirmation was denied to three bishops, by reason of pluralities without proper dispensation. Gibs. 905.

Peccham. He who shall have more benefices than one with cure of souls, without dispensation, shall hold only the last; and if he shall strive to hold the rest, he shall forfeit all. And it is further decreed, that he who shall take more benefices than one, having cure of souls, or being otherwise incompatible, without dispensation apostolical, either by institution or by title of commendam, or one by institution and another by commendam, except they be held in such manner as is permitted by the constitution
constitution of Gregory published in the council of Lions; shall be deprived of them all, and be ipso facto excommunicated, and shall not be absolved but by us or our successors or the apostolic see. Lind. 137.

Having cure of souls.] Whether it be a cathedral or parochial church, or a chapel having cure of the parishioners, either de jure or de facto; so that there be a parish, wherein he can exercise parochial rites: also, whether it be a dignity, or office, or church; as there are many archipresbyters, archdeacons, and deans, who have no church of their own, yet they have jurisdiction over many churches. Lind. 135.

Or being otherwise incompatible] Namely, dignities, parsonages, and other ecclesiastical benefices, which require personal residence either by statute, privilege, or custom. Lind. 137.

In such manner as is permitted by the constitution of Gregory] Namely, that he to whom the benefice is granted in commendam be of lawful age, and a priest; and that it be one only, and of evident necessity, or advantage to the church, and to continue no longer than for six months. Lind. 137.

And shall not be absolved but by us or our successors, or the apostolic see] And by another constitution of the same archbishop, if any shall otherwise absolve them, they shall be accursed. Lind. 339.

But after all, these canons and constitutions were not intended to hinder or take away pluralities; but to render dispensations necessary: for a clerk was allowed to hold as many dignities or benefices as he could get, with the pope’s dispensation; which was easily obtained from his legate or nuncio residing here, on paying the sums required. Johnf. 91.

2. By the 21 H. 8. c. 13. If any person having one benefice with cure of souls, being of the yearly value of 81. or above, accept and take any other with cure of souls, and be instituted and inducted in possession of the same; then and immediately after such possession had thereof, the first benefice shall be adjudged in law to be void. And it shall be lawful to every patron, having the advowson thereof, to present another, and the presentee to have the benefit of the same, in such like manner and form as tho’ the incumbent had died or resigned; any licence, union, or other dispensation to the contrary notwithstanding.
Plurality.

Standing: and every such licence, union, or dispensation to be obtained contrary to this present act, of what name or quality soever they be, shall be utterly void and of none effect. And if any person or persons, contrary to this present act, shall procure and obtain at the court of Rome or elsewhere any licence, union, toleration, or dispensation, to receive and take any more benefices with cure than is above limited; every such person or persons, so juing for himself, or receiving and taking such benefice by force of such licence union toleration or dispensation, that is to say, the same person or persons only, and none other, shall for every such default incur the penalty of 20l, and also lose the whole profits of every such benefice or benefices as he receiveth or taketh by force of any such licence, union, toleration, or dispensation; half to the king, and half to him that will sue for the same in any of the king's courts. f. 9, 10, 11.

If any person] Altho' bishops are not within this act, otherwife than as commendataries, that is, having two benefices with cure, either by retainer, or de novo; yet it is a general law, which ought to be taken notice of without pleading, by the same reafon that the statute of the 13 Eliz. c. 10. concerning leaves of the clergy, hath often been adjudged a general law, tho' bishops are not included in it. Gibs. 906.

Having one benefice] So as that he hath been instituted, altho' he hath not been inducted into the same; for if he taketh a second benefice after such institution, the first is void, as much as if it had been taken after induction also. Gibs. 906.

Of the yearly value of 8l or above] According to the valuation in the king's books; for so it was unanimously resolved by the court of common pleas in the 23 C. 2. and before that in the 8 C. 1. by the same court, in the case of Drake and Hill: which therefore is at this day taken for law, notwithstanding the two more ancient opinions to the contrary, one in Dyer, 7 Eliz. and the other in the case of Bond and Tricket in the 43 Eliz. Gibs. 906. Watf. c. 2.

Of 8l or above] If such first benefice is under the yearly value of 8l in the king's books, the same is not within this statute, but refis upon the law of the church as it was before the statute. Gibs. 906.

Accept and take any other] It is not material in this case, of what value the second church is, or whether rated in the king's books at all; for the voidance will take place equally
equally when the second is under, as when it is above 81 a year. Gibs. 906.

And be instituted and inducted in possession of the same] Al- tho' the expression is copulative, and should therefore imply, that the voidance which follows thereupon doth not take place till after induction; yet it hath been often adjudged, that if one is instituted, and then obtains dispensation, and after that is inducted, the dispensation comes too late; not only because by institution the church is full of the incumbent, and one cannot have a dispensation to take and receive (as the words of the act are) what he had before; but also because by institution he hinders others from being presented; and so by obtaining institution to many churches, with sequestration of the profits of them, the intent of this statute might be utterly frustrated. Gibs. 906.

And it shall be lawful to every patron, having the advowson thereof, to present another] If the first benefice was of less value than 81. a year; yet by his acceptance of a second with cure, it is at this day in jure void by the received canon law: and there needs not any sentence declaratory in the spiritual court, to make way for the patron's presentation; for he may immediately thereupon (without either deprivation or resignation) present a new incumbent to the said church, and require his admission; and if the bishop doth refuse the patron's clerk, a quare impedit lies for the patron. But some opinions are, that the church is not void but by deprivation; and that the taking of a second benefice with cure in such case, until deprivation, is no cession: But this is to be understood, that it is no cession to the disadvantage of the patron; so as to make a lapse incur from the time of such cession, no notice having been given to the patron thereof. For until after such clerk shall have been actually deprived of his first benefice, and notice thereof given to the patron; he, tho' he may, yet he need not to present: but then after such deprivation, the church is void in facto and in jure, so that he must at his peril present. Wats. c. 2.

And if an incumbent of a church with cure under 81 a year doth take a second benefice with cure, in which he is also instituted and inducted (no dispensation being obtained for the holding of them both), by which the first is void against the patron, so that he may present (as before is shewed), but before the patron doth present upon such avoidance, the archbishop, by force of this statute, doth grant
grant to the clerk a licence perinde valere, to hold the first with the second benefice; this is not a good licence, (altho' confirmed according to the statute) to take away the patron's presentment, tho' his church was only void by force of a canon, and not by statute: for by the canon the first benefice was so void, that the patron might have presented before any deprivation; and after the patron hath once a title to present, this title cannot be taken away from him by a subsequent licence, unless such a licence could make a void church full. *Watf. c. 2.*

But if any person having one benefice with cure of souls, being of the yearly value of 81 or above, do accept and take another benefice with cure of souls, and be instituted and inducted in possession of the same (although the last benefice be but of 31 value); immediately after such possession had thereof, the first benefice is not only void in law but in fact also: so that the patron thereof must present to a living of such value, so void, within six months (without expecting notice from the ordinary) to avoid the lapse; it being then not only void by canon law, but also by act of parliament, in which all men are parties. But he need not (unless notice be duly given) present till such time as his clerk is inducted into another benefice. For tho' by his institution he hath the cure of souls, and the church is full to several purposes; yet the words of the statute are, "and be instituted and inducted in possession of the same;" so that until he be inducted, there is no cession by this statute, but only by the canon law; by which law, in such case also he may be deprived. *Watf. c. 2.*

But the patron, if he pleaseth, may present so soon as his clerk is instituted into another benefice incompatible, altho' he hath no notice from the ordinary of any cession or deprivation made of the first benefice, by reason of his acceptance of another by institution; and tho' he was only instituted into the first benefice, and not inducted: or else, if he pleaseth, he may sue such person in the court Christian, to have him deprived by sentence, in this, as well as in any other case where the living is void by the canon law only. *Watf. c. 2.*

But this rule, that the accepting of a second benefice that is incompatible, doth make a cession or absolute avoidance of the former, hath its exceptions: As, 1. If a person having a benefice incompatible, be admitted, instituted, and inducted into a second benefice incompatible also, but doth not subscribe the articles according to
the statute; his first benefice is not void, because by reason of that neglect, he was never incumbent of the second. The like law seemeth to be, if a man hath obtained a second benefice incompatible with his former, by a simoniacal contract; for in such case also, his presentation or collation, institution and induction, are utterly void and of none effect in law: However, the canon law, unless a pardon intervene, will reach him in this case of simony; for by that he may be deprived.

2. If he that hath a benefice incompatible, before he takes another, being duly qualified, doth obtain a sufficient dispensation, to hold at one and the same time more than one of such benefices as are incompatible: for by dispensation, a man at this day with us (tho' he be not qualified by degree in the university, retainer, or birth) may hold as many benefices without cure, of what value soever, as he can get; all of them, or all but the last, being under the value of 81 a year. Watson. c. 3.

Any licence, union, or other dispensation to the contrary notwithstanding] The union here spoken of, is meant of a temporary union for the life of the incumbent; instances of which are common both before and since the reformation. Gibs. 907.

And every such licence, union, or dispensation, contrary to this act, shall be utterly void and of none effect] One being possessed of two benefices by dispensation according to this statute, did afterwards by a triality (or a dispensation to hold three) obtain a third benefice, and enjoyed all the three; and Dyer says, that divers justices and serjeants were of opinion, that the first of the three was void, and the profits of the third forfeited by this clause, and that only the second remained to him. Gibs. 907. Dyer 327.

Also, in the case of the king against the bishop of Chester, where one had two benefices with cure, by dispensation, and then took a third with cure (and, as it seemeth, without dispensation); it is laid to have been adjudged, that both the two first should be void. Gibs. 907. Noy 149.

And the words of Hobart are; I hold, if a man take a triality, which is not allowed him, he cannot by that take two benefices, because his dispensation is void. Hob. 158.

The rule of the canon law is, that if a person having two benefices incompatible, shall by dispensation accept
a third, and be in quiet possession thereof, the two first shall be ipso facto void. Gibs. 907.

Upon all which considerations, if a third benefice is to be taken by one who already holds two by dispensation, the best way is to determine which of the two he will hold with the third, and to make the other void by re-signation, before he accepts the third. Gibs. 907.

Shall procure and obtain at the court of Rome] In the catalogue of faculties which were grantable at Rome in the times of popery (besides the common dispensations to hold two, three, or four benefices incompatible) are these three that follow: 1. A dispensation to whatsoever and how many other benefices incompatible, to the value of 500 l. a year. 2. To the value of 1000 l. a year. 3. Without any restriction: The price of each rising gradually, according to the degree of favour and profit. Gibs. 907.

And how much the practice, as well as law, of holding pluralities, was altered by this statute, from what it was whilst the right of dispensation rested in the pope; will appear (amongst many other such like which might be mentioned) from the famous instance of Bogo de Clare, rector of St Peter's in the East in Oxford; who in the eighth year of king Edward the first, was presented by the earl of Gloucester to the church of Wyfton in the county of Northampton, and obtained a dispensation to hold the same, together with one church in Ireland, and fourteen other churches in England in nine different dioceses; all which benefices were valued at that time at 268 l. 6s. 8d. Ken. Par. Ant. 292. Gibs. 907. Wood's Hist. et Antiq. Univ. Oxon. 116.

3. By the aforesaid statute of the 21 H. 8. c. 13. it is enacted, that all spiritual men being of the king's council, may purchase licence or dispensation, to take, receive, and keep three parsonages or benefices with cure of souls: and all other being the king's chaplains, and not sworn of his council; the chaplains of the queen, prince, or princes, or any of the king's children, brethren, sisters, uncles, or aunts, may feemably purchase licence or dispensation, and receive and keep two parsonages and benefices with cure of souls: Every archbishop and duke may have six chaplains; every marquis and earl, five; viscount, and other bishop, four; chancellor of England for the time being, baron and knight of the garter, three; every duchess, marchioness, countess, and baroness, being widows, two; treasurer, controller of the king's house, the king's secretary, and dean of his chapel, the king's usher, and master of the
the rolls, two; chief justice of the king's bench, one; warden of the five ports, one; whereof every one may purchase licence or dispensation, and receive have and keep two parsonages or benefices with cure of souls. And the brethren and sons of all temporal lords, which are born in wedlock, may every of them purchase licence or dispensation to receive have and keep as many parsonages or benefices with cure, as the chaplains of a duke or archbishop. And the brethren and sons born in wedlock of every knight, may every of them purchase licence or dispensation, and receive take and keep two parsonages or benefices with cure of souls. f. 13.—21.

Parsonages or benefices] Dispensations were granted heretofore, for such a number of benefices, without specifying the particulars; and sometimes with an additional power to exchange, and take others; only keeping within the number in point of possession at one and the same time. But the later and safer way hath been, to grant dispensation only for preventing the voidance of a benefice in possession, by the taking of a second, however these words may be capable of a larger interpretation. Gibs. 907.

Every duke, marquis, earl, &c.] And altho' such duke, marquifs, earl, or the like, be minors, and under age; yet they may retain chaplains within this act: as was adjudged in the case of the queen and the bishop of Salisbury; even tho' the lord admiral, in whose custody the minor was, might retain chaplains in his own right. 4 Co. 119. Gibs. 908.

But if the son and heir apparent of a baron, or such like, retaineth a chaplain, and his father dieth, and the chaplain purchaseth dispensation; such retainer will not avail, because it was not available at the beginning. 4 Co. 90.

And if the person who retained dies, or is removed, or is attainted, before any effect of the retainer; it is gone, and shall have no effect afterwards: but if it taketh effect before, it continues good, notwithstanding death, or attainder, or removal. Gibs. 908.

Brethren and sons born in wedlock of every knight] But not brethren or sons of baronets; which dignity hath been created since the making of this act. Gibs. 908. That is, if such baronets are not also knights.

S. 22. Provided, that the said chaplains in purchasing, taking, receiving, and keeping benefices with care of souls, as is aforesaid,
Plurality.

Aforesaid, shall be bound to have and exhibit, where need shall be, letters under the sign and seal of the king or other their lord and master, testifying whose chaplains they be; and else not to enjoy any such plurality of benefices by being such chaplain: any thing in this act notwithstanding.

Letters under the sign and seal] Which may be in this form: “Know all men by these presents, that I the right honourable A. lord—baron of—have admitted, constituted, and appointed the reverend B. C. clerk, my domeftick chaplain; to have, hold, and enjoy all and singular the benefits, privileges, liberties, and advantages, due and of right granted to the chaplains of noblemen by the laws and statutes of this realm. Given under my hand and seal, the—day of—in the year &c.”

And the same being under hand and seal, it seemeth that if there shall be lawful cause to discharge him, such discharge must be also under hand and seal: Which may be to this effect; “Whereas I the right honourable A. lord—baron of—by writing under my hand and seal, bearing date the—day of—did admit, constitute, and appoint B. C. clerk, my domeftick chaplain; to hold and enjoy all benefits, privileges, and advantages belonging to the same: Now by these presents, I the said A. lord—do for divers good and lawful causes and considerations, dismiss and discharge the said B. C. from my service as domeftick chaplain, and from all privileges and advantages to him granted as aforesaid. Given under my hand and seal, the—day of—in the year &c.”

S. 23. And all doctors and bachelors of divinity, doctors of law, and bachelors of law canon, and every of them, which shall be admitted to any of the said degrees by any of the universities of this realm, and not by grace only, may purchase licence, and take, have, and keep two parsonages or benefices with cure of souls.

Bachelors of law canon] Dr Ayliffe says, that no degree in the canon law hath been taken since the reformation. Ayl. Par. [418.]

And not by grace only] This seems to be explained by a like expression in the statute of the 14 H. 8. c. 5. intitled, “The privileges and authority of physicians in London;” by which, provision is made for the examination of physicians by the president and elects, except
except he be a graduate of Oxford or Cambridge, which hath accomplished all things for his form, without any grace; that is, (as it seemeth) hath performed the statutable exercises, in order to such degree, without any favour or dispensation therein. Gib. 908, 909.

S. 24. Provided, that every archbishop, because he must occupy eight chaplains at consecrations of bishops; and every bishop, because he must occupy six chaplains at giving of orders and consecration of churches, may every of them have two chaplains over and above the number above limited unto them; whereof every one may purchase licence or dispensation, and take receive and keep as many parsonages and benefices with cure of souls, as is before assigned to such chaplains.

Dr Ayliffe says, that notwithstanding this clause, bishops can only qualify this number for the purposes here mentioned, of ordination and consecration; but that they can qualify no more than four, for a licence or dispensation.—But this seemeth contrary to the words of the clause as above recited. Ayl. Par. [418.]

S. 25. Provided also, that no person to whom any number of chaplains or any chaplain, by any of the provisions aforesaid is limited, shall in any wise, by colour of any of the same provisions, advance any spiritual person or persons, above the number of them appointed, to receive or keep any more benefices with cure of souls, than is above limited by this act, any thing specified in the said provisions notwithstanding; and if they do, then every such spiritual person or persons, so advanced above the said number, to incur the penalty contained in this act.

Above the number] Altho' a chaplain retained above the number, be promoted before those who were duly retained according to the statute; such retainer (above the number) shall neither avail him, nor deject those who were duly retained of the right of purchasing dispensation: nor shall he ever have benefit by his retainer (even tho' the rest are dead) unless it be renewed upon the death of one of those who made up the statutable number: inasmuch as the retainer was null ab initio; and a chaplain once legally qualified, cannot be discharged at pleasure, to make way for others. Gib. 909.

So if a baron (who can have but three chaplains) doth qualify three accordingly, and they being advanced to pluralities, he upon displeasure or for other cause doth diminish them from their attendance, yet they are his chaplains at large, and may hold their pluralities for their lives; and tho' he may entertain as many others as he will; yet
yet he cannot qualify any of them to hold a plurality, whilst the first three are living. And so of others. But as any of the three first die; he may qualify others, if so be he retain them anew after the death of the first. Watf. c. 3.

If a baron, who may retain three chaplains as aforesaid, be made warden of the cinque ports (who may have a chaplain in respect of his office), yet shall he have but three; and if a baron hath three, and be made an earl, yet he shall have but five in all; and so of the rest: because the statute is to be taken strictly against pluralities. Gibs. 909.

S. 29. Provided, that it shall be lawful to every spiritual person, being chaplain to the king, to whom it shall please the king to give any benefices or promotions spiritual, to what number soever it be, to accept and take the same, without incurring the penalty and forfeiture of this statute.

Being chaplain to the king] It hath been resolved in the court of king's bench, that a chaplain extraordinary is not a chaplain within this statute, but only the chaplains in ordinary; that is, not one who has only an entry of his name made in the book of chaplains, but one who has also a waiting time. Gibs. 909. 1 Salk. 162.

To accept and take the same] Without previous dispensation; which the king himself, as supreme ordinary, hath power to grant, and his presentation of his own chaplain imports the granting of it. But if the king's chaplain be presented to a second benefice by a subject, a dispensation is necessary, and must be obtained before his institution to the second living. Gibs. 909. 1 Salk. 161.

S. 31. Provided also, that no deanry, archdeaconry, chancelorship, treasurership, chantryship, or prebend in any cathedral or collegiate church, nor parsonage that hath a vicar endowed, nor any benefice perpetually appropriate, be taken or comprehended under the name of benefice having cure of souls, in any article aforesaid.

S. 33. Provided also, that every duchess, marquess, countess, baroness, widows, which have taken, or that hereafter shall take any husbands under the degree of a baron, may take such number of chaplains, as is above limited to them being widows, and that every such chaplain may purchase licence to have and take such number of benefices with cure of souls, in manner and form as they might have done, if their said ladies and mistresses had kept themselves widows.
Being widows] And 'tho' they marry, the retainer before marriage stands good, and shall have its effect after marriage. If they marry under the degree of a baron, they are specially provided for in this clause, and if they marry a baron, or above that degree, my lord Coke has laid down the law in the following words: If a woman baroness retaineth two chaplains according to the statute, and afterwards taketh one of the nobility to husband; the retainer of these two chaplains remaineth, and they without new retainer may take two benefices; for their retainer was not ended by the marriage. 4 Co. 119.

Gibf. 909.

4. Can. 41. No licence or dispensation for the keeping of more benefices with cure than one, shall be granted to any, but such only as shall be thought very well worthy for his learning, and very well able and sufficient to discharge his duty; that is, who shall have taken the degree of a master of arts at the least in one of the universities of this realm, and be a publick and sufficient preacher licenced. Provided always, that he be by a good and sufficient caution bound to make his personal residence in each of his said benefices for some reasonable time in every year; and that the said benefices be not more than thirty miles distant asunder; and lastly, that he have under him, in the benefice where he doth not reside, a preacher lawfully allowed, that is able sufficiently to teach and instruct the people.

Very well worthy for his learning] So is the tenor of the Lateran council under Innocent the third against pluralities; where it is allowed, in this particular case and in no other, that the see apostolic may dispence with persons of sublime abilities and learning, that they may be honoured with more benefices than one. Gibs. 910.

A publick and sufficient preacher licenced] With regard to his being thus qualified (which in those days was not a common qualification), there is usually a proviso in the body of the dispensation, that in either of the churches he preach thirteen sermons every year, according to the orders of the church of England published in that behalf, and therein handle the word of God religiously and reverently. Gibs. 910.

Bound to make his personal residence for some reasonable time] In every dispensation to hold two benefices, there is a proviso, that in that benefice from which he shall be the more absent, he shall exercise hospitality for at least two months every year, and that proviso being evidently founded
founded on this canon; every pluralist, who doth not observe it, is punishable by ecclesiastical censures. Gibs. 911.

*Not more than thirty miles distant*] Heretofore, it was usual to obtain licences from the king, to take two benefices beyond the distance of thirty miles, by way of dispensation with this canon; and in such cases, we find this clause in the faculties granted by the archbishop, "The king's licence for distance beyond thirty miles "having been first granted to you," or the like; by reason of which licence and clause, they have been usually called royal dispensations. But none of these (as it seemeth) have been granted since the revolution; it having been then set forth in the declaration of rights, 1 W. & J. c. 2. that the power of suspending laws or the execution of laws, by regal authority, without consent of parliament, is illegal; and with respect to acts of parliament in particular, it is enacted by that statute, that no dispensation by non-obstante of any statute shall be allowed, unless the same shall be specially provided for in such statute. Gibs. 911.

That he have under him, in the benefice where he doth not reside, a preacher lawfully allowed] In pursuance of this canon (and not of any thing in the statute), a clause to the like purpose is inserted in the faculty or dispensation. Gibs. 911.

And it is further provided by Canon 47. that whoever hath two benefices, shall maintain a preacher licensed, in the benefice where he doth not reside; except he preach himself at both of them usually.

5. The method which a presentee must pursue, in order to obtain a dispensation, is as followeth:

He must obtain of the bishop, in whose diocese the livings are, two certificates of the values in the king's books, and the reputed values and distance of such livings; one certificate for the archbishop, and the other for the lord chancellor. And if the livings lie in two dioceses; then two certificates, as aforesaid, are to be obtained from each bishop, each certifying the value in the king's books, and the reputed value, of the living in his own diocese; and both of them, the reputed distance of the two livings.

Which certificates may be in this form:

"To the most reverend father in God, Thomas, by divine providence lord archbishop of Canterbury, prince of all England and metropolitan:

Whereas
Whereas A. B. clerk, master of arts, vicar of C. in the county of D. and in my diocese of E. is presented to the rectory of F. in the county and diocese aforesaid; These are therefore to certify your grace, that the said vicarage of C. is valued in the king’s books at——is of the reputed yearly value of——That the said rectory of F. is valued in the king’s books at——is of the reputed yearly value of——And that they are distant from each other about——miles. Witness my hand the——day of——

The like to the lord high chancellor of Great Britain.

He must also exhibit to the archbishop, his presentation to the second living.

And also bring with him two papers of testimonials from the neighbouring clergy, concerning his behaviour and conversation; one for the archbishop, and the other for the lord chancellor.

The form of which testimonials may be thus;

“To the most reverend father in god, Thomas, by divine providence, lord archbishop of Canterbury, primate of all England, and metropolitan:

We whose names and seals are hereunto subscribed and set, do humbly certify your grace, that we have personally known the life and behaviour of A. B. clerk, master of arts, vicar of C. in the county of D. and diocese of E. for the space of three years now past; that he hath, during the said time, been of good and honest life and conversation, a faithful and loyal subject to his majesty king George the third, and hath not (so far as we know) held, written, or taught any thing, but what the church of England approves of and maintains. In witness whereof, we have hereunto set our hands and seals, this——day of——in the year of our lord——.”

A. B. rector of A.
C. D. vicar of B.
E. F. vicar of C.”

And he must in like manner exhibit to the archbishop his letters of orders of deacon and priest.

And he must also exhibit to the archbishop, a certificate of his having taken the degree of master of arts at the least, in one of the universities of this realm, under the hand of the registrar of such university.
And in case he be not doctor or batchelor of divinity, nor doctor of law, nor batchelor of canon law; he is to procure a qualification (according to the form above expressed) as chaplain to some nobleman, or to some other person impowered by law to grant qualifications for pluralities (which is also to be duly registred in the faculty office) in order to be tendred to the archbishop, according to the statute. And if he hath taken any of the aforefaid degrees, which the statute allows as qualifications; he is to procure a certificate thereof in the manner before mentioned, and to exhibit the fame to the archbishop. Eston, 444.

After which, this dispensation is made out at the faculty office; where he gives securitie according to the direction of the canon. And afterwards he muft repair to the lord chancellor, for confirmation under the broad seal.

All which being done, he is then to apply himſelf to the bishop of the diocife where the living lies, for his admission and institution. Deg. p. 1. c. 4.

6. In pursuance of the statute and canons aforegoing, the form of a dispensation is usually as followeth:

"Thomas, by divine providence archbishop of Canterbury, primate of all England and metropolitan, by authority of parliament lawfully impowered for the purpose herein written: To our beloved in Chrift A. B. clerk, master of arts, of—college in the university of—and also chaplain to the right honourable C. lord—health and grace. The greater progres men make in facred learning, the greater encouragement they merit; and the more their necessitities are in daily life, the more necessary supports of life they require. Upon which consideratpons, and being moved by your supplications in this behalf, We do (by virtue and in pursuance of the power vested in us by the statutes of this realm) by theſe presents graciously dispence with you; that, together with the rectory of the parish church of—in the county of—and diocese of—which you now poſſefs, the annual fruits whereof, according to the valuation made in the books of first fruits and tenths of ecclesiastical benefices remaining in the exchequer of our sovereign lord the king, do not exceed the sum of—you may freely and lawfully accept, and hold as long as you ſhall live, the rectory of the parish church of—in the county of—and diocese of—not distant from the

H 3 " former
Plurality.

former above—miles or thereabouts, the annual fruits whereof according to the valuation aforesaid, do not exceed the sum of—Provided always, that in each of the churches aforesaid, as well in that, from which it shall happen that you shall be for the greater part absent, as in the other, on which you shall make perpetual and personal residence, you do preach thirteen sermons every year according to the ordinances of the church of England promulgated in that behalf; and do therein sincerely religiously and reverently handle the holy word of God; and that in the benence, from which you shall happen to be most absent, you do nevertheless exercise hospitality, two months yearly; and for that time, according to the fruits and profits thereof, as much as in you lieth, you do support and relieve the inhabitants of that parish, especially the poor and needy. Provided also, that the cure of the souls of that church from which you shall be most absent, be in the mean time in all respects laudably served by an able minister, capable to explain and interpret the principles of the Christian religion, and to declare the word of God unto the people, in case the revenues of the said church can conveniently maintain such minister; and that a competent and sufficient salary be well and truly allowed and paid to the said minister, to be limited and allotted by the proper ordinary at his discretion, or by us or our successors, in case the diocesan bishop shall not take due care therein. Provided nevertheless, that these presents do not avail you any thing, unless duly confirmed by the king's letters patent. Given under the seal of our office of faculties, this day of &c.

The lord chancellor's confirmation:

George the third, &c. To all to whom these our present letters shall come, greeting: We have seen certain letters of dispensation to these presents annexed; which, and every thing therein contained, according to a certain act in that behalf made in the parliament of Henry the eighth heretofore king of England, our predecessor, we have ratified, approved and confirmed, and for us our heirs and successors we do ratify approve and confirm by these presents: So that the reverend A. B. clerk, master of arts, in the letters aforesaid named, may use have and enjoy, freely and quietly with impunity,
impunity, and lawfully, all and singular the things in
the same specified, according to the force form and
effect of the same, without any impediment whatso-
ever, although express mention of the certainty of the
premises, or of any other gifts or grants by us herefo-
re made to the said A. B. be not made in these pre-
cepts; or any other thing, cause, or matter whatsoever
in any wise notwithstanding. In testimony whereof
we have caused these our letters to be made patent.
Witness our self at Westminfter, the —— day of ——
in the —— year of our reign.”

7. By the several stamp acts; for every skin or piece
of vellum or parchment, or sheet or piece of paper, on
which any dispensation to hold two ecclesiastical dignities
or benefices, or both a dignity and a benefice, shall be
engrossed or written, there shall be paid a treble forty
shilling stamp duty.

8. By the 13 El. c. 20. That the livings appointed
for ecclesiastical ministers may not by corrupt and indi-
ext dealing be transferred to other uses, it is enacted,
that no lease to be made of any benefice or ecclesiastical
promotion with cure, or any part thereof, and not being
impropriated, shall endure any longer than while the le-
se shall be ordinarily resident, and serving the cure of
such benefice without absence above fourscore days in
any one year; but every such lease, immediately upon
such absence, shall cease and be void; and the incum-
be to offending shall for the same lose one year’s profit
of his said benefice, to be distributed by the ordinary
among the poor of the parish. And all chargings of
such benefices with cure with any pension, or with
any profit out of the same to be yielded or taken,
other than rents reserved upon leases, shall be void.

Provided, that every parson by the laws of this realm
allowed to have two benefices, may demise the one of
them upon which he shall not be most ordinarily resident,
to his curate only that shall there serve the cure for him:
but such lease shall endure no longer than during such
curate’s residence without absence above forty days in any
one year.

9. By the 1 W. c. 26. If the universities shall present
Popish livings, or nominate to any popish benefice, with cure, prebend,
or other ecclesiastical living, any person who shall then
have any other benefice with cure of souls; such presen-
tation shall be void.
BY 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; every such offence shall be felony, and the person so offending shall suffer death as in cases of felony; and shall be tried in the county where he or she was apprehended, as if the offence had been committed in such county.

Provided, that this shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas for seven years together:

Or whose husband or wife shall absent him or her self the one from the other, for seven years together, in any part within his majesty's dominions, the one of them not knowing the other to be living within that time.

Provided also, that this shall not extend to any person that shall be at the time of such marriage divorced by any sentence in the ecclesiastical court:

Or to any person where the former marriage hath been by sentence in the ecclesiastical court declared to be void and of no effect:

Nor to any person by reason of any former marriage had or made within age of consent.

Provided also, that no attainder for this offence made felony by this act, shall work any corruption of blood, loss of dower, or disfranchisement of heirs.

If any person within his majesty's dominions of England and Wales] 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, Kelv. 79, 80.

Being married] This extendeth to a marriage de facto, or voidable by reason of consanguinity, affinity, or such like; for it is a marriage in judgment of law until it be avoided; and therefore tho' neither marriage be de jure, yet they are within this statute. 3 Inst. 88.

Shall marry any person, the former husband or wife being alive] If a man marrieth a wife, and then marrieth another
Polygamy.

other the former wife being living, and then such first wife dying he marrieth a third the second wife being living; this marrying of the third is not felony, because the marriage with such second wife was merely void: but otherwise it would have been if he had married the third, the first and true wife being living. 1 H. H. 693.

*Every such offence shall be felony*] And such second marriage is merely void. 3 Infl. 88.

And the person so offending shall suffer death as in cases of felony] Yet he shall have the benefit of clergy; the same being not excluded by express words. 3 Infl. 89.

*And shall be tried*] The first and true wife is not to be allowed as a witness against the husband; but it seemeth clear, that the second wife may be admitted to prove the second marriage, being not so much as his wife de facto. 1 H. H. 693.

In the county where he or she was apprehended] This is added only cumulative; for he may be indicted where the second marriage was, though he be never apprehended; and so be proceeded against to outlawry. 1 H. H. 694.

Shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas for seven years together] And in this case notice that he or she is living, is not material, in respect of the commorancy beyond sea. 3 Infl. 88.

*Beyond the seas*] And this, although it be within the king's dominions; as in New England, or Ireland. 1 H. H. 693.

Or whose husband or wife shall absent him or her self the one from the other, for seven years together, in any part within his majesty's dominions, the one of them not knowing the other to be living within that time] So that in this case notice is material, and maketh the offence. 3 Infl. 88.

*Shall not extend to any person that shall be at the time of such marriage divorced by any sentence in the ecclesiastical court*] And this is intended a divorce not a vincula matrimonii, for then without the aid of any proviso either may freely marry: but it must be intended of divorces a mensa et thoro. 1 H. H. 694.
Polygamy.

Nor to any person by reason of any former marriage had or made within the age of consent] If the man be above fourteen and the wife under twelve, or if the wife be above twelve and the man under fourteen, yet may the husband or wife so above the age of consent disagree to the espousals, as well as the party that is under the age of consent; for the advantage of disagreement must be reciprocal. And so it was resolved by the judges and civilians, T. 42 El. in the king’s bench, in a writ of error between Babington and Warner. So as if either party be within age of consent, it is no former marriage within this act. 3 Hift. 89.

H. 4 G. Strutville’s case. By Parker chief justice: Where a woman marries a second husband, the first husband being alive, and the second not privy; as to what she acquired during the cohabitation, she shall be esteemed as a servant to the second husband, who is intitled to the benefit of her labour.

Popery.

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XXV. Popish wife.

XXVI. Popish servants or sojourners.

XXVII. Popish schoolmasters.

XXVIII. Popish shall not succeed to the crown of this realm.

XXIX. Popists shall not sit in either house of parliament.

XXX. Popists shall not present to benefices.

XXXI. Shall be as excommunicated.

XXXII. Shall not repair to court.

XXXIII. Shall not come within ten miles of London.

XXXIV. Shall not remove above five miles from their habitation.

XXXV. Shall be disabled as to law, physic, and offices.

XXXVI. Shall not be executors, administrators, or guardians.

XXXVII. Shall not inherit or take by descent, devise, or purchase.

XXXVIII. Inrolling deeds and wills of papists.

XXXIX. Registering estates of papists.

XL. Papists to pay double taxes.

XLI. Lands given to superstitious uses.

XLII. Presentment of papists to the courts spiritual and temporal.

XLIII. Information against papists not restrained to the proper county.

XLIV. Peers how to be tried in cases of recusancy.

XLV. Papists
I. Papal incroachments in this realm.

1. There doth not appear much of the pope's power in this realm before the conquest. But the pope having favoured and supported king William the first in his invasion of this kingdom, took that opportunity of enlarging his incroachments, and in this king's reign began to send his legates hither; and prevailed with Henry the first to give up the donation of bishoprics; and in the time of king Stephen gained the prerogative of appeals; and in the time of Henry the second exempted all clerks from the secular power. 1 Haw. 49, 50.

2. And not long after this, by a general excommunication of the king and people, for several years, because they would not suffer an archbishop to be imposed upon them; king John was reduced to such straits, that he was obliged to surrender his kingdoms to the pope, and to receive them again, to hold of him for the rent of a thousand marks. 1 Haw. 50.

3. And in the following reign, of Henry the third; partly from the profits of our best church benefices, which were generally given to Italians and others residing at the court of Rome, and partly from the taxes imposed by the pope, there went yearly out of the kingdom 70,000l. an immense sum in those days. 1 Haw. 50.

4. The nation, being under this necessity, was obliged to provide for the prerogative of the prince and the liberties of the people, by many strict laws; as will appear in the following sections. 1 Haw. 50.

II. Papist jurisdiction abolished.


2. Can. 1. All ecclesiastical persons shall faithfully keep and observe, and (as much as in them lieth) shall cause to be observed and kept of others, all and singular laws and statutes made for restoring to the crown of this kingdom the ancient jurisdiction over the state ecclesiastical, and abolishing all foreign power repugnant to the same. And all ecclesiastical persons having cure of souls, and all other preachers and readers of divinity lectures, shall to the utmost of their wit, knowledge and learning, purely and sincerely, without any colour or dissimulation, teach mani...
nift open and declare, four times a year at leaft, in their sermons and other collations and lectures, that all usurped and foreign power (forasmuch as the same hath no esta-

3. By the 26 H. 8. c. 1. The king shall be taken as the only supreme head in earth of the church of England, and shall have and enjoy annexed to the imperial crown of this realm, all honours dignities preheminences jurid-
dictions privileges authorities immunities profits and commodities to the said dignity of supreme head of the same church belonging; and shall have power, from time to time, to visit repre{

4. And by the 35 H. 8. c. 3. Whereas the king hath heretofore been and is justly lawfully and notoriously known named published and declared, to be king of En-

5. And by the 1 Eliz. c. 1. To the intent that all the usurped and foreign power and authority, spiritual and tempora-

And
And such jurisdictions privileges superiorities and pre-
heminences, spiritual and ecclesiastical, as by any spiritual
or ecclesiastical power or authority hath been heretofore or
may lawfully be exercised or used, for the visitation of
the ecclesiastical state and persons, and for reformation
order and correction of the same, and of all manner of
errors heresies schisms abuses offences contempts and enor-
mities, shall for ever be united and annexed to the impe-
rial crown of this realm. § 17.

And for the utter extinguishments of all foreign and
usurped power and authority, it is enacted; that if any
person shall by writing, printing, teaching, preaching,
express words, deed or act, advisedly maliciously and di-
rectly affirm hold stand with set forth maintain or defend
the authority preheminence power or jurisdiction, spiritual
or ecclesiastical, of any foreign prince prelate person state
or potentate whatsoever, heretofore claimed used or usurped
within this realm; or shall advisedly maliciously and
directly put in use or execute any thing, for the extorting
advancement setting forth maintenance or defence of any
such pretended or usurped jurisdiction power prehemi-
ience and authority, or any part thereof; he, his abet-
tors aiders procurers and counsellors, being thereof attainted
according to the true order and course of the common
laws of this realm, shall for the first offence forfeit to the
king all his goods and chattels, as well real as personal;
and if he have not goods worth 20l he shall also be im-
prisoned for a year; and also all the ecclesiastical promo-
tions of every spiritual person so offending shall be void;
for the second offence shall incur a praemunire: and for
the third offence shall be guilty of high treason. But no
person shall be molested for any offence by preaching,
teaching or words, unless he be indicted within one half
year. And no person shall be indicted or arraigned for
any offence adjudged by this act, unless there be two suf-
cient witnesse more, to testify the offence; and the
said witnesse, or so many of them as shall be living, and
within the realm at the time of the arraignment, shall be
brought forth in person face to face to give evidence, if the
party require it. And if any person shall happen to give
relief aid or comfort, to a person offending in any such
case of praemunire or treason; this shall not be taken to
be an offence, unless there be two sufficient witnesses
openly to testify, that the person had notice and know-
ledge of the offence committed. § 27, 28, 29, 30, 31, 32, 33.

And by the 23 El. c. 1, 1. 8. The justices of
the peace may inquire of offences within this act (but not bear and determine the same), within a year and a day after the offence committed.

6. And by the 5 El. c. r. (which act is required to be read at every quarter sessions, leet and law day, and once in every term in the open hall of every house of court and chancery), if any person shall by writing, printing, preaching or teaching, deed or act, advisedly and wittingly hold or stand with, to extol set forth maintain or defend the authority jurisdiction or power of the bishop of Rome or of his see, heretofore claimed used or usurped within this realm; or by any speech open deed or act, advisedly and wittingly attribute any such manner of jurisdiction authority or preheminence to the said bishop or see of Rome within this realm: he, his abettors procurers and counsellors, and also their aiders assistants and comforters, upon purpose and to the intent to set forth further and extol the said usurped power, being thereof lawfully indicted or presented within one year, and convicted or attainted at any time after, shall incur a praemunire: And as well justices of assize in their circuits, as justices of the peace in their quarter open sessions, may inquire thereof as of other offences against the peace, and shall certify every presentment thereof into the king's bench, within forty days, if the term be then open; if not, at the first day of the full term next following the said forty days; on pain of 100l. and the justices of the king's bench shall hear and determine the same, as in other cases of praemunire. And for the second offence, such person shall be guilty of high treason: But not to work corruption of blood, diffension of heirs, or forfeiture of dower. Provided; that the charitable giving of reasonable alms to any offender, without fraud or covin, shall not be deemed any such abetment procuring counselling aiding assisting or comforting, as thereby to incur any pain or forfeiture.

His abettors procurers and counsellors, and also their aiders assistants and comforters An indictment against any such person must be, knowing the principal to be a maintainer of the jurisdiction of the pope; and to say, against the form of the statute only, is not sufficient. 1 H. H. 332.

Charitable giving of reasonable alms This special clause of giving alms not to make an aider or comforter, if the alms be reasonable and without covin, tho' the offender be not imprisoned nor under bail, seems to be but agreeable to the common law; and therefore it seems even by
the common law, if a physician or surgeon minister help
to an offender sick or wounded, tho' he know him to be
an offender even in treason, this makes him not a traytor,
for it is done upon the account of common humanity; but
it will be misprision of treason, if he know it, and do
not discover him. 1 H. H. 332.

7. Finally, by the 3 J. c. 4. If any person shall, either
upon the seas, or beyond the seas, or in any other place
within the king's dominions, put in practice to absolve
persuade or withdraw any of his majesty's subjects from
their natural obedience, or to reconcile them to the pope
or fee of Rome, or to any other prince state or potentate;
or shall be willingly so absolved or withdrawn as afore-
said, or willingly reconciled, or shall promise obedience
to any such pretended authority prince state or potentate;
he, his procurers and counsellors, aiders and maintainers,
knowing the same, shall be guilty of high treason. f. 22,

23. But this shall not extend to any person who shall be
reconciled to the pope or fee of Rome (for and touching
the point of so being reconciled only) that shall return
into this realm, and thereupon within six days before the
bishop of the diocese or two justices of the peace of the
county where he shall arrive, submit himself and take the
oaths (of allegiance and supremacy, 1 W. seff. 1. c. 8.):
which oaths the said bishop or justices shall certify at the
next sessions, on pain of 401. f. 24.
And persons shall be tried for these offences, at the
assizes of that county, or in the king's bench, and be
there proceeded against as if the treason had been committed
in the county where the person shall be taken. f. 25.

III. Peter-pence abolished.

Peter-pence was an annual tribute of one penny, paid at
Rome out of every family at the feast of St. Peter. Gibb.
87.

And this, Ina the Saxon king, when he went in pil-
grimage to Rome about the year 740, gave to the pope,
partly as alms, and partly in recompence of a house erect-

And this continued to be paid generally until the time
of king Henry the eighth, when it was enacted, that from
thenceforth no person shall pay any pensions, censes, por-
tions, peter-pence, or any other impositions, to the use
of the bishop or fee of Rome. 25 H. 8. c. 21.

IV. First
IV. First fruits and tenths taken from the pope.

First fruits, annates, or primitive, are the first fruits after the avoidance of every spiritual living for one whole year. These have been paid of very ancient time; for amongst the laws of King Ina, who began his reign in the year 712, there is an order for the payment thereof. But the pope did not obtain to have them appropriated to himself, until after the reign of King Edward the first. 4 Inl. 120. God. Introd. 49. Degge P. 2. c. 15.

Tenths, decimes, are the tenth part of the yearly value of all ecclesiastical livings. This payment was exacted from the clergy by the pope in the reign of King Edward the first; and was sometimes granted by the pope to the kings of this realm, especially for the aid of the holy land: but afterwards these tenths became wholly appropriated to the see of Rome. 4 Inl. 120, 121.

But by the 26 H. 8. c. 3. The revenues of the first fruits and tenths are for ever annexed to the imperial crown of this realm.

V. The pope’s presentation to benefices.

1. By the 25 Ed. 3. fl. 6. If any reservation, collation, or provision be made by the court of Rome, of any archbishopric, bishopric, dignity, or other benefice, in disturbance of the rightful donors; the king shall present for that time, if such donors shall not themselves exercise their right. And if persons lawfully presented shall be disturbed by such provisors; then the said provisors, their procurators, executors, and notaries shall be attached by their body, and brought in to answer, and if they be convicted, they shall abide in prison without bail, till they have made fine to the king and gree to the party grieved; and before they be delivered, they shall make full renunciation, and find surety that they shall not attempt such things in time to come. And if they cannot be found, the exigent shall go against them.

2. By the 38 Ed. 3. fl. 2. To cease the perils that shall happen, because of provisions of benefices; it is ordained, that all persons obtaining such provisions, shall be punished according to the aforesaid statute of the 25 Ed. 3. and they who cannot be attached, if they appear not in two months, shall be punished according to the statute of provisors of the 27 Ed. 3. c. 1. (hereafter following).
3. By the 12 R. 2. c. 15. No person shall pass or send out of the realm, without the king’s licence, to provide for himself a benefice; on pain that such provisor shall be out of the king’s protection, and the benefice to be void.

4. And by the 13 R. 2. f. 2. c. 2. If any shall accept a benefice contrary to the statute of the 25 Ed. 3. f. 6. he shall be banished out of the realm for ever, and his lands and goods forfeited to the king.

5. By the 3 R. 2. c. 3. No person shall take to terrn any benefice of an alien, without the king’s licence; nor shall convey money out of the realm for such term: on pain of being punished as by the statute of provisors of the 27 Ed. 3.

6. And by the 7 R. 2. c. 12. If any alien shall purchase and occupy any benefice, without the king’s licence; he shall be comprised within the statute of the 3 R. 2. c. 3. and moreover shall incur the forfeitures of the 25 Ed. 3. f. 5. c. 22. (that is, he shall be out of the king’s protection.)

7. And finally, by the 16 R. 2. c. 5. which is the famous statute called the statute of praemunire; If any shall purchase or pursue, in the court of Rome or elsewhere, any translation of any prelate out of the realm, or from one bishoprick to another, he shall be put out of the king’s protection, his lands and goods forfeit to the king, and shall be attached by his body if he may be found, and brought before the king and his council there to answer, or else proceed to be made against him by praemunire facias, as in other statutes of provisors.

Shall be put out of the king’s protection] By these words, the persons attainted in a writ of praemunire, are disabled to have any action or remedy by the king’s law or the king’s writs; for the law and the king’s writs are the things whereby a man is protected and aided; so as he who is out of the king’s protection, is out of the aid and protection of the law. 3 Infl. 126.

VI. Appeals to Rome.

1. The statutes concerning the prohibition of appeals to Rome, are but declaratory of the ancient law of the realm. 4 Infl. 340, 341.

2. The first attempt of any appeal to the see of Rome out of England, was by Anfelm archbishop of Canterbury, in the reign of William Rufus; and yet it took no effect. 4 Infl. 341.
And the same is opposed by the statutes following:

3. By the 27 Ed. 3. c. 1. called the statute of provisors, All the people of the king’s ligeance, which shall draw any out of the realm in plea, whereof the cognizance pertaineth to the king’s court, or of things whereof judgments be given in the king’s court; or which do sue in any other court, to defeat or impeach the judgments given in the king’s court, shall have a day containing the space of two months by warning to be made to them, to appear before the king and his council, or in his chancery, or before the king’s justices of the one bench or the other, to answer to the king for the contempt. And if they come not at the day to be at the law; they, their procurators attornies executors notaries and maintainers, shall be put out of the king’s protection, and their lands and goods forfeit to the king, and their bodies (wheresoever they may be found) shall be taken and imprisoned and ranfomed at the king’s will: And upon the same a warrant shall be made, to take them by their bodies, and to seize their lands and goods into the king’s hands; and if it be returned that they be not found, they shall be put in exigrant and outlawed.

4. By the 38 Ed. 3. fl. 2. To cease the perils that shall happen, because of citations out of the court of Rome, upon causes whose cognizance pertaineth to the king’s court; it is ordained, that all persons obtaining such citations shall be punished according to the statute of the 25 Ed. 3. fl. 6. (above recited); and they who cannot be attached, if they appear not in two months, shall be punished according to the aforesaid statute of provisors. And the king, clergy, and laity do mutually engage, to stand by one another in defence of this act.

5. By the 13 R. 2. fl. 2. c. 3. If any person shall bring or send into the realm any summons, sentences, or excommunications, against any person for executing the statute of provisors; he shall be imprisoned, and forfeit his lands and goods, and incur the pain of life and member: And if any prelate make execution thereof, his temporalities shall be taken into the king’s hands; and if any person of less estate than a prelate make such execution, he shall be imprisoned, and make fine and ransom by the discretion of the king’s council.

6. By the statute of praemunire, 16 R. 2. c. 5. If any shall purchase or pursue, in the court of Rome or elsewhere, any process, sentences of excommunication, bulls or instruments, against any person executing judg-
ments in the king's courts; or shall bring within the realm or receive the same: he shall be put out of the king's protection, his lands and goods forfeit to the king, and shall be attached by his body if he may be found, and brought before the king and his council there to answer, or else process to be made against him by praemunire facias, as in other statutes of provisors.

Or elsewhere] It hath been said, that suits in the ecclesiastical courts within this realm are within these words, if they concern matters the cognizance whereof belongs to the common law; as where a bishop deprives an incumbent of a donative, or excommunicates a man for hunting in his parks. 1 Haw. 51.

But it seemeth that a suit in those courts, for a matter which appears not by the libel it self, but only by the defendant's plea or other matter subsequent, to be of temporal cognizance (as where a plaintiff libels for tithes, and the defendant pleads that they were severed from the nine parts, by which they became a lay fee), is not within the statute; because it appears not that either the plaintiff or the judge knew that they were severed. 1 Haw. 52.

7. Finally, by the 24 H. 8. c. 12. All causes testamentary, causes of matrimony, and divorces, rights of tithes, oblations, and obventions (the knowledge whereof by the goodness of princes of this realm, and by the laws and customs of the same, appertaineth to the spiritual jurisdiction of this realm) shall be determined within the king's jurisdiction and authority, and not elsewhere; any foreign inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, judgments, or other process or impediments whatsoever notwithstanding. And all spiritual persons shall and may use, minister, and execute all divine services, any foreign citations, processefs, inhibitions, suspensions, interdictions, excommunications, or appeals touching any the causes aforesaid, from or to the see of Rome, or any other foreign prince or court, to the contrary notwithstanding: And if they shall, by the occasion thereof, refuse to minister the same, they shall be imprisoned for a year, and make fine and ransom at the king's pleasure.

And if any person in any of the causes aforesaid, shall attempt or procure from the see of Rome or elsewhere, any foreign process or other the instruments abovementioned, or execute any of the same, or do any thing to
the hindrance of any process sentence judgment or determination in any courts of this realm, for any the causes aforesaid; he, his fautors comforters abettors procurers executors and counsellors, shall incur a præmunire.

VII. Bringing bulls and other instruments from Rome.

1. By the 25 H. 8. c. 21. If any person shall sue to the court or fee of Rome for any licence, faculty, or dispensation, or put any of the same in execution; he shall incur a præmunire.

2. And by the 28 H. 8. 16. All bulls, braves, faculties, and dispensations heretofore obtained of the fee of Rome, shall be void; and shall not be pleaded in any court of this realm, on pain of a præmunire.

Yet it hath been holden, that the alleging of an ancient bull, in order to induce another principal matter, whereon to ground a title, without claiming any thing from the bull itself, is not within this statute. 1 Haw. 51.

3. By the 13 Eliz. c. 2. If any person shall use or put in use any bull writing or instrument written or printed, of absolution or reconciliation obtained from the bishop of Rome or other person claiming authority by or from him; or shall take upon him by colour thereof to absolve or reconcile any person, or to grant or promise to any person any such absolution or reconciliation, by any speech, preaching, teaching, writing, or any other open deed; or shall willingly receive and take any such absolution or reconciliation; or shall obtain from the bishop of Rome any manner of bull, writing, or instrument, written or printed, containing any thing matter or cause whatsoever; or shall publish or by any means put in use any such bull, writing, or instrument; he, his procurers abettors and counsellors to the fact and committing of the said offence, being attained according to the course of the laws of this realm, shall be adjudged guilty of high treason. And all aiders comforters or maintainers of any the said offenders, after committing any the said offences, to the intent to set forth uphold or allow the execution of the said usurped power, shall incur a præmunire.

And if any person to whom any such absolution, reconciliation, bull, writing or instrument shall be offered moved or persuaded to be used put in use or executed, shall conceal the same offer motion or persuasion, and not disclose the same by writing or otherwise within six weeks
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to some of the privy council; he shall be guilty of misprision of high treason.

(And the justices of the peace may inquire thereof (but not hear and determine the same) within a year and a day after the offence committed. 23 El. c. 1. § 8.)

And if any justice of the peace to whom any the said offences shall be declared, do not within fourteen days signify the same to one of the privy council; he shall incur a præmunire.

VIII. Popish books and relics.

1. By the 3 & 4 Ed. 6. c. 10. All books called antiphones, missals, grailes, processionals, manuals, legends, pies, portuasses, primers in Latin and English, couchers, journals, ordinals, or other books or writings heretofore used for the service of the church, written or printed in the English or Latin tongue, other than such as shall be set forth by the king's majesty, shall be clearly and utterly abolished, extinguished, and forbidden for ever to be used or kept in this realm.

And if any person or body corporate that shall have in his or their custody any the said books or writings, or any images of stone, timber, alabaster, or earth, graven carved or painted, which have been taken out of or stand in any church or chapel, and do not destroy the same images and every of them, and deliver every of the same books to the mayor, bailiff, constable, or churchwardens of the town where such books shall be, to be by them delivered over openly within three months next following after such delivery, to the archbishop, bishop, chancellor, or commissary of the diocese, to the intent that they may cause them immediately after either to be openly burnt, or otherwise defaced and destroyed; (he) shall for every such book or books willingly retained forfeit to the king for the first offence twenty shillings, for the second four pounds, and for the third shall suffer imprisonment at the king's will.

And if any mayors, bailiffs, constables, or churchwardens, do not within three months after receipt of the same books deliver them to the archbishop, bishop, chancellor, or commissary; and if such archbishop, bishop, chancellor, or commissary do not, within forty days after receipt of such books, burn, deface and destroy the same; every of them so offending shall forfeit to the king 40 l. The one half of all which forfeitures shall be to any of the subjects that will sue for the same.

And
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And the justices of assize in their circuits, and justices of the peace in the general sessions, may inquire of, hear, and determine the same.

But nothing herein shall extend to any image or picture, set or graven upon any tomb, in any church, chapel, or churchyard, only for a monument of any king, prince, nobleman, or other dead person, which hath not been commonly reputed and taken for a faint.

Also, any person may use keep and have any primers in the English or latin tongue, set forth by king Hen. 8. so that the sentences of invocation or prayer to saints be blotted or put out of the same.

2. By the 13 Eliz. c. 2. If any person shall bring into the realm any token or thing called by the name of agnus dei, or any crosses pictures beads or such like vain and superflitious things from the bishop or see of Rome, or from any person authorized or claiming authority from the said bishop of Rome to consecrate or hallow the same; and shall deliver or cause or offer to be delivered the same or any of them to any subject of this realm, to be worn or used: he, and also every other person who shall receive the same to the intent to use and wear the same, shall incur a praemunire.

Provided, that if any person to whom any such agnus dei or other the things aforesaid shall be offered to be delivered, shall apprehend the party offering the same, and bring him to the next justice of the peace, if he shall be able so to do; or for lack of such ability, shall within three days disclose the name of such person so offering the same and his dwelling place or place of ressort (which he shall endeavour himself to know by all the means he can) to the ordinary of the diocese or to a justice of the peace of the shire where such person to whom such offer shall be made shall be respliant; and also if such person to whom such offer shall be made shall happen to receive any such agnus dei or other thing above remembred, and shall in one day next after such receipt deliver the same to a justice of the peace: in such case he shall not incur any danger or penalty.

And if any justice of the peace, to whom any the said offences shall be declared, do not within fourteen days signify the same to one of the privy council, he shall incur a praemunire.

3. By the 3 J. c. 5. No person shall bring from beyond the seas, nor shall print sell or buy any popish primers, ladies psalters, manuals, rosaries, popish catechisms, millals,
mortal, breviaries, portals, legends, and lives of saints, containing superstitious matter, printed or written in any language whatsoever, nor any other superstitious books printed or written in the English tongue; on pain of 40 fl. for every book, one third to the king, one third to him that shall sue, and one third to the poor of the parish where such books shall be found and the said books to be burned. f. 25.

And two justices of the peace (and mayors within cities and towns corporate) may search the houses and lodgings of every popish recusant convict, or of every person whose wife is a popish recusant convict, for popish books and relics of popery; and if any altar, pix, beads, pictures, or such like popish relics, or any popish book or books, shall be found in any of their custody, as in the opinion of the said justices (or mayor) shall be thought unmeet for such recusant to have or use, the same shall presently be defaced and burnt, if it be meet to be burned; and if it be a crucifix, or other relick of any price, the same to be defaced at the general quarter sessions of the peace in the county where the same shall be found, and the same to be restored to the owner. f. 26.

Note; a recusant, in general, signifies any person, whether papist or other, who refuses to go to church and to worship God after the manner of the church of England; a popish recusant, is papist who so refuseth; and a popish recusant convict, is papist legally convicted of such offence.

IX. Jesuits and popish priests.

1. By the 27 El. c. 2. All jesuits, seminary priests, and other priests whatsoever made or ordained out of the realm, or within the realm, by any authority derived or pretended from the see of Rome, shall depart out of the realm. f. 2.

And it shall not be lawful for any jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person whatsoever, being born within the realm, and made ordained or professed by any authority derived or pretended from the see of Rome, by what name title or degree soever the same shall be called or known, to come into be or remain in any part of the realm; and if he do, he shall be guilty of high treason. f. 3.

And every person who shall wittingly and willingly receive relieve comfort aid or maintain any such jesuit seminary
nary priest or other priest deacon or religious or ecclesiastical person as aforesaid, shall be guilty of felony without benefit of clergy. $4.

And if any subject (not being a jesuit seminary priest or other such priest deacon or religious or ecclesiastical person as is before mentioned) who shall be of or brought up in any college of jesuits or seminary out of this realm in any foreign parts, shall not in six months next after proclamation in that behalf to be made in the city of London under the great seal of England, return into this realm, and thereupon (within two days next after such return) before the bishop of the diocese or two justices of the peace of the county where he shall arrive, submit himself and take the oath of supremacy; every such person who shall otherwise return into or be in this realm without submission as aforesaid, shall be guilty of high treason. $5.

And if any person shall wittingly and willingly either directly or indirectly convey deliver or fend, or procure to be conveyed or delivered to be sent out of this realm into any foreign parts; or shall otherwise wittingly or willingly give or contribute any money or other relief to or for any jesuit seminary priest or such other priest deacon or religious or ecclesiastical person as is aforesaid, or to or for the maintenance or relief of any college of jesuits or seminary out of the realm in any foreign parts, or of any person then being of or in the same colleges or seminaries and not returned with submission as in this act is expressed; he shall incur a praemunire. $6.

And every offence against this act may be inquired of heard and determined as well in the court of king's bench in the county where the same court shall for the time be, as also in any other county within this realm where the offence shall be committed, or where the offender shall be taken. $8.

But nothing herein shall extend to any such jesuit seminary priest or other such priest deacon or religious or ecclesiastical person as is before mentioned, as shall within three days after he come into the realm, submit himself to some archbishop or bishop of this realm or to some justice of the peace within the county where he shall arrive or land, and do thereupon truly and sincerely before such archbishop bishop or justice of the peace take the oath of supremacy, and by writing under his hand confess and acknowledge, and from thenceforth continue, his
due obedience to the laws and statutes of this realm in
causes of religion. $10$.

And every person who shall know and understand that
any such jesuit seminary priest or other priest above said
shall be within this realm, and shall not discover the same
to a justice of the peace or other higher officer in twelve
days, but willingly conceal his knowledge therein; shall
be fined and imprisoned at the king's pleasure. And if
such justice of the peace or other such officer to whom
such matter shall be so discovered, do not within twenty
eight days give information thereof to some of the privy
council; he shall forfeit 200 marks. $13$.

And such of the privy council to whom such information
shall be made, shall thereupon deliver a note in
writing, subscribed with his hand, testifying that such
information was made to him. $14$.

And all such oaths and submissions as shall be made by
force of this act, shall be certified into the chancery
by the parties before whom the same shall be made, within
three months after such submission; on pain of 100l. to
the queen. $15$.

And if any person so submitting himself shall within
ten years after such submission made come within ten
miles of the place where the queen shall be, without espe-
cial licence under her majesty's hand; he shall take no
benefit by his submission, but the same shall be void,
$16$.

2. By the 35 El. c. 2. If any person who shall be su-
spected to be a jesuit, seminary, or massing priest, being
examined by any person having lawful authority in that
behalf to examine him, shall refuse to answer directly and
truly whether he be a jesuit, or a seminary or massing
priest; he shall be committed to prison by such as shall
so examine him, and there continue until he shall make
direct and true answer to the said questions whereupon he
shall be so examined. $11$.

3. And by the 37. c. 5. Such person as shall first dis-
cover to any justice of the peace any recusant or other
person who shall entertain or relieve any jesuit, seminary,
or popish priest, or shall discover any mass to have been
said and the priest that said the same, within three days
after the offence committed, and by reason of such disco-
very any of the said offenders shall be taken and convicted
or attainted,—shall not only be freed from the danger
and penalty of any law for such offences if he be an off-
fender therein, but also shall have the third part of the
forfeiture
forfeiture so as the total exceed not 150l; and if it do exceed 150l, he shall have the sum of 50l for every such discovery: and after conviction of the offender, he shall have a certificate from the judges or justices of the peace before whom the conviction shall happen, to be directed to the sheriff or other officer who shall seize the goods or levy the forfeiture, commanding him to pay the same out of the monies to be levied by virtue of the said forfeitures. § 1.

4. And by the 11 & 12 IV. c. 4. Every person who shall apprehend a popish bishop priest or jesuit, and prosecute him till he be convicted of saying mafs, or of exercising any other part of the office or function of a popish bishop or priest within this realm, shall have from the sheriff without fee one hundred pounds within four months after the conviction, and demand thereof made by tendering a certificate to the said sheriff under the hand of the judge or justices before whom the conviction shall be, certifying such conviction and that such popish priest or jesuit was taken by the person claiming the reward: And if any dispute shall arise between the persons apprehending, the said judge or justices shall by their certificate proportion the shares as to them shall seem just and reasonable. And if the sheriff shall die or be removed before the expiration of the said four months, his successor shall pay the same within two months after demand and certificate brought as aforesaid. The sheriff making default shall forfeit 200l to the person to whom the money is due, with full costs. The sheriff to be repaid the money contained in such certificate out of the treasury. § 1, 2.

And if any popish bishop priest or jesuit shall say mafs, or exercise any other part of the office or function of a popish bishop or priest within this realm; he shall be adjudged to perpetual imprisonment in such place within this realm, as the king by advice of the privy council shall appoint. § 3.

But this shall not extend to any popish priest for saying mafs or officiating as a priest in the house of a foreign minister; so as such priests be not a natural born subject, nor naturalized; and so as his name and place of his birth, and the minister to whom he shall belong, be entered in the office of the principal secretary of state. § 5.

X. Saying
X. Saying or hearing mass.

1. By the 23 El. c. 1. Every person who shall say or sing mass, shall forfeit 200 marks, and be committed to the next jail for one year and further till he have paid the said sum. And every person who shall willingly hear mass, shall forfeit 100 marks, and be imprisoned for a year. $f.$ 4.

Which said forfeitures, by another clause in the said act, shall be one third to the king to his own use; one third to the king for relief of the poor in the parish where the offence shall be committed, to be delivered by warrant to the principal officers in the receipt of the exchequer, without further warrant from the king; and one third to him who shall sue. And if such person shall not be able, or shall fail to pay the same within three months after judgment given; he shall be committed to prison till he have paid the same, or conform himself to go to church. $f.$ 11.

And the justices of assize and justices of the peace in their open quarter sessions, may inquire of, hear and determine the same. $f.$ 9.

But if the offender shall, before he be indicted, or at his arraignment or trial before judgment, submit and conform himself before the bishop of the diocese, or before the justices where he shall be indicted arraigned or tried (not having before made like submission at his trial being indicted for the first offence); he shall be discharged, upon his recognition of such submission in open assizes or sessions of the county where he shall be resident. $f.$ 10.

2. And by the 3 $f.$ c. 5. Such person as shall first discover to any justice of the peace any mass to have been said, and the persons that were present at such mass, or any of them, within three days next after the offence committed, and by reason of such discovery any of the said offenders shall be taken and convicted or attainted, shall not only be freed from the danger and penalty of any law for such offences if he be an offender, but also shall have the third part of the forfeiture, so as the total exceed not 150 l.; and if it do exceed 150 l., he shall have the sum of 50 l. for every such discovery; and after conviction of the offender, he shall have a certificate from the judges or justices of the peace before whom the conviction shall happen, to be directed to the sheriff or other officer.
officer who shall seize the goods or levy the forfeiture, commanding him to pay the same out of the monies to be levied by virtue of the said forfeitures. f. 1.

XI. Frequenting conventicles.

By the 1 W. c. 18. commonly called the act of toleration, Every justice of the peace may require any person that goes to any meeting for the exercise of religion, to make and subscribe the declaration of the 30 C. 2. against popery, and also to take the oaths of allegiance and supremacy (or the declaration of fidelity in case he scruples to take an oath); and upon refusal thereof, shall commit him to prison without bail, and shall certify the name of such person to the next sessions; and if he shall upon a second tender at the sessions refuse to make and subscribe the declaration aforesaid, he shall be then and there recorded, and shall be taken thenceforth for a popish recusant convict and suffer accordingly.

And there is a clause in the said act, that nothing in that act contained shall give any ease benefit or advantage, to any papist or popish recusant whatsoever.

XII. Foreign education of papists.

1. By the 1 Ja. c. 4. Every person who shall pass or go, or shall send any child or any other person under his government, into any the parts beyond the seas, out of the king's obedience, to the intent to enter into or be resident in any college seminary or house of jesuits priests or any other popish order profession or calling, or repair to any the same, to be instructed persuaded or strengthened in the popish religion, or in any sort to profess the same; every such person so sending any child or other person beyond the seas to any such purpose, shall forfeit to the king 100 l.; and every such person so passing or being sent, shall in respect of himself only and not of his heirs or posterity, be disabled to inherit purchase take have or enjoy any lands profits goods debts duties legacies or sums of money within this realm, and all estates and interest in trust for him shall be void. f. 6.

But if such person or child so passing or sent shall after become conformable and obedient to the laws of the church, and shall repair to church, and continue in such conformity; he shall during such time as he shall so continue
continue, be discharged of every such disability and incapacity. f. 7.

And by the same act, No woman, nor any child under the age of twenty one years (except sailors or ship boys, or the apprentice or factor of a merchant) shall be permitted to pass over the seas (except by licence of the king, or of six or more of the privy council under their hands); on pain that the officer of the port that shall willingly or negligently suffer any such to pass, or shall not enter the names of such passengers licensed, shall forfeit his office and his goods; and on pain that the owner of the ship that shall wittingly or willingly carry any such over sea without such licence, shall forfeit the ship and tackle; and every master or mariner of or in any vessel offending as aforesaid, shall forfeit his goods, and be imprisoned for twelve months. f. 8.

The one half of all which forfeitures shall be to the king, and half to him that will sue. f. 9.

2. And by the 3. 7. c. 5. If the children of any subject within this realm (the said children not being soldiers mariners merchants or their apprentices or factors) to prevent their good education in England, or for any other cause, shall be sent or go beyond seas, without licence of the king, or of six of the privy council (whereof the principal secretary to be one) under their hands and seals; every such child shall take no benefit by any gift conveyance decent devise or otherwise of any lands leases or goods, until he being of the age of eighteen years take the oaths of allegiance and supremacy before a justice of the peace where the parent shall inhabit; and in the mean time the next of kin, who shall be no papish recusant, shall enjoy the same until he shall conform himself and take the said oaths and receive the sacrament: And after such oaths taken and conforming and receiving the sacrament, he who received the profits shall make account thereof, and in reasonable time make payment thereof, and restore the value of such goods. f. 16.

And all such persons as shall so send such child or children over seas, shall forfeit 100l (to him who shall discover and convict the offender. 11 & 12 W. c. 4. f. 6.) f. 16.

3. And by the 3 C. c. 2. If any person shall pass or go, or shall convey or send, or cause to be sent or conveyed any child or other person into any parts beyond the seas out of the king's obedience, to the intent and pur-
pose to enter into or be resident or trained up in any priory, abbey, nunnery, popish university, college or school, or house of jesuits, priests, or in any private popish family, and shall be there by any jesuit, seminary priest, frier, monk, or other popish person instructed persuaded or strengthened in the popish religion, in any fort to profess the same; or shall convey or send, or cause to be conveyed or sent any sum of money or other thing, for the maintenance of any child or other person gone or sent and trained and instructed as is aforesaid, or under colour of any charity benevolence or alms towards the relief of any priory abbey or nunnery college school or any religious house: every person so sending conveying or causing to be sent and conveyed as well any such child or other person, as any sum of money or other thing, and every person being sent beyond the seas, shall be disabled to sue or use any action bill plaint or information in course of law, or to profecute any suit in any court of equity, or to be committee of any ward, or executor or administrator to any person, or capable of any legacy or deed of gift, or to bear any office; and shall forfeit his goods, and shall forfeit his lands during life. § 1.

The said offences to be inquired of heard and determined in the king’s bench, or at the assizes of such counties where the offenders did last dwell or abide, or whence they departed out of the realm, or where they were taken. § 3.

Provided, that no person so sent or conveyed, that shall within six months after his return conform himself to the establisht religion and receive the sacrament according to the statutes made concerning conformity from popish recusants, shall incur any the said penalties. § 2.

And if at any time after the said six months he shall so conform himself, he shall have his lands restored, during the time that he shall so continue in such conformity. § 4.

XIII. Popish children of protestants.

If any person not bred up by his parents from his infancy in the popish religion, and professing himself to be a popish recusant, shall breed up instruct or educate his child or children, or suffer them to be instructed or educated in the popish religion; he shall be disabled of bearing any office or place of trust or profit, in church
or state: And all such children as shall be so brought up instructed or educated, shall be disabled of bearing any such office or place of trust or profit until they be perfectly reconciled and converted to the church of England, and shall take the oaths of allegiance and supremacy before the justices of the peace at the quarter sessions of the place where they shall inhabit, and thereupon receive the sacrament of the lord's supper, and obtain a certificate thereof, under the hands of two of the said justices. 25 C. 2. c. 2. f. 8.

XIV. Protestant children of papists.

If any papish parent, in order to compel his protestant child to change his religion, shall refuse to allow him a fitting maintenance, suitable to the degree and ability of such parent, and to the age and education of such child; then upon complaint thereof to the lord chancellor, he shall make order therein. 11 & 12 IV. c. 4. f. 7.

XV. Papists not repairing to church.

1. By the 1 El. c. 2. All persons shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof to some usual place where common prayer and such service of god shall be used in such time of let, upon every Sunday and other days ordained and used to be kept as holidays, and then and there to abide orderly and soberly during the time of common prayer, preaching or other service of god there to be used and ministred; on pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence 12d. to be levied by the churchwardens of the parish where such offence shall be done, to the use of the poor of the same parish, of the goods lands and tenements of such offender, by way of distress. f. 14.

And all archbishops bishops and all other their officers exercising ecclesiastical jurisdiction, as well in places exempt as not exempt, within their diocese, shall have power to reform correct and punish by censures of the church, all offenders within any their jurisdiction or diocese. f. 16.

And the justices of assize may inquire of hear and determine the same. f. 17.
And the archbishop or bishop may at his liberty and pleasure associate himself to the justices of assize, for the inquiring of hearing and determining the same. § 18.

But no person shall be molested for the said offence unless he be thereof indicted at the next assize. § 20.

And the mayor of London and all other mayors bailiffs and other head officers of cities boroughs and towns corporate to which the justices of assize do not commonly repair, shall have power to inquire of hear and determine the said yearly within fifteen days after Easter and Michaelmas, in like manner as the justices of assize may do. § 22.

And all archbishops and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinary, having any peculiar ecclesiastical jurisdiction, shall have power as well to inquire in their visitation synods and elsewhere within their jurisdiction, at any other time and place, to take accusations and informations of the said offences committed within the limits of their jurisdiction, and to punish the same by admonition excommunication sequestration or deprivation and other censures and processes in like form as heretofore hath been used in like cases by the king’s ecclesiastical laws. § 23.

Provided, that whatsoever persons offending in the premises shall for their offences first receive punishment of the ordinary, having a testimonial thereof under the ordinary’s seal, shall not for the same offence esftoons be convicted before the justices; and likewise receiving for the said offence punishment first by the justices, shall not for the same offence esftoons receive punishment of the ordinary. § 24.

All persons] Except dissenters qualified by the act of toleration, who resort to some congregation of religious worship allowed by that act. 1 W. c. 18. § 2, 16.

Having no lawful or reasonable excuse] It hath been held, that the indictment need not to shew that the party had no reasonable excuse for his absence; but the defendant, if he have any matter of this kind in his favour, ought to shew it. 1 Haw. 13.

And if the spiritual court, proceeding upon this statute, refuse to allow a reasonable excuse, they may be prohibited; but if they proceed wholly on their own canons, they shall not be at all controlled by the common law, unless they act in derogation from it, as by questioning a matter not triable by them, as the bounds of a parish, or...
the like; for they shall be presumed to be the best judges of their own laws. 1 Haw. 13.

To some other usual place] And he who is absent from his own parish church shall be put to prove where he went to church. 1 Haw. 13.

To abide orderly and soberly during the time] He who misbehaves himself in the church, or misses either morning or evening prayer, or goes away before the whole service is over, is as much within the statute as he who is wholly absent. 1 Haw. 13.

Thereof be indicted] The offence in not coming to church consisting wholly in a non-seasance, and not supposing any fact done, but barely the omission of what ought to be done, needs not be alleged in any certain place; for properly speaking, it is not committed any where. 1 Haw. 13.

And by the 3 J. c. 4. The justices of affize and justices of the peace in seessions shall have power to inquire hear and determine of all recusants and offences for not repairing to church according to the meaning of former laws, as the justices of affize may do by such former laws; and also shall have power at their affizes, and at the seessions (in which any indictment against any person for not repairing to church according to such former laws shall be taken) to make proclamation, by which it shall be commanded that the body of such offender be rendred to the sheriff or other keeper of the gaol, before the next affizes or before the next seessions respectively; and if at the said next affizes or seessions the offender so proclaimed shall not make appearance of record, then upon every such default recorded, the same shall be as sufficient conviction in law, as if upon the indictment a verdict had been found and recorded. 3 J. 7.

And by the same statute of 3 J. c. 4. If any person shall not resort every Sunday to some church chapel or usual place of common prayer, and there hear divine service, according to the 1 El. c. 2. one justice of the peace of that division where the party shall dwell, on proof to him made of such default by confession, or oath of witness, may call the said party before him; and if he shall not make a sufficient excuse and due proof thereof to the satisfaction of the said justice, he may give warrant to the churchwarden of the said parish wherein the said party shall dwell, to levy 12d for every such default by distrees and
and sale; and in default of such distress, the said justice
may commit him to some prison within the shire division
or liberty wherein such offender shall be inhabiting, till
payment be made; which said forfeiture shall be to and
for the use of the poor of that parish wherein the offender
shall be abiding at the time of the offence committed.

§ 27.

But no man shall be impeached upon this clause, ex-
cept he be called in question for his default within one
month after the said default made. § 28.

And no man being punished according to this branch,
shall for the same offence be punished by the 1 El. c. 2.
id. § 29.

2. By the 23 El. c. 1. Every person above the age of
sixteen years, who shall not repair to some church chapel
or usual place of common prayer, but forbear the same
contrary to the 1 El. c. 2. shall forfeit to the queen's
majesty for every month which he shall so forbear 20l;
and over and besides the said forfeitures, every person so
forbearing by the space of twelve months shall, after cer-
tificate thereof in writing made into the king's bench by
the bishop of the diocese or a justice of assize or a justice
of the peace of the county where the offender shall dwell,
be bound with two sufficient sureties in 200l at least, to
the good behaviour, and so to continue bound until he
conform himself and come to church. Which said for-
feitures shall be one third to the king to his own use;
one third to the king for relief of the poor in the parish
where the offence shall be committed, to be delivered by
warrant to the principal officers in the receipt of the ex-
chequer without further warrant from the king; and one
third to him who shall sue. And if such person shall not
be able, or shall fail to pay the same within three months
after judgment given; he shall be committed to prison till
he have paid the same, or conform himself to go to church.

§ 3, 11.

But if the offender shall before he be indicted, or at his
arraignment or trial before judgment, submit and conform
himself before the bishop of the diocese or before the juf-
tices where he shall be indicted arraigned or tried (having
not before made like submission at his trial being indicted
for the first offence); he shall be discharged, upon his
recognition of such submission in open assizes or sessions
of the county where he shall be resident. § 10.

Also every person which usually on the sun-day shall
have in his house divine service by law established, and be

K 2 therea;
thereat himself most commonly present and shall not obstinately refuse to come to church, and shall also four times a year at least be present at the divine service in the church of the parish where he shall be resident, or in some other common church or chapel of ease, shall not incur any pain or penalty for not repairing to church. § 12.

And every grant conveyance bond judgment and execution, made of covinous purpose to defraud any interest right or title that may or ought to grow to the king or to any other person by any conviction or judgment on this statute, shall be void against the king, and against such as shall sue for such penalty as aforesaid. § 13.

But forbear the same contrary to the 1 El. c. 2.] A person who was sick for part of the time contained in an information upon this statute, shall not be at all excused by reason of such sickness, if it be proved that he was a recusant both before and after; for it shall be intended that he obstinately forbore during that time. § Haw. 14.

Shall forfeit to the queen's majesty for every month] It hath been resolved, that this statute by inflicting 20l for a month's absence, difpenfeth not with the forfeiture of 12d for the absence of one Sunday; for both may well stand together; and the 12d is immediately forfeited upon the absence of each particular day. § Haw. 13.

For every month] The time of a month intended by this statute, shall be computed not by the kalendar, but by the number of days, allowing twenty eight days to each, according to the common rule of expounding statutes, which I speake generally of a month. § Haw. 14.

One third to, &c.] This clause for distribution of the forfeitures is nevertheless sufficient with the former part, in giving the whole forfeiture to the queen; it being usual in acts of parliament, to give the whole penalty for any criminal matter to the king, and afterwards in the same act to make distribution thereof, and to give part to him that will sue. § Haw. 18.

And by the 29 El. c. 6. it is further enacted, that every feeoffment gift grant conveyance alienation estate lease incumbrance and limitation of use, of or out of any lands, made by any person which hath not repaired or shall not repair to some church chapel or usual place of common prayer, contrary to the 23 El. c. 1. and which is revocable at the pleasure of such offender, or in any wise directly
Liev or indirectly intended for the behoof relief or maintenancer or at the disposition of such offender, or whereby such offender or his family shall be maintained,—shall be utterly void as against the king for levying the penalties. $1.

But this shall not extend to make void or impeach any grant or lease made bona fide, without fraud or covin, whereupon the accustomed yearly rent or more shall be reserved, or any other conveyance made bona fide upon good consideration, and without fraud or covin, which shall not be revocable at the pleasure of the offender, otherwise than to give benefit to the king to enjoy such rents and payments during the continuance of such lease and grant. $2.

And every conviction for such offence shall be in the king's bench or at the assizes, and not elsewhere; and shall from the justices before whom the record of such conviction shall remain, be estreated into the exchequer before the end of the term next ensuing such conviction.

$2.

And every such offender in not repairing to church as shall be thereof once convicted, shall in such of the terms of Easter or Michaelmas as shall be next after such conviction, pay into the exchequer after the rate of 20l. for every month which shall be contained in the indictment whereupon the conviction shall be; and shall also for every month after such conviction without any other indictment or conviction pay into the exchequer at two times a year, viz. in every Easter and Michaelmas term as much as shall then remain unpaid, after the rate of 20l. for every month after such conviction. And if default shall be made in any part of any payment aforesaid, the queen may by process out of the exchequer seize all the goods and two parts of the lands liable to such seizure or to the penalties aforesaid, leaving the third part only of such lands for the maintenance of the offender and his family.

$4.

And for the speedy conviction of such offender in not repairing to divine service, the indictment mentioning the not coming of such offender to the church of the parish where he at any time before such indictment was or did keep house or residence, nor to any other church chapel or usual place of common prayer, shall be sufficient in the law; and it shall not be needful to mention in the indictment that the offender was or is inhabiting within this realm; but if it shall happen any such offender then not
to be within this realm, the party shall be relieved by plea to be put in and not otherwise: And upon the indictment of such offender, a proclamation shall be made at the affizes in which the indictment shall be taken (if the same be taken at any affize) by which it shall be commanded, that the body of such offender shall be rendred to the sheriff before the next affizes; and if at the said next affizes the offender so proclaimed shall not appear of record, then upon such default recorded, the same shall be as sufficient a conviction in law of the said offence as if a trial had been by verdict. f. 5.

Provided, that when such offender shall make submission and conform, or shall die; no forfeiture of 20l for any month or seizure of the lands of the offender, from such submission and conformity or death, and satisfaction of all the arrearages of 20l monthly, before such seizure due or payable, shall ensue or be continued against such offender. f. 6.

And the lord treasurer, chancellor, and chief baron of the exchequer, or two of them, may assign such third part given to the poor by the former act, as well for relief of the poor, and of the houses of correction, as of impotent and maimed soldiers; as they or any two of them shall appoint. f. 7.

And this act shall not extend to continue any seizure of any lands of such offender in the queen's hands, after the offender's death, which lands he shall have only for term of his life, or in the right of his wife. f. 9.

May seize all the goods] The king, according to the better opinion, may seize the goods, but not grant them over, without an inquisition to be taken. 1 Haw. 20.

And two parts of the lands] But the king cannot seize the lands till it appears by the return of an inquisition to that purpose to be awarded, of what lands the offender was seized; because the king's title to lands ought always to appear of record. 1 Haw. 20.

Shall not appear of record] If a recusant who was proclaimed at the affizes, render himself at the next affizes to plead or traverse; he must appear in person, and he is to be in custody: for the words of the statute and of the proclamation are, that he shall render his body to the sheriff. Kelyng 35.

Of record] An actual personal appearance of the defendant will no way avail him, unless the same be entered of record. 1 Haw. 16.

And
And by the 1 F. c. 4. Where any seizure shall be had of the two parts of the lands for the not payment of 20l. a month: such two parts shall, according to the extent thereof, go towards the payment of such 20l a month being unpaid by any such recusant: and the third part thereof shall not be extended or seized by the king for not payment of the said 20l a month. And where any seizure shall be had of the two parts as aforesaid, and such recusant shall die, the debt or duty by reason of his recusancy not being discharged: in such case the same two parts shall continue in his majesty's possession until the residue of the said debt or duty shall be discharged: and the king shall not seize or extend any third part descending to any such heirs, either by reason of the recusancy of his ancestors, or the recusancy of any such heirs. F. 5.

And moreover, by the 3 F. c. 4. it is further enacted, that every offender in not repairing to divine service, being once convicted, shall in such of the terms of Easter and Michaelmas as shall be next after such conviction, pay into the receipt of the exchequer after the rate of 20l for every month which shall be contained in the indictment whereupon such conviction shall be; and shall also for every month after such conviction, without any other indictment or conviction, forfeit 20l, and pay into the receipt of the exchequer aforesaid at two times in the year, viz. in every Easter and Michaelmas term, as much as shall then remain unpaid after the rate of 20l for every month after such conviction; except in such cases where the king may by this act refuse the same and take two parts of the lands of such offender, till the said party being indicted for not coming to church contrary to former laws shall conform himself and come to church. F. 8.

And every conviction so recorded, shall by the justices before whom the record of the conviction shall be, be certified into the exchequer, before the end of the term following such conviction, in such convenient certainty for the time and other circumstances, as the court of exchequer may thereupon award processes for the seizure of the lands and goods of every such offender as the cause shall require: And if default shall be made in any part of any payment aforesaid contrary to the form herein before limited; then, and so often, the king may by process out of the exchequer seize all the goods and two parts as well of all the lands leafes and farms of such offender, as of all other lands liable to seizure or to the penalties aforesaid.
by the true meaning of this act, leaving the third part only of the said lands leafes and farms for the maintenance of the offender his wife children and family. § 9.

And the king shall have power to refuse the 20l a month tho' it be tendred ready to be paid, and thereupon to seize two parts in three to be divided as well of all the lands leafes and farms that at the time of such seizure shall be or afterwards shall come to any such offender in not coming to church or to any other to his use, as of all other lands liable to such seizure or to the penalties aforesaid, and the same to retain till such offender shall conform himself, in lieu of the 20l monthly that during such his seizure and retainer shall incur. Saving to all persons (other than the offender his heirs or others claiming to his or their use) all leafes rents conditions and other rights and titles made and done without fraud. § 11.

But the king shall not take into his two parts, but leave to such offender, his chief mansion house, as part of his third part; and shall not demise lease nor put over the said two parts nor any part thereof to any recusant nor to his use: And whosoever shall take the same in lease or otherwife of his majesty, shall give such security not to commit nor suffer waste, as by the court of exchequer shall be allowed. § 12.

And no indictment against any person for not coming to church, nor any proclamation, outlawry, or other proceeding thereupon shall be reversed for any default in form, nor otherwise than by direct traverse to the point of not coming to church. § 16.

Provided, that if such person indicted shall submit and conform and repair to church, he may from thence be admitted to avoid and reverse the indictment and all proceedings thereupon, as if this act had not been made, § 17.

And every of the said offences against this act may be inquired of heard and determined before the justices of the king's bench or of assize or before the justices of the peace in feffions. § 36.

Shall be reversed for any default in form] But it hath been resolved, that the party is only restrained from taking advantages of defects in the record it self, and that he may plead any collateral matter, as a pardon, or a former conviction. 1 Haw. 17.

And that he may even reverse a judgment after verdict for any such defect in the record it self, as tends to the king's
king's prejudice, as the omission of a capiatur, or the like; and that he may reverse an outlawry for any common defect, upon putting in bail, and traversing the indictment as to the point of not coming to church; which is very agreeable to the purport of the whole clause, the latter part whereof seems manifestly to qualify the generality of the former. 1 Haw. 17.

XVI. Perverting others or being perverted to popery.

By the 23 El. c. 1. All persons who shall have or pretend to have power or shall put in practice to absolve persuaded or withdraw any of the subjects from their natural obedience, or to withdraw them for that intent from the establisht to the romanish religion, or to move them to promise any obedience to any pretended authority of the see of Rome or of any other prince state or potentate to be had or used within this realm, or shall do any overt act to that intent or purpose, shall be guilty of high treason. f. 2.

And if any person shall be willingly absolved or withdrawn as aforesaid, or willingly be reconciled, or shall promise any obedience to any such pretended authority prince state or potentate; he, his procurers and counsellors, shall be guilty of high treason. f. 2.

And all persons that shall wittingly be aiders or maintainers of such persons so offending, knowing the same, or shall conceal any such offence, and shall not within twenty days after their knowledge of the offence disclose the same to a justice of the peace or other high officer, shall be guilty of misprision of treason. f. 3.

Pretend to have power, or shall put in practice] Upon the indictment against Campion and others, 33 El. concerning which the judges were assembled at serjeants inn, it was resolved by them, that if any person shall pretend to have power to absolve, tho' he move none with an intent to draw them from their obedience; or shall move any with an intent to draw them from their obedience, tho' he pretend not to have power to absolve; both these acts, singly taken, are treason within the purview of this statute. Gibs. 536.

XVII. Entring
XVII. Entering into foreign service.

By the 3 J. c. 4. If any gentleman or person of higher degree, or any person that shall bear any office or place of captain, lieutenant, or any other place charge or office in camp army or company of soldiers or conduct of soldiers, shall go voluntarily out of the realm to serve any foreign prince, state or potentate, or shall voluntarily serve any such, before he shall become bound by obligation with two such sureties as shall be allowed of by the officers who shall take the bond unto the king in the sum of 20l at the least with condition to the effect following, shall be a felon. The tenor of which condition followeth: f. 19.

1. That if the within bounden A. B. shall not at any time then after be reconciled to the pope or see of Rome, nor shall enter into or consent unto any plot or conspiracy whatsoever against the king's majesty his heirs and successors or any of his and their estate and estates realms or dominions, but shall within convenient time after knowledge thereof had reveal and disclose to the king's majesty his heirs and successors or some of the lords of his or their honourable privy council all such practices plots and conspiracies; that then the said obligation to be void. f. 20.

And the custumer and comptroller of every port haven or creek, or one of them, or their or either of their deputy, may take the said bond; taking for the same 6d and no more. Which said custumer and comptroller shall register and certify every such bond into the court of exchequer once every year, on pain of 5l. f. 21.

And where any such person shall pass out of the cinque ports or any member thereof; the lord warden of the cinque ports, or any person by him appointed, may take such bond as aforesaid. f. 42.

XVIII. Refusing the oaths and subscriptions.

1. By the 7 J. c. 6. If any person of or above the degree of a baron or baroness and above the age of eighteen years, shall stand and be presented indicted or convicted for not coming to church or not receiving the sacrament according to law, before the ordinary, or other having lawful power to take such presentment or indictment; then three of the privy council, whereof the lord chancellor
chancellor lord treasurer lord privy seal or principal secre-
tary to be one, upon knowledge thereof shall require such
person to take the oaths of allegiance and supremacy:  
And if any other person of and above the said age and
under the said degree, shall so stand and be presented
indicted or convicted; or if the minister petty constable
and churchwardens or any two of them shall complain
to any justice of the peace near adjoining to the place
where any person complained of shall dwell, and the
said justice shall find cause of suspicion; then any one
justice of the peace within whose commission or power
such person shall be, or to whom complaint shall be
made, shall upon notice thereof require such person to
take the said oaths. And if any person being of the age
of eighteen years or above shall refuse to take the said
oaths duly tendered; then the persons authorized to give
the said oaths shall commit him to the common gaol till
the next assizes or sessions, where the said oaths shall be
again in the said open sessions required of such person by
the justices of assize or of the peace then and there pre-
fent; and if he shall then also refuse, he shall incur a
praemunire. (Except women covert; who shall be com-
mited only to prison, there to remain without bail till
they will take the said oaths.) § 26.

And every person refusing to take the said oaths,
shall be disabled to execute any publick place of ju-
dicature or bear any other office (being no office of inheri-
tance or ministerial function), or to use or practice the
common or civil law, or the science of physick or sur-
gery, or the art of an apothecary, or any liberal science
for gain. § 27.

2. By the 13 C. 2. § 2. c. 1. No person shall be
placed elected or chosen to any office or place of mayor,
alderman, recorder, bailiff, town clerk, common coun-
cil 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 ac-
cording to the rites of the church of England, within one
year next before such election: and in default thereof,
every such election and placing shall be void.

3. And by the 25 C. 2. c. 2. For preventing dangers
which may happen from popish recusants; every person
who shall be admitted into any office civil or military,
shall within three months after his admittance receive the
sacrament of the lord's supper, in some publick church on
the
the lord's day immediately after divine service and sermon: And shall at the same time that he takes the oaths (which shall be within six months after his admittance, 9 G. 2. c. 26.) deliver into the court a certificate of his having received the sacrament under the hands of the minister and churchwarden, and shall make proof of the truth thereof by two witnesses upon oath; all which shall be put upon record in the said court. § 2. 3.

And if he shall neglect or refuse so to do, he shall be disabled to hold such office, and the same shall be void. § 4.

And if he shall execute the same after such times expired, and be convicted thereupon in the courts at Westminster or at the assizes; he shall be disabled to sue or use any action bill plaint or information in course of law, or to prosecute any suit in any court of equity or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, and shall forfeit 500l to him who shall sue. § 5.

And at the same time when he takes the oaths, he shall also make and subscribe this declaration following, under the same penalties and forfeitures, viz. I A. B. do declare, that I do believe that there is not any tran Substantiation 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. § 9.

4. And by the 7 & 8 W. c. 27. Every person who shall refuse to take the oaths of allegiance and supremacy, when tendered to him by any person lawfully authorized to administer or tender the same; or shall refuse or neglect to appear when lawfully summoned in order to have the said oaths tendered to him;—shall, until he have duly taken the said oaths, be liable to suffer as a popish recusant convict. And for the better levying the penalties to the king, the persons tendering the oaths shall upon such refusal or default of appearance record and enter in parchment the christian and surname and place of abode of such person refusing or not appearing, together with the time of such tender and refusal or default of appearance, and shall deliver the said record or entry to the justices of assize at the next assizes, who shall forthwith set the same into the exchequer to be there entred of record, that the court may proceed thereupon as against popish recusants convict. § 1.

And no person who shall refuse to take the said oaths, or being a quaker shall refuse to subscribe the declaration of
of fidelity (which oaths and subscription the sheriff or chief officer taking the poll at any election of members of parliament at the request of any one of the candidates shall administer) shall be admitted to give any vote at such election. § 19.

5. And by the 1 G. § 2. c. 13. Two justices of the peace, or any other person who shall be by his majesty for that purpose specially appointed by order in the privy council or by commission under the great seal, may administer and tender the oaths of allegiance supremacy and abjuration to any person whom they shall suspect to be dangerous or disaffected to his majesty or his government: And if any person to whom the said oaths shall be tendered shall neglect or refuse to take the same; such justices or other person specially to be appointed as aforesaid, tendering the said oaths, shall certify the refusal thereof to the next quarter sessions where such refusal shall be made; and the said refusal shall be recorded amongst the rolls of that sessions, and shall be from thence certified by the clerk of the peace into the chancery or king's bench, there to be recorded amongst the rolls of such court, in a roll to be there kept for that purpose only; and every person so neglecting or refusing to take the said oaths, shall be from the time of such neglect or refusal adjudged a popish recusant convict. § 10.

And two justices or any other person so specially appointed as aforesaid by writing under their hands and seals may summon any person to appear before them at a certain day and time therein to be appointed, to take the said oaths; which said summons shall be served upon such person or left at his dwelling house or usual place of abode with one of the family there; and if such person so summoned shall neglect or refuse to appear, then upon due proof upon oath of serving the said summons, such justices or other persons as aforesaid shall certify the same to the next sessions, there to be entered upon the rolls; and if such person shall neglect or refuse to appear and take the said oaths at the said sessions, the names of the person so certified being publickly read at the first meeting of the said sessions, such person shall be adjudged a popish recusant convict, and as such to forfeit and be proceeded against as if he had actually refused to take the oaths; and the same shall be from thence certified by the clerk of the peace into the chancery or king's bench, there to be recorded in a roll to be kept for that purpose only. § 11.
XIX. Armour and ammunition.

1. By the 3 3. c. 5. All such armour gunpowder and munition, as any popish recusant convict shall have in his house or elsewhere, or in the possession of any other at his disposition, shall be taken from them by warrant of four justices of the peace at their general or quarter sessions to be holden in the county where such popish recusant shall be resident (other than such necessary weapons as shall be thought fit by the said justices to remain and be allowed for the defence of such recusant's persons or house): and the said armour and munition so taken, shall be kept at the costs of such recusant, in such places as the said four justices at their said sessions shall appoint. 5. 27.

And if such person shall refuse to declare unto the said justices or to any of them what armour he hath, or shall hinder or disturb the delivery thereof to any of the said justices or to any other person authorized by their warrant to take and seize the same; he shall forfeit his said armour gunpowder and munition, and shall also be imprisoned by warrant of any justice of the peace of such county for three months. 5. 28.

And notwithstanding the taking away the same, the said popish recusant shall be charged with the maintaining of the same, and with the buying providing and maintaining of horse and other armour and munition, in such fort as other subjects shall be appointed and commanded according to their several abilities and qualities; and the said armour and munition, at the charge of such popish recusant for them, and as their own provision of armour and munition, shall be shewed at every muster shew or use of armour to be made within the said county. 5. 29.

2. And by the 1 W. c. 15. It shall be lawful for any two justices of the peace, who shall know or suspect any person to be a papist, or shall be informed that any person is or is suspected to be a papist, to tender, and they shall forthwith tender to him the declaration of the 30 G. 2. 5. 2. c. 1.: and if he shall refuse to make and subscribe the same, or shall refuse or forbear to appear before the said justices for the making and subscribing the same upon notice to him given or left at his usual place of abode by any person authorized in that behalf by warrant of the said justices; he shall from thenceforth be liable to
all the penalties forfeitures and disabilities in this act mentioned. /. 2.

And the said justices shall certify the name surname and usual place of abode of every such person, who being required shall refuse or neglect to make and subscribe the said declaration, or to appear before them for that purpose; as also of every person who shall make and subscribe the same,—at the next sessions, to be there filed and kept amongst the records. /. 3.

And no papist or reputed papist for refusing or making default, shall have in his house or elsewhere, or in the possession of any other to his use or at his disposition, any arms weapons gunpowder or ammunition (other than such necessary weapons as shall be allowed to him by order of the justices in sessions, for the defence of his house or person): and two justices by their warrant may authorize any person in the day time, with the assistance of the constable or his deputy, to search for all arms weapons gunpowder or ammunition, which shall be in the house custody or possession of any such papist or reputed papist, and seize the same for the use of the king; which said justices shall at the next sessions deliver the same in open court for the use aforesaid. /. 4.

And every papist or reputed papist who shall not within ten days after such refusal or making default as aforesaid, discover and deliver or cause to be delivered to some justice of the peace, all arms weapons gunpowder or ammunition whatsoever, which he shall have in his house or elsewhere, or which shall be in the possession of any person to his use; or shall hinder or disturb any person authorized by warrant of two justices to search for and seize the same;—shall be committed to the common gaol by warrant of two justices for three months without bail, and shall also forfeit the said arms and pay treble the value of them to the king, to be appraised by the justices at the next sessions. /. 5.

And every person who shall conceal, or be privy or aiding or affilling to conceal, or who knowing thereof shall not discover to a justice of the peace the arms weapons gunpowder or ammunition of any person for refusing or making default, or shall hinder or disturb any person authorized as aforesaid in searching for taking and seizing the same, shall be committed to the common gaol by two justices for three months without bail, and shall also forfeit treble value of the said arms to the king. /. 6.
An if any perfon fhall discover any concealed arms, weapons, ammunition or gunpowder belonging to any perfon refusing or making default as aforesaid, fo as the fame may be feized; the juftices on delivery of the fame at the feffions, fhall as a reward for fuch discovery, by order of feffions allow him a fum of money amounting to the full value of the arms weapons ammunition or gunpowder fo discovered: the faid fum to be afSESSED by the judgment of the faid juftices at their faid feffions, and to be levied by diftres and fale of the goods of the of- fender. f. 7.

But if any perfon who fhall have fo refused or made default, fhall defire to submit and conform, and for that purpose fhall prefent himfelf before the juftices at the next feffions where his default fhall be certified, and fhall there in open court make and fubferibe the faid declaration and take the oaths of allegiance and supremacy, he fhall be difcharged. f. 8.

XX. HOrses.

No papift or reputed papift, fo refusing or making de- fault in making and fubfcribing the declaration as by the laft mentioned act of the 1 W. c. 15. fhall have or keep in his poffeflion any horfe above the value of 5l; and two juftices by their warrant may authorize any perfon, with the afSIfance of the constable or his deputy, to fearch for and feize the fame for the ufe of the king. 1 W. c. 15. f. 9.

And if any perfon fhall conceal, or be aiding in con- cealing any fuch horfe; he fhall be committed to prison by fuch warrant without bail for three months, and fhall also forfeit to the king treble value of fuch horfe, which value is to be fettled as aforesaid. f. 10.

XXI. Popifi Baptifm.

Every papifi recufant who fhall have a child born, fhall within one month next after the birth, caufe the fame to be baptized by a lawful minifter, according to the laws of the realm, in the open church of the parish where the child fhall be born, or in some other church near adjoining, or chapel where baptifm is ufually admi- niftered; or if by infirmity of the child it cannot be brought to fuch place, then the fame fhall within the time aforesaid be baptized by the lawful minifter of any of the faid parifhes
parishes or places: on pain that the father of such child
if he be living one month after the birth, or if he be
dead then the mother of such child shall forfeit 1001; one
third to the king, one third to him who shall sue in any
of the king's courts of record, and one third to the poor
of the said parish. 31. c. 5. f. 14.

XXII. Popish marriage.

1. By the 31. c. 5. Every man being a popish recus-
ant convict, who shall be married otherwise than in some
open church or chapel, and otherwise than according to
to the orders of the church of England, by a minister
lawfully authorised, shall be disabled to have any estate
of freehold into any lands of his wife as tenant by cour-
tesy; and every woman being a popish recusant convict,
who shall be married in other form than as aforesaid,
shall be disabled not only to claim any dower of the in-
heritance of her husband, or any jointure of the lands of
her husband, but also of her widow's estate and frank-
bank in any customary lands whereof her husband died
feised, and likewise be disabled to have any part of her
husband's goods: And if any such man shall be married
with any woman, otherwise than as aforesaid, which
woman shall have no lands whereof he may be intitled to
be tenant by the courtesy; he shall forfeit 1001, half to
the king, and half to him that shall sue in any of the
king's courts of record. f. 13.

2. But by the 26 G. 2. c. 33. After march 25, 1754,
if they shall be married any where in England, other than
in a church or publick chapel (unless by special licence
from the archbishop of Canterbury), or without publica-
tion of banns, or licence, the marriage shall be void.

XXIII. Popish burial.

If any popish recusant, man or woman, not being ex-
communicate, shall be buried in any place, other than in
the church or church yard, or not according to the ec-
clesiastical laws of this realm; the executors or adminis-
trators of every such person so buried, knowing the same
or the party that causeth him or her to be so buried,
shall forfeit 201, one third to the king, one third to him
that shall sue in any of the kings courts of record, and
one third to the poor of the parish where such person
died. 31. c. 5. f. 15.

Vol. III. L XXIV. Heirs
XXIV. Heirs of popish recusants.

If any recusant shall die, his heir being no recusant; such heir shall be freed from all penalties and incumbrances in respect of his ancestor's recusancy: And if at the decease of such recusant his heir shall be a recusant, and after shall become conformable and obedient to the laws of the church, and repair to church, and continue there during the time of divine service and sermons, and also shall take the oaths of allegiance and supremacy before the archbishop or bishop of the diocese; such heir shall be freed from all penalties and incumbrances happening by reason of his ancestor's recusancy. 1 J. c. 4. f. 3. 1 W. c. 8.

But if the heir of any recusant shall be within the age of sixteen years at the decease of his ancestor and shall after his age of sixteen years become a recusant; such heir shall not be freed of any of the penalties and incumbrances happening by reason of his ancestor's recusancy, until he shall submit or reform himself, and become obedient to the laws of the church, and repair to church, and take the oaths of allegiance and supremacy as aforesaid; and yet nevertheless, from and after such submission and oath taken, every such heir shall be freed from all penalties and incumbrances happening by reason of his ancestor's recusancy. 1 Ja. c. 4. f. 4. 1 W. c. 8.

XXV. Popish wife.

1. By the 3 J. c. 5. Every married woman being a popish recusant convict (her husband not being a popish recusant convict) who shall not conform herself, but shall forbear to repair to some church or usual place of common prayer there to hear divine service and to receive the sacrament, by the space of one whole year next before the death of her husband,—shall forfeit to the king the issues and profits of two parts of her jointure and of her dower during her life, out of any lands which were her husband's, and also be disabled to be executrix or administratrix of her said husband, and to have or demand any part or portion of her said deceased husband's goods or chattels. 1. 10.

2. And by the 7 J. c. 6. If any married woman being convicted as a popish recusant for not coming to church, shall not in three months conform herself and repair to church
church and receive the sacrament; she shall be committed to prison by one of the privy council, or the bishop of the diocese, if she be a baroness; or if she be under that degree, by two justices of the peace (one whereof to be of the quorum), until she shall conform herself and come to church and receive the sacrament; unless her husband shall pay to the king 10l a month, or the third part of his lands at his own choice, so long as she remaining a recusant convict shall continue out of prison. f. 28.

XXVI. Popish servants or sojourners.

By the 3 f. c. 4. Every person who shall willingly maintain retain relieve keep or harbour in his house, any servant sojourner or stranger who shall not repair to some church or chapel or usual place of common prayer to hear divine service, but shall forbear the same for a month together, not having a reasonable excuse, shall forfeit 10l a month. f. 32.

And every person who shall knowingly retain or keep in his service fee or livery, any person who shall not repair to some church chapel or usual place of common prayer to hear divine service, but shall forbear the same for a month together, shall forfeit 10l a month. f. 33.

But this shall not extend to punish or impeach any person, for maintaining retaining relieving keeping or harbouring his father or mother wanting (without fraud or covin) other habitation or sufficient maintenance, or the ward of any such person, or any person that shall be committed by authority to the custody of any by whom they shall be so relieved maintained or kept. f. 34.

The said offences to be inquired of heard and determined, before the justices of the king's bench, or of assize, or before the justices of the peace in sessions. f. 36.

XXVII. Popish schoolmasters.

1. By the 23 El. c. 1. If any person shall keep or maintain any schoolmaster, which shall not repair to church or be allowed by the bishop of the diocese; he shall forfeit 10l a month. f. 6.
Provided, that no such ordinary, or their ministers, shall take any thing for the said allowance. — And if such schoolmaster or teacher shall teach contrary to this act; he shall be disabled to be a teacher of youth, and be imprisoned for a year. £ 7.

The said forfeiture to be, one third to the king to his own use; one third to the king for relief of the poor in the parish where the offence shall be committed, to be delivered by warrant to the principal officers in the receipt of the exchequer without further warrant from the king; and one third to him who shall sue: and if such person shall not be able, or shall fail to pay the same within three months after judgment given, he shall be committed to prison till he have paid the same, or conform himself to go to church. £ 11.

But if the offender shall, before he be indicted, or at his arraignment or trial before judgment, submit and conform himself before the bishop of the diocese, or before the justices where he shall be indicted arraigned or tried (having not before made like submission at his trial being indicted for the first offence); he shall be discharged, upon his recognition of such submission in open assizes or sessions of the county where he shall be resident. £ 10.

2. And by the 17 & 12 W. c. 4. No person shall keep any school or be a schoolmaster, out of any of the universities or colleges of this realm, except it be in some publick or free grammar school, or in some such nobleman's or gentleman's house as are not recusants, or where the schoolmaster shall be specially licensed by the archbishop bishop or guardian of the spiritualities of the diocese; on pain that as well the schoolmaster, as also the party that shall retain or maintain any such schoolmaster, shall forfeit each of them 40 l. a day: the one half of which forfeitures shall be to the king, and half to him that will sue. £ 9.

3. And by the 11 & 12 W. c. 4. If any papist, or person making profession of the popish religion, shall keep school, or take upon himself the education or government or boarding of youth; he shall be adjudged to perpetual imprisonment, in such place within this realm, as the king by advice of the privy council shall appoint. £ 3.
XXVIII. Papists shall not succeed to the crown of this realm.

1. By the 1 W. &c. 2. c. 2. Every person that shall be reconciled to or shall hold communion with the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be for ever incapable to inherit poffesses or enjoy the crown and government of this realm; and in such case the people shall be absolved of their allegiance; and the crown shall descend to and be enjoyed by such person being a protestant, as should have inherited and enjoyed the same, in case the person so reconciled, holding communion, or professing, or marrying as aforesaid were naturally dead. $: 9.

And every king and queen who shall come to and succeed in the imperial crown of this kingdom, shall on the first day of the meeting of the first parliament next after their coming to the crown, sitting on the throne in the house of peers in the presence of the lords and commons, or at their coronation before such person who shall administer the coronation oath at the time of their taking the said oath (which shall first happen)———make and subcribe the declaration of the 30 C. 2. But if he or she shall be under the age of twelve years, then every such king or queen shall make and subscribe the same at their coronation, or the first day of the meeting of the first parliament as aforesaid, which shall first happen after such king or queen shall have attained the said age of twelve years. $: 10.

2. And by the second article of the union of the kingdoms of England and Scotland, All papists, and persons marrying papists, shall be excluded from, and for ever incapable to inherit poffesses or enjoy the imperial crown of Great Britain and the dominions thereunto belonging; and in every such case, the crown and government shall descend to and be enjoyed by such person being a protestant, as should have inherited and enjoyed the same, in case such papist or person marrying a papist was naturally dead. 5 An. c. 8.

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XXIX. Papists
XXIX. *Papists shall not sit in either house of parliament.*

By the 30 C. 2. fl. 2. c. 1. No person that shall be a peer of the realm, or member of the house of peers, shall vote or make his proxy in the house of peers, or sit there during any debate in the said house of peers; nor any person that shall be a member of the house of commons, shall vote in the house of commons, or sit there during any debate after the speaker is chosen; until he shall first take the oaths of allegiance and supremacy (and abjuration, 1 G. fl. 2. c. 13,) and make and subscribe this declaration following; viz.

I A. B. do solemnly and sincerely, in the presence of god, profefs, 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, altho' 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, 1. 2, 3.

Which said oaths and declaration shall be solemnly and publickly made and subscribed betwixt the hours of nine in the morning and four in the afternoon, by every such peer and member of the house of peers at the table in the middle of the house, before he take his place in the house, and whilst a full house of peers is there with their speaker in his place; and by every such member of the house of commons, at the table in the middle of the said house, and
and whilst a full house of Commons is there duly sitting
with their Speaker in his chair: and the same to be done
in either house in such like order or method, as each
house is called over by respectively. § 4.

And if any peer or member of the house of peers, or
member of the house of Commons, shall offend against
this act; he shall be deemed and adjudged a popish recu-
fant convict, and shall forfeit and suffer as a popish recu-
fant convict; and shall be disabled to execute any office
or place of profit or trust, civil or military; or to fit or
vote in either house of Parliament, or to make a proxy in
the house of peers; or to sue or use any action, bill,
plaint, or information in course of law, or to prosecute
any suit in any court of equity; or to be guardian of any
child, or executor or administrator of any person, or cap-
able of any legacy or deed of gift; (or to vote at any
election for members of Parliament, 1 G. 3. 2. c. 13;) and
shall forfeit 500l to him who shall sue. § 6.

And it shall be lawful for the house of peers and house
of Commons, or either of them respectively, as often as
they shall see occasion, to order and cause all or any of
the members of their respective houses, openly in their
respective houses of Parliament, to take the said oaths,
and to make and subscribe the said declaration, at such
times, and in such manner, as they shall appoint. And
if any peer shall, contrary to such order made by their
said house, wilfully presume to sit therein, without taking
the said oaths and subscribing the said declaration; he shall
be disabled to sit in the said house of peers and give any
voice therein either by proxy or otherwise, during that
Parliament: And if any member of the house of Commons
shall contrary to such order made by their house, wilfully
presume to sit therein, without taking the said oaths, and
making and subscribing the said declaration; he shall be
disabled to sit in the said house of Commons, or to give
any voice therein, during that Parliament. § 7.

And where any member of the house of Commons shall
be so disabled to sit or vote, his place shall be void; and
a writ shall issue for the election of a new member. § 8.

And during the time of taking the said oaths and ma-
kmg and subscribing the declaration, all proceedings shall
cease; and the said oaths declaration and subscription,
together with a schedule of the names of the persons who
shall take and subscribe the same, shall be made and en-
tered in parchment rolls provided by the clerk of the house
of Lords and the clerk of the house of Commons; and none

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of the peers or members shall pay to such clerk above 12d for such entry: All which rolls the said clerks shall without fee shew to any person desiring to look upon the same.

s. 11.

XXX. Papists shall not present to benefices.

1. By the 3 J. c. 5. Every person being a popish recusant convict, shall be utterly disabled to present to any benefice with cure or without cure, prebend, or any other ecclesiastical living; or to collate or nominate to any free school, hospital, or donative; or to grant any avoidance of any benefice, prebend, or other ecclesiastical living.

s. 18.

And the chancellor and scholars of the university of Oxford, so often as any of them shall be void, shall have the presentation, nomination, collation, and donation of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, in the counties of Oxford, Kent, Middlesex, Suffex, Surrey, Hampshire, Berkshire, Buckinghamshire, Gloucestershire, Worcestershire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembroke, Caernarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire, the city of London, and in every city and town being a county of itself within any of the limits and precincts of any of the counties aforesaid, as shall happen to be void during such time as the patron thereof shall be a recusant convict as aforesaid. s. 19.

And the chancellor and scholars of the university of Cambridge shall have the presentation, nomination, collation, and donation of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, within the counties of Essex, Hertfordshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicester, Derbyshire, Nottinghamshire, Shropshire, Chester, Lancashire, Yorkshire, the county of Durham, Northumberland, Cumberland, Westmorland, Radnorshire, Denbighshire, Flintshire, Carnarvonshire, Anglesey, Merionethshire, Glamorganshire, and in every city and town being a county of itself within the limits and precincts of any of the said counties, as shall happen to be void during such time as the patron thereof shall be a recusant convict as aforesaid. s. 20.

Provided,
Provided, that neither of the said chancellors nor scholars of either of the said universities, shall present or nominate to any benefice with cure, prebend, or other ecclesiastical living, any such person as shall then have any other benefice with cure of souls: And if any such presentation or nomination shall be made of any such person so benefited, the same shall be void. f. 21.

Being a papish recusant convict] And this, whether he be convicted before the avoidance or after; for the words are general, that the university shall present so often as any such benefices shall be void; and avoidances before conviction are within the same mischief as avoidances after; and it would be a hard construction, that general words shall not be extended to remedy all cases which are within equal mischief. Comyns 182. Gibs. 771.

Shall be utterly disabled] They were utterly disabled before, by being made excommunicate, in sect. 2, as was observed by Finch, solicitor, in the case of Knight and Daunor; and therefore of what force ever institution or induction when given upon such a presentation, may be against strangers, there is no doubt but the bishop may refuse to give it, and take the benefit of the lapse, in case no other presents, who hath right, and is capable of presenting. For that the bishop in this case, as in others, hath right to lapse, appears from hence, that the statute intended no more than to put the university in the place of the patron; all rights which belong to others, remaining as they were before. Gibs. 771.

To present] Hereby the patron is only disabled to present; and he continues patron as to all other purposes; and therefore he shall confirm the leases of the incumbent. 1 Haw. 32.

Or to grant any avoidance] But such person, by being disabled to grant an avoidance, is no way hindred from granting the advowson itself in fee, or for life or years, bona fide, and for good consideration. 1 Haw. 32.

And the chancellor and scholars] The two clauses which give this benefit to the universities respectively, are private clauses, whereof the judges, without pleading of them, cannot take notice. 10 Co. 57.

So often as any of them shall be void] But if an advowson or avoidance, belonging to such a person, come into the king's hands, by reason of an outlawry, or conviction of recusancy,
reCUSancy, or the like; the king, and not the university, shall present. 1 Haw. 32.

During such time as the patron thereof shall be a recusant convicT] When the presentation for that turn is vested in the university, altho' afterwards the recusant conformeth himself, or dieth, yet the university shall present. 10 Co. 57.

2. By the 1 W. c. 26. Every person who shall refuse or neglect to make and subscribe the declaration of the 30 C. 2. when the same shall be tendered by two justices of the peace as in the said act is mentioned; or who shall, upon notice given as by the said act, refuse or forbear, to appear before them for the making and subscribing thereof, and shall thereupon have his name surname and place of abode certified and recorded at the sessions;—every such person so recorded, shall be from thenceforth adjudged disabled to make such presentation, collation, nomination, donation, or grant of any avoidance of any benefice, prebend, or ecclesiastical living, as fully as if such person were a popish recusant convict. And the universities shall have the presentation, nomination, collation, and donation. f. 2.

And where any person shall be seised or possessed of any advowson, right of presentation, collation, or nomination to any such ecclesiastical living, free school, or hospital as aforesaid, in trust for any papist or popish recusant, who shall be convicted or disabled as by the 3 J. c. 5. or by this act; he shall be disabled to present nominate or collate to any such ecclesiastical living free school or hospital, or to grant any avoidance thereof, and such presentations nominations collations and grants shall be void; and the universities shall proceed, as if such recusant convict or disabled were seised or possessed thereof, f. 3.

And if any trustee or mortgagee or grantee of any avoidance shall present nominate or collate, or cause to be presented nominated or collated any person to any such ecclesiastical living free school or hospital, whereof the trust shall be for any recusant convict or disabled, without giving notice of the avoidance in writing to the vicechancellor within three months next after the avoidance; he shall forfeit 500l to the respective chancellor and scholars of the university, to whom the presentation nomination or collation shall belong. f. 4.

Provided,
Provided, that the said chancellors and scholars of either university, shall not present or nominate to any benefice with cure prebend or other ecclesiastical living, any person as shall then have any other benefice with cure of souls: and if any such presentment shall be had or made of any such person so beneficed, the same shall be utterly void. \(f\). 5.

And if any person so presented or nominated to any benefice with cure, shall be absent from the same above sixty days in any one year; in such case the said benefice shall be void. \(f\). 6.

Provided always, that if any such person shall present himself at the sessions for that place where his name was recorded, and shall there in open court make and subscribe the said declaration, and take the oaths (of allegiance and supremacy, 1 W. c. 8.) he shall be discharged of the said disability, and be enabled to make such presentment collation nomination donation and grant, as if this act had not been made. \(f\). 7.

S. 2. Refuse or forbear.] In the case of Fitzherbert and the university of Oxford, the party was summoned to take the oaths, but refused to attend. Upon which occasion, it was declared by the court, that the justices ought to be present at the time appointed; and if they are not there, it is a good excuse for the party, if the party attends; but there is no necessity that the justices should be present, if the party does not come; it is sufficient if they leave notice at the place, to give them notice if the party comes; and the party himself is obliged to do the first act, namely, to attend at the time and place appointed. Comyns 183.

3. And by the 12 An. 3. 2. c. 14. it is further enacted, that every papist or person making profession of the popish religion, and every child of such person not being a protestant under the age of twenty one years, and every mortgagee trustee or person any way intrusted directly or indirectly, mediate or immediately, by or for such papist or person making profession of the popish religion or such child as aforesaid, whether such trust be declared by writing or not, shall be disabled to present collate and nominate to any benefice prebend or ecclesiastical living school hospital or donative, or to grant any avoidance of any benefice prebend or ecclesiastical living; and every such presentment collation nomination and grant, and every admission institution and induction thereupon shall be void: and the universities shall have the presentation nomination collation and donation. \(f\). 1.
And when any presentation to any benefice or ecclesiastical living shall be brought to any archbishop bishop or other ordinary, from any person who shall be reputed to be, or whom such archbishop bishop or other ordinary shall have cause to suspect to be a papist or truффee of any person making profession of the popish religion, or suspected to be such; such archbishop bishop or other ordinary shall tender or administer to every such person (if present) the declaration against transubstantiation of the 25 C. 2. and if absent, shall by notice in writing to be left at the place of habitation of such person, appoint some convenient time and place when and where such person shall appear before such archbishop bishop or other ordinary, or some persons to be authorized by them by commission under their seal of office; who shall, upon such appearance, tender or administer the said declaration to the party making such presentation: and if he shall neglect or refuse to make and subscribe the declaration so tendered, or shall neglect or refuse to appear upon such notice, such presentation shall be void; and in such case the archbishop bishop or other ordinary shall, within ten days after such neglect or refusal, send and give a certificate under their seal of office of such neglect or refusal to the vicechancellor; and the presentation to such benefice, for that turn only, shall be vested in the respective chancellor and scholars. ʃ. 2.

And for the better discovery of secret trusts and fraudulent conveyances made by papists, it is enacted, that when the presentation of any person presented to any benefice or ecclesiastical living shall be brought to any archbishop bishop or other ordinary; he shall, before he give institution, examine the person presented upon oath, whether to the best and utmost of his knowledge and belief, the person who made such presentation be the true and real patron, or made the same in his own right, or whether he be not mediatly or immediately, directly or indirectly, trustee or any way intrusted for some other, and whom by name, who is a papist or maketh profession of the popish religion, or the children of such, or for any other and whom, or what he knows, has heard, or believes touching the same; and if such person so presented shall refuse to be examined, or shall not answer directly, the presentation shall be void. ʃ. 3.

And the chancellor and scholars of the respective universities, to whom the presentation to such benefices and ecclesiastical livings should belong in case the rightful patrons had been popish recusants convic, and their pre-
Popery.

fentees or clerks, may for the better discovery of such secret and fraudulent trusts, exhibit their bill in any court of equity, against such person presenting, and such person as they have reason to believe to be the cheat que trust of the advowson, or any other person who they have cause to suspect may be able to make any other or further discovery of such secret trusts and practices; to which bill, the defendants being duly served with process of the court, shall forthwith directly answer: and if they shall refuse or neglect to answer, in such time as shall be appointed by the court, the bill shall be taken pro confession, and be allowed as evidence against such person to neglecting and refusing, and his trustees, and his or their clerk; provided, that every person having fully answered such bill, and not knowing of any such trust, shall be intituled to his costs to be taxed according to the course of the court.

§ 4.

And the court where any quare impedit shall be depending, at the instance of the said chancellor and scholars or their clerk being plaintiffs or defendants in such suit by motion in open court, may make a rule or order requiring satisfaction upon the oath of such patron and his clerk, who in the said suit shall contest the right of the university to present, by examination of them in open court, or by commission under the seal of such court for the examination of them, or by affidavit, as the said court shall find most proper, in order to the discovery of any secret trust frauds or practices relating to the said presentation; and if it appear to the court, upon the examination of such patron or clerk, that the said patron is but a trustee, then they shall discover who the person is and where he lives; and upon their refusal to make such discovery, or to give satisfaction as aforesaid, they shall be punished as guilty of a contempt of the court: And if the said patron or his clerk shall discover the person for whom the said patron is a trustee; then the court, on motion made in open court, shall make a rule or order, that the person for whom the patron is a trustee shall in the said court, or before commissioners to be appointed for that purpose under the seal of the said court, make and subscribe the declaration against tranubstantiation of the 25 C. 2. and likewise on pain of incurring a contempt of the said court, shall give such further satisfaction upon oath relating to the said trust, as the court shall think fit: and such person so required to make and subscribe the said declaration, and refusing or neglecting so to do, shall be esteemed as a popish recusant convict in respect of such presentation. § 5.
And the answer of such patron and the person for whom he is intrusted and his and their clerk or any of them, and their examinations and affidavit taken as aforesaid by order of any court where such quare impedit shall be depending, or by any archbishop bishop or other ordinary, or the commissioners as aforesaid (which examinations shall therefore be reduced into writing and signed by the party examined) shall be allowed as evidence against such patron so presenting and his clerk. § 6.

Provided, that no such bill, nor any discovery to be made by any answer thereunto, or to any such examination as aforesaid, shall be made use of to subject any person making such discovery or not answering such bill, to any penalty or forfeiture, other than the loss of the presentation then in question. § 7.

And in case of any such bill of discovery exhibited by the chancellor and scholars or their presentee, no lapse shall incur, nor plenary be a bar against them, in respect of the benefice or ecclesiastical living touching which such bill shall be exhibited, till after three months from the time that the answer to such bill shall be put in, or the same be taken pro confesso, or the prosecution thereof deferred; provided that such bill be exhibited before any lapse incurred. § 8.

And the chancellor and scholars may sue a writ of quare impedit by the name of chancellor and scholars, or by their proper names of incorporation, at their election. § 9.

And in case of any such trust confessed or discovered by any answer to such bill or such examination as aforesaid, the court may enforce the producing of the deeds relating to the said trusts, by such methods as they shall find proper. § 10.

4. And by the 11 G. 2. c. 17. it is further enacted, that every grant to be made of any advowson or right of presentation collation nomination or donation of and to any benefice prebend or ecclesiastical living school hospital or donative, and every grant of any avoidance thereof, by any papist or person making profession of the popish religion, whether such trust be declared by writing or not, shall be null and void, unless such grant be made bona fide and for a full and valuable consideration to and for a protestant purchaser and merely and only for the benefit of a protestant; and every such grantee or person claiming under any such grant shall be deemed to be a trustee for a papist, or person professing the popish religion within
within the aforesaid act of 12 An.; and all such grantees, and persons claiming under such grants, and their presen-
tees, shall be compelled to make such discovery relating to such grants and presentations made thereupon, and by such methods, as by the said act. And every devise to be made by any papist or person professing the popish religion, of any such advowson or right of presentation collation nomination or donation or any such avoid-
ance, with intent to secure the benefit thereof to the heirs or family of such papist or person professing the popish religion, shall be null and void; and all such devises, and persons claiming under such devises, and their presents, shall in like manner be com-
pelled to discover, whether to the best of their know-
ledge and belief, such devises were not made to the said intent. f. 5.

XXXI. Shall be as excommunicated.

1. By the 3 J. c. 5. Every popish recusant convict shall stand and be reputed to all intents and purposes disabled, as a person lawfully and duly excommunicated, and as if he had been so denounced and excommunicated according to the laws of this realm, until he shall con-
form himself and come to church and hear divine service and receive the sacrament according to the laws of this realm, and take the oaths (of allegiance and supremacy, 1 W. c. 8,); and every person sued by such person so to be disabled, may plead the same in disabling of such plain-
tiff, as if he were excommunicated by sentence in the ecclesiastical court. f. 11.

2. And by the 3 J. c. 4. Upon any lawful writ war-
rant or process awarded to any sheriff or other officer, for the taking of any popish recusant (actually) excom-
municated for such recusancy; it shall be lawful for such sheriff or other officer, if need be, to break open any house wherein such person excommunicate shall be, or to raise the power of the county, for the apprehending of such person, and the better execution of such warrant writ or process. f. 35.

XXXII. Shall not repair to court.

1. By the 3 J. c. 5. No popish recusant convict shall come into the court or house where the king or his heir apparent to the crown shall be, unless he be commanded
to be done by the king, or by warrant from the lords and others of the privy council; on pain of 100l, half to the king, and half to him that shall sue in any of his majesty's courts of record. § 2.

2. And by the 30 C. 2. § 2. c. 1. Every peer of this realm, and member of the house of peers, and every peer of Scotland or Ireland, being of the age of one and twenty years or upwards, not having taken the oaths (of allegiance and supremacy, 1 W. c. 8.) and made and subscribed the declaration against popery of the 30 C. 2. § 2. c. 1, and every member of the house of commons not having taken the said oaths and made and subscribed the said declaration, and every person convicted of popish recusancy, who shall come advisedly into or remain in the presence of the king, or shall come into the court or house where he resides, shall suffer all the pains forfeitures and disabilities of this act; unless he do in the next term after such his coming or remaining take the said oaths, and make and subscribe the said declaration, in the high court of chancery, between the hours of nine and twelve in the forenoon: That is to say, he shall be disabled to execute any office or place of profit or trust, civil or military; or to sit or vote in either house of parliament or to make a proxy in the house of peers; or to sue or use any action, bill, plaint, or information in course of law, or to prosecute any suit in any court of equity; or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift; and shall forfeit 500l to him who shall sue. § 5, 6.

But this act shall not extend to the prejudice of any person for coming into or remaining in the presence of the king, who shall first have licence so to do by warrant under the hands and seals of six privy counsellors, by order of his majesty's privy council, upon some urgent occasion therein to be expressed; so as such licence exceed not ten days, and that it be first filed and put upon record in the office of the petty bag in chancery, for any one to view without fee: and no person to be licensed above thirty days in any one year. § 12.

Provided, that if any offender shall after such offence take the oaths and subscribe the declaration in the chancery in manner aforesaid; he shall from thenceforth be freed and discharged from all seizures, penalties and losses which he might otherwise sustain by reason of being a popish recusant convicted by virtue of this act, and from all disabilities and incapacities incurred thereby; so as such freedom
dom and discharge extend not to restore any such person to any office or place filled up, nor to any other office till after a year from taking the said oaths and making the said declaration; nor to make void the said forfeiture of 500l. f. 13.

XXXIII. Shall not come within ten miles of London.

1. By the 37. c. 5. All papish recusants who shall come dwell or remain within the city of London or within ten miles thereof, who shall be indicted or convicted of recusancy, or who shall not repair unto some usual church or chapel and there hear divine service, but shall forbear the same by the space of three months, shall within ten days after such indictment or conviction depart from the said city and ten miles compass of the same, and also shall deliver up their names to the lord mayor if such recusant be within the city or the liberties thereof; and if the said recusant shall dwell or remain in any other county within ten miles of the said city, then he shall within the said ten days deliver up his name to the next justice of the peace within such county: on pain of forfeiting to the king 100l; half of which shall be to the king, and half to him that will sue in any of the king's courts of record. f. 4.

2. And by the 1 W. c. 9. For the better discovering and amoving all papists and reputed papists out of London and Westminster and ten miles of the same; the lord mayor, and every justice of the peace of London Westminster and Southwark, and of the counties of Middlesex Surrey Kent (and Essex, 1 W. c. 17.) shall cause to be arrested and brought before him every person, not being a merchant foreigner, as is reputed to be a papist, and tender to him the declaration of the 30 C. 2. f. 2. c. 1. and if he refuse to make and subscribe the same, and shall after such refusal continue within the said distance, he shall forfeit and suffer as a papish recusant convict. f. 2.

And every justice of the peace shall certify every such subscription before him taken, and also the names of all persons refusing upon tender to make or subscribe as aforesaid, under his hand and seal, into the court of king's bench the next term, or else at the next quarter sessions of the county or place where such taking subscribing, or refusal shall happen: And if the said person, so refusing and certified, shall not within the next term or sessions
after such refusal appear in the court of king's bench or sessions where such certificate shall be returned, and in open court make and subscribe the same, and indorse or enter his fo doing upon the certificate so returned; he shall be from the time of such his neglect or refusal taken and adjudged a popish recusant convict, and as such to forfeit and be proceeded against. f. 3.

But this act not to extend to any foreigner being a menial servant to any ambassador or publick agent. f. 4.

XXXIV. Shall not remove above five miles from their habitation.

1. By the 35 El. c. 2. Every person above the age of sixteen, and having any certain place of abode, who being a popish recusant shall be convicted for not repairing to church, and being within this realm at the time he shall be convicted, shall within forty days next after such conviction (if not restrained by imprisonment, or by the king's command, or by order of fix or more of the privy council, or by sickness, and in case of such restraint then within twenty days after the removal of such restraint) repair to his place of usual dwelling and abode, and shall not at any time after remove above five miles from thence; on pain of forfeiting his goods, and also of forfeiting to the king all his lands rents and annuities during life. f. 3.

And every such offender which hath copyhold or customary lands, shall forfeit the same during his life to the lord of the manor, if such lord be not a popish recusant convict; and if he be, then such forfeiture shall be to the king. f. 5.

And all such persons as are to repair to their place of dwelling and abode, and not to remove above five miles from thence as is aforesaid, shall within twenty days next after coming to such place notify their coming thither, and present themselves and deliver their true names in writing, to the minifter or curate of the parish and to a constable of the town; and thereupon the said minifter or curate shall enter the same in a book to be kept in every parish for that purpose. f. 6.

And the said minifter or curate and the said constable shall certify the same in writing to the next general or quarter sessions, to be entred by the clerk of the peace in the rolls of the sessions. f. 7.
And if any such person, being a popish recusant (not being a feme covert, and not having lands of the clear yearly value of twenty marks, or goods above the value of 40l.) shall not within the time before limited repair to his place of usual dwelling and abode, and thereupon notify his coming as aforesaid; or at any time after his repairing to any such place, shall pass or remove above five miles from thence; and shall not within three months next after he shall be apprehended for offending as aforesaid, conform himself in coming to church, and in making such publick confession and submission as is herein after directed, being thereunto required by the bishop of the diocese, or a justice of the peace, or by the minister or curate of the parish; in every such case, every such offender, being thereunto warned or required by two justices of the peace or the coroner, shall upon his corporal oath before two justices of the peace or a coroner abjure the realm for ever; and thereupon shall depart out of this realm at such haven and port, and within such time, as shall be assigned and appointed by the said justices or coroner, unless he be letted or stayed by such lawful and reasonable means or causes, as by the common laws of this realm are permitted and allowed in cases of abjuration for felony; and in such cases of let or stay, then within such reasonable and convenient time after, as the common law requireth in case of abjuration for felony. f. 8.

And every justice of the peace or coroner before whom such abjuration shall be made, shall cause the same presently to be entred of record before them, and certify the same to the next assizes. f. 9.

And if such offender shall refuse to make such abjuration, or after abjuration made shall not go to such haven and within such time as is before appointed, and from thence depart out of this realm, or after such departure shall return without the king's special licence; he shall be guilty of felony without benefit of clergy. f. 10.

Provided, that if any person so restrained shall be urged by process or be bound without fraud or covin to make appearance in any of the king's courts; or shall be required by three or more of the privy council, or by four or more of any commissioners to be in that behalf assigned by the king, to make appearance before such council or commissioners: in such case, he shall incur no forfeiture for travelling to make appearance accordingly.
not for his abode concerning the same, nor for convenient time for his return. \textit{s}. 13.

And if any such person so restrained shall be bound or ought to yield his body to the sheriff, upon proclamation in that behalf without fraud or covin to be made; in such case he shall not incur any forfeiture for travelling for that purpose only, nor for convenient time for his return. \textit{s}. 14.

Provided also, that if any person that shall offend against this act, shall before he be thereof convicted, come to some parish church on some Sunday or other festival day, and there hear divine service, and at service time, before the sermon, or reading of the gospel, make publick and open submission and declaration of his conformity; he shall be discharged. Which submission shall be as followeth: I A. B. do humbly confess and acknowledge, that I have grievously offended God in contemning her majesty’s good and lawful government and authority, by absenting myself from church, and from hearing divine service, contrary to the godly laws and statutes of this realm: And I am heartily sorry for the same, and do acknowledge and testify in my conscience, that the bishop or see of Rome hath not nor ought to have any power or authority over her majesty, or within any her majesty’s realms or dominions: And I do promise and protest, without any dissimulation, or any colour or means of any dispensation, that from henceforth I will from time to time obey and perform her majesty’s laws and statutes, in repairing to the church, and hearing divine service, and do my uttermost endeavour to maintain and defend the same. \textit{s}. 15, 16.

And the minister or curate shall presently enter the same into a book to be kept in every parish for that purpose; and within ten days shall certify the same in writing to the bishop. \textit{s}. 17.

And if any person shall relapse after his submission, he shall have no benefit by such his submission. \textit{s}. 18.

And married women shall also be bound by this act, except only in the case of abjuration. \textit{s}. 19.

Above five miles] It seems that the miles shall be computed according to the English manner, allowing 1760 yards to each mile; and that the same shall be reckoned not by straight lines, as a bird or arrow may fly, but according to the nearest and most usual way. \textit{1 Hasw. 25.}
In cases of abjuration for felony] Anciendy, if a man had committed felony, and did fly to a sancctuary, that is, to a church or church yard, before he was apprehended, he might not be taken from thence to be tried for his crime; but on confession thereof before the justices, or before the coroner, he was admitted to abjure the realm: but afterwards this privilege of sancctuary, by the 21 J. c. 28. was taken away. But the abjuration, where it is by statute specially appointed, as in the present case, doth still continue.

Abjuration] The form whereof, according to the ancient books, is thus: This hear you, Sir coroner, that I A. O. of —— in the county of —— am a popish recusant, and in contempt of the laws and statutes of England, I have and do refuse to come to their church: I do therefore, according to the intent and meaning of the statute made in the 35th year of queen Elizabeth, abjure the realm of England. And I shall haste me towards the port of P, which you have given and assigned to me, and that I shall not go out of the highway leading thither, nor return back again; and if I do, I will that I be taken as a felon of the king: And that at P. I will diligently seek for passage, and I will tarry there but one flood and ebb, if I can have passage; and unless I can have it in such space, I will go every day into the sea up to my knees, affaying to pass over. So help me god and his doom. Stam. 116. Mir. b. 1. Office. Cor. 49.

2. And by the 3 J. c. 5. J. 7. The king, or three of the privy council in writing under their hands, may give licence to every such recusant to go and travel out of the compass of five miles, for such time as in the said licence shall be contained, for their travelling attending and returning, and without any other cause to be expressed within the said licence: And if any person so confined shall have necessary occasion or business to go and travel out of the compass of the said five miles, then upon licence in writing in that behalf to be gotten, under the hands and seals of four justices of the peace of the same county division or place, next adjoining to the place of abode of such recusant, with the privy and assent in writing of the bishop of the diocese, or of the lieutenant or a deputy lieutenant of the county residing within the said county or liberty, under their hands and seals (in which licence shall be specified both the particular cause of the licence, and the time how long the party shall be absent in travelling attending and returning); it shall

M 3
be lawful for such person to go and travel about such his necessary business for such time only as shall be comprised in the said licence, the party so licensed first making oath before the said four justices or any of them, that he hath truly informed them of the cause of his journey, and that he shall not make any causeless stays. And every person so confined who shall go above five miles from the place to which he is confined, not having such licence, and not having taken such oath, shall suffer as by the 35 El. c. 2.

E. 11 f. Peter Maxfield was indicted, that he being a convicted recusant departed above five miles from his abode in Wallstool in the county of Stafford contrary to the statute. The defendant pleaded, that he informed Ralf Snead, Walter Bagnal, and two other justices of the peace of the county of Stafford (the said Walter being also a deputy lieutenant there), that he had urgent occasions to go to London, about business concerning his estate, and made oath before them that it was true; whereupon they by writing under their seals gave licence unto him to go to London, or to other places, as his business required, for six months; by virtue whereof he went; and so justifies. And it was thereupon demurred: 1. Because the statute is, that four justices, with the assent of a lieutenant in writing, or one deputy lieutenant in writing, may give licence; for it ought to be by four justices besides the deputy lieutenant: And all the court were of that opinion; for the statute appointing precisely the number of the justices, with the assent as aforesaid, it ought to be exactly pursued; and it is not sufficient, that a deputy lieutenant be one of the four. 2. The licence is not good, because it is not pleaded to be under their hands; and it is not sufficient to plead it to be under their seals: Also the licence ought to shew the particular cause of the licence, and not in such general manner, for urgent causes. Wherefore rule was given, that if cause were not shewn, judgment should be entered for the king, 

XXXV. Shall be disabled as to law, physic, and offices.

By the 3 f. c. 5. No recusant convict shall practise the common law of this realm as a counsellor clerk attorney or solicitor, nor shall practise the civil law as advocate or proctor; nor practise physic, nor exercise the trade of an
an apothecary; nor shall be judge minister clerk or steward of or in any court, or keep any court, nor shall be register or town clerk, or other minister or officer in any court; nor shall bear any office or charge, as captain, lieutenant, corporal, serjeant, ancient-bearer, or other office in camp, troop, band or company of soldiers; nor shall be captain master or governor or bear any office of charge of or in any ship castle or fortres of the king; but shall be utterly disabled for the same: and every person offending herein shall also forfeit 100l, half to the king, and half to him that shall sue in any of the king's courts of record. f. 8.

And no popish recusant convict, or having a wife being a popish recusant convict, shall exercise any publick office or charge in the commonwealth; but shall be utterly disabled to exercise the same by himself or by his deputy: Except such husband himself, and his children which shall be above the age of nine years abiding with him, and his servants in household, shall once a month, not having any reasonable excuse, to the contrary, repair to some church or chapel usual for divine service, and there hear divine service; and the said husband, and such his children and servants as are of meet age receive the sacrament of the lord's supper, at such times as are limited by the laws of this realm, and do bring up his said children in true religion. f. 9.

XXXVI. Shall not be executors, administrators, or guardians.

By the 3 f. c. 5. A recusant convict shall be disabled to be executor or administrator by force of any testament or letters of administration; nor shall have the custody of any child as guardian in chivalry, guardian in socage, or guardian in nurture of any lands freehold or copyhold. f. 22.

And the next of kin of such child to whom the lands cannot lawfully descend, who shall usually resort to some church or chapel and there hear divine service, and receive the sacrament thrice in the year next before, shall have the custody and education of such child and of his lands holden in knights service, till the full age of the said ward of twenty one years; and of his lands holden in socage, as a guardian in socage; and of his lands holden by copy of court roll of any manor, so long as the custom of the said manor shall allow the same: and shall yield an account of the profits of the same to the said ward. f. 23.

M 4
XXXVII. Shall not inherit or take by descent, de-
vice, or purchase.

By the 11 & 12 W. c. 4. If any person educated in
the popish religion or professing the same, shall not with-
in six months after he shall attain the age of eighteen
years, take the oaths of allegiance and supremacy and
subscribe the declaration of the 30 C. 2. in the chancery
or king’s bench or quarter sessions where he shall reside;
he shall in respect of himself (but not of his heirs) be
disabled to inherit or take any lands by descent devise or
limitation, in possession reversion or remainder; and du-
ring his life, or till he shall take the said oaths and sub-
scribe the declaration, his next of kin who shall be a pro-
testant shall enjoy the same without being accountable
except for waste, for which he shall pay to the party dis-
able treble damages: and every papist or person profess-
ing the popish religion shall be disabled to purchase, to
his own name, or in the name of any other to his use or
in trust for him any manors, lands, profits out of lands,
tenements, rents, terms, or hereditaments; and all estates
terms and any other interests or profits out of lands, to be
made suffered or done for the use of such person or upon
any trust or confidence mediatly or immediately for the
benefit or relief of any such person, shall be void. ʃ 4.

Shall not within 6 months after he shall attain the age of 18
years] If an infant is so young, as at the time of the ac-
cruing of the title (be it by devise or limitation) by rea-
son of his tender years he is incapable of embracing any
religion; in such case he may take within this act: but
he must take care to conform before the age of 18 years
and 6 months; otherwise he forfeits to the next protestant
heir. 2 P. Will. 3.

Disabled to purchase] A papist tenant in tail suffer a re-
covery to the use of himself in fee, in order to make a
marriage settlement; this is not a purchase within this
statute. Str. 267. Mr. Ratcliffe’s case, upon an appeal
to the lords delegates from the judgment of the commis-
ioners for forfeited estates.
XXXVIII. Inrolling deeds and wills of papists.

1. By the 3 G. c. 18. No manors or lands or any interest therein, or rent or profit thereout, shall pass alter or change from any papist or person professing the popish religion, by any deed or will, except such deed within six months after date, and such will within six months after the death of the testator, be inrolled in one of the king's courts of record at Westminster, or within the county wherein the manors and lands do lie, by the custos rotulorum and two justices of the peace and the clerk of the peace, or two of them, whereof the clerk of the peace to be one. f. 6.

2. But by the 10 G. c. 4. Leases of lands made by papists or persons professing the popish religion, to any protestant, whereon the full yearly value or the ancient or most accustomed yearly rent or more shall be reserved, shall be good without inrolling. f. 19.

3. And by the 2 G. 3. c. 26. Such deeds and wills shall be good, if they be inrolled before Dec. 25, 1762; if advantage hath not been taken of the default, before Dec. 25, 1761. And there is generally the like clause of indemnity in some act of parliament every two or three years.

And by the same statute, No purchase made for full and valuable consideration of any manors messuages or lands or of any interest therein, by any protestant, and merely and only for the benefit of protestants, shall be impeached or avoided by reason that any deed or will thro' which the title thereto is derived hath not been inrolled; so as no advantage was taken of the want of inrollment thereof before such purchase was made, and so as no decree or judgment hath been obtained for want of the inrollment of such deeds or wills.

Provided, that nothing herein shall be construed to extend, to make good any grant, lease, or mortgage, of the advowson, or right of presentation, collation, nomination, or donation, of and to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, or any avoidance thereof, made by any papist or person professing the popish religion, in trust, directly or indirectly, mediate or immediately, by or for any such papist or person professing the popish religion, whether such trust hath been declared by writing or not.

XXXIX. Re-
XXXIX. Registering estates of papists.

1. By the 1 G. f. 2. c. 55. Every person having any estate or interest in any lands, being a popish recusant or papist or educated in the popish religion or whose parent or parents shall be a papist or papists or who shall use or profess the popish religion, shall within six months after he shall attain to the age of twenty one years take the oaths of the 1 G. f. 2. c. 13. and repeat and subscribe the declaration against popery of the 30 C. 2. in one of the courts at Westminster or at the sessions of the peace where such lands or some part thereof shall lie, between the hours of nine and twelve in the forenoon; or in default thereof, shall within six months next after the time appointed for him to take the oaths, and so from time to time within six months after he or any trustee for him shall come into the possession or perception of the rents or profits of any other lands, register or procure to be registered his name and all such lands, in what parish township or place the same do lie, and who are the possessors thereof, and what estate or interest he has in the same, and the yearly rent if the same shall be let; and if the same be let upon lease, then by whom such lease was made, what yearly or other rent is reserved thereupon, and what fine or sum of money was paid for such lease, in case the same was made by himself or any person in trust for him or that he was party or privy thereunto; and the time and day of the month and year when such entry shall be made, in a parchment book or roll which shall be kept by the clerk of the peace.

And every such person shall take care that his name be, within the said six months allowed for making such registry, subscribed to such registry in the presence of two justices in open sessions, either by himself, or by his attorney thereto lawfully authorized by warrant of attorney under his hand and seal executed by him in the presence of two witnesses, who shall make proof of such execution upon their oaths at the sessions where such name shall be subscribed or registry produced; and two justices then present shall subscribe their names to such entry as witnesses that the same was duly made, and in default thereof each of the said justices then present shall forfeit 20l to the king.

And the clerk of the peace shall keep parchment books or rolls at some notorious place within his division, and shall
shall by himself or his lawful deputy enter therein the christian and surnames of every such person who shall come in person and desire to be registred, or shall send any writing under his hand to him or his deputy, desiring him to registre his name; and shall also registre the estate in lands of every such person, in such manner and in such words as he shall by any writing signed by him desire: Provided that such person pay the fees hereby appointed for the same, and that he apply to the said clerk of the peace or his deputy to enter such registery, and deliver to him in writing the words he desires to have so registred or entered ten days before the sessions where the entries are to be subscrib'd. And such clerk of the peace or his deputy shall enter such persons names and registery of their estates before the next sessions after such delivery, in the said books or rolls; and shall carry the said books and rolls in which such entries shall be so made, to the next and every other sessions of the peace, until the time of such subscribings shall be expired. And such clerk of the peace shall also keep alphabetical tables of the surnames of all such persons whose names and estates shall be registred, and of the parishes and townships where the lands so registred lie, with reference to the place in the books or rolls where such names and lands shall be registred; and shall also carefully keep all such warrants of attorney as shall be so proved as aforesaid upon a file, together with such books and rolls; and shall likewise enter such warrants of attorney upon record; and shall have for such registery and entry on record 3d for every 200 words which such registery and entry on record shall contain; and shall have 4d for every search that shall be made for the name or estate of any person; and shall make search on the request of any person who shall pay such fees, and shall permit such person to inspect the said tables books and rolls and such letters of attorney as shall be so filed; and shall give copies of such registries subscrib'd by himself or his lawful deputy, to every person who shall desire the same and tender him the fees hereby appointed for the same; and shall suffer such persons who shall request him so to do, to examine the same with the roll or book, and for so doing shall have 3d for every 200 words contained in every such copy. f. 1.

And if any clerk of the peace shall neglect or refuse to do any the things hereby appointed, he shall forfeit his office. f. 1.
And if any such person hereby required to take and subscribe such oaths and repeat and subscribe such declaration as aforesaid, or in default thereof to register or cause to be registered his name and estate as aforesaid, shall not either take and subscribe such oaths and repeat and subscribe such declaration in manner aforesaid, or register his name and estate as aforesaid, and also subscribe his name to such registre or procure the same to be subscribed by such his attorney as aforesaid, within the time limited for the doing thereof, or shall not register the same truly; he shall forfeit the fee simple and inheritance of all such lands not registered or fraudulently registered whereof he or any person in trust for him was seised in fee simple at the time of such default or fraud in registreing, and the full value of the inheritance of all such lands not registered or fraudulently registered whereof he or some person in trust for him was not seised in fee simple at the time of such default or fraud as aforesaid; two third parts to the king, and the other third part to such person being a protestant who shall sue for the same at the common law in any of the courts at Westminster or in the chancery; and the person so suing shall be intitled in the court of chancery to demand all such discoveries as he might do if he were a purchaser for valuable consideration, and to demand a true discovery from all persons of all such incumbrances and titles which any way affect the same, and of all trusts relating thereto; to which bill no plea of demurrer shall be allowed, but the defendant shall sufficiently answer the same at large: and also the person suing for the same may bring an ejectment on his own demise, and give this act and the special matter in evidence; and if it shall appear upon trial of such ejectment, that the estate sued for is the estate of the person so neglecting to register or fraudulently registreing, and the defendant shall not make it appear that he took the said oaths and repeated and subscribed the said declaration in manner aforesaid, or otherwise that he registered his name and the estate so sued for, a verdict shall be given for the lessor of the plaintiff in such ejectment, and judgment shall be thereupon had as is usual upon verdicts in ejectments, and the lessor of the plaintiff shall have costs of suit as is usual when judgment in ejectment is recovered by or given for the lessor of the plaintiff; and by such judgment two third parts of the lands so recovered shall be vested in the king, and the other third part in the person who shall be lessor of the plaintiff in the said ejectment.
But in case such person so making default or committing any fraud in registring as aforesaid, after such default or fraud committed, and before he be convicted or any ejectment or suit brought for such forfeited lands, shall bona fide for a just and valuable consideration convey over grant lease or incumbrance any such lands omitted or fraudulently registred as aforesaid; the person so purchasing or having such grant lease or incumbrance, not knowing at the time of such purchase or incumbrance made the said offender to be a person within the description of this act, shall not be prejudiced hereby, but in such case the offender shall forfeit the value of the inheritance to be distributed and recovered in manner aforesaid. § 3.

Also this shall not extend to compel any person to registre or procure to be registred any lands, until he or some other person as trustee for him hath been actually seized, and have notice thereof, or possessed, or in the receipt of the rents or profits of the same for six months. § 4.

And this shall not extend to compel any person to registre any lands, whereof he shall be only farmer or tenant at rack rent, or only shall hold by lease whereupon two thirds of the full yearly value or more shall be reserved. § 5.

Also this shall not extend to defeat or prejudice any protestant, or other creditor, who bona fide shall have any charge or incumbrance upon any real estate hereby directed to be registred; but then in case of such charge or incumbrance, the person so making default or committing any fraud in registring as aforesaid, shall forfeit the value of such charge and incumbrance, one third to him who shall by virtue of this act sue for and recover the lands so forfeited subject to such charge and incumbrance or any part thereof in proportion to the part so by him recovered, and two thirds to the king. § 6.

2. And by the 3 G. c. 18. No action for any penalty or forfeiture on this or the former act, for wilfully neglecting or refusing to register or for committing fraud in such registry, shall be commenced after two years after the offence committed. § 2.

And where any manors demesne or other lands or entire farms do lie in more counties than one, the registrying thereof, in the county only where the manor house or the house to the said farm or lands do lie, and not in several counties
counties, taking notice thereof in the said registry, that the same do extend to such other county, shall be a sufficient registering of such entire manors farms or lands. £ 3.

And no sale for a full and valuable consideration of any manors messuages or lands, or of any interest therein, by any person being reputed owner or in the possession or receipt of the rents and profits thereof, made to and for any protestant purchaser, and merely and only for the benefit of protestants shall be avoided or impeached by reason of any of the disabilities or incapacities in the 11 & 12 W. c. 4. or 1 J. c. 4. or other acts contained, and incurred by any person joining in such sale, or by any other person from or thro' whom the title or any interest therein shall be derived; unless before such sale, the person intitled to take advantage of such disability or incapacity shall have recovered the said manors messuages or lands, or given notice of his claim and title to such purchaser; or, before the contract for such sale, shall have claimed the said manors messuages or lands, by reason of such disability or incapacity, and have entered such claim in open court at the general seessions of the peace where the same do lie, and bona fide and with due diligence pursued his remedy in a proper course of justice for the recovery thereof. £ 4.

XL. Papists to pay double taxes.

By the yearly land tax acts, papists and reputed papists, being of eighteen years of age, who shall not have taken the oaths of allegiance and supremacy, shall pay double land tax.

XLI. Lands given to superstitious uses.

By the 1 G. ft. 2. c. 50. All manors lands tenements rents tithes penfions portions annuities and all other hereditaments whatsoever, and all mortgages securities sums of money goods chattels and estates, which have been given granted devised bequeathed or settled upon trust, or to the intent that the same or the profits or proceed thereof shall be applied to any abbey priory convent nunnyry college of jesuits seminary or school for the education of youth in the Romish religion in Great Britain or elsewhere, or to any other popish or superstitious uses, shall be forfeited to the king for the use of the publick. £ 24.

And
And the commissioners of the forfeited estates by that act had power to inquire and inform themselves of all such. f. 25.

XLII. Presentment of papists to the courts spiritual and temporal.

1 Can. 110. If the churchwardens or questmen or assistants shall know any man within their parish or elsewhere, that is a fator of any usurped or foreign power by the laws of this realm justly rejected and taken away, or a defender of popish and erroneous doctrines; they shall detect and present the same to the bishop of the diocese or ordinary of the place to be cenured and punished according to such ecclesiastical laws as are prescribed in that behalf.

2. Can. 114. Every parson vicar or curate shall carefully inform themselves every year, how many popish recusants men women and children above the age of thirteen years, and how many being popishly given (whoso they come to the church, yet do refuse to receive the communion) are inhabitants or make their abode either as sojourners or common guests in any of their several parishes, and shall set down their true names in writing (if they can learn them) or otherwife such names as for the time they carry, distinguishing the absolute recusants from half recusants; and the same so far as they know or believe, so distinguished and set down under their hands, shall truly present to their ordinaries, under pain of suspension, before the feast of St. John Baptist. And all such ordinaries chancellors commissaries archdeacons officials and all other ecclesiastical officers to whom the said presentments shall be exhibited, shall likewise within one month after the receipt of the same, under pain of suspension by the bishop from the execution of their offices for the space of half a year (as often as they shall offend therein), deliver them or cause to be delivered to the bishop respectively; who shall also exhibit them to the archbishop within six weeks; and the archbishop to his majesty within other six weeks after he hath received the said presentments.

3. And by the statute of the 3 f. c. 4. The churchwardens and constables of every town parish or chapel, or one of them, or if there be none such, then the chief constable of the hundred where such town parish or chapel shall be, as well in places exempt as not exempt, shall
shall once a year present the monthly absence from church
of all popish recusants; and shall present the names of
their children being of the age of nine years and upwards,
abiding with their parents, and as near as they can
the age of every of the said children; as all the names
of the servants of such recusants; —— at the general
quarter sessions. $4.

Which presentments shall be recorded by the clerk of
the peace, or town clerk, without fee. And in default
of such presentment to be made, the churchwardens con-
stables or high constables shall forfeit 20 lh; and in de-
fault of such recording, the clerk of the peace or town
clerk shall forfeit 40 lh: To be recovered in the king's
bench, alizes, or sessions. $5, 36.

And upon every presentment of such monthly absence,
whereupon the party shall after be indicted and convicted
(not being for the same absence before presented) the
churchwardens constables or high constables making such
presentment, shall have a reward of 40 lh, to be levied
out of the recusant's goods and estate in such manner and
form as the justices shall by their warrant then and there
order and appoint. $6.

XLIII. Information against papists not restrained to
the proper county.

The act of the 21 $ c. 4. for laying informations in
the proper county, shall not extend to any information
suit or action grounded upon any law or statute made
against popish recusants, or against those that shall not
frequent the church and hear divine service; but such of-
fence may be laid or alleged to be in any county at the
pleasure of the informer, any thing in the said act to the
contrary notwithstanding. $ 5.

XLIV. Peers how to be tried in cases of recusancy.

It is generally provided in the several acts, that peers
in cases of recusancy shall be tried by their peers.

XLV. Papists conforming.

1. By the 1 $ c. 4. If any recusant shall submit or
reform himself and become obedient to the laws of the
church, and repair to church, and continue there during

the
the time of divine service and sermons; he shall be discharged. f. 2.

2. By the 3 7. c. 4. Every popish recusant convict, who shall conform himself and repair to church, shall within the first year after he shall so conform himself, and after the said first year shall once in every year following at the least, receive the sacrament of the lord’s supper, in the church of the parish where he shall most usually abide. f. 2.

And if there be no such parish church, then in the church next adjoining: on pain that for such not receiving he shall forfeit for the first year 20l, for the second year 40l, and for every year after 60l, until he shall have received the sacrament, as aforesaid: And if after he shall have received the sacrament, he shall estoons at any time offend in not receiving the same by the space of one year, he shall for every such offence forfeit 60l. The one half of all which forfeitures shall be to the king, and the other half to him that will sue in any court of record at Westminster, or at the assizes, or general quarter sessions. f. 3.

3. And by the 11 G. 2. c. 17. Every person being reputed owner or in possession or receipt of the rents and profits of any manors messuages or lands, or of any interest therein, who having been or reputed to be a papist or educated in the popish religion, shall conform to and profess the protestant religion, and shall take the oaths of allegiance supremacy and abjuration and repeat and subscribe the declaration of the 30 C. 3. in the court of chancery, king’s bench, or quarter sessions of the county where he shall reside (all which shall be recorded in one of his majesty’s courts of record at Westminster or such quarter sessions as aforesaid); and every person being a protestant, claiming under such person so conforming, for his own benefit or for the benefit of any other protestant and not for the benefit of any papist, shall hold possess and enjoy all such manors messuages and lands discharged from all disabilities and incapacities incurred by such person so reputed owner or in possession or receipt of the rents and profits as aforesaid, or by any other person by from or thro’ whom the title to such manors messuages or lands or any interest therein shall be derived, for such estate or interest as he would have had if no such disability or incapacity had been incurred; unless the person intitled to take advantage of such disability incapacity or defect of title shall bona fide recover such manors messuages or lands,
lands, by judgment or decree in some action or suit to be commenced six calendar months before the making of such record, and to be prosecuted with due diligence. §. 1.

But this shall not prejudice the right of any person intitled to take advantage of such disability or incapacity, who shall have, precedent to the making of such record, been in quiet possession of any such manors meffuages or lands by the space of two calendar months.

§. 2.

And if any such person so conforming shall afterwards return to or again profess the popish religion, he shall for ever afterwards be disabled and incapable of having any benefit of this act, and shall from thenceforth be liable to the same disabilities incapacities and forfeitures as if he had not taken the said oaths and subscribed the declaration. §. 3.

Also, this shall not extend to prejudice the right of any person intitled to any remainder or reversion in any such manors meffuages or lands, in case he shall pursue his right by some action or suit to be commenced within twelve calendar months next after the precedent estate on which such remainder or reversion depends and is expectant shall be determined, and shall prosecute such action or suit with due diligence. §. 4.

In the year 1714, the convocation drew up a form of receiving converts from popery: which is printed in Wilk. Conc. V. 4. p. 660.

XLVI. Saving of the ecclesiastical jurisdiction.

It is generally provided by the several principal statutes above rehearsed, that nothing therein shall take away or abridge the authority or jurisdiction of ecclesiastical censures; but the archbishops, bishops, and other ecclesiastical judges may proceed as before the making thereof.

Portion of tithes. See Tithes.
Præmonstratenses. See Monasteries.
Præmunire. See Courts.
Præstation. See Pension.
Preaching. See Publick worship.
Prebendary.

The law concerning prebendaries, canons, and other members of the chapter in cathedral and collegiate churches, falleth in under the title Deans and Chapters.

Prerogative court.

The prerogative court of the archbishop, is that court wherein all testaments are proved, and all administrations granted, where the party dying within the province hath bona notabilia in some other diocese than where he dieth; and is so called from the archbishop's having a prerogative throughout his whole province for the said purposes. 4 Inf. 335.

From this court the appeal lieth to the king in chancery. Id.

Presentation.

Presentation, or collation, to a living, is treated of under the title Benefice.

Presentation to popish livings, is treated of under the title Popery.

Priest. See Divination.

Primate. See Bishops.

Prior. See Monasteries.

Private chapels. See Chapel.
Privileges and restraints of the clergy.

1. The common law, to the intent that ecclesiastical persons might the better discharge their duty in celebration of divine service, and not to be intangled with temporal business, hath provided that they shall not be bound to serve in any temporal office. 1 Inst. 96.

And altho' a man holdeth lands or tenements, by reason whereof he ought to serve in a temporal office, yet if this man be made an ecclesiastical person within holy orders, he ought not to be elected to any such office; and if he be, he may have the king's writ for his discharge. 2 Inst. 3.

And this, altho' it be an office which he may execute by deputy: Thus, in the case of the vicar of Dartford, H. 12 G. 2, the court granted to him a writ of privilege, against serving the office of expenditor to the commissioners of sewers; tho' it was infifted, that this was an office which might be executed by deputy. Str. 1107.

2. The popish foreign canon law forbids secular offices and employments to persons in holy orders. So do the following constitutions:

Othob. No clergyman shall be an advocate in the secular court in a cause of blood, or in any other cause but such as are allowed by law. And if any shall do otherwise, if it be in a cause of blood, he shall be ipso facto suspended from his office; and if in any other cause, he shall be punished by his diocesan according to his discretion. And in causes of blood which shall extend to life or member, we do strictly injoin, that no clergyman presume to be a judge or an advocate; and he who shall act contrary hereunto, besides the suspension from his office which he shall ipso facto incur, shall be otherwise punished according to the discretion of his superior: From which sentence of suspension he shall by no means be absolved by his diocesan, until he shall have made competent satisfaction. Athob 91.

And, more particularly, by another constitution of the same legate: Whereas it is unbecoming for clergymen employed in heavenly offices, to minister in secular affairs; we think it fordid and base, that certain clerks greedily pursuing earthly gain and temporal jurisdictions, do receive
ceive secular jurisdictions from laymen, so as to be named justices, and to become ministers of justice, which they cannot administer without injury to the canonical dispositions and to the clerical order: We desiring to extirpate this horrid vice, do strictly injoin all rectors of churches and perpetual vicars and all others whatsoever constituted in the order of priesthood, that they receive no secular jurisdiction from a secular person, or presume to exercise the same; and if they do, they shall relinquish the same within the space of two months, and never resume it; and whoever shall attempt any thing contrary to the premises, shall be ipso facto suspended from his office and benefice; and if he shall intrude into his office or benefice during such suspension, he shall not escape canonical vengeance, which shall not be relaxed until he shall have made satisfaction at the discretion of his diocesan, and taken an oath that he will not do the like again. Saving the privileges of our lord the king in this behalf. Athan 89.

Which saving (Mr Johnson says) entirely defeated the constitution. And in the former constitution there is also a saving, for such causes as are allowed by law. Johnf. Othob. Athan 91.

But if those savings had not been expressed; yet it is certain, that the constitutions could not have altered the law of the land in this respect. And it is well known, that the kings of England in all ages have asserted a right to employ what subjects they pleased, of the clergy as well as laity, in any post of civil government; and in fact, very many clergymen have been chancellors, treasurers, and even chief justices of the king's bench, and consequently must have fpace judges in cases of life and death.

And by the statute of Articuli cleri, 9 Ed. 2. St. 1. c. 8. It is complained as followeth: The barons of the king's exchequer claiming by their privilege, that they ought to make answer to no complainant out of the same place, extend the same privilege unto clerks abiding there, called to orders or unto residence, and inhibit ordinaries that by no means, or for any cause, so long as they be in the exchequer, or in the king's service, they shall not call them to judgment. Unto which it is answered: It pleaseth our lord the king, that such clerks as attend in his service, if they offend, shall be correct by their ordinaries, like as other; but so long as they are occupied about the exchequer, they shall not be bound to keep residence in their churches. This is added of new by the council: The king and
Privileges and restraints

his ancestors, since time out of mind have used, that clerks which are employed in his service, during such time as they are in service, shall not be compelled to keep residence in their benefices; and such things as be thought necessary for the king and common wealth, ought not to be said to be prejudicial to the liberty of the church.

So long as they are occupied about the exchequer] And the court of exchequer may grant a prohibition to the ordinary, for any that ought to have the privilege of the exchequer, where the court may give the party remedy, or where a suit dependeth in the court of exchequer for the same cause; or where the king's service, which is the cause of the privilege, is hindred by the suit before the ordinary: as for non-residence, during that time that he gave his necessary attendance in the exchequer for the king's service. 2 Inst. 624.

Added of new by the king's council] That is, by the common council of the realm, as it is termed in original writs, and in other legal records, and so it is taken in other acts of parliaments, and in the preamble to the same articuli clerii. 2 Inst. 624.

That clerks which are employed in his service] This branch is general, and not limited (as the former is) to the privilege of the exchequer; but extendeth to any other service of the king for the commonwealth: as if he be employed as an ambassador into any foreign nation, or the like service for the king, which is (as it is here said) for the commonwealth, which ever must be preferred before the private. 2 Inst. 624.

3. Ecclesiastical persons have this privilege, that they ought not in person to serve in war. 2 Inst. 3.

4. By the statute of 52 H. 3. c. 10. For the towns of sheriffs, it is provided, that archbishops, bishops, nor any religious men, or women, shall not need to come thither, except their appearance be specially required thereat for some other cause.

The towns of sheriffs] Nor consequently are they bound to appear at the lector, or view of frankpledge. 2 Inst. 4.

Nor any religious men] Men of religion, in the proper sense, are taken for those that are regulars, as being professed in some of the religious orders, as abbots, priors, and the like; but ecclesiastical persons that are seculars, that is, who do not live under the rules of any
any of the religious orders, as bishops, deans, archdeacons, prebends, parsons, vicars, and such like, are also within this act. 2 Inl. 121.

Shall not need to come thither] That is, they are not compellable to come, but left to their own liberty. And if any man be grieved in any thing contrary to the purview of this statute, he shall have an action grounded upon the statute, for his remedy and relief therein. 2 Inl. 121, 122.

Except their appearance be specially required thereat for some other cause] As to be a witness, or the like. 2 Inl. 121.

5. By the 50 Ed. 3. c. 5. it is enacted as follows: Because that complaint is made by the clergy, that as well divers priests, bearing the sacrament to sick people, and their clerks with them, as divers other persons of holy church, whilst they attend to divine services in churches, church-yards, and other places dedicate to god, be sundry times taken and arrested by authority royal, and commandment of other temporal lords, in offence of god, and of the liberties of holy church, and in disturbance of divine services aforesaid; the king granteth and defendeth, upon grievous forfeiture, that none do the same from henceforth: so that collusion or feigned cause be not found in any of the said persons of holy church in this behalf.

And by the 1 R. 2. c. 15. it is thus further enacted: Because that prelates do complain themselves, that as well beneficed people of holy church, as other be arrested and drawn out as well of cathedral churches, as of other churches and their churchyards, and sometimes whilst they be intended to divine services, and also in other places, although they be bearing the body of our lord Jesus Christ to sick persons, and so arrested and drawn out, be bound and brought to prison, against the liberty of holy church; it is ordained, that if any minister of the king or other, do arrest any person of holy church by such manner, and thereof be duly convicted, he shall have imprisonment, and then be ransomed at the king's will, and make gree to the parties so arrested: provided, that the said people of holy church shall not hold them within the churches or sanctuaries by fraud or collusion in any manner.

And their clerks with them] By this it appears, that the clerk who is assistent may have this privilege. Degge p. 1, 6, 11.
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Whil[they attend to divine services] It hath been adjudged upon this, that in going, continuing, and returning, to celebrate divine service, the priest ought not to be arrested, nor any who aid him in it. 12 Co. 100.

By authority royal] But this extendeth only to cases betwixt party and party, and not to cases wherein the public peace is concerned, which are between the king and the party; and therefore a person may be apprehended going to or returning from divine service, by a warrant from a justice of the peace, it being for a breach of the peace, and for the king; and so in like cases. Watf. cb. 34.

Thus, in the case of Pit and Webley, E. 11 J. Pit had a warrant from a justice of the peace, and served it upon Webley, as he was coming from church from sermon, upon a week day. Whereupon Webley libelled against him in the spiritual court; and Pit moved for a prohibition, and framed the suggestion upon these statutes, which prohibit arrests in time of divine service, and in going and returning to and from the church. But it was said, that those statutes are where the matters are betwixt one common person and another, but not where it concerns the king and a common person, as here it did, this arrest being made at the king's suit. And to this opinion the court seemed to incline, and that there was just cause for a prohibition. But further day being given, the parties in the mean while agreed. Cro. Ja. 321.

Against the liberties of holy church] By which it appears, that these statutes are but an affirmation of the common law, and in maintenance of the liberties of holy church. 12 Co. 100.

And thereof be duly considered] The party grieved may have an action upon the statute: for when any thing is prohibited by an act, altho' the act doth not give an action, yet action lieth upon it. 12 Co. 100.

And if an arrest be made contrary to these statutes, and the person arresting doth presently discharge the person arrested, upon pretence of ignorance, or the like; this will not excuse the contempt in making the arrest. Watf. cb. 34.

However, if such undue arrest be made, the arrest is good; so that if a rescous be made, and thereby any person killed, the killing is murder. Watf. cb. 34. And
And Dr Watson says, he that doth offend against the aforesaid statutes, may not only be fined in the temporal court, but also may be excommunicated by the ecclesiastical judge, and condemned in cofts. *Watf. cb. 34.*

6. By the statute 13 Ed. 1. fl. 4. it is thus enacted: For laying violent hands on a clerk, it hath been granted, that it shall be tried in a spiritual court, when money is not demand- ed, but a thing done for punishment of sin. And hereof the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

And by the 9 Ed. 2. c. 3. If any lay violent hands on a clerk, the amends for the peace broken shall be before the king, and for the excommunication before a prelate, that penance corporal may be injoined; which if the offender will redeem of his own good will, by giving money to the prelate, or to the party grieved, it shall be required before the prelate, and the king's prohibition shall not lie.

*Lay violent hands*] A prohibition having been granted, where a clerk libelled against another in the spiritual court, for that he beat him, or at leaftwise assaulted him with a bill, and would have stricken him, and called him goose, and woodcock, and many such words; the court held, that the prohibition did well lie: for altho' for the laying violent hands on a clerk, the suit ought to be in the spiritual court, yet for an assault only, the suit ought to be at the common law. *Cro. El. 753.*

So also where a prohibition was granted to stay process in the spiritual court, against one who seeing an assault made upon his servant by a clerk, came in aid of his servant, and laid his hands peaceably upon the clerk; Gaudy chief justice held, that this case was out of these statutes, because the party had good cause to beat the clerk: and the prohibition stood. *Cro. El. 655.*

So also, if a clergyman be arrested by process of law, he cannot for this sue in the ecclesiastical court. *2 Inft. 492.*

*The amends for the peace broken shall be before the king*] If the clerk sue in court christian for damages for the battery, he is in case of praemunire; for in that case the ecclesiastical judge ought to proceed ex officio, only to correct the sin. *2 Inft. 492.*

And tho' he do not directly sue for such damages there; yet, if a man is excommunicate for laying violent hands on a clerk, and the spiritual court deny absolution till amends be made to the party for the battery; a prohibition will be granted. *Gibs. 9.*

And
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And for the excommunication before a prelate] This is the known punishment assigned to that crime by the canon law; to which the practice of the church of England hath been conformable, both before and since the reformation. Gibs. 9.

It shall be required before the prelate, and the king's prohibition shall not lie] Or, in case the money for redeeming of penance is senced for in the spiritual court, and a prohibition is granted by the temporal; then a writ of consultation is provided for relief of the party. Gibs. 9.

7. He that is within orders hath a privilege, that albeit he have had the privilege of his clergy for a felony, he may have his clergy afterwards again, and so cannot a layman: And he that is within orders, and hath his clergy allowed, shall not be branded in the hand. And these privileges are given by act of parliament. 2 Inst. 637. 2 H. H. 389.

And altho' a clergman in orders shall not be burnt in the hand, yet after his discharge given by the court, he shall have the same privilege, as if he had been burnt in the hand; and therefore shall not be drawn in question in the ecclesiastical court, to deprive him, or inflict any ecclesiastical censure upon him. 2 H. H. 389.

8. Such as be within orders of the ministry, or clergy, cannot be empanelled as jurors. Lamb. Inst. 396.

9. It seems to be agreed, that a person in holy orders cannot be an approver; because it is a rule, that no member of the clergy can sue any appeal whatsoever, in a matter or cause of death. 2 Haw. 205.

10. A clergman being an appellant, the defendant cannot wage his battel; but the clerk being appellant may counterplead the wager of battel, and compel the appellee to put himself upon his country. 2 Haw. 427.

11. By the 9 H. 3. c. 14. No man of the church shall be amerced after the quantity of his spiritual benefice, but after his lay-tenement, and after the quantity of his offence.

Amerced] Here appeareth a privilege of the church, that if an ecclesiastical person be amerced (tho' amercements belong to the king) yet he shall not be amerced in respect of his ecclesiastical promotion or benefice, but in respect of his lay fee, and according to the quantity of his fault; which is to be assessed. 2 Inst. 29.

Benefice] Benefice is a large word, and is taken for any ecclesiastical promotion, or spiritual living whatsoever. 2 Inst. 29.

Shall have the benefit of clergy more than once.

Exempted from serving on juries.

Cannot be an approver.

May counter-plead the waging of battel.

Shall not be amerced after the quantity of his spiritual benefice.
Lay-tenant] And if a spiritual person be amerced above the quantity of his lay-tenantment, he shall have a writ to prohibit the levying of it. Gib. 13.

12. By the 1 Ed. 3. st. 2. c. 10. Whereas archbishops, bishops, abbots, priors, abbes, and prioresse have been fore grievied by the requests of the king and his progenitors, which have desired them by great threats, for their clerks and other servants, for great pensions, prebends, churches, and coronies, so that they could nothing give nor do to such as had done them service, nor to their friends, to their great charge and damage; the king granteth, that from henceforth he will no more such things desire, but where he ought.

But where he ought] For, of common right, the king, as founder of archbishops, bishoprics, and many religious houses, had a corody, or a pension, in the several foundations; a corody, for his vadelets, who attend him; and a pension, for a chaplain, such as he should specially recommend, till the respective possessor should promote him to a competent benefice. Gib. 16.

If any ecclesiastical person shall be in fear or doubt, that his goods or chattels or beasts, or the goods of his farmor, should be taken by the ministers of the king, for the business of the king, he may purchase a protection. 2 Infl. 4.

No demean or proper cart for the necessary use of any ecclesiastical person, ought to be taken for the king's carriage; but they are exempted by the ancient law of England from any such carriage: and this was an ancient privilege belonging to holy church. 2 Infl. 35.

But there is no special exemption in the yearly mutiny acts, for clergymen, in respect of the soldiers carriages.

13. If a person be bound in a recognizance in the chancery or other court, and he pay not the sum at the day; by the common law, if the person had nothing but ecclesiastical goods, the recognize could not have had a levies facias to the sheriff to levy the same of those goods, but the writ ought to be directed to the bishop of the diocese to levy the same of his ecclesiastical goods. 2 Infl. 4.

In an action brought against a person, wherein a capias lieth (for example, an account) the sheriff returns that he is a clergyman beneficed having no lay fee, in which he may be summoned; in this case the plaintiff cannot have a capias to the sheriff to take the body of the person, but he shall have a writ to the bishop, to cause the person to
come and appear. But if he had returned, that he is a clergyman having no lay fee, then is a capias to be granted to the sheriff; for that it appeared not by the return that he had a benefice, so as he might be warned by the bishop his diocesan; and no man can be exempt from justice.

2 Inst. 4.

M. 9 W. Mostey and Warburton. On a fieri facias against Warburton, a fellow of Winchester college, the sheriff returned, that he is a clergyman beneficed having no lay fee. Hereupon a fieri facias was issued to the bishop, to levy the fame of his ecclesiastical goods. The bishop sent his mandate to the warden and fellows of the college, to sequestrate his salary. They answer, that they have not power to do it. The bishop moved the court to know, whether he might compel them by ecclesiastical censures. By Holt chief justice; if a prebendary hath a sole body, the bishop upon a vari facias of his ecclesiastical goods may sequestrate it; but if he hath but a body aggregate with the dean and chapter, he cannot sequestrate it. In this case, the profits of the fellowship are but casual dividends, in which before division Warburton hath no interest, so that they do not make an estate; and it seems in this case Warburton is not a clerk beneficed, and the bishop may return that he hath no ecclesiastical goods.

L. Ray. 265. 1 Salk. 320.

14. Articuli cleri, 9 Ed. 2. 8. 1. c. 9. It is complained; that the king's officers, as sheriffs and others, do enter into the fees of the church to take distresses, and sometimes they take the parson's beasts in the king's highway, where they have nothing but the land belonging to the church. Answer: The king's pleasure is, that from henceforth such distresses shall neither be taken in the king's highway, nor in the fees wherewith churches in times past have been endowed; nevertheless he will that distresses to be taken in possessions of the church newly purchased by ecclesiastical persons.

Fees of the church] That is, lands belonging to the church. Lind. 268.

Parsons] Here parsons (rectores) be named but for example; for this law extendeth to other ecclesiastical persons. 2 Infi. 627.

From henceforth such distresses shall not be taken] Notwithstanding that the king's officers, as sheriffs and others, are mentioned in the complaining part, yet lord Coke says, this law bindeth not the king, when he is party, for any debt
of the clergy.

Of the clergy.

of the clergy.

of the clergy.

debt or duty due unto him, because the distress or other proceeds for the king is not expressly named (in the enacting part), but distresses generally: And this appeareth, he says, by a book of cases (27 Ass. p. 66); a prior brought a bill of trespass against the sheriff, for entering into his sanctuary, that is, within the circuit of the scite of his priory, and took away his beasts. The defendant said, that he was sheriff, and that the prior lost issues in the court of common pleas, and a writ issued to him to levy the issues, and that he entered into the sanctuary because he could not find a distress without. Whereupon the plaintiff demurred, and judgment was given against the plaintiff. Which proveth that the sheriff in that case could not have returned, upon the process to him directed, that he is a clerk benefited having no lay fee. 2 Inst. 627. Nevertheless, the words are, that such distresses (quod distintiones hujusmodi) shall not be taken; which manifestly refer to the complaint preceding.

 Shall neither be taken] And if they be taken, the party aggrieved may have a writ for his relief. Gibl. 15.

 Have been endowed] This is to be taken in a large sense; for here the fees that they have by reason of their foundation, or by reason of their dotation or endowment, are included. 2 Inst. 627.

 Endowed] The possessions of the church are the endowment of the church, and they are accounted as tenants in dower. 2 Inst. 627.

Possessions of the church newly purchased by ecclesiastical persons] Concerning tacks, tenths, and fifteenths granted by parliament to the king, the possessions of ecclesiastical persons, which they acquired since the 20 Ed. 1. either by purchase or act in law, as by others, &c. were chargeable thereunto: but those which they had at that time were not charged therewith. And the reason thereof was this: The pope (after the example of the high priest among the Jews, who had of the Levites the tenth part of the tithe) claimed by pretext thereof a yearly tenth part of the value of all ecclesiastical livings. This portion or tribute was by ordinance yielded to the pope in 20 Ed. 1. and a valuation then made of the ecclesiastical livings within this realm, to the end the pope might know, and be answered of that yearly revenue, so as the ecclesiastical livings chargeable with that tenth (which was called spiritual) to the pope, were not chargeable with
with the temporal tenths or fifteenths granted to the king in parliament, left they should be doubly charged: but their possessions acquired after that taxation were liable to the temporal tenths or fifteenths, because they were not charged to the other. 2 Infl. 627.

*Newly purchased*] In which the temporal lords had a right of distraint; which right they ought not to lose, by the possessions coming into the hands of ecclesiastical persons. For where any burden real lieth upon any land or place, the thing itself passeth with its burden. Lindw. 268.

*Purchased*] Either to their own use, or to the use of the church. Lindw. 268.

15. If any ecclesiastical person knowledge a statute merchant or statute staple, or a recognizance in the nature of a statute staple; his body shall not be taken by force of any process thereupon. 2 Infl. 4.

16. Amongst the Saxons, the lands of the clergy were charged to castles, bridges, and expeditions. Wake's State of the Ch. 2.

But after the introduction of the Romish canon law, they obtained exemptions.

And lord Coke says, that ecclesiastical persons ought to be quit and discharged of tolls and customs, avirage, pontage, paviage, and the like, for their ecclesiastical goods; and if they be molested therefore, they may have a writ for their discharge. 2 Infl. 3.

Which writ they may have out of the chancery made of course without petition or motion, directed to the party that distrains or disturbs them for any of these things, commanding them to desist; and if such writ be not obeyed, the curfitor of course will make out an alias and pluries; and if none of these will be obeyed, an attachment to arrest the party, and detain him till he obey. Degge p. 1. c. 11.

But this and the like is always to be understood, with this exception, viz. provided that no act of parliament hath ordered otherwise.

17. Anciency, indeed, it was held, that clergymen are not to be burdened in the general charges with the laity of this realm; neither to be troubled or incumbered, unless they be especially named and expressly charged by some statute. God. Rep. 194.

Thus Dr Godolphin observes, that the statute of *hue and cry* charges the *inhabitants and resiants*; but it hath never
never been taken, says he, that parsons and vicars are included, or shall be contributory in robberies. In the same statute are watchings; yet the clergy thereby are never charged. The statute for highways, charges every householder; yet this hath never been taken by usage to charge the clergy. Also, the charge of gaols; the act says all refiants shall pay: yet have the clergy never been charged. Thus, where the bridge act says, all inhabitants shall be assessed; it must mean all such only as are chargeable to pontage. God. Rep. 194, 5.

But now the contrary doctrine prevails, that clergymen are liable to all charges by act of parliament, unless they are specially exempted.

Thus they are, both in respect of their tithes and glebes, liable to contribute to watch and ward, to the repair of the highways, and may be rated or taxed by the commissioners of sewers; they, as well as laymen, are chargeable to the poor maimed soldiers or poor prisoners, confitute rates, and shall contribute towards satisfying for a robbery committed within the hundred, and all other publick charges imposed by act of parliament. And this hath been resolved upon debate, as Hale chief justice said, before all the judges, T. 27 C. 2. in the case of Webb and Batchelor. Watf. ch. 40. 3 Keb. 255. 476. 1 Ventr. 273. 2 Lev. 139.

And particularly, in the case of bridges, the statute of the 22 H. 8. says, the justices of the peace shall assess every inhabitant towards their repair: by which words every inhabitant Lord Coke says, all privileges of exemptions or discharges whatsoever from contribution (if any were) are taken away, altho' the exemption were by act of parliament. 2 Infl. 704.

And in respect of the highways, where the statutes direct that the parishioners of every parish shall repair, Mr. Hawkins observes thereupon, 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.

18. The canonical habit (properly speaking) is that Apparel: which is enjoined by the canons of the church. But in a matter so fluctuating as that of dress, it is impossible to lay down rules for apparel in one age, which will not appear ridiculous in the next. In such case, the general rule.
Privileges and restraints

rule can only be, that clergymen shall appear in habit and dress such as shall comport with gravity and decency, without effeminacy or affectation.

The canons for the habit of clergymen are chiefly these two that follow: which, for the reason above mentioned, are now become matters only of curiosity and speculation.

By a constitution of archbishop Stratford, in the year 1343, in the reign of king Edward the third: the outward habit often shews the inward disposition; and tho' the behaviour of the clergy ought to be the instruction of the laity, yet the prevailing excesses of the clergy, as to tonsure, garments, and trappings, give abominable scandal to the people; because such as have dignities, parsonages, honourable prebends, and benefices with cure, and even men in holy orders, feorn the tonsure (which is the mark of perfection, and of the heavenly kingdom), and distinguishe themselves with hair hanging down to their shoulders, in an effeminate manner; and apparel themselves like soldiers rather than clerks, with an upper jump remarkably short, with excessive wide or long sleeves, not covering the elbows, but hanging down; their hair curled and powdered, and caps with tippets of a wonderful length; with long beards; and rings on their fingers; girt with girdles exceeding large and costly, having purses enamelled with figures and various sculptures gilt, hanging with knives (like swords) in open view; their shoes chequered with red and green, exceeding long, and variously indented; with croppers to their faddles, and horns hanging at the necks of their horses; and cloaks furred on the edges, contrary to the canonical sanctions, so that there is no distinction between clerks and laicks, which rendreth them unworthy of the privilege of their order: we therefore, to obviate these miscarriages, as well of the masters and scholars within the universities of our province, as of those without, with the approbation of this sacred council do ordain, that all beneficed men, those especially in holy orders, in our province, have their tonsure as comports with the state of clergymen; and if any of them do exceed by going in a remarkably short and close upper garment, with long or unreasonably wide sleeves, not covering the elbow, but hanging down, with hair unclipped, long beards, with rings on their fingers in publick (excepting those of honour and dignity), or exceed in any particular before expressed; such of them as have benefices, unless within
fix months time they shall effectually reform upon admonition given, shall incur suspension from their office ipso facto, and if they continue under it for three months, they shall from that time be suspended from their benefice ipso jure without any further admonition: And they shall not be absolved from this sentence by their diocesans, till they pay the fifth part of one year’s profit of their benefices to be distributed to the poor. If they be unbeneecied, they shall be disabled from obtaining a benefice for four months. And such as are students in the universities, and pass for clerks, if they do not effectually abstain from the premises, shall be ipso facto disabled from taking any ecclesiastical degrees or honours in those universities, till by their behaviour they give proof of their discretion as becometh scholars. Yet by this constitution we intend not to abridge clerks of open wide surcoats, called table-coats, with fitting sleeves to be used at seasonable times and places; nor of short and close garments, whilst they are travelling in the country, at their own discretion.

Lind. 122. John’s. Stratf.

[Monsture] This signifies sometimes not only the shaven spot on the crown of the head, but the whole ecclesiastical cut, or having the hair clipt in such a fashion, that the ears might be seen, but not the forehead. John’s. Stratf.

Surcoats] made to save better cloaths, especially in eating and drinking at home. Lind. 124.

And by the seventy fourth canon of the canons in the year 1603. Archbishops and bishops shall use the accustomed apparel of their degrees: Deans, masters of colleges, archdeacons and prebendaries in cathedral and collegiate churches (being priests or deacons), doctors in divinity law and physick, bachelors in divinity, masters of arts, and bachelors of law, having any ecclesiastical living, shall usually wear gowns with standing collars and sleeves ftrait at the hands, or wide sleeves, as is used in the universities, with hoods or tippets of silk or sarcenet, and square caps. And all other ministers shall also usually wear the like apparel as is aforesaid, except tippets only. And all the said ecclesiastical persons above mentioned shall usually wear in their journeys cloaks with sleeves, commonly called priests cloaks, with guards, welts, long buttons, or cuts. And no ecclesiastical person shall wear any coife or wrought night cap, but only
plain night caps of black silk, fatten, or velvet. In private houses, and in their studies, the said persons ecclesiastical may use any comely and scholarlike apparel, provided that it be not cut or pinkt, and in publick not to go in their doublet and hose, without coats or cassocks. And not to wear any light coloured stockings. Poor beneficed men and curates (not being able to provide themselves long gowns) may go in short gowns of the fashion aforesaid.

Particularly, the band, we may observe, is no part of the canonical habit; being not so ancient as any canon of the church. Archbishop Laud is pictured in a ruff, which was worn at that time both by clergymen and gentlemen of the law; as also long before, during the reigns of king James the first, and of queen Elizabeth. The band came in with the puritans and other sectaries, upon the downfall of episcopacy; and in a few years afterwards became the common habit of men of all denominations and professions: which giving way in its turn, was yet retained by the gentlemen of the long robe (both ecclesiastical and temporal), only because they would not follow every caprice of fashion. Indeed most of the peculiar habits, both in the church and in courts of justice and in the universities, were in their day the common habit of the nation; and were retained by persons and in places of importance, only as having an air of antiquity, and thereby in some sort conducing to attract veneration: and the same, on the other hand, in proportion do persuade to a suitable gravity of demeanour; for an irreverent behaviour, in a venerable habit, is extremely burlesque and ungraceful.

19. By Canon 75. No ecclesiastical persons shall at any time, other than for their honest necessities, resort to any taverns or alehouses, neither shall they board or lodge in any such places. Furthermore, they shall not give themselves to any base or servile labour, or to drinking, or riot, spending their time idly by day or by night, playing at dice, cards, or tables, or any other unlawful game. But at all times convenient, they shall hear or read somewhat of the holy scriptures, or shall occupy themselves with some other honest study or exercise, always doing the things which shall appertain to honesty, and endeavouring to profit the church of god, having always in mind, that they ought to excel all others in purity of life,
life, and should be examples to the people to live well and christially, under pain of ecclesiastical censures to be inflicted with severity, according to the qualities of their offences.

20. Nevertheless, lord Coke says, by the common law Receptions, of the land, clergymen may use reasonable recreations, in order to make them fitter for the performance of their duty and office. 2 Inst. 309.

And albeit spiritual persons (he says) are prohibited, by the canon law, to hunt; yet by the common law they may use the recreation of hunting. And after the decease of every archbishop and bishop (amongst other things) the king time out of mind hath had his kennel of hounds, or a composition for the same. 2 Inst. 309.

The foundation of which custom was this: It appeareth by many records, that by the law and custom of England, no bishop could make his will of his goods or chattels coming of his bishoprick, without the king's licence. Whereupon the bishops, that they might freely make their wills, yielded to give to the king after their deceases respectively for ever six things: 1. Their best horse or palfrey, with bridle and saddle. 2. A cloak with a cape. 3. One cup with a cover. 4. One bacon and ewer. 5. One ring of gold. 6. Their kennel of hounds. 2 Inst. 338.

21. By the 1 H. 7. c. 4. It shall be lawful to all archbishops and bishops, and other ordinaries having episcopal jurisdiction, to punish and chastise priests, clerks, and religious men, as shall be convicted before them by examination and other lawful proof requisite by the law of the church, of adultery, fornication, incest, or any other fleshly incontinency, by committing them to ward and prifon, there to abide for such time as shall be thought to their discretions convenient for the quality and quantity of their trespasss.

22. No spiritual person shall take to farm to himself, or to any person to his use, of the lease or grant of any person by writing, or by word or otherwise, by any manner of means, any manors, lands, tenements, or other hereditaments, for term of life, for term of years, or at will; on pain of 10l. a month, that he or any other to his use shall occupy any farm by reason of any such lease or grant: half to the king, and half to him that shall sue in any of the king's courts. 21 H. 8. c. 13. £. 1.

O 2 Provided.
Privileges and restraints

Provided, that this shall not extend to any spiritual person, for taking to farm any temporalities, during the vacation of any archbishoprick, bishoprick, or any collegiate or cathedral church. ʃ. 4.

Nor to any spiritual person, that shall tender or make any traverse upon any office, concerning his freehold. ʃ. 4.

And provided, that every spiritual person may take in farm any meffes, manfions, or dwelling houses, having but only orchards or gardens, in any city, borough, and town, for his own habitation or dwelling. ʃ. 35.

And moreover by the same statute, no spiritual person shall by himself, nor by any other for him or to his use, bargain and buy to sell again for any lucre, gain, or profit, in any markets, fairs, or other places, any manner of cattle, corn, lead, tin, hides, leather, tallow, fl, wool, wood, or any manner of victual or merchandise; on pain of treble value of every thing so bargained and bought to sell again; half to the king, and half to him that will sue in any of the king's courts. And the bargain to be void. ʃ. 5.

Provided, that if any such spiritual person shall happen without fraud or covin, to buy any horses, mares, or mules, to the only intent to occupy for himself or his servants, to ride to and fro upon his necessary business, or any other cattels or goods, to the only intent at the buying thereof to be employed and put in and about his necessary apparel of his own house, or of his person and servants, or in for and about the only occupying, manuring, or tillage of his own glebe or demeane lands annexed to his church, or for the necessary expences of his own household keeping; and after the buying of any such horses, cattels or goods, or exercise of them, happeneth to mislike any of them that they should not be good, profitable, nor convenient for any the said purposes for the which they were bought: such person may lawfully bargain and put away such things, without fraud or covin. ʃ. 6.

And provided, that every spiritual person, not having sufficient glebe or demeane lands in their own hands in the right of their churches, for pafturage of cattle, or for increase of corn, for the only expences of their households, or for their carriages or journeyes, may take in farm other lands, and buy and sell corn and cattle for the only manurance, tillage, and pasturage of such farms, so that the
the increase thereof be alway employed for the only expences in their households and hospitallities, and not in any wise to buy and sell again for any other commodity, lucre, or advantage, any corn or cattle renewing, coming or growing in and upon any such farm or otherwise, but only the remain and overplus above their expences of their households if any such shall happen of the breed and increase thereof, without fraud or covin. f. 8.

Not having sufficient glebe] This hath been pleaded, and the plea allowed, as oft as any action hath been brought upon this statute. Gibs. 159.

23. No spiritual person shall have, use, or keep by himself or by any person to his use any tanhouse; nor any brewhouse, to any other use than only to be spent and occupied in his own house: on pain of 10l a month; half to the king, and half to him that will sue in any of the king's courts. 21 H. 8. c. 13. f. 32.

24. By Canon 76. No man being admitted a deacon or minister, shall from thenceforth voluntarily relinquish the fame, nor afterwards use himself in the course of his life, as a layman; upon pain of excommunication. And the churchwardens shall present him.

25. After all, these distinctions of the clergy are shadows rather than substance; being most of them about matters which are obsolete and of no significance. The restraints, as to the scope and purport of them, are such as the clergy for the most part would chuse to put upon themselves: and the privileges, such as they are, seem to be scarcely worth claiming; and some of them one would almost imagine to have been calculated to bring a disgrace upon the clergy, rather than to be of any real benefit to them; for why should a clergyman be protected from paying his just debts more than any other person, or be faved from punishment for a crime for which another person ought to be hanged? And it is hoped, there hath not been one instance, of a clergyman having needed to claim the privilege of his order a second time, for a crime for which a layman by the laws of his country should suffer death.

Probate of wills. See Wills.
1. **Proctors** are officers established to represent in judgment the parties who empower them (by warrant under their hands, called a proxy) to appear for them, to explain their rights, to manage and instruct their cause, and to demand judgment. 2 Dom. 583.

2. By the 3 f. c. 5. No recusant convict shall practice in the civil law as proctor. f. 8.

And by the 5 G. 2. c. 18. No proctor in any court shall be a justice of the peace, during such time as he shall continue in the business and practice of a proctor. f. 2.

3. By the several stamp acts; every admission of any person to the office of proctor in any of the courts, shall be upon a treble 40s. stamp.

4. **Can.** 129. None shall procure in any cause whatsoever, unless he be thereunto constituted and appointed by the party himself, either before the judge, or by act in court; or unless in the beginning of the suit, he be by a true and sufficient proxy thereunto warranted and enabled. We call that proxy sufficient, which is strengthened and confirmed by some authentical seal, and party’s approbation, or at least his ratification therewithal concurring. All which proxies shall be forthwith by the said proctors exhibited into the court, and be safely kept and preserved by the regifter in the publick registry of the said court. And if any regifter or proctor shall offend herein, he shall be secluded from the exercise of his office for the space of two months, without hope of release or restoring.

5. **Otho.** Whereas a custom is said to prevail, that he who is cited to a certain day, constitutes a proctor for that day without letters, or by letters not sealed with an authentic seal; by which means it happeneth, that whilst such proctor will not prove his mandate, or confirm his letters by witnesses, or some other impediment comes in the way, nothing is done that day, nor on the following day, the proctor’s office being at an end; and so all former diligence is lost without any effect: As a caution against this fallacy, we do ordain, that for the future a special proctor be constituted absolutely without any limitation of time; or if he be constituted for the day, yet not for one day only, but for several days, to be continued if need be. And the mandate shall be proved by an authenti
tic writing; unless be be constituted in the acts of court, or the constitutitor cannot easily find an authentic seal. 

Athon 61.

6. Peccham. We do ordain, that no dean, archdeacon or his official, or bishop's official, shall set his seal to any proxy, unless it be publickly requested of him in court, or out of court when he who constituteth the proctor and is known to be the principal party is present and personally requesteth it: And whatsoever dean, archdeacon or his official, or official of the bishop, shall do the contrary out of certain malice, shall be ipso facto suspended from his office and benefice for three years. And if any advocate shall procure a false proxy to be made, he shall be suspended for three years from his office of advocate, and be disabled to hold any ecclesiastical benefice, and if he be married or bigamus [whereby in those days he was incapacitated to hold a benefice] he shall be excommunicated ipso facto; and whatever shall be done by virtue of such false proxy shall be utterly void to all intents and purposes, and the proctor who was the chief actor in such falsity shall be for ever repelled from executing any legal act. And all of these nevertheless, if they shall be convicted, shall be bound to render damages to the party injured. Lind. 76.

7. Can. 130. For lessening and abridging the multitude of suits and contentions, as also for preventing the complaints of suitors in courts ecclesiastical, who many times are overthrown by the oversight and negligence, or by the ignorance and insufficiency of proctors; and likewise for the furtherance and increase of learning, and the advancement of civil and canon law; following the laudable customs heretofore observed in the courts pertaining to the archbishop, we will and ordain that no proctor exercising in any of them shall entertain any cause whatsoever, and keep and retain the same for two court days, without the counsel and advice of an advocate, under pain of a year's suspension from his practice; neither shall the judge have power to release or mitigate the said penalty, without express mandate and authority from the archbishop.

H. 2 W. Leigh's case. A proctor of doctors commons, who had done business without the advice of an advocate, contrary to the canon, and refused to pay a tax of 10s imposed upon him by order of the court towards the charges of the house, and was suspended from his office, prayed a mandamus in the court of king's bench to be restored; but it was denied, and said by the court, that
officers are incident to all courts, and must partake of the nature of those several and respective courts in which they attend; and the judges, or those who have the supreme authority in such courts, are the proper persons to censure the behaviour of their own officers; and if they should be mistaken, the king's bench cannot relieve: for in all cases, where such judges keep within their bounds, no other court can correct their errors in proceedings; and if any wrong be done in this case, the party must appeal. Gib.

995. 3 Mod. 332.

8. Can. 131. No judge, in any of the said courts, shall admit any libel or any other matter, without the advice of an advocate admitted to practice in the same court, or without his subscription; nor shall any proctor conclude any cause depending, without the knowledge of the advocate retained and fee'd in the cause: which if any proctor shall do or procure to be done, or shall by any colour whatsoever defraud the advocate of his duty or fee, or shall be negligent in repairing to the advocate and requiring his advice what course is to be taken in the cause; he shall be suspended from all practice for the space of six months, without hope of being thereunto restored before the said term be fully compleat.

9. Can. 133. Forasmuch as it is found by experience, that the loud and confused cries and clamours of proctors in the courts of the archbishop, are not only troublesome and offensive to the judges and advocates, but also give occasion to the standers-by of contempt and calumny toward the court itself; to the end that more respect may be had to the dignity of the judge, and that causes may more easily and commodiously be handled and dispatched, we charge and injoin, that all proctors in the said courts do especially intend that the acts be faithfully entred and set down by the register, according to the advice and direction of the advocate; that the said proctors refrain loud speech and babling, and behave themselves quietly and modestly, and that when either the judges or advocates or any of them shall happen to speak, they presently be silent; upon pain of silencing for two whole terms then immediately following every such offence of theirs: And if any of them shall the second time offend herein, and after due monition shall not reform himself, let him be for ever removed from his practice.

10. It hath been adjudged, that no mandamus lies to restore a proctor of doctors commons, admitting that no appeal lay from the dean of the arches to the archbishop.
as visitor; because this is an ecclesiastical office, and a matter properly and only cognizable in that court; and that the temporal courts are not to intermeddle, or inquire into this sentence, or into the proceedings in any matters whereof they have a proper jurisdiction, but are to give credit thereunto; altho' it was urged, that if a mandamus did not lie in this case, the party would be without remedy, for that no assize would lie of this office; and tho' an action on the case might lie, yet it may be defective, because a jury may not well compute the damages in proportion to the loss of a man's livelihood; besides it was urged, that a mandamus ought to lie in this case, as well as for an attorney of an inferior court, because this is an officer of a more publick concern. 3 Bac. Abr. 531.

For the fees of proctors; see Tit. Fees.

Procuration. See Visitation.

Profaneness.

1. A L L blasphemies against god, as denying his being or providence; and all contumelious reproaches of Jesus Christ; all profane scoffing at the holy scripture, or exposiing any part thereof to contempt or ridicule; all impostures in religion, as falsely pretending to extraordinary commissions from god, and terrifying or abusing the people with false denunciations of judgments; and all open lewdness grossly scandalous; inasmuch as they tend to subvert all religion or morality, which are the foundation of government, are punishable by the temporal judges with fine and imprisonment, and also such corporal infamous punishment as to the court in discretion shall seem meet, according to the heinousness of the crime. 1 Haw. 7.

Also, seditious words, in derogation of the established religion, are indictable, as tending to a breach of the peace; as these, your religion is a new religion, preaching is but prattling, and prayer once a day is more edifying. 1 Haw. 7.

2. By the 9 & 10 W. c. 32. If any person, having been educated in or at any time having made profession of the christian religion within this realm, shall by writing or printing
printing teaching or advised speaking deny any one of the persons in the holy trinity to be god, or shall assert or maintain there are more gods than one, or shall deny the christian religion to be true, or the holy scriptures of the old and new testament to be of divine authority, and shall upon indictment or information in any of his majesty's courts at Westminster or at the assizes, be thereof lawfully convicted by the oath of two or more witnesses; he shall for the first offence be disabled to have any office or employment or any profit appertaining thereunto; for the second offence shall be disabled to prosecute any action or information in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office for ever within this realm, and shall also suffer imprisonment for the space of three years from the time of such conviction. § 1.

Provided, that no person shall be prosecuted by this act for any words spoken, unless the information thereof shall be given upon oath before a justice of the peace, within four days after such words spoken; and the prosecution of such offence be within three months after such information. § 2.

Provided, that any person, convicted of any the aforesaid crimes, shall for the first offence (upon his acknowledgment and renunciation of such offence or erroneous opinions in the same court where he was convicted, within four months after his conviction) be discharged from all penalties and disabilities incurred by such conviction. § 3.

3. By the 2 Ja. c. 21. If any person shall in any pageant, enterlude, shew, may-game, or pageant, jeffingly or profanely speak, or use the holy name of god, or of Christ Jesus, or of the holy ghost, or of the trinity, which are not to be spoken but with fear and reverence; he shall forfeit 10 l. half to the king, and half to him that shall sue for the fame in any court of record at Westminster.

4. In the year 1656, James Nailer for perforating our favour, and suffering his followers to worship him, and pay him divine honours, was sentenced to be set in the pillory, and to have his tongue bored through with a red hot iron, and to be whipped, and stigmatized in the forehead with the letter B. 1 St. Tr. 802.

5. M. 1 G. 2. K. and Curl. An information was exhibited by the attorney general, against the defendant Edmund Curl, for printing and publishing a certain obscene book,
book, setting forth the several lewd passages, and concluding against the peace. It was moved in arrest of judgment, that however the defendant may be punishable for this in the spiritual court, as an offence against good manners, yet it cannot be a libel for which he is punishable in the temporal courts. But after long debate and consideration, the court at last gave it as their unanimous opinion, that this was a temporal offence; and the defendant was set in the pillory. *Str. 788.*

6. *E. 2 G. 2. K.* and Woolston. He was convicted on four informations for his blasphemous discourses on the miracles of our Saviour. And attempting to move in arrest of judgment, the court declared they would not suffer it to be debated, whether to write against Christianity in general was not an offence punishable in the temporal courts at common law. They desired it might be taken notice of, that they laid their stress upon the word *general,* and did not intend to include disputes between learned men upon particular controverted points. The next term he was brought up, and fined 25 l for each of his four discourses, to suffer a year’s imprisonment, and to enter into a recognizance for his good behaviour during his life, himself in 3000 l, and 2000 l by others. *Str. 834.*

7. *H. 2 G. 3. K.* and Annett. An information was exhibited by the attorney general against the defendant, for writing, printing, and publishing a certain malignant, profane, and blasphemous libel, intituled, "The free inquirer," tending to blaspheme almighty God, and to ridicule, traduce, and discredit the holy scriptures; and on conviction, was sentenced by the court, to suffer one month’s imprisonment in Newgate, to stand twice in the pillory, with a paper affixed over his head, with these words “For blasphemy”, once at Charing cross, and once at the royal exchange; and then to be confined in the house of correction in Clerkenwell to hard labour for one year; and at the expiration of the year, to be remanded to Newgate in execution of the said judgment; and to find security for his good behaviour during the remainder of his life, himself in 100 l, and two sureties in 50 l each; and to be fined 6s 8 d.

8. By the *22 G. 2. c. 33. art. 2.* All flag officers, and all persons in or belonging to his majesty’s ships or vessels of war, being guilty of profane oaths, cursings, excrescences, drunkenness, uncleanness, or other scandalous actions, in derogation of god’s honour, and corruption of good manners, shall incur such punishment as a court martial
martial shall think fit to impose, and as the nature and degree of their offence shall deserve.

For profane cursing and swearing, See title Swearing.

Heresy, is treated of under the title of that name.

Prohibition.

By the statute of Circumspecte agatis, 13 Ed. 1.

The king to his judges sendeth greeting. Use your selves circumspeckly in all matters concerning the bishop of Norwich and his clergy, not punishing them if they hold plea in court christian of such things as be mere spiritual, that is to wit, of penance injoined by prelates for deadly sin, as fornication, adultery, and such like, for which sometimes corporal penance, and sometimes pecuniary is injoined, specially if a freeman be convict of such things: Also if prelates do punish for leaving the churchyard unclosed, or for that the church is uncovered or not conveniently decked; in which cases none other penance can be injoined but pecuniary: Item, if a parson demand of his parishioners oblations or tithes due and accustomed; or if any parson do sue against another parson for tithes greater or smaller, so that the fourth part of the value of the benefice be not demanded: Item, if a parson demand mortuaries, in places where a mortuary hath been used to be given: Item, if a prelate of a church, or a patron, demand of a parson a pension due to him; all such demands are to be made in a spiritual court. And for laying violent hands on a clerk, and in cause of defamation, it hath been granted already, that it shall be tried in a spiritual court, when money is not demanded, but a thing done for punishment of sin; and likewise for breaking an oath: In all cases afore rehearsed, the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

In all matters concerning the bishop of Norwich and his clergy] The bishop of Norwich is here put only for example; but it extendeth to all the bishops within this realm.

2 Inf. 487. The said act having been made on a petition of the bishop of Norwich; as, generally, acts of parliament in ancient times were founded on antecedent petitions.
Prohibition.

Of such things as be mere spiritual] Not having any mixture of the temporalities; as hereby, schisms, holy orders, and the like. 2 Inst. 488.

So that the fourth part of the value of the benefice be not demanded] So as at this day, in case where one patron of the presentation of one patron demands tithes against another patron of the presentation of another patron in court chriftian, amounting to a fourth part of the value of the benefice; the right of tithes at this day is to be tried at the common law. 2 Inst. 491.

2. It hath been holden, that if the spiritual court do proceed wholly on their own canons, they shall not be at all controuled by the common law (unless they act in derogation from it, as by questioning a matter not triable before them, as the bounds of a parish, or the like); for they shall be presumed to be the best judges of their own laws: and therefore in such case, if a perfon is aggrieved, his proper remedy is not by prohibition, but by appeal. 1 How. 4. 13. Ayl. Par. 171, 438.

3. In case the principal matter belong to the cognizance of the spiritual court, all matters incidental (tho’ otherwise of a temporal nature) are also cognizable there; and no prohibition will lie, provided they proceed in the trial of such temporal incident, according to the rules of the temporal law.

Thus in the case of Shorter and Friend, H. 1 W. An executor being sued for a legacy in the spiritual court, pleaded payment, and offered to prove it by one witnefs; which the judge refused, and gave sentence againft him. Upon this matter suggested, a prohibition was moved for. And by the court; 1. Where the ecclesiastical court proceeded in a matter merely spiritual, if they proceed in their own manner, tho’ it is different from the common law, no prohibition lieth; as in probate of wills, there if they refuse one witnefs, no prohibition lieth. 2. Where they have cognizance of the original matter, and an incident happens which is of temporal cognizance, or triable by the common law; they shall try the incident, but must try it as the common law would: thus in a suit for tithes, or for a legacy, if the defendant pleads a releafe or payment; or in a suit to prove a will, if the defendant plead a revocation. So in the case at bar; they shall try the matter of payment or no payment, but then they must admit such proof as the common law would, or otherwise they reject the cause themselves, and ought to be prohibi-
Prohibition.

3. A bare suggestion, that the defendant hath but one witness, and that they take exception to his credit and reputation, is no cause of prohibition; for if they admit the proof of one witness, whether he be a credible witness or not they shall judge, and the party hath no remedy but by appeal. 2 Salk. 547. L. Raym. 220.

4. A temporal loss, ensuing upon a spiritual sentence, is not of itself cause of prohibition. So it was adjudged in the 42 & 43 Eliz. in the case of Baker and Rogers (Cro. Eliz. 789), where the deprivation was for simony; on which occasion the reasoning of the court was thus: Altho' it was said, that in the spiritual court they ought not to have intermeddled to divest the freehold, which is in the incumbent after induction; true it is, they should not meddle to alter the freehold, but they meddled only with the manner of obtaining his presentment, which by consequence divested the freehold from him, by the dissolution of his estate, when his admission and institution is avoided. In like manner, where an incumbent (3 Mod. 67.) was libelled against in the arches, for not being twenty-three years of age when made deacon, nor twenty-four when made priest, and prayed a prohibition, because a temporal loss (namely, deprivation) might follow; the court denied the prohibition, and compared this case to that of a drunkard, or ill liver, who are usually punished in the ecclesiastical courts, tho' a temporal loss may ensue; and if prohibitions should be granted in all cases where a temporal loss might ensue, those courts would have little or nothing to do. Gibs. 1028.

5. M. 1 Ann. Galizard and Rigault. There was an indictment for assaulting, beating, wounding, and endeavouring to ravish the wife of B. upon which the party was convicted: and afterwards the husband brought an action of trespass, for the same cause: and now the party being also libelled against in the spiritual court for the same fact, namely, for soliciting her chastity, moved for a prohibition to the proceedings in the spiritual court. And it was urged for the jurisdiction of the spiritual court, that they may punish for the solicitation and incontinence, and that this suit was for the health of the soul, the others for fine and damages. But by the court a prohibition was granted; for it being an attempt and solicitation to incontinence, coupled with force and violence, it doth by reason of the force, which is temporal, become a temporal crime in toto; as if one say, thou art a whore and a thief, or thou keepest a bawdy house, which are temporal matters,
the party shall not proceed in the spiritual court; so if it be said of a woman that she is a bawd only, and not that she keeps a bawdy house: but, Holt chief justice said, if one commit adultery, and the husband bring assault and battery, this shall not hinder the spiritual court, for it is a criminal proceeding there, and no indictment lies at the common law for adultery. 2 Salk. 552.

But if a man libel for two distinct things, the one of which is of ecclesiastical cognizance, and the other not; a prohibition shall be granted as to that which is of temporal cognizance, and they of the court Christian shall proceed for the other. L. Raym. 59.

6. H. 10 W. The churchwardens against the rector of Market Bosworth. The churchwardens libel against the rector, that there hath been time out of mind, and is, a chapel of ease within the same parish; and that the rector of the said parish for time out of mind hath repaired and ought to repair the chancel of the said chapel; and that the chancel being out of repair, the defendant being rector hath not repaired it. The rector in the said court denied the custom. And a decree was made for the rector, that there was no such custom, and costs were taxed there for the said rector. The churchwardens moved for a prohibition; and it was argued for the prohibition, that it ought to be granted, because it appears that the libel is upon a custom, which the defendant hath denied; and it may be the question was in the spiritual court, custom or not, which is not triable there, but at the common law; and then this appearing upon the libel, that the court hath not jurisdiction, a prohibition may be granted after sentence. But all the court held the contrary. For by Holt chief justice; The reason for which the spiritual court ought not to try customs is, because they have different notions of customs, as to the time which creates them, from those that the common law hath: For in some cases the usage of ten years, in some twenty, in some thirty years, make a custom in the spiritual court; whereas by the common law it must be for time immemorial. And therefore since there is so much difference between the laws, the common law will not permit that court to adjudge upon customs, by which in many cases the inheritances of persons may be bound. But in this case, that reason fails: for the spiritual court is so far from adjudging that there is any such custom which the common law allows, that they have adjudged that there hath not been any custom allowed by their law, which allows a less time than
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than the common law to make a custom. And the plain-
tiffs having grounded their libel upon a custom, which
was well grounded if the custom had not been denied (for
libels there may be upon customs), but the custom being
denied and found no custom, it is not reason to prohibit
the court in executing their sentence against the plaintiffs.
For the design of a motion for a prohibition, is only to
excuse the plaintiffs from costs. And there is no reason
but that they ought to pay them; since it appears, that
they have vexed the defendant without cause. And there-
fore a prohibition was denied. L. Raym. 435.

T. 12 W. Jones and Stone. David Jones the vicar of
N. was libelled against in the spiritual court, for that by
custom time out of mind, the vicars of N. had by them-
selves or others, said and performed divine service in the
chapel of Chawbury, for which there was such a recomp-
sence, and that he neglected. The defendant came for a
prohibition, and without traversing this custom, suggested
that all customs were triable at common law. And it was
urged, that it was enough for a prohibition, that a custom
appeared to charge the vicar with a duty, for which he
was not liable of common right. But by Holt chief jus-
tice; A parson may be bound to an ecclesiastical duty by
custom, and when he is bound by custom, the spiritual
court may punish him if he neglects that duty; the custom
might have a reasonable commencement by composition
in the spiritual court, and begin by an ecclesiastical act;
and a bare prescription only is not a sufficient ground for a
prohibition, unless it concerns a layman; whereas here
it is an ecclesiastical right, an ecclesiastical person, and
an ecclesiastical duty, and the prescription not denied.
2 Salk. 550.

7. When the issue of a matter depending in the spi-
tual court, is determined or influenced by any statute, a
prohibition lieth. The reason is, because the temporal
judges have the interpretation of all statutes or acts of
parliament, whether they concern temporal matters or
spiritual.

In some of the books there is an intimation, that not
only all statutes whatever are to be interpreted by the tem-
poral courts; but also that when a statute is made, giving
remedy in a matter of ecclesiastical cognizance, the very
making of such statute doth ipso facto take the right of
jurisdiction from the spiritual court, and transfer it to the
temporal; if there is not a special saving in the act, to
preserve the spiritual jurisdiction. But to this the rule
laid
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laid down by lord Coke, (which is also generally followed by the books) is a full answer:—An act of parliament being in the affirmative doth not abrogate or take away the jurisdiction ecclesiastical, unless words in the negative be added, as and not otherwise, or in no other manner or form, or to the like effect. Gibs. 1028.

8. T. 2 An. By Holt chief justice: It was formerly held by all the judges of England, that when there was a proceeding ex officio in the ecclesiastical court, they were not bound to give the party a copy of the articles; but the law is otherwise, for in such cases, if they refuse to give a copy of the articles, a prohibition shall go until they deliver it; and accordingly, upon motion, a prohibition was granted in the like case by Holt chief justice and the court. L. Raym. 991.

9. Prohibition may be granted upon a collateral surmise; that is, upon a surmise of some fact or matter not appearing in the libel. It was heretofore a petition of the clergy to the king in parliament, that no prohibition might be granted, without first shewing the libel; and it was a complaint of archbishop Bancroft in the time of king James the first, that prohibitions were granted without fight of the libel, which (as it was there said) is the only rule and direction for the due granting of a prohibition, because upon diligent consideration thereof it will easily appear, whether the cause belong to the temporal or ecclesiastical cognizance; as, on the other side, without fight of the libel, the prohibition must needs range and rove with strange and foreign suggestions, at the will and pleasure of the deviser, nothing pertinent to the matter in demand. To this charge of granting prohibitions without fight of the libel, the judges in their answer say nothing; but as to granting them upon suggestion of matters not contained in the libel, their words are these; Tho’ in the libel there appear no matter to grant a prohibition, yet upon a collateral surmise the prohibition is to be granted; as, where one is sued in the spiritual court for tithes of sylva cedua, the party may suggest, that they were gross or great trees, and have a prohibition, yet no such matter appeareth in the libel; so if one be sued there for violent hands laid on a minister by an officer, as a constable, he may suggest, that the plaintiff made an affray upon another, and he to preserve the peace laid hands on him, and so have a prohibition; and so in very many other like cases; and yet upon the libel no matter appeareth, why a prohibition should be granted. Gibs. 1027.

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On the husband's suing on the wife's cause of action.

Suggestion to be first moved in the spiritual court.

Affidavit to be made of the suggestion.

10. **H. 13 W.** Libel in the spiritual court by the husband and wife, for calling the husband cuckold: Ruled by Holt chief justice, that a prohibition shall go, because they cannot both sue in that court for that word, but the wife only, the imputation being upon her; and the husband and wife by the law spiritual may not join in suit in the ecclesiastical court as they must do in the temporal, but each shall sue separately upon their own cause of action. 3 *Salk.* 288.

11. The suggestion must have been moved, and rejected in the spiritual court, before it can be admitted in the temporal court.—In the bishop of Winchester’s case (2 *Co. 45.*) it was held, that in a suit for tithes in the spiritual court, a man may have a prohibition, suggesting a prescription or modus, before or without pleading. But this seems not to be law. For in the 12 *W.* a prohibition was moved for, suggesting a custom: But it was denied by Holt chief justice and the court, unless they pleaded it below, because perhaps they might admit the plea. Also in the 10 *W.* it was said by Holt chief justice, that if a modus be pleaded in the spiritual court, and admitted, no prohibition shall go; but if the question be, whether a modus or no modus, a prohibition shall go; and so is the law, viz. wherever the matter which you suggest for a prohibition is foreign to the libel, you must plead it below, before you can have a prohibition; otherwise where the cause of prohibition appears on the face of the libel. 2 *Salk.* 551.

12. **M. 4 An. Burdett and Newell.** A rule was made to shew cause, why a prohibition should not be granted, to stay a suit against the plaintiff, in the court of the archdeacon of Litchfield, for not going to his parish church nor any other church on sundays or holidays, nor receiving the sacrament thrice a year; upon suggestion of the statute of *Eliz.* and the toleration act, and then qualifying himself within that act; and alleging that he pleaded it below, and that they refused to receive his plea. It was shewed for cause, that this fact was false, and the plaintiff was not a disserter, nor had qualified himself as above; and therefore it was moved, that the court would not allow the rule to stand, unless they had an affidavit of the fact; for by that means any person might come and suggest a false fact, and oust the spiritual court of their jurisdiction. Which was agreed to by the court, and therefore the rule was discharged. *L. Raym.* 1211.

And,
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And, by Holt chief justice, the distinction is this: Where the matter suggested appears upon the face of the libel, we never insist upon an affidavit; but unless it appear upon the face of the libel, or if you move for a prohibition as to more than appears on the face of the libel to be out of their jurisdiction, you ought to have affidavit of the truth of the suggestion. 2 Salk. 549.

13. It is said, the suggestion need not be precisely proved, in order to obtain a prohibition. For where the suggestion was for a modus for lamb and wool, tho' the proof failed as to the wool, and it was urged that therefore they had failed in the whole; yet a prohibition was granted. And in the case of Austen and Pigot, it was said, that the proof in a prohibition need not to be so precise, but if it appears, that the court Christian ought not to hold plea thereof, it sufficeth. Gibs. 1029.

But if the suggestion appears to the court to be notoriously false, they will not grant a prohibition; for by Holt chief justice, they ought to examine into the truth of the suggestion, and see what foundation it hath. L. Raym. 587.

14. Lord Coke says, the suggestion for a prohibition may be traversed in the temporal court. 2 Inst. 611.

And Dr Watson says, if the suggestion for a prohibition contains no other matter upon which a prohibition ought to be granted to the spiritual court, besides the refusal of a plea there, which by the common law is a good plea, and ought to have been allowed, in such case the refusal is traversable. Therefore supposing that a modus decimandi, or a prescription of a manner of tithing, is triable in the spiritual court; if in a suit there for a modus decimandi another modus be pleaded, or that there is no such modus, and that plea is refused; or if in a suit for tithes of lands not tithe-free, a prescription is pleaded as to the manner of tithing, and that plea is refused; and a prohibition is moved for, upon suggestion of such refusal; the refusal being the principal matter of the suggestion, is therefore traversable. Watf. c. 58.

15. Prohibitions are not to be granted on the last day of the term. So is the rule set down in the books; to which Rolle adds, nor on the last day save one: and the reason of both is, that there would not be time for notice to be given to the other side. But it is added in Latch, that upon motion, on the last day of the term, there may be a rule to stay proceedings till the next term. Gibs. 1029.
16. 7. 10 W. Gardner and Booth. Where it doth appear in the libel, or by the proceedings in the cause, that the cognizance of the cause doth not belong to the spiritual court; a prohibition may be moved for and granted after sentence: and this holds in all cases but where one is sued out of his diocese; for there, if he doth not take advantage of it before sentence, he shall not have a prohibition after sentence; and the reason is, for that the cause doth belong to the spiritual court; and tho' it doth not belong to that spiritual court, it belongs to some other, and not to the king's temporal court. 2 Salk. 548.

So in the case of Parker and Clarke, M. 3 An. The clerk of a parish libelled against the churchwardens, for so much money due to him by custom every year, and to be levied by them on the respective inhabitants in the said parish; and after sentence in the spiritual court, the defendants suggested for a prohibition, that there was no such custom as the plaintiff had set forth in his libel. It was objected against granting the prohibition, that it was now too late, because it was after sentence, especially since the custom was not denied; for if it had, and that court had proceeded, then and not before it had been proper to move for a prohibition. But by Holt chief Justice; it is never too late to move the king's bench for a prohibition, where the spiritual court hath no original jurisdiction, as they had not in this case, because the clerk of a parish is neither a spiritual person, nor is this duty in demand spiritual, for it is founded on a custom, and by consequence triable at law; and therefore the clerk may have an action on the case against the churchwardens, for neglecting to make a rate, and to levy it, or if it had been levied, and not paid by them to the plaintiff. 6 Mod. 252. 3 Salk. 87.

17. The plaintiff, as well as defendant, in the spiritual court, may have a prohibition to stay his own suit. To this purpose when archbishop Bancroft alleged that the plaintiff's having made choice thereof, and brought his adversary there into trial, should by all intendment of law and reason and by the usage of all other judicial places thereby conclude himself in that behalf, yet the answer of the judges was, that none may pursue in the ecclesiastical court, for that which the king's court ought to hold plea of; but upon information thereof given to the king's courts, either by the plaintiff or by any mere stranger, they are to be prohibited, because they deal in that which appertaineth not to their own jurisdiction. And in the case of Worts
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Worts and Clifton, M. 12 'Ja. the same thing was declared and adjudged in the court of king's bench. Gibs. 1027. Cro. Ja. 350.

E. 30 G. 2. Paxton and Knight. This was a question whether a prohibition should be granted, to stay proceedings in an ecclesiastical court, in a suit by a quaker, for a feast in a church; founding his title upon a prescriptive right. In which suit the ecclesiastical court had determined against him. And now he came, after sentence below, for a prohibition. (Note, an immemorial prescription was alledged on both sides.) On shewing cause against the prohibition, it was urged, that the court will not, after sentence, grant a prohibition, unless the defect of jurisdiction appears upon the face of the libel. And the aforesaid case of Market Bosworth was insifted on, where the spiritual court had adjudged against the custom set up; tho' their law allows a lefs time, than the common law; to make a custom: but the prohibition was denied. So here, if the spiritual court will admit lefs evidence of a prescription than the temporal courts will, and the prescription is nevertheless found to be groundlefs; it is certain that the party who fets it up can have no reafon to come for a prohibition after sentence: and his only reafon for it can be (as the court obferved in the aforesaid case) to get clear of thofe cofts, which he hath by his own vexatious fuit rendred himfelf liable to, and which (as was there adjudged) he ought to pay.—But the court seemed to think, that if the fentence of the ecclesiastical court was a nullity, their award of cofts muft be fo too. And here are reciprocal prescriptions alledged. And the prescriptive right of the one is determined for, tho' that of the other is determined againft. They have adjudged the adverse prescription to be a good one, which they could not try, and which they will establish upon lefs evidence than the common law requires. And lord Mansfield faid, that tho' he was very sorry that the court were obliged to grant the prohibition (becaufe the party applied for it only to get rid of paying the cofts occafioned by his own vexatious fuit), yet he thought they could not avoid doing it. And the rule for a prohibition was made absolute. Burrow. 314.

18. If the defendant in a prohibition die; his executors Party dying, may proceed in the spiritual court, and the judges of that court out of which the prohibition was granted, will also in fuch cafe make a rule to the spiritual court to proceed: but the plaintiff may, if he pleafeth, have a new prohibition against the executors. Wait, c. 55.

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19. A
19. A prohibition takes off the costs assigned upon an appeal, where the cause is returned to the inferior court. This was adjudged, E. 7 Cha. in the case of Crompton and Waterford; where an appeal had been to the delegates, who overruled it, and assigned costs for the wrong appeal: And the court agreed with Richardson, that because a prohibition stays all proceedings, the costs were taken away; and added, that if the party was e.xcommunicate, he should be absolved. Helt. 167. Litt. 365. Giff. 1029.

By the statute of the 8 & 9 W. c. 11. In suits upon prohibitions, the plaintiff obtaining judgment or any award of execution, after plea pleaded, or demurrer joined therein, shall recover his costs of suit; and if the plaintiff shall become nonsuit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs, and have execution for the same. f. 3.

H. 4 G. Sir Henry Houghton and Starkey. After judgment for the plaintiff in prohibition, the question was, what costs ought to be allowed; and whether they should be computed from the first motion, or only from the declaration, was the doubt. Upon search, it was found to be the course of all the courts, to tax only from the time of declaring, except in two instances; the one in the case of Eads and Jackson in the 2 Geo. and the other in the case of Brown and Turner: where they were allowed from the first motion. And of this opinion were all the judges. And all the officers were directed for the future to allow the costs of the first motion. And afterwards, H. 12 Geo. between Swetnam and Archer, it was stated in the same manner, and agreed to be the uniform practice ever since. And, E. 1 Geo. 2. between Sir Thomas Bury and Crofts, the same doubt was raised by a new matter; and the court ordered costs from the first motion. Str. 82.

M. 10 G. 2. Middleton and Croft. The plaintiff in prohibition, having prevailed in one point, altho' he failed in all the rest, moved for costs; and it was moved that they might be taxed from the time of the first motion, according to several determinations. And this last was acquiesced in, if the court should be of opinion for costs. As to which, it was objected, that the point in which the plaintiff prevailed was not the gist of the proceedings, but only a circumstance; and that it would be very hard, that they who had prevailed upon the merits, should pay costs. But by the court, The words of the act are not to be got over, which give costs to the plaintiff if he obtains
tains any judgment: and this matter was under consider-
ation in the house of lords in Dr Bentley's cafe, where the prohibition stood as to some articles, and there was a consultation for the rest: to be sure it will be considered in the quantum, but we cannot deny costs. Str. 1062.

H. 14 G. 2. Gegge and Jones. Upon shewing caufe against a prohibition, the court made the rule absolute, with a direction that the plaintiff should declare in prohibition. He tendred a declaration, but the defendant refused it, and applied to stay proceedings, as being willing to submit. The other insifted he had a right to go on, and so get the costs of the motion, which he could not otherwise have. But the court stayed the proceedings without costs; saying, the direction to declare was in favour of the defendant, who might waive it. Str. 1114.

20. To conclude; Sir Simon Degge observeth, that prohibitions of themselves are excellent things, where they are used upon just, legal, and true grounds; and have often avoided the usurpations of the popes and spiritual courts. But by the corruption of these later times, they are grown very grievous to the clergy (in the recovering of their tithes and other rights), being too often granted upon feigned and untrue suggestions, which it is impossible the judges should foresee without the spirit of prophecy. And (he adds) I think I may presume to say, that where one was granted before queen Elizabeth's time, there have been a hundred granted in this last age. And they are a very great delay and charge to the clergy; and it were well (says he) in my poor judgment, if the reverend judges would think of some way to restrain them, or to make them pay well for their delay, by making the plaintiff enter into recognizance to pay such costs as the court out of which they issue should award, in case they should not prove their suggestion in convenient time; or some such other course as they in their great wisdom shall think just and meet. Deg. p. 2. c. 26.

Note, Consultation is treated of under the title of that name.

Provisors. See Courts.
Psalmody. See Publick worship.
Publick Notary. See Notary Publick.
Publick Worship.

I. Due attendance on the publick worship.
II. Establishment of the book of common prayer.
III. Orderly behaviour during the divine service.
IV. Performance of the divine service, in the several parts thereof.

I. Due attendance on the publick worship.

All persons shall refer to church.

On pain of punishment by the censures of the church.

2. By the 5 & 6 Ed. 6. c. 1. All persons shall diligently and faithfully (having no lawful or reasonable excuse to be absent) endeavour themselves to refer to their parish church or chapel accustomed, or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of let, upon every sunday and other days ordained and used to be kept as holidays; and then and there to abide orderly and soberly during the time of the common prayer, preaching, or other service of God: on pain of punishment by the censures of the church. 1. 2.

And for the due execution thereof; the king's most excellent majesty, the lords temporal, and all the commons in this present parliament assembled, do in God's name require and charge all the archbishops, bishops, and other ordinaries, that they shall endeavour themselves to the utmost of their knowledges, that the due and true execution thereof may be had throughout their dioceses and charges, as they will answer before God for such evils and plagues wherewith almighty God may justly punish his people, for neglecting this good and wholesome law. 1. 3.

3. By the 1 El. c. 2. All persons shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour
endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used, in such time of let, upon every Sunday, and other days ordained and used to be kept as holidays, and then and there to abide orderly and soberly, during the time of the common prayer, preaching, or other service of God there to be used and ministered; on pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence 12d, to be levied by the churchwardens of the parish where such offence shall be done, to the use of the poor of the same parish, of the goods and lands of such offender, by way of distress. f. 14.

All persons] Femes covert as well as others. Gibs. 291.

Except dissenters qualified by the act of toleration, who resort to some congregation of religious worship allowed by that act. f. W. c. 18. s. 2, 16.

But they who repair to no place of publick worship, are still punishable as before that act. And if the churchwardens shall happen to present a person, who possibly may go to some other place; the proof thereof rests upon the person presented, and the absence from church justifies the presentment. Gibs. 964.

Having no lawful or reasonable excuse] In the case of Elizabeth Dormer, an exception was taken to the indictment, because these words were omitted, not having any lawful or reasonable excuse; but it was agreed by all, that these words are to come in on the other side, and need not be put into the indictment. Gibs. 291.

To their parish church] If one goes to a customary chapel within the parish, it is a good excuse; but this must be pleaded. Gibs. 292.

If the plea in the spiritual court be, that this is not his parish church, and they refuse the plea, a prohibition will be granted; because that court cannot intermeddle with the precincts of parishes. Gibs. 292.

Or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of let] By the common law or practice of the church of England, no person can be duly discharged from attending his own parish church, or warranted in resorting to another, unless he be first duly licensed by his ordinary, who is the proper judge of the reasonableness of his request, and grants him letters of licence under seal, to be exhibited
Publike Worship.

(as there shall be occasion) in proof of his discharge. Which licences are very common in our ecclesiastical records. Gibs. 291.

And there to abide orderly and soberly] It is not enough to come, unless he also abide; nor enough to abide when he is come, unless he come so as to be present at the several parts of divine service, and also remain there throughout orderly and soberly; the clause being penned conjunctively, and so the guilt and forfeiture incurred by the violation of any one branch. Gibs. 292.

Among the constitutions of Egbert, archbishop of York, one is, that whilst the minister is officiating, if any person shall go out of the church, he shall be excommunicated; and this is taken from a canon of the fourth council of Carthage. Gibs. 964.

And all archbishops and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinaries having any peculiar ecclesiastical jurisdiction, shall have power to inquire hereof in their visitation, synods, and elsewhere within their jurisdiction at any other time and place, and to take accusations and informations of all and every the things aforesaid, done committed or perpetrated within the limits of their jurisdictions; and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and processes, in like form as heretofore hath been used in like cafes by the queen’s ecclesiastical laws. f. 23.

And the justices of assize shall have power to inquire of, hear and determine the same, at the next assizes; and to make processes for execution, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof. And every archbishop and bishop may at his liberty and pleasure, join and associate himself to the justices of assize, for the inquiring of, hearing and determining the same. f. 17, 18, 19.

And all mayors bailiffs and other head officers, of cities boroughs and towns corporate to which justices of assize do not commonly repair, shall have power to inquire of hear and determine the same yearly within fifteen days after the feast of Easter and St Michael the archangel; in like manner and form as the justices of assize may do. f. 22.

Also, by the 3 J. c. 4. If any subject of this realm shall not repair every Sunday to some church chapel or usual place appointed for common prayer, and there hear divine service, according to the said statute of the 1 El. c. 2. it shall be lawful for one justice of the peace, on proof to him made by confession or oath of witness, to call the party before him; and if
be shall not make a sufficient excuse and due proof thereof to the satisfaction of such justice, he shall give warrant to the churchwarden of the parish where the party shall dwell, to levy 12 d for every such default by distress and sale; and in default of distress, shall commit him to prison till payment be made: which forfeiture shall be to the use of the poor of the parish where the offender shall be resident at the time of the offence committed. Provided, that no man be impeached upon this clause, except he be called in question for his said default within one month next after the default made: And that no man being punished according to this branch, shall for the same offence be punished by the forfeiture of 12 d. on the statute of the first of Elizabeth. f. 27, 28, 29.

And provided, that whatsoever persons shall for their offences first receive punishment of the ordinary, having a testimonial thereof under the ordinary's seal, shall not for the same offence eftablished by the justices; and likewise receiving for the said offence punishment first by the justices, shall not for the same offence receive punishment of the ordinary.

4. By the 23 El. c. 1. f. 5. Every person above the age of sixteen years, which shall not repair to some church chapel or usual place of common prayer, but forbear the same contrary to the 1 El. c. 2. and be thereof lawfully convicted, shall forfeit to the queen 20 l. a month.

And there are many regulations concerning the same, by that, and by several subsequent statutes; which being chiefly intended against popish recusants, are more properly treated of under the title Popery. And by the toleration act, the same shall not extend to qualified protestant dissenters: but no papist, or popish recusant, shall have any benefit by the said act of toleration.

And by the 23 El. c. 1. Every person which usually on the Sunday shall have in his house divine service which is established by the law of this realm, and be thereat himself usually or most commonly present, and shall not obstinately refuse to come to church; and shall also four times in the year at least be present at the divine service in the church of the parish where he shall be resident, or in some other common church or chapel of ease, shall not incur the said penalty of 20 l. a month for not repairing to church. f. 12.

5. By the 3 J. c. 5. No recusant convicted shall practice law or physic, nor shall be judge or minister of any court, or bear any military office by land or sea; and shall forfeit for every offence 100 l: and shall also be disabled to be executor, administrator, or guardian. f. 8, 22.

6. By
6. By the 3 J. c. 4. Every person who shall retain in his service, or shall relieve, keep, or harbour in his house any servant, sojourner, or stranger, who shall not repair to church, but shall forbear for a month together, not having reasonable excuse, shall forfeit 10l for every month he shall continue in his house such person so forbearing: And the justices of the peace in their sessions may bear and determine the same. f. 32, 33, 36.

7. But by the 1 J. c. 4. A recusant conforming himself shall be discharged of all penalties, which he might otherwise sustain by reason of his recusancy. f. 2.

II. Establishment of the book of common prayer.

1. Art 20. The church hath power to decree rites or ceremonies, that are not contrary to god's word.

Art. 34. It is not necessary that traditions and ceremonies be in all places one, or utterly like; for at all times they have been divers, and may be changed according to the diversity of countries, times, and and mens manners: so that nothing be ordained against god's word. Whovever thro' his private judgment, willingly and purposely, doth openly break the traditions and ceremonies of the church, which be not repugnant to the word of god, and be ordained and approved by common authority; ought to be rebuked openly (that other may fear to do the like), as he that offendeth against the common order of the church, and hurteth the authority of the magistrate, and woundeth the consciences of weak brethren. Every particular or national church, hath authority to ordain, change, and abolish ceremonies or rites of the church, ordained only by man's authority; so that all things be done to edifying.

Can. 6. Whoever shall affirm, that the rites and ceremonies of the church of England by law established, are wicked, antichristian, or superstitious; or such as, being commanded by lawful authority, men who are zealously and godly affected may not with any good conscience approve them, use them, or as occasion requireth subcribe unto them: let him be excommunicated ipso facto, and not restored until he repent, and publickly revoke such his wicked errors.

2. In the more early ages of the church, every bishop had a power to form a liturgy for his own diocese; and if he kept to the analogy of faith and doctrine, all circum-
stances were left to his own discretion. Afterwards the practice was, for the whole province to follow the service of the metropolitan church; which also became the general rule of the church: And this Lindwood acknowledgeth to be the common law of the church; and intimates, that the use of several services in the same province (as was here in England) was not to be warranted but by long custom. Gibs. 259.

The latin services, as they had been used in England before, continued in all king Henry the eighth's reign, without any alteration; save some rasures of collects for the pope, and of the office of Thomas Becket and of some other fants, whose days were by the king's injunctions no more to be observed; but those rasures or deletions were so few, that the old mafs books, breviaries, and other rituals, did still serve without new impressions. Gibs. 259.

3. In the second year of king Edward the fifth, a liturgy was established by the statute of the 2 & 3 Ed. 6. c. 1, as followeth:

Where of long time there hath been had in this realm of England and in Wales divers forms of common prayer, commonly called the service of the church, that is to say, the use of Sarum, of York, of Bangor, and of Lincoln; and besides the same, now of late much more divers and sundry forms and fashions have been in the cathedral and parish churches of England and Wales, as well concerning the mattens or morning prayer, and the evenjongs, as also concerning the holy communion commonly called the mafs, with divers and sundry rites and ceremonies concerning the same, and in the administration of other sacraments of the church; and albeit the king, by the advice of his council, hath heretofore divers times essayed to stay innovations or new rites concerning the premisses, yet the same hath not bad such good success as his highness required in that behalf; whereupon his highness being pleased to bear with the frailty and weaknec of his subjects in that behalf, of his great clemency hath not only been content to abstain from punishment of those that have offended in that behalf, but also to the intent a uniform quiet and godly order should be had concerning the premisses, hath appointed the archbishop of Canterbury and certain other of the most learned and discreet bishops and other learned men of this realm, having respect to the most sincere and pure christian religion taught by the scripture, as to the usages in the primitive church, to draw and make one convenient and meet order rite and fashion of common and open prayer and administration of the sacraments to be had and used in his majesty's realm of England and
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in Wales; the which, by the aid of the holy ghost, with one uniform agreement is of them concluded, set forth, and delivered in a book, intitled, The book of common prayer and administration of the sacrament and other rites and ceremonies of the church, after the use of the church of England: Wherefore the lords spiritual and temporal and the commons in this present parliament assembled, considering as well the most godly travel of the king's highness herein, as the godly prayers orders rites and ceremonies in the said book mentioned, and the considerations of altering those things which be altered, and retaining those things which be retained in the said book, and also the honour of god, and great quietness which by the grace of god shall ensue upon the one and uniform rite and order in such common prayer and rites and external ceremonies to be used throughout England and Wales, do give to his highness most heartly and lovely thanks for the same, and humbly pray that it may be enabled by his majesty with the assent of the lords and commons in parliament assembled, That all and singular ministers in any cathedral or parish church, or other place within this realm, shall be bounden to say and use the mattens, even-song, celebration of the lord's supper commonly called the mass, and administration of each the sacraments, and all their common and open prayer, in such order and form as is mentioned in the same book, and none other, or otherwise.

And by the same act divers regulations were made, to establish the said book; which are yet in force, not for the establishment of that book, but for the establishment of the present book of common prayer injoined by the act of uniformity of the 13 and 14 C. 2. and which therefore remain to be inserted in their due course. For, that I may observe it once for all; the regulations made by the several acts of uniformity for the establishing of the several respective liturgies, are all brought over and inforced by the last act of uniformity for the establishing of the present book of common prayer, by this clause following, viz.

The several good laws and statutes of this realm, which have been formerly made, and are now in force, for the uniformity of prayer and administration of the sacraments, shall stand in full force and strength to all intents and purposes whatsoever, for the establishing and confirming of the said book herein before mentioned to be joined and annexed to this act, and shall be applied practised and put in use for the punishing of all offences contrary to the said laws, with relation to the book aforesaid, and no other. 13 & 14 C. 2. c. 4. f. 24.
And by the 3 & 4 Ed. 6. c. 10. All books called antiphons, missals, grailes, processionals, manuals, legends, pies, portuages, primers in latin and english, couches, journals, ordinals, or other books or writings whatsoever heretofore used for the service of the church, written or printed in the english or latin tongue, other than such as shall be set forth by the king's majesty, shall be clearly and utterly abolished, extinguished and forbidden for ever to be used or kept in this realm or elsewhere in any the king's dominions. s. 1.

And if any person or persons, bodies politic or corporate, that shall have in his or their custody any the books or writings of the forts aforesaid, and do not before the last day of June next ensuing deliver or cause to be delivered all and every the same books to the mayor bailiff constable or churchwardens of the town where such books then shall be, to be by them delivered over openly within three months next following after the said delivery, to the archbishop bishop chancellor or commissary of the same diocese, to the intent that they cause them immediately after either to be openly burned, or otherwise defaced and destroyed, shall for every such book or books willingly retained in his hands or custody, and not delivered as aforesaid after the said last day of June, and be thereof lawfully convicted, forfeit to the king for the first offence 20 l., and for the second offence 4 l., and for the third offence shall suffer imprisonment at the king's will. s. 2.

Note, the sense of the foregoing paragraph is evident enough; but it is a little ungrammatically expressed.

And if any mayors bailiffs constables or others, do not within three months after receipt of the same books, deliver or cause to be delivered such books so by them received, to the archbishop bishop chancellor or commissaries of their diocese; and if the said archbishop bishops chancellor or commissaries do not, within forty days after the receipt of such books, burn deface and destroy, or cause to be burned defaced or destroyed the same books, and every of them; they and every of them so offending shall forfeit to the king, being thereof lawfully convicted, 40 l. The one half of all which forfeitures shall be to any of the king's subjects that will sue for the same in any of the king's courts of record. s. 3.

And as well justices of assize in their circuits, as justices of the peace within the limits of their commission in the general sessions, shall have power to inquire of, hear, and determine the same; in such form as they may do in other such like cases. s. 4.

Provided, that any person may use keep and have any primers in the english or latin tongue, set forth by king Henry the eighth;
so that the sentences of invocation or prayer to saints in the same primers be blotted, or clearly put out of the same. 1. 6.

4. Thus stood the liturgy until the 5th year of king Edward the sixth. But because some things were contained in that liturgy, which shewed a compliance with the superflition of those times, and some exceptions were taken to it by some learned men at home, and by Calvin abroad, therefore it was reviewed, in which Martin Bucer was consulted, and some alterations were made in it, which consisted in adding the general confession and abjuration; and the communion to begin with the ten commandments. The use of oil in confirmation and extreme unction were left out, and also prayers for souls departed, and what tended to a belief of Christ's real presence in the eucharist. And this liturgy so reformed was established by the act of the 5 Ed. 6. as followeth:—Because there hath risen in the use and exercise of the common service in the church hereunto set forth, divers doubts for the fashion and manner of the ministering of the same, rather by the curiosity of the ministers and misleaders, than of any other worthy cause; therefore as well for the more plain and manifest explanation thereof, as for the more perfection of the said order of common service, the king with the consent of the lords and commons in parliament assembled, hath caused the aforesaid order of common service, intitled, the book of common prayer, to be faithfully and godly perused explained and made fully perfect, and hath annexed and joined it so explained and perfected to this statute: adding also, a form and manner of making and consecrating of archbishops bishops priests and deacons, to be of like force authority and value, as the same like aforesaid book intituled the book of common prayer was before; and with the same clauses of provisions and exceptions to all intents and purposes as by the act of the 2 & 3 Ed. 6. c. 1. was limited and expressed for the uniformity of service and administration of the sacraments throughout the realm, upon such several pains as in the said act is expressed. And the said former act to stand in full force and strength to all intents and constructions, and to be applied practised and put in use to and for the establishing of the book of common prayer now explained and hereunto annexed, and also the said form of making archbishops bishops priests and deacons hereunto annexed, as it was for the former book. 5 & 6 Ed. 6. c. 1. f. 5.

This liturgy was abolished by queen Mary; who having called in and defoyed the aforesaid rated books of king Henry the eighth, required all parishes to furnish themselves with new complete books, and enacted that the service should stand as it was most commonly used
in the last year of the reign of the said king Henry the eighth. Gibs. 259.

And for a month and more after queen Mary’s death, the service continued as before, nothing being forbidden but the elevation; but on the 27th day of December following, queen Elizabeth set forth a proclamation, to charge and command all manner of her subjects, as well those that be called to the ministry of the church, as all others, that they do forbear to preach or teach, or to give audience to any manner of doctrine or preaching, other than to the gospels and epistles, commonly called the gospel and epistle of the day, and to the ten commandments in the vulgar tongue, without exposition or addition of any manner of sense or meaning to be applied or added; or to use any other manner of publick prayer rite or ceremony in the church, but that which is already used, and by law received, or the common litany used at this present in her majesty’s own chapel, and the lord’s prayer and the creed in English; until consultation may be had by parliament, by her majesty and her three estates of this realm, for the better conciliation and accord of such causes, as at this present are moved in matters and ceremonies of religion. Gibs. 267, 268.

5. After which, in the first year of the same queen, a liturgy was established by act of parliament of the 1 El. c. 2. in this wise:—Be it enacted, by the queen’s highness, with the assent of the lords and commons in this present parliament assembled, that all ministers in any cathedral or parish church or other place, shall be bounden to say and use the matters, evenfong, celebration of the lord’s supper, and administration of each of the sacraments, and all the common and open prayer, in such order and form as is mentioned in the book authorized by parliament in the 5 & 6 Ed. 6. with one alteration or addition of certain lessons to be used on every Sunday in the year, and the form of the litany altered and corrected, and two sentences only added in the delivery of the sacrament to the communicants, and none other or otherwise. And there was a proviso, that such ornaments of the church, and of the ministers thereof, shall be retained and used, as was in this church of England by authority of parliament in the second year of the reign of king Edward the sixth, until other order shall be taken therein by the authority of the queen’s majesty, with the advice of her commissioners appointed and authorized under the great seal of England for causes ecclesiastical, or of the metropolitan of this realm.
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Of the lords and commons] It was not said lords spiritual, in this or either of the former acts; because all the bishops present differed. Gibs. 268.

The form of the litany altered and corrected] By the omission of the clause, from the tyranny of the bishop of Rome and all his detestable enormities; which had been in the 2d and in the 5th of Ed. 6. Gibs. 268.

Two sentences only added in the delivery of the sacraments] Of the two forms now used at the delivering of the bread and wine, the first part of each (to the word life inclusive) was in the book of the second year of king Edward the sixth, but not the second part; but in the book of the fifth year, was the second part without the first: and the alteration made by virtue of this act, was the inserting of both as they now stand. Gibs. 268.

Order shall be taken by authority of the queen's majesty, with the advice of her commissioners] Two years afterwards, by virtue of this clause, the queen issued her commission to the archbishop and three others to peruse the order of the lessons throughout the whole year, and to cause some new calendars to be imprinted; which were finished and sent to the several bishops to see them observed in their dioceses in the month of February 1560. Gibs. 268.

By Can. 36. of the canons in 1603; No person shall be received into the ministry, nor admitted to any ecclesiastical living, nor suffer to preach, to catechize, or be a lector or reader of divinity in any place; except he shall first subscribe (amongst others) to this article following; That the book of common prayer, and of ordering of bishops priests and deacons, containeth in it nothing contrary to the word of God, and that it may be lawfully used, and that he himself will use the form in the said book prescribed, in publick prayer and administration of the sacraments, "and none other."

And by Can. 56. of the same canons; Every minister, being possessed of a benefice that hath cure and charge of souls, although he chiefly attend to preaching, and hath a curate under him to execute the other duties which are to be performed for him in the church, and likewise every other stipendiary preacher that readeth any lection, or catechizeth, or preacheth in any church or chapel, shall twice at the least every year read himself the divine service upon two several Sundays publicly and at the usual times, both in the forenoon and afternoon in the church which he so possesseth, or where he readeth catechizeth or preacheth as is aforesaid, and shall likewise as often in every year administer the sacraments of baptism (if there be any to be bap-
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tized), and of the lord's supper, in such manner and form, and with the observation of all such rites and ceremonies as are prescribed by the book of common prayer in that behalf: which if he do not accordingly perform, then shall be that is possessed of a benefice (as before) be suspended; and he that is but a reader preacher or catechizer, be removed from his place by the bishop of the diocese; until he or they shall submit themselves to perform all the said duties, in such manner and sort as before is prescribed.

After the passing of these canons, king James in the first year of his reign, by virtue of the aforesaid proviso in the 1 El. c. 2. upon the conference held before the king himself at Hampton court, gave directions to the archbishop and other high commissioners, to review the common prayer book; and they did make several material alterations and enlargements of it, as in the office of private baptism, and in several rubrics and other passages, and added five or six new prayers and thanksgivings, and all that part of the catechism which contains the doctrine of the sacraments. And yet the powers specified in that proviso, seem not to extend to the queen's heirs and successors, but to be only lodged personally in the queen; yet the book of common prayer so altered stood in force from the first year of king James, to the fourteenth of Charles the second. Watf. c. 31.

And it is to be observed, that the liturgy of the 13 & 14 C. 2. is not the same with that which the aforesaid canons do refer to; so that so far forth the said canons as to this matter are not now in force.

6. In the preface to the book of common prayer, concerning the service of the church (which was also nearly the same in the 2d and in the 5th of Ed. 6:—There was never any thing by the wit of man so well devised, or so sure established, which in continuance of time hath not been corrupted; as, among other things, it may plainly appear by the common prayers in the church, commonly called divine service. The first original and ground whereof, if a man would search out by the ancient fathers, he shall find that the same was not ordained but of a good purpose, and for a great advancement of godliness. For they so ordered the matter, that all the whole bible (or the greatest part thereof) should be read over once every year; intending thereby, that the clergy, and especially such as were ministers in the congregation, should by often reading and meditation in God's word, be stirred up to godliness themselves, and be more able to exhort others by wholesome doc-
trine, and to confute them that were adversaries to the truth; and
further, that the people, by daily hearing of holy scripture read in the church, might continually profit more and more in the knowledge of god, and be the more inflamed with the love of his true religion.

But these many years past, this godly and decent order of the ancient fathers hath been so altered, broken and neglected, by planting in uncertain stories and legends, with multitude of responses, verses, vain repetitions, commemorations, and synodals; that commonly, when any book of the bible was begun, after three or four chapters were read out, all the rest were unread. And in this sort the book of Isaiah was begun in advent, and the book of Genesis in septuagesima; but they were only begun, and never read through; after like sort were other books of holy scripture used. And moreover, whereas St Paul would have such language spoken to the people in the church, as they might understand and have profit by hearing the same; the service in this church of England these many years hath been read in Latin to the people, which they understand not; so that they have heard with their ears only, and their hearts spirit and mind have not been edified thereby. And furthermore, notwithstanding that the ancient fathers have divided the psalms into seven portions, whereof every one was called a nocturn; now of late time, a few of them have been daily said, and the rest utterly omitted. Moreover, the number and hardiness of the rules called the pie, and the manifold changings of the service, was the cause that to turn to the book only was so hard and intricate a matter, that many times there was more business to find out what should be read, than to read it when it was found out.

These inconveniences therefore considered, here is set forth such an order, whereby the same may be redressed. And for a readiness in this matter, here is drawn out a calendar for that purpose, which is plain and easy to be understood; whereof (so much as may be) the reading of holy scripture is so set forth, that all things shall be done in order, without breaking one piece from another. For this cause be cut off anthems, responses, invitatories, and such like things, as did break the continual course of the reading of the scripture.

Yet because there is no remedy, but that of necessity there must be some rules; therefore certain rules are here set forth: which as they are few in number, so they are plain and easy to be understood. So that here you have an order for prayer, and for the reading of the holy scripture, much agreeable to the mind and purpose of the old fathers, and a great deal more profitable and commodious, than that which of late was used. It is more profitable, because here are left out many things, whereas some are
are untrue, some uncertain, some vain and superstitious, and nothing is ordained to be read but the very pure word of God, the holy scriptures, or that which is agreeable to the same; and that in such a language and order, as is most easy and plain for the understanding both of the readers and hearers. It is also more commodious, both for the shortness thereof, and for the plainness of the order, and for that the rules be few and easy.

And forasmuch as nothing can be so plainly set forth, but doubts may arise in the use and practice of the same; to appease all such diversity (if any arise) and for the resolution of all doubts, concerning the manner how to understand do and execute the things contained in this book; the parties that so doubt, or diversely take any thing, shall always resort to the bishop of the diocese, who by his discretion shall take order for the quieting and appeasing of the same; so that the same order be not contrary to any thing contained in this book. And if the bishop of the diocese be in doubt, he may send for the resolution thereof to the archbishop.

And also it be appointed, that all things shall be read and sung in the church in the English tongue, to the end that the congregation may be thereby edified; yet it is not meant, but that when men say morning and evening prayer privately, they may say the same in any language that they themselves do understand.

Stories and legends] That is, concerning the lives of the saints; of whom there being such a number in the church of Rome, few days are free from the stories and legends they relate of them. Gibs. 263.

Responds] A short anthem sung, after reading three or four verses of a chapter; after which, the chapter proceeds. Id.

Commemorations] The service of a lesser holiday falling in with a greater. Id.

Synodals] Constitutions made in provincial or diocesan synods, and published in the parish churches. Id.

Nocturn] So called from the ancient christians rising in the night to perform them. Id.

Pie] A table to find out the service belonging to each day; which becomes very difficult, by the coincidence of many offices on the same day. Id.

Invitatories] Some text of scripture, adapted and chosen for the occasion of the day, and used before the venite; which also it self is called the invitatory psalm. Id.
In the English tongue.] By Art. 24. It is a thing plainly repugnant to the word of God, and the custom of the primitive church, to have publick prayer in the church, or to minifter the sacraments, in a tongue not understood by the people.

And by the 2 & 3 Ed. 6. c. 1. it is provided, that it shall be lawful to any man that understandeth the greek, latin, and hebrew tongue, or other strange tongue, to say and have the prayers of mattens and even-song in latin or any such other tongue, saying the same privately, as they do understand. f. 5.

And for the encouragement of learning in the tongues, in the universities of Cambridge and Oxford; to use and exercise in their common and open prayer in their chapels (being no parish churches) or other places of prayer, the mattens, even-song, litany, and all other prayers (the holy communion commonly called the mass excepted) prescribed in the said book, in greek, latin, or hebrew. f. 6.

And by the 13 & 14 C. 2. c. 4. it is provided, that it shall be lawful to use the morning and evening prayer, and all other prayers and service prescribed in and by the said book, in the chapels or other publick places of the respective colleges and halls in both the universities, in the colleges of Westminster, Winchester and Eaton, and in the convocations of the clergies of either province, in latin. f. 18.

And by the same statute, the bishops of Hereford, St David's, Asaph, Bangor, and Landaff, and their successors, shall take order that the said book be translated into the Britifh or welsh tongue, to be used in Wales where the welsh tongue is commonly used; and at the same time an English book shall be had there likewise, that such as understand the same may have recourse thereunto, and such as do not understand the same may by conferring both tongues together the sooner attain to the knowledge of the English tongue. f. 27.

And by the 5 El. c. 28. The bishops are in like manner required to cause the old and new testament to be translated into welsh, and to have one English and one Welsh copy in every such respective place.

By the 13 & 14 C. 2. c. 4. (which is the last act of uniformity) it is enacted as follows: Whereas by the neglect of ministers in using the order of common prayer, during the time of the late troubles, great mischiefs and inconveniences have arisen; for the prevention thereof in time to come, and for
for settling the peace of the church, the king (according to his declaration of the fifth and twentieth of October 1660) granted his commission under the great seal, to several bishops and other divines, to review the book of common prayer, and to prepare such alterations and additions as they thought fit to offer: And afterwards, the convocations of both the provinces being by his majesty called and assembled, his majesty hath been pleased to authorize and require the presidents of the said concavations, and other the bishops and clergy of the same, to review the said book of common prayer, and the book of the form and manner of the making and consecrating of bishops priests and deacons; and that after mature consideration, they should make such additions and alterations in the said books respectively, as to them should seem meet and convenient, and should exhibit and present the same to his majesty in writing, for his further allowance or confirmation: since which time, they the said presidents bishops and clergy of both provinces have accordingly reviewed the said books, and have made some alterations to the same which they think fit to be inserted, and some additional prayers to the said book of common prayer to be used upon proper and emergent occasions; and have exhibited and presented the same unto his majesty in writing in one book, intitled, The book of common prayer and administration of the sacraments and other rites and ceremonies of the church, according to the use of the church of England, together with the psalter or psalms of David pointed as they are to be sung or said in churches, and the form and manner of making ordaining and consecrating of bishops priests and deacons: All which his majesty having duly considered, hath fully approved and allowed the same, and recommended to this present parliament, that the said books of common prayer and of the form of ordination and consecration of bishops priests and deacons, with the alterations and additions which have been so made and presented to his majesty by the said convocations, be the book which shall be appointed to be used by all that officiate in all cathedral and collegiate churches and chapels, and in all chapels of colleges and halls in both the universities and the colleges of Eaton and Winchester, and in all parish churches and chapels throughout the kingdom, and by all that make or consecrate bishops priests or deacons in any of the said places, under such sanctions and penalties as the houses of parliament shall think fit. 

Now in regard that nothing conduceth more to the settling of the peace of the nation, nor to the honour of our religion and the propagation thereof, than an universal agreement in the publick worship of god; and to the intent that every person within this realm may certainly know the rule to which he is to conform, in
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Publick worship and administration of sacraments and other rites and ceremonies of the church of England, and the manner how and by whom bishops, priests and deacons are and ought to be made ordained and consecrated; be it enacted by the king's most excellent majesty, by the advice and consent of the lords spiritual and temporal and of the commons in this present parliament assembled, That all and singular ministers in any cathedral, collegiate, or parish church or chapel, or other place of publick worship, shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the publick and common prayer, in such order and form as is mentioned in the said book, intitled as aforesaid, and annexed and joined to this present act; and that the morning and evening prayers therein contained, shall upon every lord's day, and upon all other days and occasions, and at the times therein appointed, be openly and solemnly read by all and every minister or curate, in every church chapel or other place of publick worship as aforesaid. I. 2.

Granted his commission under the great seal] Which bore date Mar. 25. 1661. and was directed to twelve bishops and twelve presbyterian divines; with nine assistants on each side, to supply the places of the principals, when they should be occasionally absent. In virtue of which commission, the commissioners met frequently at the Savoy, and disputations were held, but nothing concluded. Gibs. 275.

Or other place of publick worship] By the 22 G. 2. c. 33. All commanders, captains, and officers at sea, shall cause the publick worship of almighty god, according to the liturgy of the church of England, to be performed in their respective ships; and prayers and preachings by the chaplains shall be performed diligently. Art. 1.

And by the rubrick before the service at sea: The morning and evening service to be used daily at sea, shall be the same which is appointed in the book of common prayer.

In such order and form as is mentioned in the said book] Provided, that in all those prayers, litanies, and collects, which do any way relate to the king, queen, or royal progeny; the names be altered and changed from time to time, and fitted to the present occasion, according to the direction of lawful authority. 13 & 14 C. 2. c. 4. f. 25. That is, (according to practice,) of the king or queen in council. Gibs. 280.

7. By
7. By the 1 El. c. 2. The book of common prayer shall be provided at the charges of the parishioners of every parish and cathedral church. f. 19.

This was intended of the book of common prayer, as then established by that act.

By Can. 80. The churchwardens or questmen of every church and chapel shall, at the charge of the parish, provide the book of common prayer, lately explained in some few points by his majesty's authority, according to the laws and his highness's prerogative in that behalf; and that with all convenient speed, but at the furthest within two months after the publishing of these our constitutions.

And this was intended of the same book of common prayer, as altered in the conference at Hampton court as aforefaid.

Finally, by the 13 & 14 C. 2. c. 4. A true printed copy of the (present) book of common prayer, shall at the costs and charges of the parishioners of every parish church and chapel, cathedral church, college and hall, be provided before the feast of St Bartholomew 1662; on pain of 31 a month, for so long time as they shall be unprovided thereof. f. 26.

And the respective deans and chapters of every cathedral or collegiate church were required at their proper costs and charges, before Dec. 25. 1662, to obtain under the great seal of England, a true and perfect printed copy of this act, and of the said book annexed hereunto, to be by the said deans and chapters and their successors kept and preserved in safety for ever, and to be also produced and shewed forth in any court of record as often as they shall be thereunto lawfully required; and also there shall be delivered true and perfect copies of this act and of the same book into the respective courts at Westminster, and into the tower of London, to be kept and preserved for ever among the records of the said courts, and the records of the tower, to be also produced and shewed forth in any court, as need shall require; which said books so to be exemplified under the great seal of England, shall be examined by such persons as the king shall appoint under the great seal of England for that purpose, and shall be compared with the original book hereunto annexed, and they shall have power to correct and amend in writing any error committed by the printer in the printing of the same book, and shall certify in writing under their hands and
and seals, or the hands and seals of any three of them, at the end of the same book, that they have examined and compared the same book, and find it to be a true and perfect copy; which said books so exemplified under the great seal, shall be deemed to be good and available in the law to all intents and purposes, and shall be accounted as good records as this book it self hereunto annexed. f. 28.

8. By the 13 & 14 C. 2. c. 4. Every person who shall be presented or collated or put into any ecclesiastical benefice or promotion, shall in the church chapel or place of publick worship belonging to the same, within two months next after that he shall be in the actual possession of the said ecclesiastical benefice or promotion, upon some lord's day, openly publickly and solemnly read the morning and evening prayers, appointed to be read by and according to the said book of common prayer, at the times thereby appointed or to be appointed; and after such reading thereof, shall openly and publickly before the congregation there assembled, declare his unfeigned assent and consent to the use of all things therein contained and prescribed, in these words and no other: "I A. B. do here declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the book, intituled, The book of common prayer and administration of the sacraments and other rites and ceremonies of the church, according to the use of the church of England; together with the psalter or psalms of David, pointed as they are to be sung or said in churches; and the form or manner of making ordaining and consecrating of bishops priests and deacons." And every such person, who shall (without some lawful impediment to be allowed and approved by the ordinary of the place) neglect or refuse to do the same within the time aforesaid (or in case of such impediment, within one month after such impediment removed) shall ipso facto be deprived of all his said ecclesiastical benefices and promotions; and the patron shall present or collate as if he were dead. f. 6.

And every person who shall be appointed or received as a lecturer, to preach upon any day of the week, in any church chapel or place of publick worship, the first time he preacheth (before his sermon) shall openly publickly and solemnly read the common prayers and service appointed to be read for that time of the day, and then and there publickly and openly declare his assent unto and approbation of the said book, and to the use of all the prayers.
ers rites and ceremonies forms and orders therein contained, according to the form before appointed in this act; and shall upon the first lecture day of every month afterwards, so long as he continues lecturer or preacher there, at the place appointed for his said lecture or sermon, before his said lecture or sermon, openly publickly and solemnly read the common prayers and service for that time of the day, and after such reading thereof shall openly and publickly before the congregation there assembled declare his unfeigned aient unto the said book, according to the form aforesaid: and every such person who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said or any other lecture or sermon in the said or any other church chapel or place of publick worship, until he shall openly publickly and solemnly read the common prayers and service appointed by the said book, and conform in all points to the things therein prescribed, according to the purport and true intent of this act. Provided, that if the said lecture be to be read in any cathedral or collegiate church or chapel; it shall be sufficient for the said lecturer, openly at the time aforesaid, to declare his aent and consent to all things contained in the said book, according to the form aforesaid. And if any person who is by this act disabled (or prohibited, 15 C. 2. c. 6. f. 7.) to preach any lecture or sermon, shall during the time that he shall continue so disabled (or prohibited), preach any sermon or lecture; he shall suffer three months imprisionment in the common gaol: and any two justices of the peace of any county within this realm, and the mayor or other chief magistrate of any city or town corporate within the same, upon certificate from the ordinary made to him or them of the offence committed, shall and are hereby required to commit the person so offending to the gaol of the same county city or town corporate. Provided, that at all times when any sermon or lecture is to be preached; the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly publickly and solemnly read by some priest or deacon, in the church chapel or place of publick worship where the said sermon or lecture is to be preached, before such sermon or lecture be preached, and that the lecturer then to preach shall be present at the reading thereof. And provided, that this act shall not extend to the universitie churches, when any sermon or lecture is preached there as and for the universitie sermon or lecture; but the same may be preached or read
in such sort and manner, as the same have been heretofore preached or read. \(f. 19, 20, 21, 22, 23.\)

9. Every dean canon and prebendary of every cathedral or collegiate church, and all masters and other head fellows chaplains and tutors of or in any college hall house of learning or hospital, and every publick professor and reader in either of the universities and in every college elsewhere, and every parson vicar curate lecturer and every other person in holy orders, and every schoolmaster keeping any publick or private school and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, who shall be incumbent or have poffession of any deanry canonry prebend mastership headship fellowship professor's place or reader's-place parsonage vicarage or any other ecclesiastical dignity or promotion or of any curate's-place, lecture or school or shall instruct or teach any youth as tutor or schoolmaster, shall at or before his admission to be incumbent or having poffession aforesaid subcribe the declaration following; "I A. B. do declare, that I will conform to the liturgy of the church of England, as it is now by law established." \(13 & 14 C. 2. c. 4. f. 8. W. ieff. 1. c. 8. f. 11.\)

Which said declaration shall be subscribed by every of the said masters and other heads fellows chaplains and tutors of or in any college hall or house of learning, and by every publick professor and reader in either of the universities, before the vicechancellor or his deputy; and by every other of the said persons before the archbishop bishop or ordinary of the diocese (or his vicar-general chancellor or commissary, \(15 C. 2. c. 6. f. 5.\)) on pain of forfeiting such office place promotion or dignity, and being utterly disabled and ipso facto deprived of the same; which shall be void, as if such person failing were naturally dead. \(13 & 14 C. 2. c. 4. f. 10.\)

And if any schoolmaster or other person instructing or teaching youth in any private house or family as a tutor or schoolmaster shall instruct or teach any youth as a tutor or schoolmaster before such subscription; he shall for the first offence suffer three months imprisonment, and for the second and every other offence shall suffer three months imprisonment and also forfeit \(51\) to the king. \(f. 11.\)

And after such subscription made, every such parson vicar curate and lecturer shall procure a certificate under the hand and seal of the respective archbishop bishop or ordinary of the diocese (who shall make and deliver the
fame upon demand); and shall publicly and openly read the same, together with the said declaration, upon some lord's day within three months then next following, in his parish church where he is to officiate, in the presence of the congregation there assembled, in the time of divine service: upon pain that every person failing therein (without some lawful impediment to be allowed and approved by the ordinary of the place, 23 G. 2. c. 28.) shall lose such place respectively and be disabled and ipso facto deprived thereof, and the fame shall be void as if he were naturally dead. /f. 11.

Provided, that the penalties in this act shall not extend to the foreigners or aliens of the foreign reformed churches, allowed by the king his heirs and successors in England. /f. 15.

Provided, that no title to confer or present by lapsed shall accrue by any avoidance of deprivation ipso facto by virtue of this statute, but after six months notice of such avoidance of deprivation given by the ordinary to the patron, or such sentence of deprivation openly and publickly read in the parish church of the benefice parsonage or vicarage becoming void, or whereof the incumbent shall be deprived by virtue of this act. /f. 16.

And no form or order of common prayers administration of sacraments rites or ceremonies shall be openly used in any church chapel or other publick place of or in any college or hall in either of the universities, or of the colleges of Westminster Winchester or Eaton, other than what is prescrib'd by the said book; and every governor or head of any of the said colleges or halls, shall within one month next after his election or collation and admission into the same government or headship, openly and publickly in the church chapel or other publick place of the same college or hall, and in the presence of the fellows and scholars of the same or the greater part of them then resident, subscribe unto the said book, and declare his unfeigned assent and consent thereunto, and to the use of all the prayers rites and ceremonies forms and orders therein prescribe and contained, according to the form aforesaid: and all such governors or heads of the said colleges and halls as shall be in holy orders, shall once at least in every quarter of the year (not having a lawful impediment) openly and publickly read the morning prayer and service in and by the said book appointed to be read in the church chapel or other publick place of the same college or hall; on pain to lose and he suspended from all the benefits and profits
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proffits belonging to the fame government or headship, by the space of six months, by the visitor or visitors of the fame college or hall; and if such governor or head so fufpended for not subfcribing to the faid book, or for not reading of the morning prayer and service as aforesaid, fhall not at or before the end of fix months next after fuch fuspension subfcribe unto the faid book and declare his confent thereto as aforesaid, or read the morning prayer and service as aforesaid, then fuch government or headship fhall be ipfo facto void. f. 17.

Provided, that in the fame colleges and halls as aforesaid, the faid service as aforesaid may be ufed in latin. f. 18.

Provided alfo, that nothing in this act fhall be prejudicial to the king's professor of the law within the university of Oxford, for or concerning the prebend of Shipton within the cathedral church of Sarum, united and annexed unto the place of the fame king's professor for the time being by the late king James of bleffed memory. f. 29.

10. By Can. 4. Whogover fhall affirm, that the form of god's worship in the church of England, eftablifhed by law, and contained in the book of common prayer and administration of sacraments, is a corrupt superflitious or unlawful worship of god, or containeth any thing in it that is repugnant to the scriptures; let him be excommunicated ipfo facto, and not restored but by the bishop of the place, or archbishop, after his repentance and publick revocation of fuch his wicked errors.

By Can. 38. If any minifter, after he hath subfcribed to the book of common prayer, fhall omit to use the form of prayer, or any of the orders or ceremonies prefcribed in the communion book, let him be fufpended; and if after a month he do not reform and submit himf elf, let him be excommunicated; and then if he fhall not submit himf elf within the space of another month, let him be depofed from the miniftry.

And by Can. 98. After any judge ecclefiaftical hath pronounced judicially againft contemners of ceremonies, for not obferving the rites and orders of the church of England, or for contempt of publick prayer; no judge ad quem fhall allow of his appeal, unlefs the party appellant do firft personally promife and avow, that he will faithfully keep and obferve all the rites and ceremonies of the church of England, as also the prefcript form of common prayer, and do likewife subfcribe to the fame.

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By the 13 & 14 C. 2. c. 4. In all places where the proper incumbent of any parsonage or vicarage or benefice with cure, doth reside on his living, and keep a curate; the incumbent himself in person (not having some lawful impediment to be allowed by the ordinary of the place) shall once at the least in every month openly and publickly read the common prayers and service in and by the said book prescribed, and (if there be occasion) administer each of the sacraments and other rites of the church, in the parish church or chapel belonging to the same, in such order manner and form as in and by the said book is appointed: on pain of 5l to the use of the poor of the parish for every offence, upon conviction by confession, or oath of two witnesses, before two justices of the peace; and in default of payment within ten days, to be levied by distress and sale by warrant of the said justices, by the churchwardens or overseers of the poor of the said parish. § 7.

By the 2 & 3 Ed. 6. c. 1. and 1 El. c. 2. it is enacted as followeth: If any parson vicar or other whatsoever minister, that ought or should sing or say common prayers mentioned in the said book, or minister the sacraments, refuse to use the said common prayers or to minister the sacraments in such cathedral or parish church, or other places as he should use to minister the same, in such order and form as they be mentioned and set forth in the said book; or shall wilfully or obstinately, standing in the same, use any other rite ceremony order form or manner of celebrating the Lord's supper, openly or privately, or manners, even fong, administration of the sacraments, or other open prayer than is mentioned and set forth in the said book; or shall preach, declare, or speak any thing in the derogation or depraving of the said book, or any thing therein contained, or of any part thereof; and shall be thereof lawfully convicted, according to the laws of this realm, by verdict of twelve men, or by his own confession, or by the notorious evidence of the fact, he shall forfeit to the king (if the prosecution is on the statute of the 2 & 3 Ed. 6.) for his first offence the profit of such one of his spiritual benefices or promotions as it shall please the king to appoint, coming or arising in one whole year after his conviction, and also be imprisoned for six months; and for his second offence be imprisoned for a year, and be deprived ipso facto of all his spiritual promotions, and the patron shall present to the same as if he were dead; and for the third offence shall be imprisoned during life: and if he shall not have any spiritual promotion, he shall for the first offence suffer imprisonment six months, and for the second offence imprisonment during life. And
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And if the prosecution is on the statute of the 1 El. c. 2. then he shall forfeit to the king for the first offence the profit of all his spiritual promotions for one year, and be imprisoned for six months; for the second offence shall be imprisoned for a year, and deprived ipso facto of all his spiritual promotions, and the patron shall present as if he were dead; and for the third offence shall be deprived ipso facto of all his spiritual promotions, and be imprisoned during life: and if he have no spiritual promotion, he shall for the first offence be imprisoned for a year, and for the second offence during life.

And by the said statutes, If any person shall in any interludes, plays, songs, rhymes, or by other open words, declare or speak any thing in the derogation depraving or despising of the same book, or of any thing therein contained, or any part thereof; or shall by open fact, deed, or by open threatenings compel or cause, or otherwise procure or maintain any parson vicar or other minister in any cathedral or paroch church, or chapel, or in any other place, to sing or say any common or open prayer, or to minister any sacrament otherwise, or in any other manner and form than is mentioned in the said book; or by any of the said means shall unlawfully interrupt or let any parson vicar or other minister, in any cathedral or paroch church chapel or any other place, to sing or say common and open prayer, or to minister the sacraments or any of them, in such manner and form as is mentioned in the said book; every such person, being thereof lawfully convicted in form aforesaid, shall (if the prosecution is on the statute of the 2 & 3 Ed. 6.) forfeit to the king for the first offence 10l, for the second offence 20l, for the third offence shall forfeit all his goods and be imprisoned during life: and if for the first offence he do not pay the 10l within six weeks after his conviction, he shall instead of the said 10l be imprisoned for three months; and if for the second offence he do not pay the said sum of 20l within six weeks after his conviction, he shall instead of the said 20l be imprisoned for six months. And if the prosecution is on the statute of the 1 El. c. 2. then he shall forfeit to the king for the first offence 100 marks, for the second offence 400 marks, for the third offence shall forfeit all his goods and be imprisoned during life: and if he do not pay the sum for the first offence within six weeks next after his conviction, he shall instead thereof be imprisoned for six months; and if he do not pay the sum for the second offence within six weeks next after his conviction, he shall instead thereof be imprisoned for twelve months.

And the justices of assize shall have power to inquire of hear and determine all offences contrary to the said afo's, and to make process for the execution of the same, as they may do against any person.
person being indicted before them of trespass, or lawfully convicted thereof. Provided, that every archbishop and bishop may at his liberty and pleasure associate himself to the said justices of assize, for the inquiring of hearing and determining the same.

But no person shall be molested for any offence against these acts, unless he be indicted thereof at the next assizes.

And lords of parliament for the said offences on the 2 & 3 Ed. 6. to be tried by their peers. But if the prosecution is on the 1 El. c. 2. then they shall only for the third offence be tried by their peers.

And all mayors bailiffs and other head officers of cities boroughs or towns corporate, to which justices of assize do not commonly repair, shall have power to inquire of hear and determine offences against these acts within fifteen days after the feast of Easter and St Michael the archangel yearly, as the justices of assize may do.

Provided, that all archbishops and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinaries having any peculiar ecclesiastical jurisdiction, shall have power by virtue of these acts, as well to inquire in their visitations, synods, and elsewhere within their jurisdiction, at any other time and place, to take accusations and informations of all and every the things abovementioned done or committed within the limits of their jurisdiction, and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and processes, in like form as heretofore hath been used in like cases by the king's ecclesiastical laws. And for their authority in this behalf, all and singular the same archbishops bishops and other their officers exercising ecclesiastical jurisdiction as well in places exempt as not exempt within their diocese, shall have full power and authority to reform correct and punish by censures of the church, all and singular the said offenders within any their jurisdictions or diocese; any other law, statute, privilege, liberty or provision heretofore made had or suffered to the contrary notwithstanding. Provided, that whatsoever persons shall for their offences first receive punishment of the ordinary, having a testimonial thereof under the ordinary's seal, shall not for the same offence es.soons be convicted before the justices; and likewise receiving for the said offence punishment first by the justices, shall not for the same offence es.soons receive punishment of the ordinary.

If any parson, vicar, or other whatsoever minister] Popish priests, as well as others; for in an action hereupon, in the 3 El. brought against a popish priest for saying mass, it was held by the whole court, that he was within the Vol. III.
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purview of the statute of the 1 El. it appearing clearly by the next clause thereof, that the design of the parliament was, to abolish the superstititious service, and to establish the new service in its place. Dyer 203.

_Ute any other rite_] In the 26 & 27 El. Fleming was indicted upon this statute of the 1 El. and punished; because he had given the sacrament of baptism in other form than is here prescribed. 1 Leon. 295.

E. 1 Ja. 2. An indictment for using other prayers, and _in other manner_, seems to have been judged insufficient, because the prayers used may be upon some extraordinary occasion, and so no crime: and it was said, that the indictment ought to have alleged, that the defendant used other forms and prayers _instead_ of those injoined, which were neglected by him; for otherwise every parson may be indicted that useth prayers before his sermon, other than such which are required by the book of common prayer. 3 Mod. 79.

_Or other open prayer_] By the said acts, _open prayer_ in and throughout the same, meaneth that prayer which is for others to come unto, or hear, either in common churches, or private chapels or oratories, commonly called the service of the church.

_Shall forfeit_] A clerk was indicted hereupon, for using other prayers, and was fined 100 marks; and it was held by the whole court to be ill: because they can inflict no other punishment than what is directed by the statute. 3 Mod. 79.

_All archbishops and bishops_] If a minister preach against the book of common prayer, this is a good caufe of deprivation by the ecclesiastical law without aid of the said statutes: for he that speaketh against the peace and quiet of the church, is not worthy to be a governor of the church. And the statutes being in the affirmative, do not take away the ordinary's power of depriving for the first offence: on the contrary, there is an express proviso, which reserveth to him his power. 2 Roll's Abr. 222.

H. 33 El. Robert Caudrey, clerk, was deprived of his benefice before the high commissioners, as well for that he had preached against the book of common prayer, as also for that he refused to celebrate divine service according to the said book; which deprivation, tho' not prescribed by the statutes for the first offence, was declared to be good; because the ecclesiastical judge might lawfully inflict such sentence.
sentence before the making of these statutes, and is not inhibited (on the contrary his ancient power is referred) by the same statutes. Gilb. 268. 5 Co. Caudrey's case.

11. By the 5 & 6 Ed. 6. c. 1. If any person shall willingly and wittingly hear and be present at any other manner or form of common prayer or administration of the sacraments, or of making ministers in the church, or of any other rites contained in the book of common prayer, than is mentioned and set forth in the said book [except persons qualified by the act of toleration as before is mentioned], and shall be thereof convicted according to the laws of this realm, before the justices of assize or justices of the peace in their sessions, by the verdict of twelve men, or by confession, or otherwise; he shall for the first offence suffer imprisonment for six months, for the second offence imprisonment for a year, and for the third offence imprisonment during life. 1. 6.

III. Orderly behaviour during the divine service.

1 Can. 18. No man shall cover his head in the church or chapels in the time of divine service, except he have some infirmity; in which case let him wear a night cap, or coif. All manner of persons then present shall reverently kneel upon their knees, when the general confession, litany, or other prayers are read; and shall stand up at the saying of the belief, according to the rules in that behalf prescribed in the book of common prayer. And likewise when in time of divine service the Lord Jesus shall be mentioned, due and lowly reverence shall be done by all persons present, as it hath been accustomed; testifying by these outward ceremonies and gestures their inward humility, Christian resolution, and due acknowledgment that the Lord Jesus Christ, the true eternal Son of God, is the only Saviour of the world, in whom alone all the mercies graces and promises of God to mankind, for this life and the life to come, are fully and wholly comprised. And none, either man woman or child, of what calling soever, shall be otherwise at such times busied in the church, than in quiet attendance to hear mark and understand that which is read preached or ministred; saying in their due places audibly with the minister, the confession, the Lord's prayer, and the creed; and making such other answers to the publick prayers, as are appointed in the book of common prayer: neither shall they disturb the service or sermon, by walking, or talking, or any other way; nor depart out of the church during the time of divine service or sermon, without some urgent or reasonable cause.
Cover his head]. In the 18 C. 2. An action of trespass for assault and battery, was brought against a churchwarden; who pleaded that the plaintiff had his hat on in time of divine service, and that he desired him to put it off, and upon refusal took it off, and delivered it into his hand. And all the court held, that the plea was good; except Twifden, who conceived that all that the churchwarden could do, was to present him to the spiritual court: tho' it is very apparent, how necessary an immediate remedy is, in case of this or the like disorders committed in the worship of God. The court also said, that the churchwardens may chastise boys playing in the churchyard,—and much more in the church. Gibs. 294. 2 Kebr. 124.

Sid. 301.

Can. 19. The churchwardens or questmen and their assistants, shall not suffer any idle persons to abide either in the churchyard or church porch, during the time of divine service; but shall cause them either to come in, or to depart.

Can. 85. The churchwardens or questmen shall take care, that in every meeting of the congregation peace be well kept; and that all persons excommunicated, and so denounced, be kept out of the church.

Can. 90. The churchwardens or questmen shall diligently see, that none do walk or stand idle or talking in the church, or in the churchyard, or the church porch, during the time of divine service.

Can. 111. In all visitations of bishops and archdeacons, the church-wardens or questmen and sidemen shall truly and personally present the names of all those, which behave themselves rudely and disorderly in the church; or which, by untimely ringing of bells, by walking, talking, or other noise, shall hinder the minister or preacher.

2. By the 1 Mar. feff. 2. c. 3. If any person of his own power and authority shall willingly and of purpose, by open and overt word fact act or deed, maliciously or contemptuously molest let disturb vex or trouble, or by any other unlawful ways or means disquiet or misife any preacher that shall be licensed allowed or authorized to preach by the queen's highness, or by any archbishop or bishop of this realm, or by any other lawful ordinary, or by any of the universities of Oxford and Cambridge, or otherwise lawfully authorized or charged by reason of his cure benefice or other spiritual promotion or charge, in any of his open sermon preaching or collation that he shall make declare preach or pronounce, in any church chapel churchyard or in any other place used frequented or appointed to be preached in; s. 2. Or
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Or shall maliciously willingly or of purpose molest let disturb vex disquiet or otherwise trouble, any parson vicar parish priest or curate or any lawful priest, preparing saying doing singing ministring or celebrating the mass, or other such divine service, sacraments or sacramentals, as was most commonly frequented and used in the last year of the reign of king Henry the eighth, or that at any time hereafter shall be allowed set forth or authorized by the queen's majesty: § 3.

Or shall contemptuously unlawfully or maliciously, of their own power or authority, pull down deface spoil abuse break or otherwise unrespectfully handle or order the most blessed comfortable and holy sacrament of the body and blood of our savour Jesus Christ, commonly called the sacrament of the altar, that shall be in any church or chapel or in any other decent place, or the pix or canopy wherein the same sacrament shall be; or unlawfully contemptuously or maliciously, of his own power and authority, pull down deface spoil or otherwise break any altar crucifix or crofs that shall be in any church chapel or churchyard:—That then every such offender in any the premises, his aiders, procurers or abettors, immediately and forthwith after the offence committed, shall be apprehended by any constable or churchwarden of the parish town or place where the offence shall be committed, or by any other officer, or by any other person then being present at the time of the offence committed: § 4.

Which person so apprehended shall with convenient speed be carried to a justice of the peace; who shall, upon due accusation by the apprehender or other person of such offence, commit him to safe keeping and custody as by his discretion shall be thought meet; and within six days next after the said accusation made, the said justice, with one other justice, shall diligently examine the offence: § 5.

And if they shall find him guilty, by two witnesses or by confession, they shall immediately with convenient speed commit him to gaol for three months and further to the next quarter sessions to be holden next after the end of the said three months. At which quarter sessions, the person so committed to gaol, upon his reconciliation and repentance in that behalf, before the said justices at the said sessions, shall be discharged out of prison, upon sufficient surety of his good abearing and behaviour, to be then and there taken by the said justices, for one whole year then next ensuing: And if he will not be reconciled and repent at the said quarter sessions, then he shall immediately in time convenient be further committed to the said gaol by the said justices or the more part of them, there to remain without bail until he shall be reconciled and be penitent for his said offence: § 6.

And if any person, of his own authority and power, willingly and unlawfully do rescue any offender so apprehended, or will disturb
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disturb binder or let such offender to be apprehended; he shall suffer like imprisonment as aforesaid, and further shall forfeit 5l. f. 7.

And if any such offender be not apprehended immediately in time convenient as aforesaid, but do escape or go away; then the said escape shall be lawfully presented before the justices of the peace at the next quarter sessions: and the inhabitants of the parish where the escape was so suffered shall forfeit to the queen for every such escape 5l; to be levied as other like amercements, upon any village hundred or town, for the escape of a murderer or other felon, for not making hue and cry: f. 8.

And all justices of the peace, justices of assize, mayors, bailiffs and justices of the peace within any city or town corporate, shall have power to inquire of hear and determine the said offences, and to set the said fines: f. 9.

Provided, that this shall not in any wise extend, to abrogate and take away the authority jurisdiction power and punishment of the ecclesiastical laws now standing and remaining in their force, or for the punishment of any the offences and misdemeanors aforesaid; but the same shall stand in force as if this act had not been made: f. 10.

Provided, that persons for any the said offences receiving punishment of the ordinary, having a testimonial thereof under his seal, shall not for the same eftsoons be convicted before the justices; and in like wise receiving for the said offences punishment by the justices, shall not for the same eftsoons receive punishment of the ordinary. f. 11.

Or other such divine service] It hath been resolved, that the disturbance of a minister in faying the present common prayer, is within this statute; for the express mention of such divine service, as should afterwards be authorized by queen Mary, doth implicitly include such also as should be authorized by her successors: for since the king never dies, a prerogative given generally to one, goeth of course to others. 1 Haw. 140.

Shall be apprehended] In the case of Glover and Hind, M. 25 C. 2. where an action of trespass of assault and battery was brought, for laying hands on the disturber; it was declared by the court, that at the common law a person disturbing divine service might be removed by any other person there present, as being all concerned in the service of god that was then performing; so that the disturber was a nuance to them all, and might be removed by the same rule of law that allows a man to abate a nuance. Gibs. 304. 1 Mod. 168.

E. 15
E. 15 C. 2. The court refused to grant a certiorari, to remove an indictment at the sessions against the defendant for not behaving himself reverently and modestly at the church during divine service; because, though the offence is punishable by ecclesiastical censures, yet they judged it a proper caufe within cognizance of the justices of the peace, and indictable. 1 Keb. 491.

3. By the 1 W. c. 18. If any person shall willingly and of purpose, maliciously or contemptuously, come into any cathedral or parish church chapel or other congregation permitted by this act, and disquiet or disturb the same, or misaie any preacher or teacher; he shall, on proof thereof before a justice of the peace, by two witnesses, find two sureties to be bound by recognizance in the sum of 50l., and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions: and upon conviction of the said offence at such sessions, he shall suffer the penalty of 20l. f. 18.

4. By the 1 G. ft. 2. c. 5. If any persons unlawfully and riotously and tumultuously assembled together, to the disturbance of the publick peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any church or chapel or any building for religious worship certified and registered according to the 1 W. c. 18, the same shall be adjudged felony without benefit of clergy. And the hundred shall answer damages, as in cases of robbery. f. 4, 6.

IV. Performance of the divine service, in the several parts thereof.

The occasional offices are treated of under the title Holidays.

1 Can. 14. The common prayer shall be said or sung distinctly and reverently, upon such days as are appointed to be kept holy by the book of common prayer, and their eyes, and at convenient and usual times of those days, and in such places of every church, as the bishop of the diocese or ecclesiastical ordinary of the place shall think meet for the largeness or strictness of the same, so as the people may be most edified. All ministers likewise shall observe the orders rites and ceremonies prescribed in the book of common prayer, as well in reading the holy scriptures and saying of prayers, as in administration of the sacraments, without either diminishing in regard of preaching, or in any other respect, or adding any thing in the matter or form thereof.
2. And by the preface to the book of common prayer: All priests and deacons are to say daily the morning and evening prayer, either privately or openly, not being let by sickness, or some other urgent cause.

And the curate that ministreth in every parish church or chapel, being at home, and not being otherwise reasonably hindered, shall say the same in the parish church or chapel where he ministrith; and shall cause a bell to be tolled thereunto, a convenient time before he begin, that the people may come to hear God’s word, and to pray with him.

3. By the rubrick before the common prayer of the 2 Ed. 6. it was ordered thus: The priest being in the quire, shall begin with a loud voice the lord’s prayer, called the pater noster.

In the quire] That is, in his own seat there, as the way was all Edward the sixth’s time; and as is still done in some churches: but in the beginning of queen Elizabeth’s reign, reading desks began to be set up in the body of the church, and divine service to be read there, by appointment of the ordinaries, according to the power vested in them by the rubrick of the 5 & 6 Ed. 6. Gibs. 297.

Shall begin] All that now goes before, viz. the sentences, exhortation, confession, and absolution, were first inserted in the second book of Edward the sixth. 2 Burnet 76.

By the rubrick before the present common prayer: The morning and evening prayer shall be used in the accustomed place of the church, chapel, or chancel; except it shall be otherwise determined by the ordinary of the place.

4. By Can. 58. Every minister saying the publick prayers, or ministring the sacraments or other rites of the church, shall wear a decent and comely surplice with sleeves, to be provided at the charge of the parish. And if any question arise touching the matter decency or comeliness thereof, the same shall be decided by the discretion of the ordinary. Furthermore, such ministers as are graduates shall wear upon their surplices at such times, such hoods as by the orders of the universitie are agreeable to their degrees; which no minister shall wear, being no graduatute, under pain of suspension: notwithstanding, it shall be lawful for such ministers as are not graduates, to wear upon their surplices, instead of hoods some decent tippet of black, so to be not silk.

But
But this canon (which is somewhat observable) is in part destroyed by the statute law, and by the rubrick before the present common prayer.

For by the 1 El. c. 2. it is provided, that such ornaments of the church, and of the ministers thereof, shall be retained and used, as was in this church of England by authority of parliament in the second year of the reign of king Edward the sixth; until other order shall be therein taken by the authority of the queen's majesty, with the advice of her commissioners appointed and authorized under the great seal for causes ecclesiastical, or of the metropolitan of this realm. 1. 25. Which other order as to this matter, was never taken.

And by the rubrick before the common prayer of the 13 & 14 C. 2. It is to be noted, that such ornaments of the church, and of the ministers thereof at all times of their ministration, shall be retained and be in use, as were in this church of England by the authority of parliament in the second year of the reign of king Edward the sixth.

Therefore it is necessary to recur in this matter to the common prayer book establiished by act of parliament in the second year of king Edward the sixth. In which there is this rubrick: "In the saying or singing of matens and evenfonge, baptizyng and burying, the minister in paryshe churches and chapels annexed to the same, shall use a surples. And in all cathedrall churches and colledges, the archdeacons, deanes, proveftes, maifters, prebendaryes, and fellowes, beinge graduates, may ufe in the quiere, beside theyr surplices, such hoothes as pertaineth to their several degrees whiche they have taken in any univerfitie within this realme. But in all other places, every minifter shalbe at libertie to ufe any surples or no. It is also seemly that graduates, when they doe preache, shoulde ufe suche hoothes as pertayneth to theyr severall degrees."

So that in marrying, churching of women, and other offices not here specified, and even in the administration of the holy communion, it seemeth that a surplice is not necessary. And the reason why it is not injoined for the holy communion in particular, is, because other veftments are appointed for that ministration, which are as followeth: "Upon the day, and at the time appointed for the ministration of the holy communion, the priest that shall execute the holye minifterie, shall put upon hym the vesture appointed for that ministration, that is to say a white albe plain, with a vesture or cope. And where there be many priests or deacons, there so many shall
shall be ready to helpe the prieft in the miniftracion, as
shall be requisite; and shall have upon them likewyfe
the veftures appointed for their miniftcry, that is to say,
\textit{albes with tunacles.}"

Note, the alb differs from the furplice in being close
fleeved.

\textit{And whencesoever the bisho}p \textit{shall celebrate the holye
communion in the churche, or execute any other pub-
lique miniftracion; he shall have upon hym, befide
his rochette, a furples or albe; and a cope or vefiment,
and also hys pastoral staffe in hys hand, or elles borne
or holden by hys chapelyne.}

5. In the 2d of Ed. 6. The order for morning and
evening prayer began (as was fai before) with the lord's
prayer, and ended with the third collect for grace; the
other five prayers that now follow having been added since.
\textit{Gibf. 300.}

From which, and from other observations which fol-
low, it will appear, that besides the several offices being
now generally put into one, which at firft were distinct
and separate, they are now become much longer than ori-
ginally they were, by the additions from time to time
which have thereunto been made.

6. \textit{Rubr.} The psalter followeth the division of the he-
brews, and the translation of the great english bible, set
forth and used in the time of king Henry the eighth and
Edward the fith.

7. \textit{Can. 15.} The litany \textit{shall be said or sung, when
and as is fet down in the book of common prayer, by the
parsons vicars minifters or curates, in all cathedral col-
legiate and parish churches and chapels, in some conve-
nient place, according to the discretion of the bisho
of the diocefe, or ecclefaftical ordinary of the place; more
particularly, upon the wednedays and fridays weekly,
tho' they be not holidays, the minifter at the accustomed
hours of service \textit{shall refort to the church and chapel, and
warning being given to the people by tolling of a bell,
shall fay the litany prefcribed in the book of common pray-
er: whereunto we wish every householder, dwelling with-
in half a mile of the church, to come or fend one at the
leaf of his householder fit to join with the minifter in
prayers.}

8. Of the prayers and thanksgivings which now f tand
at the end of the litany service, the firft two prayers (for
rain and fair weather) were at the end of the communion
service in the book of the 2 Ed. 6. To which were added
in the 5 Ed. 6. these prayers, In the time of dearth and famine; In the time of war; and, In the time of plague and sickness. The prayer to be used after any other, and the thanksgivings for rain, fair weather, plenty, and deliverance from enemies, were brought in by king James the first. The prayers, In the ember weeks, For the parliament, and For all conditions of men, were added in 1661; as were also the general thanksgiving, and the thanksgiving for publick peace, and for deliverance from the plague. Gibs. 301.

9. By the several acts of uniformity, the form of wor-
ship directed in the book of common prayer shall be used in the church, and no other; but with this proviso, that it shall be lawful for all men, as well in churches chapels oratories or other places, to use openly any psalms or prayer taken out of the bible, at any due time, not letting or omitting thereby the service, or any part thereof, men-
tioned in the said book. 2 & 3 Ed. 6. c. 1. s. 7.

And whereas heretofore there hath been great diversity in saying and singing in churches within this realm, some following Salisbury use, some Hereford use, and some the use of Bangor, some of York, some of Lincoln; now from henceforth all the whole realm shall have but one use. Pref. to the com. pr.

Salisbury use] Lindwood speaking of the use of Sarum, says, that almost the whole province of Canterbury followeth this use; and adds as one reason of it, that the bishop of Sarum is precentor in the college of bishops, and at those times when the archbishop of Canterbury solemnly performeth divine service in the presence of the college of bishops, he ought to govern the quire, by usage and an-
cient custom. Gibs. 259.

Some Hereford use] In the northern parts was generally obsered the use of the archiepiscopal church of York; in South Wales, the use of Hereford; in North Wales, the use of Bangor; and in other places, the use of other of the principal sees, as particularly that of Lincoln. Ayl. Par. 356.

The rule laid down for church music in England al-
most 1000 years ago, was, that they should observe a plain and devout melody, according to the custom of the church. And the rule prescribed by queen Elizabeth in her injunctions was, that there should be a modest and distinct song, so used in all parts of the common prayers in the church, that the same may be as plainly understood, as if it were read without singing. Of the want of which grave serious and intelligible way, the reformatio legum had
had complained before. And whether some regulations may not now be necessary, to render church music truly useful to the ends of devotion, and to guard against indecent levities, seemeth to require some consideration. Gib. 298, 299.

10. By the statute of 26 G. 2. c. 33. After the second lesson shall the banns of matrimony be published.

And by the rubrick: After the Nicene creed is ended, the curate shall declare unto the people what holidays or fasting days are in the week following to be observed; and then also, if occasion be, shall notice be given of the communion; and briefs, citations, and excommunications read: and nothing shall be proclaimed or published in the church, during the time of divine service, but by the minister; nor by him any thing, but what is prescribed in the rules of this book, or injoined by the king, or by the ordinary of the place.

11. The clergy in queen Elizabeth's time being very ignorant (and no wonder their stipends in most places being exceeding small); and moreover the state having a jealous eye upon them, as if they were not very well affected to the reformation; none were permitted to preach without licence, but they were to study and read the homilies gravely and aptly; and they that were instituted, subscribed a promise to the same effect. And this continued in some measure in the next reign: for ministers not licensed to preach, were by the canons prohibited to expound any text of scripture, and were only to read the homilies, even in their own cures. But the occasion of those canons being now taken away, the bishops do generally and justly forbear to put the canons as to this matter in execution; and every priest is permitted to preach, at least in his own cure, as he may and ought to do by the old canon law, and by the charge given him at his ordination, and by the very nature of his office. John. 48.

The restraints in this kind were (and are) as follows:

Arundel. No priest not being licensed shall exercise the office of preaching, until he shall be examined and sent by the bishop, and shall produce the authority by which he preacheth. Lind. 288.

Form of ordaining deacons: Take thou authority to read the gospel in the church of God, and to preach the same, if thou be thereto licensed by the bishop himself.

Form of ordaining priests: Take thou authority to preach the word of God, and to minister the holy sacraments, in the congregation where thou shalt be lawfully appointed thereunto.
Art. 23. It is not lawful for any man, to take upon him the office of publick preaching, or miniftring the sacraments in the congregation, before he be lawfully called and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have publick authority given unto them in the congregation, to call and send minifters into the lord’s vineyard.

Can. 36. No person shall be received into the miniftiry, nor admitted to any ecclesiatical living, nor suffered to preach, to catechize, or to be a lecturer or reader of divinity in either university, or in any cathedral or collegiate church, city, or market town, parish church, chapel, or any other place within this realm; except he be licenfed either by the archbishop or by the bishop of the diocese where he is to be placed, under their hands and seals, or by one of the two universities under their seal likewise; and except he shall first subscribe to the three articles concerning the king’s supremacy, the book of common prayer, and the thirty nine articles: and if any bishop shall license any person without such subscription, he shall be suspendet from giving licences to preach for the space of twelve months.

And by the 31 El. c. 6. If any person shall receive or take any money, fee, reward, or any other profit, directly or indirectly, or any promise thereof, either to himself or to any of his friends (all ordinary and lawful fees only excepted), to procure any licence to preach; he shall forfeit 40l. f. 10.

After the preacher shall be licenfed, then it is ordained as followeth:

Can. 45. Every beneficed man, allowed to be a preacher, and residing on his benefice, having no lawful impediment, shall in his own cure, or in some other church or chapel (where he may conveniently) near adjoining, where no preacher is, preach one sermon every Sunday of the year; wherein he shall soberly and sincerely divide the word of truth, to the glory of God, and to the best edification of the people.

Can. 47. Every beneficed man, licensed by the laws of this realm (upon urgent occasions of other service) not to reside upon his benefice, shall cause his cure to be supplied by a curate that is a sufficient and licenfed preacher, if the worth of the benefice will bear it. But whosoever hath two benefices, shall maintain a preacher licenfed, in the benefice where he doth not reside, except he preach himself at both of them usually.
By Can. 50. Neither the minister, churchwardens, nor any other officers of the church, shall suffer any man to preach within their churches or chapels, but such as by shewing their licence to preach shall appear unto them to be sufficiently authorized thereunto, as is aforesaid.

Can. 51. The deans, presidents, and residentiaries of any cathedral or collegiate church, shall suffer no stranger to preach unto the people in their churches; except they be allowed by the archbishop of the province, or by the bishop of the same diocefe, or by either of the univerfities: and if any in his sermon shall publish any doctrine either strange or disagreeing from the word of God, or from any of the thirty nine articles, or from the book of common prayer; the dean or residentiaries shall by their letters, subscribed with some of their hands that heard him, so soon as may be, give notice of the fame to the bishop of the diocefe, that he may determine the matter, and take such order therein as he shall think convenient.

Can. 52. That the bishop may understand (if occasion require) what sermons are made in every church of his diocefe, and who presume to preach without licence; the churchwardens and wardens shall see, that the names of all preachers which come to their church from any other place, be noted in a book, which they shall have ready for that purpose; wherein every preacher shall subscribe his name, the day when he preached, and the name of the bishop of whom he had licence to preach.

Can. 53. If any preacher shall in the pulpit particularly or nominally of purpose impugn or confute any doctrine delivered by any other preacher in the same church, or in any church near adjoining, before he hath acquainted the bishop of the diocefe therewith, and received order from him what to do in that case, because upon such publick disputing and contradicting there may grow much offence and disquietness unto the people; the churchwardens or party grieved shall forthwith signify the same to the said bishop, and not suffer the said preacher any more to occupy that place which he hath once abused, except he faithfully promise to forbear all such matter of contention in the church, until the bishop hath taken further order therein: who shall with all convenient speed so proceed therein, that publick satisfaction may be made in the congregation where the offence was given. Provided, that if either of the parties offending do appeal, he shall not be suffered to preach pendentis lite.

Can. 55. Before all sermons, lectures, and homilies, the preachers and ministers shall move the people, to join with
with them in prayer, in this form, or to this effect, as briefly as conveniently they may. "Ye shall pray for Christ's holy catholick church, that is, for the whole congregation of christian people dispersed throughout the whole world, and especially for the churches of England, Scotland, and Ireland. And herein I require you most especially, to pray for the king's most excellent majesty, our sovereign lord James, king of England, Scotland, France, and Ireland, defender of the faith, and supreme governor in these his realms, and all other his dominions and countries, over all persons, in all causes, as well ecclesiastical as temporal. Ye shall also pray for our gracious queen Anne, the noble prince Henry, and the rest of the king and queen's royal issue. Ye shall also pray for the ministers of god's holy word and sacraments, as well archbishops and bishops, as other pastors and curates. Ye shall also pray for the king's most honourable council, and for all the nobility and magistrates of this realm, that all and every of these in their several callings, may serve truly and painfully to the glory of god, and the edifying and well governing of his people, remembering the account that they must make. Also ye shall pray for the whole commons of this realm, that they may live in the true faith and fear of god, in humble obedience to the king, and brotherly charity one to another. Finally, let us praise god for all those which are departed out of this life in the faith of Christ, and pray unto god that we may have grace to direct our lives after their good example; that this life ended, we may be made partakers with them of the glorious resurrection in the life everlasting: always concluding with the lord's prayer.

The like form was enjoined by the injunctions of queen Elizabeth in the year 1559; and a form of bidding was likewise prescribed (but of a different tenor from these two) by the injunctions of Edward the sixth; and also before this (and before the reformation) we find the like bidding form in englith, in a festival printed in the year 1509, which is much longer than these, and is reprinted at length by Dr Burnet in his history of the reformation. Vol. 2, Append. p. 104.

The occasion of this kind of bidding prayer (as it is called) was that, in the ancient church silence was commanded to be kept for a time, for the peoples secret prayers; and in this or such like form the minister directed
the people what to pray for. A remainder of which usage is still preserved in the office of ordination of priests. Warn. 28.

In the year 1661, there is an entry in the journal of the upper house of convocation, that the bishops unani-
mously voted for one form of prayer, to be used by all minis-
ters, as well before as after sermon: and that this order was pursued in the convocation (altho' not brought to effect), appears from the minutes of the lower house, where on Jan. 31. we find a committee appointed for this (among other purposes) to compile a prayer before ser-
mon. Gibs. 311.

Peccham. Every priest shall explain to the people, four
times a year, the fourteen articles of faith, the ten com-
mandments, the two evangelical precepts, the seven works
of mercy, the seven deadly sins with their consequences,
the seven principal virtues, and the seven sacraments of grace. The fourteen articles of faith (whereof seven be-
long to the mystery of the trinity, and seven to Christ's humanity) are, 1. The unity of the divine essence in the
three persons of the undivided trinity. 2. That the father
is god. 3. That the son is god. 4. That the holy ghost,
proceeding from the father and the son, is god. 5. The
creation of heaven and earth by the whole and undivided
trinity. 6. The sanctification of the church by the holy
ghost; the sacraments of grace; and all other things
wherein the christian church communicateth. 7. The
consummation of the church in eternal glory, to be truly
raised again in flesh and spirit; and opposite thereunto,
the eternal damnation of the reprobate. 8. The incarn-
ation of Christ. 9. His being born of the blessed virgin.
10. His suffering and death upon the cross. 11. His de-
cent into hell. 12. His resurrection from the dead.
13. His ascension into heaven. 14. His future coming
to judge the world. The ten commandments are the pre-
cepts of the old testament. To these the gospel addeth
two others, to wit, the love of god, and of our neigh-
bour. Of the seven works of mercy, six are collected out
of the gospel of St Matthew; to feed the hungry, to give
drink to the thirsty, to entertain the stranger, to cloath
the naked, to visit the sick, and to comfort those that are
in prison: and the seventh is gathered out of Tobias, to
wit, to bury the dead. The seven deadly sins are pride,
envy, anger or hatred, slothfulness, covetousness, glut-
tony and drunkenness, luxury. The seven principal
virtues are faith, hope, charity, which respect god; pru-
dence,
dence, temperance, justice, fortitude, with regard unto men. The seven sacraments of grace are baptism, confirmation, orders, penance, matrimony, the eucharist, and extreme unction. Lind. 1, 43, 54.

12. Rubrick after the nicene creed. Then shall follow the sermon, or one of the homilies already set forth or hereafter to be set forth by authority.

**Form of ordaining deacons.** It appertaineth to the office of a deacon, to read holy scriptures and homilies in the church.

**Art. 35.** The second book of homilies, the several titles whereof we have joined unto this article, doth contain a godly and wholesome doctrine, and necessary for these times, as doth the former book of homilies, which were set forth in the time of Edward the sixth; and therefore we judge them to be read in churches by the ministers diligently and distinctly, that they may be understood of the people.

**Can. 49.** No person whatsoever, not examined and approved by the bishop of the diocese, or not licensed as is aforesaid for a sufficient or convenient preacher, shall take upon him to expound in his own cure or elsewhere, any scripture or matter of doctrine; but shall study to read plainly and aptly (without glossing or adding) the homilies already set forth, or hereafter to be published by lawful authority, for the confirmation of the true faith, and for the good instruction and edification of the people.

**Can. 46.** Every beneficed man, not allowed to be a preacher, shall procure sermons to be preached in his cure, once in every month at the least, by preachers lawfully licensed; if his living, in the judgment of the ordinary, will be able to bear it. And upon every Sunday, when there shall not be a sermon preached in his cure; he or his curate shall read some one of the homilies prescribed or to be prescribed by authority, to the intents aforesaid.

13. Besides the publication of things merely ecclesiastical, there are divers acts of parliament, and other matters temporal, required to be published in the churches. Such are thefe which follow:

The act of uniformity of the 5 & 6 Ed. 6. is required to be read in the church by the minister once every year.

The act against swearing, of the 19 G. 2. to be read in the church by the minister four times every year.
The act of the 12 An. f. 2. c. 18. concerning ships in distress, to be read in the church four times a year in all the seaport towns, and on the coast, immediately after prayers and before the sermon.

The act for the observation of the fifth of November, to be read by the minister on that day, after the morning prayer or preaching.

The act for the commemoration of king Charles the second's restoration, to be read after the nicene creed on the lord's day next before the twenty ninth day of May yearly.

By the 3 & 4 W. c. 12. What defaults or annoyances the surveyor of the highways shall find in the highways, cauways, bridges, ditches, hedges, trees, watercourses, drains, or gutters; he shall, immediately after sermon ended, give publick notice of the same in the parish church. f. 8.

By the 17 G. 2. c. 3: The churchwardens and overseers of the poor shall cause publick notice to be given in the church, of every rate for relief of the poor allowed by the justices of the peace, the next sunday after such allowance; and no rate shall be reputed sufficient to be collected, till after such notice given. f. 1.

By the yearly land tax acts, and by the acts for laying duties upon houses and windows, the collectors of the said tax and duties respectively shall, within ten days after their receipt of the duplicates of the assessment, cause publick notice to be given in the church or chapel 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 appointed by the commissioners, for hearing and determining appeals against the said assessment.

Pulpit. See Church.

Purgation.

Purgation in general. By a provincial constititution of archbishop Langton; ecclesiastical judges shall not compel any to come to purgation at the suggestion of their apparitors, unless they be infamed by grave and good men. Lind. 312.
And by a constitution of archbishop Stratford; Persons defamed of crimes and excesses, and willing to purge themselves, shall not be drawn out of one deanery into another, or to places in the country where victuals and necessaries of life are not to be sold: And in the enjoining of purgation to them, not more than six compurgators shall be required for fornication, or the like crime; nor more than twelve for a greater crime, as for adultery. Lind. 313.

And purgation was exercised in the following manner: When any man or woman lay under a common suspicion or publick fame of incontinence, or other vice; tho' there was not proof plain and full enough to convict them, yet were they liable to be summoned before the spiritual judge, and to be charged with the crime. If they confessed; they had a certain penance immediately enjoined them: If they denied; the judge enjoined them purgation to be performed on a day appointed, by their own oath, and by the oaths of five or six neighbours (more or less, according to the nature of the crime, and the condition of the person); and those to be of good fame and sober conversation. The oath of the person suspected was, to declare his own innocence; and the oath of the compurgators, that they believed what he swore was true. If the person came at the day appointed, together with his neighbours, and purged himself according to the rules of the church, he was dismissed, and declared innocent, and restored to his good name; but he was at the same time enjoined to avoid the cause of suspicion, or the ground of the fame, for the time to come. But if he appeared not, he was declared contumacious, and proceeded against as such; or if he did appear, and could not perform purgation (that is, either would not swear to his own innocence, or could not bring others to swear that they believed he swore true,) such failure was taken for conviction, and the judge proceeded to enjoin penance, in the same manner as if the person had been duly convicted, by his own confession, or by the testimony of others. Gibs. 1042.

But by the 13 C. 2. c. 12. f. 4. It shall not be lawful for any person exercising ecclesiastical jurisdiction, to tender or administer unto any person whatsoever, the oath usually called the oath ex officio, or any other oath, whereby such person to whom the same is tendered or administered, may be charged or compelled to confess, or accuse, or to purge him or herself, of
any criminal matter or thing, whereby he or she may be liable to censure or punishment.

Compelled to confess So that any person may still offer himself voluntarily, for the clearing of his innocence, to such purgation as hath been described. Gibs. 1042.

2. Anciently, upon the allowance of the benefit of clergy, the person accused was delivered to the ordinary, to make his purgation; which was to be before a jury of twelve clerks, by his own oath affirming his innocency, and the oaths of twelve compurgators as to their belief of it. 2 H. H. 383. Wood's Civ. L. 669.

But now, by the statute of the 18 El. c. 7. this kind of purgation is also taken away; and the person admitted to his clergy shall not be delivered to the ordinary.

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Quakers. See Dissenters.

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Quare impedit.

QUARE impedit is a writ that lieth, where one hath an advowson, and the parson dies, and another presents a clerk, or disturbs the rightful patron to present; then the rightful patron (altho he be a purchaser, and do not claim from his ancestors) shall have this writ. But an assize of darrein presentment lies, where a man or his ancestors have presented before. From whence it follows, that where a man may have an assize of darrein presentment, he may have a quare impedit; but not contrariwise. Terms of the Law.

And it is so called, in like manner as most of the other writs in the register, from certain words in the writ respecting the special matter for which the writ is brought.

The law concerning writs of quare impedit is treated of under the title Advowson.
Quare incumbavit.

*Quare incumbavit* is a writ that lies, where two are in plea for the advowson of a church, and the bishop admits the clerk of one of them within the six months: then the other shall have this writ against the bishop. And this writ lies always depending the plea. *Terms of the L.*

Which is treated of more at large under the title *Advowson.*

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Quare non admitit.

*Quare non admitit* is a writ that lies, where a man hath recovered an advowson, and sends his clerk to the bishop to be admitted, and the bishop will not receive him; then he shall have the said writ against the bishop. *Terms of the L.*

Quarrelling in the church or churchyard. See *Church.*

Querela duplex. See *Double quarrel.*

Questmen. See *Churchwardens.*

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Quod permittat.

*Quod permittat* is a writ granted to the successor of a parson, for the recovery of common of pasture, by the statute of the 13 Ed. 1. c. 24. and hath its name from those words in the writ.

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Rape.

*If any person shall unlawfully and carnally know and abuse any woman child under the age of ten years; every such unlawful and carnal knowledge shall be felony, and the offender shall*
Rape.

shall suffer as a felon without allowance of clergy. 18 El. c. 7. s. 4.

2. By the 3 Ed. 1. c. 13. The king prohibiteth, that none do take away by force any maiden within age (neither by her own consent nor without), nor any wife or maiden of full age, nor any other woman against her will; and if any do, at his suit that will sue in forty days, the king shall do common right; and if none commence his suit within forty days, the king shall sue: and such as be found culpable, shall have two years imprisonment, and after shall fine at the king's pleasure; and if they have not whereof, they shall be punished by longer imprisonment, according as the trespass requires.

Do take away by force] The taking away by force of any woman whatsoever against her will; albeit there be no rape, is generally prohibited by this act, upon the penalty herein expressed. 2 Inft. 182.

Any maiden within age] This shall be taken for her age of consent, that is, twelve years old, for that is her age of consent to marriage; and the taking her away within that age, whether she consent or no, is prohibited by this act. 2 Inft. 182.

By the 13 Ed. 1. ft. 1. c. 34. Of women carried away with the goods of their husbands; the king shall have the suit for the goods so taken away.

Of women carried away] This is to be understood of a violent taking away by any person; and so this action may be brought against women as well as men. 2 Inft. 435.

The king shall have the suit] Yet may the husband also have his action of trespass, both by the common law, and by the statute of the 3 Ed. 1. c. 13. 2 Inft. 434.

3. By the 3 H. 7. c. 2. Where women, as well maidens, as widows, and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances be oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, or to other by their assent, or defoiled; it is enacted, that what person that taketh any woman so against her will unlawfully, that is to say, maid, widow, or wife, that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony; and that such misdoers, takers, and procurators to the same, and receivers, know-
Rape.

ing the said offence in form aforesaid, be reputed and adjudged as principal felons.

Where women &c.] This act, on the offender's part, doth extend to all degrees, and to all persons; but extendeth not to all women. For on the woman's part, three things are necessarily required to make the offence felony; 1. That the maid wife or widow have lands or tenements or moveable goods, or be an heir apparent. 2. That she be taken away against her will. 3. That she be married to the misdoer, or to some other by his consent, or be defiled (that is, carnally known). For if these concur not, the misdoer is no felon within this statute, but otherwise to be punished. 3 Inst. 61.

Contrary to their will] It is no manner of excuse, that the woman at first was taken away with her own consent because if the afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will as if she had never given any consent at all: for till the force was put upon her, she was in her own power. 1 Haw. 110

And it is not material, whether a woman so taken away be at first married or defiled, with her own consent or not, if she were under the force at the time; because the offender is in both cases equally within the words of the statute, and shall not be construed to be out of the meaning of it, for having prevailed over the weakness of a woman, whom by so base means he got into his power. 1 Haw. 110.

Receiving wittingly the same woman] But by a construction of the common law, they that receive the misdoers, and not the woman, are only accessories, and not principal felons. 3 Inst. 61, 62.

Be felony] And by the 39 El. c. 9. The benefit of clergy is taken away from the principals, procurers, and accessories before.

And for the proof of this felony the woman may be admitted an evidence against the misdoer, th'o' married to him; because such marriage was founded in force and terror; and because, as such cases are generally contrived, so heinous a crime would go unpunished, unless the testimony of the woman should be received. Gilb. 418.

And when a woman is taken by force in one county, and married in another county, the offender may be indicted and found guilty in such other county; because the
Rape.

continuing of the force there, amounts to a forcible taking within the statute. 1 Haw. 110.

4. By the 4 & 5 P. & M. c. 8. It shall not be lawful to any person to take or convey away, or cause to be taken or conveyed away, any maid or woman child unmarried, being within the age of sixteen years, out of the possession custody or governance and against the will of her father or of such person to whom by his will or other act he appointed his guardian; except such taking and conveying away as shall be made without fraud, by or for her master or mistress, or her guardian in socage, or guardian in chivalry. 1. 2.

And if any person above the age of fourteen years, shall unlawfully take or convey, or cause to be taken or conveyed any maid or woman child unmarried being within the age of sixteen years, out of the possession and against the will of her father or mother or guardian; he shall, on conviction and attainder by the order and due course of the laws of this realm, be imprisoned for two years, or else pay such fine as shall be assessed by the court of star chamber. 1. 3.

And if any person shall so take away or cause to be taken away, and deflour, any such maid or woman child; or shall against the will of or unknown to her father if he be living, or against the will of or unknown to her mother (having the custody of her) if he be dead; by secret letters, messages, or otherwise, contract matrimony with her: he shall, being thereof lawfully convicted as aforesaid, be imprisoned for five years, or else pay such fine as shall be assessed by the said court. The one moiety of which fines shall be, half to the king, and half to the party grieved. 1. 4.

And the king and queen's honourable council of the star chamber, by bill of complaint or information, and justices of assize by inquisition or indictment, shall have power to hear and determine the said offences; upon every which indictment and inquisitions such process shall be awarded, as upon an indictment of trespass at common law. 1. 5.

And if any woman child or maiden, being above the age of twelve years, and under the age of sixteen, do consent or agree to such person that shall so make any contract of matrimony; her next of kin, to whom the inheritance should come after her decease, shall have all such lands as she had in possession reversion or remainder at the time of such assent, during the life of such person that shall so contract matrimony; and after her decease the same shall come to such person as they should have done in case this act had not been made, other than to him only that so shall contract matrimony. 1. 6.
Provided, that this shall not extend to any orphans in London; or any other city, borough, or town, where orphans are commonly provided for by grant or custom; but the lord mayor and aldermen of London, and the head officers in other cities, boroughs, or towns, may take such order therein as they have been wont. f. 7.

It shall not be lawful] This clause is but a declaration of the common law; by which any person might be fined and imprisoned for the offence therein specified and contained: and the statute is only an aggravation of punishment, and doth not create an offence. Gibs. 419.

Against the will of her father] H. 15 G. 2. K. against Cornforth and others. The court granted an information against the defendants, for taking away a natural daughter under sixteen, under the care of her putative father; being of opinion it was within this statute. Str. 1162.

Against the will of her father or mother or guardian] In the case of Twisleton and King, M. 20 C. 2. it was alleged, that the girl consented to go; but the court took no notice of that: and it being plainly against the will of the parents, the jury were directed to find the parties guilty. 2 Keb. 432.

By secret letters, messages, or otherwise] The mother of one Tibboth, fearing that her only daughter might be stolen, entreated the lady Gore to take her into her family; who married her (being under the age of sixteen) to her son, without consent of the mother, who was also her guardian. But the estate being sued for by Hicks according to the tenor of the statute, and it appearing to the court that the marriage was solemnized by a lawful minister, in the church, at a canonical hour, before several people, and while the church doors were open; the case was found not to be within the design and intention of this statute; nor could the plaintiff prove any thing to make a forfeiture: so he was nonsuit. Gibs. 420.

Honourable council of the star chamber] It is declared in Moor's case, that inasmuch as there are no negative words in this new conveyance of power to the star chamber, and the court of king's bench had a right to hear and determine before the statute; the same power which they had by the common law still remaineth to them, notwithstanding the statute; and that so it would have been, tho' the court of star chamber had still continued. And it appears
appears that one Story was fined 100l by the court of
king's bench, for taking away a young woman under
sixteen out of her mother's custody; and two women
who were assistants 50l each; and all bound to the good
behaviour, the first for five years, and the two others for
one year. Gibs. 420.

5: By the 13 Ed. 1. ft. 1. c. 34. *If a man do ravish a
woman married, maid, or other, where she did not consent,
neither before nor after; he shall have judgment of life and of
member: And where a man ravished a woman married, lady,
damofel, or other, with force, altho' she consent after; he shall
have such judgment as before is said, if he be attainted at the
king's suit, and there the king shall have the suit.

He shall have judgment of life and of member] That is, he
shall be attainted of felony. And this is to be understood,
upon an appeal to be brought by the party ravished. But
if she did consent, either before or after, she shall have
no appeal. 2 Inft. 433, 434.

If he be attainted at the king's suit] And not at the suit
of the party upon an appeal, as in the former case: for
here it is supposed, that she consenteth afterwards; which
barreth her appeal. 2 Inft. 434.

By the 6 R. 2. c. 6. Against the offenders and ravishers
of ladies, and the daughters of noblemen, and other women, it
is ordained, that wheresoeuer they be ravished, and after such
rape do consent to such ravishers, that as well the ravishers, as
they that be ravished, be from thenceforth disabled to have or
challenge all inheritance dower or joint feoffment, after the death
of their husbands and ancestors. And the next of blood shall
have title immediately after such rape to enter. And the hus-
bands of such women, if they have husbands, or if they have
not then their fathers or other next of blood shall have their suit
against the ravishers, to have them thereof convicted of life and
member, altho' the same woman after such rape do consent to
the ravisher: And the defendant shall not wage battel, but be
tried by inquisition of the country. Saving to the king and other
lords the efeheits of such ravishers, if they be thereof convicted.

Shall have their suit] That is, by appeal.

By the 18 El. c. 7. For the repressing of the most wicked
and felonious rapes or ravishments of women, maids, wives,
and damofels; it is enacted, that if any person shall commit
any manner of felonious rape or ravishment, he shall be guilty of
felony without benefit of clergy.

And
Rape.

And all rapes are commonly excepted out of the acts of general pardon.

Rate for the repair of the church: See Church.

Reader.

The office of reader is one of the five inferior orders in the Romish church.

And in this kingdom, in churches or chapels where there is only a very small endowment, and no clergyman will take upon him the charge or cure thereof, it hath been usual to admit readers, to the end that divine service in such places might not altogether be neglected.

It is said, that readers were first appointed in the church about the third century. In the Greek church they were said to have been ordained by the imposition of hands: But whether this was the practice of all the Greek churches hath been much questioned. In the Latin church it was certainly otherwise. The council of Carthage speaks of no other ceremony, but the bishop's putting the bible into his hands in the presence of the people, with these words, "Take this book and be thou a reader " of the word of God, which office if thou shalt faithfully " and profitably perform, thou shalt have part with those " that minister in the word of God." And in Cyprian's time, they seem not to have had so much of the ceremony as delivering the bible to them, but were made readers by the bishop's commissioun and deputation only, to such a station in the church. Bingham. Antiq. V. 2. P. 31.

Upon the reformation here, they were required to subscribe to the following injunctions:

"Imprimis, I shall not preach or interpret, but only read that which is appointed by publick authority:

I shall not minister the sacraments or other publick rites of the church, but bury the dead, and purify women after their childbirth:

I shall keep the register book according to the injunctions:

I shall use sobriety in apparel, and especially in the church at common prayer:

I shall move men to quiet and concord, and not give them cause of offence:

I shall
I shall bring in to my ordinary, testimony of my behaviour, from the honest of the parish where I dwell, within one half year next following:

I shall give place upon convenient warning so thought by the ordinary, if any learned minister shall be placed there at the suit of the patron of the parish:

I shall claim no more of the fruits sequestr'd of such cure where I shall serve, but as it shall be thought meet to the wisdom of the ordinary:

I shall daily at the least read one chapter of the old testament, and one other of the new, with good advisement, to the increase of my knowledge:

I shall not appoint in my room, by reason of my absence or sickness, any other man; but shall leave it to the suit of the parish to the ordinary, for assigning some other able man:

I shall not read but in poorer parishes destitute of incumbents, except in the time of sickness, or for other good considerations to be allowed by the ordinary:

I shall not openly intermeddle with any artificers occupations, as covetously to seek a gain thereby; having in ecclesiastical living the sum of twenty nobles or above by the year."

This was resolved to be put to all readers and deacons by the respective bishops, and is signed by both the archbishops, together with the bishops of London, Winchester, Ely, Sarum, Carlisle, Chester, Exeter, Bath and Wells, and Gloucester. Strype's Annals. V. i. p. 306.

By the foundation of divers hospitals, there are to be readers of prayers there, who are usually licensed by the bishop.

Reading desk. See Church.

Refusal. See Benefice.

Register.

So far as this officer is to be considered solely in the capacity of a notary publick, see the title Notary Publick.

1. Can. 123. No chancellor, commissary, archdeacon, official, or any other person using ecclesiastical jurisdiction, shall speed any judicial act, either of contentions
or voluntary jurisdiction, except he have the ordinary register of that court, or his lawful deputy; or if he or they will not or cannot be present, then such persons as by law are allowed in that behalf to write or speed the same, under pain of suspension ipso facto.

And this is according to the rule of the ancient canon law; which, to prevent falsifications, requireth the acts to be written by some publick person (if he may be had), or else by two other credible persons: and the credit which the canon law gives to a notary publick is, that his testimony shall be equal to that of two witnesses. Gibs. 996.

2. Can. 134. If any register, or his deputy or substitute whatsoever, shall receive any certificate without the knowledge and consent of the judge of the court; or willingly omit to cause any person (cited to appear upon any court day) to be called; or unduly put off and defer the examination of witnesses to be examined by a day set and assigned by the judge; or do not obey and observe the judicial and lawful monition of the said judge; or omit to write or cause to be written such citations and decrees as are to be put in execution and set forth before the next court day; or shall not cause all testaments exhibited into his office to be registred within a convenient time; or shall set down or enact, as decreed by the judge, any thing false or concealed by himself, not so ordered or decreed by the judge; or in the transmission of processes to the judge ad quem, shall add or insert any falsity or untruth, or omit any thing therein, either by cunning or by gross negligence; or in causes of instance, or promoted of office, shall receive any reward in favour of either party, or be of counsel directly or indirectly with either of the parties in suit; or in the execution of their office shall do ought else maliciously, or fraudulently, whereby the said ecclesiastical judge or his proceedings may be clouded or defamed: we will and ordain, that the said register, or his deputy or substitute, offending in all or any of the premises, shall by the bishop of the diocese be suspended from the exercise of his office, for the space of one two or three months or more, according to the quality of his offence; and that the said bishop shall assign some other publick notary to execute and discharge all things pertaining to his office, during the time of his said suspension.  

3. Dr Godolphin says, If there be a question between two persons touching several grants, which of them shall be register of the bishop's court; this shall not be tried in the bishop's court, but at the common law: for altho'
the subjectum circa quod be spiritual, yet the office it self is temporal. *God. 125.*

So in the case of *K.* and *Ward, H. 4 G.* 2. There was a mandamus to Dr Ward the commissary, to admit Henry Dryden to be deputy register of the archbishop of York's court; suggesting that Dr Thomas Sharpe had been admitted to the office, to execute the same by himself or his deputy; that he had appointed Dryden (who is averred to be a fit person) to be his deputy, whom the commissary had refused to admit, to the great damage of Dr Sharpe who complains; and therefore the writ commands the commissary to admit and swear Dryden, or shew cause to the contrary. To this the commissary returns; that long before the constituting Dryden to be deputy, John Sharpe and Thomas Sharpe were admitted to the office as principals, to hold for their lives, and the life of the survivor; that they, in the year 1714, appointed John Shaw to be their deputy, who executed the office till John Sharpe died; that Thomas Sharpe survived, and on May 12, 1727, by a new appointment constituted Shaw his deputy, who was admitted, and executed the office until suspended in the manner after mentioned; that Shaw at the time of his admission took an oath, that he would justly and honestly execute the office without favour or reward, and do every thing incumbent on the office, and not be an exacter or greedy of rewards; and then sets forth the 134th Canon; and further, that whilst Shaw was deputy, several proctors of the court on the sixteenth of February 1727 exhibited to the commissary several articles against him, complaining of divers misbehaviours in his office, contrary to several of the particulars set forth in the said canon; that Shaw being summoned on the sixth of April 1728, gave in his answer in writing (which is set forth); and then the return goes on, that forasmuch as it appeared to the commissary that the answer was insufficient, and that Shaw had confessed himself guilty of several omissions and extortions in the exercise of his office, therefore upon complaint thereof to the archbishop, he on the twenty first of May 1728, by his commission under his archiepiscopal seal directed to the commissary, and reciting that Shaw had been guilty in the manner before mentioned, doth therefore impower the commissary to suspend him and assume another notary publick; that by virtue hereof, he on the twenty fourth of May 1728 suspended Shaw for five years, and assumed Joseph Leech a notary publick, who before the constituting Dryden to be deputy, took upon
upon him and hath ever since executed the office; that Shaw appealed, and in that appeal allledged, that on the twenty third of May 1728 he resigned the office, and that Dr Sharpe had appointed William Smith to be deputy; that delegates were appointed, who on the twenty third of October 1728 issued an inhibition to the commissary, that pending the appeal he should do nothing to the prejudice of the appellant; that the appeal remains undetermined; and for those reasons he cannot admit Dryden to be the deputy of Dr Sharp. Strange argued, that the return was ill, and that there ought to be a peremptory mandamus; which argument was to the following effect; "I must observe in general, that there is no incapacity returned in Dryden, no want of any regular appointment or deputation; on the contrary it appears, that Dr Sharpe had a power to make a deputy, and that he hath executed it with regard to Dryden: As therefore Dryden hath prima facie a regular title to the office, the commissary who is to admit him ought not to refuse to do his duty; especially considering, that the admission gives no right, but only a legal possession, to enable him to assert his right if he has any: And upon this foundation it is, that non sui electus hath been held no good return to a mandamus to swear in a churchwarden, because it is directed only to a ministerial officer, who is to do his duty, and no inconvenience can follow; for if the party hath a right, he ought to be admitted; if he hath not, the admission will do him no good: This effect of a mandamus to admit, was laid down in the case of the king against the dean and chapter of Dublin, H. 7 G. which was a mandamus to admit one Dougate to his seat in the choir and his voice in the chapter; for wherever the office is but ministerial, he is to execute his part, let the consequence be what it will: In the case of the king and Simpson, M. 11 G. there was a mandamus to the archdeacon of Colchester, to swear Rodney Fane into the office of churchwarden; the archdeacon returned, that before the coming of the writ he received an inhibition from the bishop; but the court held that was no excuse, and that a ministerial officer is to do his duty, whether the act will be of any validity or not: In the case of Taylor and Raymond, M. 4 G. to a mandamus to swear in a churchwarden, it was returned, that before the coming of the writ he had sworn in another, and it was held an ill return, for be the right which way it will, the officer is to do his duty: These two last cases are both in point; in one there was an inhibition (as there
there is in this case), and in the other there was another officer, as they pretend there is here, to wit, Joseph Leech: But what is that inhibition? it is, to do nothing that may prejudice the appeal: Can this hurt Shaw? no; if he is relieved on the appeal, he will be restored, tho' another is admitted; if he is not relieved, it muft be for want of a right, and he will not be capable of suffering any prejudice by the other's admission: But, what takes off all pretence of the inhibition's being material in this case is, that it appears by Shaw's own shewing, that he had the day before his suspension surrendered his deputation; and that accounts for the last part of the return, that the appeal is undetermined, it not being of any con- sequence to Shaw to prosecute it any further; besides, this would be to deprive Dr Sharpe of the benefit of this office as long as Shaw shall think fit to sleep upon the appeal, Dr Sharpe having no power to expedite the deter- mination: A deputy is but at will; and this is to deprive Dr Sharp of his will for five years; which suspension I take to be illegal; for the expression in the canon of such a number of months or more, must have a reaflonable con- struction, and can never be extended to five years: Shaw is entirely divested of the office, which answers the pur- pose of reformation better than a bare suspension: As therefore the office is vacant, there can be no reason why the commiffary should refuse to fill it up; and a peremptory mandamus ought to go." And by the court: Surely it is attempting too much, to support this as a good re- turn; the effect of a mandamus, as laid down, is certain- ly fo, that it gives no right: The canon only intended, that the bishop fhould suspend, where the principal would not revoke; but an actual revocation is better than a sus- pension: It would be carrying the power of inhibitions a great way, if we fhould allow them the force contended for by the return: We are therefore all of opinion, that the return is ill. Then exception was taken to the writ, that a mandamus would not lie for a deputy; and for this was cited 6 Mod. 18, where Holt chief justice lays it down, that for a deputy a mandamus will not lie: But it was an- wered, that this is not a mandamus for the deputy, but for the principal to be admitted to have a deputy; the refufal of Dryden is laid to be, to the great damage of Dr Sharpe, and therefore to do Dr Sharpe right in the pre- misses is the writ awarded; it appears Dr Sharpe has a freehold in the office, fo tho' his deputy is but at will, he hath it for life; and in 1 Ventr. 110. a mandamus was granted.
granted to restore a person to the office of deputy, because the principal
hath no other way to get him admitted; and in the report
of the same case in 1 Lev. 306. it is said by the court,
that altho' a mandamus doth not lie for a deputy, yet it
lies for him who deputes him, to have him admitted or
restored, for otherwise he may be deprived of his power
to make a deputy. Then it was further objected, that a
mandamus doth not lie for a spiritual office; and for this
were cited divers cases, where it was determined that a
mandamus will not lie for a proctor, who belongeth as
much to the ecclesiastical court as the registre doth: Unto
which it was answered, that this is not any objection;
a mandamus hath been granted to admit an under-school-
master, and yet schoolmasters are within the canons of
1603 as well as registres; so in the case of Mr Folks
lately, for the office of apparitor general of the archbishops
of Canterbury; so it hath been often granted for a parift
clerk; for a sexton; so in like manner it was granted to
restore Dr Bentley to his degrees; and to admit Dr Sher-
lock to a prebend at Norwich; and it is to be observed,
that no affize will lie for this office, therefore if the party
hath not this remedy, he hath none; the reason why it
was refused to a proctor was, because it did not appear
what interest he had, but here appears a freehold. And
by the court; We all think this writ is good, notwithstanding
the exceptions that have been taken, and there-
fore a peremptory mandamus must go. Str. 893.

Register book.

1. T HE keeping of a church book, for the age of
these that should be born and christened in the
parish, began in the thirtieth year of king Henry the
eighth. Ged. 144, 145. 3 Burnet 139.

And the following canon, in the main of it, was only
a reinforcement of one of the lord Cromwell's injunctions
in the year 1538; which was continued in those of king
Edward the sixth, and of queen Elizabeth; in whose
reign, a protestation being appointed to be made by mini-
sters at institution, one head of it was,—I shall keep
the register book, according to the queen's majesty's in-
junctions. Gibb. 204.

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By
By Can. 70. In every parish church and chapel within this realm, shall be provided one parchment book at the charge of the parish, wherein shall be written the day and year of every christening, wedding, and burial, which have been in the parish since the time that the law was first made in that behalf; so far as the ancient books thereof can be procured, but especially since the beginning of the reign of the late queen. And for the safe keeping of the said book, the churchwardens, at the charge of the parish, shall provide one sure coffer, with three locks and keys; whereby one to remain with the minister, and the other two with the churchwardens severally; so that neither the minister without the two churchwardens, nor the churchwardens without the minister, shall at any time take that book out of the said coffer. And henceforth upon every sabbath day, immediately after morning or evening prayer, the minister and churchwardens shall take the said parchment book out of the said coffer, and the minister in the presence of the churchwardens shall write and record in the said book, the names of all persons christened, together with the names and surnames of their parents, and also the names of all persons married and buried in that parish, in the week before, and the day and year of every such christening, marriage, and burial; and that done, they shall lay up that book in the coffer as before: And the minister and churchwardens, unto every page of that book, when it shall be filled with such inscriptions, shall subscribe their names. And the churchwardens shall once every year, within one month after the five and twentieth day of March, transmit unto the bishop of the diocese or his chancellor, a true copy of the names of all persons christened married or buried in their parish in the year before (ended the said five and twentieth day of March), and the certain days and months in which every such christening marriage and burial was had, to be subscribed with the hands of the said minister and churchwardens, to the end the same may faithfully be preserved in the registry of the said bishop; which certificate shall be received without fee. And if the minister or churchwardens shall be negligent in performance of any thing herein contained; it shall be lawful for the bishop or his chancellor to convene them, and proceed against every of them as contemners of this our constitution.

Shall write and record in the said book] Which book is good evidence, and the falsifying of it is punishable at common-law. Gibs. 204.

The names of all persons christened and also of all persons married and buried within that parish] That is to lay, at the parish church there: for when this canon was made, and
and for all the time before, there was none christened, married, or buried elsewhere; except amongst the papists, in whom it was very penal so to do; and the registering and authenticating an act against law could not be intended. Nor doth any thing in the act of toleration require the parish minister to register the christenings marriages or burials of any protestant dissenters, which are not performed in the church according to the rites of the church of England. And it seemeth incongruous and unjustifiable for him, to make a record of that, which possibly, and very probably, he knoweth nothing of.

2. By the 26 G. 2. c. 33. For preventing undue entries and abuses in registers of marriages; the churchwardens and chapelwardens of every parish or chapelry shall provide proper books of vellum, or good and durable paper, in which all marriages and banns of marriage respectively, there published or solemnized, shall be registered; and every page thereof shall be marked at the top, with the figure of the number of every such page, beginning at the second leaf with number one; and every leaf or page so numbed shall be ruled with lines at proper and equal distances from each other, or as near as may be; and all banns and marriages published or celebrated in any church or chapel, or within any such parish or chapelry, shall be respectively entred registered printed or written upon, or as near as conveniently may be to such ruled lines, and shall be signed by the parson vicar minister or curate, or by some other person in his presence, and by his direction; and such entries shall be made as aforesaid, on or near such lines in successive order, where the paper is not damaged or decayed by accident or length of time, until a new book shall be thought proper or necessary to be provided for the same purposes, and then the directions aforesaid shall be observed in every such new book: and all books provided as aforesaid, shall be deemed to belong to every such parish or chapelry respectively, and shall be carefully kept and preserved for publick use. §. 14.

And in order to preferve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, it is enacted, that all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage, an entry thereof shall be made in such register to be kept as aforesaid; in which entry or register it shall be.
be expressed, that the said marriage was celebrated by banns or licence; and if both or either of the parties married by licence be under age, with consent of the parents or guardians as the case shall be; and shall be signed by the minister with his proper addition, and also by the parties married, and attested by such two witnesses; which entry shall be made in the form or to the effect following:

A. B. of [the this] parish ———— and C. D. of [the this] parish ———— were married in this [church chapel] by [banns licence] with consent of [parents guardians] this ———— day of ———— in the year ————,

By me J. J. [Rector] [Vicar Curate]

This marriage was solemnized between us [A. B. C. D.] in the presence of [E. F. G. H.] f. 15.

And if any person shall, with intent to elude the force of this act, knowingly and wilfully insert, or cause to be inserted in the register book of such parish or chapel as aforesaid, any false entry of any matter or thing relating to any marriage; or falsly make alter forge or counterfeit any such entry in such register, or cause or procure the same to be done, or act or assist therein; or utter or publish as true any such false altered forged or counterfeit register as aforesaid, or a copy thereof, knowing the same to be false altered forged or counterfeited; or shall wilfully destroy, or cause or procure to be destroyed, any register book of marriages, or any part of such register book, with intent to avoid any marriage, or to subj ect any person to any of the penalties of this act; he shall be guilty of felony without benefit of clergy. f. 16.

3. By the 30 C. 2. c. 3. for burying in woollen, it is enacted, that the minister of every parish shall keep a register, in a book to be provided at the charge of the parish, and make a true entry of all burials within his parish, and of all affidavits of persons being buried in woollen brought unto him according to the said act; and where no such affidavit shall be brought unto him within
the time therein limited, he shall enter a memorial there-of in the said registry, against the name of the party interred, and of the time when he notified the name to the churchwardens or overseers of the poor according to the said act. § 7.

E. 6 G. 2. Dormer and Ekyns. Mr Abney moved for an information in the court of king's bench, against Mr Ekyns, rector of the parish church of Walton, and against Mr Bonner curate of the same church, for refusing to give Mr Dormer copies of certain parts of a register belonging to that parish, and likewise for refusing to give him a certificate of certain persons of the family of the Dormers being born in that parish. He said, that an ejectment was depending in this court, at the time this refusal was made, and still continued to be so, between Mr Dormer and Mr Parkerston and his wife, concerning certain lands which the plaintiff claimed as heir male of the Dormer family. Several of that family were born in the parish of Walton; and for this reason it was necessary to have copies of several parts of the register, and likewise a certificate of the birth of many in that family. Accordingly Mr Dormer made his application to the rector and curate of that parish for this purpose, and offered to pay them for the same; but they refused letting him have them; and the only reason they gave was, that Mr Parkerston and his wife were the defendants, and they would do nothing to their prejudice. Of this fact he said he had an affidavit; and for such an extraordinary denial of justice he hoped the court would grant an information. The court said, you have a right to inspect the publick books of the parish; but cannot oblige the rector or curate to make you out either copies of those books, or a certificate; for which reason, they could not grant the motion. Upon this he changed his motion, and desired a rule to inspect those books. The court said, motions to inspect the publick books of corporations, they grant without an affidavit; but in motions to inspect the publick books of a parish, an affidavit is always requisite. By such affidavit, they said too, it must be sworn, that the copies of them are necessary to be produced in evidence at a trial of a cause depending, and likewise that the inspection of those books to take copies has been demanded and refused. Now in the present case, the first part was sworn to, but not the latter; for which reason the court refused to make any rule at present. 2 Barnard. 269.
Register book.

[Note, the register book belongs to the parish, and the incumbent alone is not intrusted with the keeping of it, much less the curate. But by the canon abovementioned it is to be kept under three locks, the key of one only of which locks the minister is to keep, and the churchwardens the other two. So that the application in such case, as it seemeth, ought to be to the minister and churchwardens.]

Repair of the Church. See Church.

Residence.

1. OTHO. The bishop shall provide, that in every church there shall be one resident, who shall take care of the cure of souls, and exercise himself profitably and honestly in performing divine service and administration of the sacraments. Acton 36.

The rule of the ancient canon law was, that if a clergyman deserted his church or prebend, without just and necessary cause, and especially without the consent of the diocesan, he should be deprived. And agreeable hereunto was the practice in this realm; for the sometimes the bishop proceeded only to sequestration or other censures of an inferior nature, yet the more frequent punishment was deprivation. Gillis 827.

2. Regularly, personal residence is required of ecclesiastical persons upon their cures; and to that end, by the common law, if he that hath a benefice with cure be chosen to an office of bailiff, or bedle, or the like secular office, he may have the king's writ for his discharge. 2 Inst. 625:

For the intendment of the common law is, that a clerk is resident upon his cure; infomuch that in an action of debt brought against J. S. rector of D. the defendant pleading that he was demurrant and conversant at B. in another county, the plea was over-ruled; for since the defendant denied not that he was rector of the church of D. he shall be deemed by law to be demurrant and conversant there for the cure of souls. 2 Inst. 625.

3. By the statute of articuli cleri, 9 Ed. 2. ft. 1. c. 8. In the articles exhibited by the clergy, one is as follows:
Also barons of the king's exchequer, claiming by their privilege, that they ought to make answer to no complainant out of the same place, do extend the same privilege unto clerks abiding there, called to orders or unto residence, and inhibit ordinaries that by no means or for any cause, so long as they be in the exchequer, or in the king's service, they shall not call them to judgment: Unto which it is answered, It pleaseth our lord the king, that such clerks as attend in his service, if they offend, shall be correct by their ordinaries, like as other; but so long as they are occupied about the exchequer, they shall not be bound to keep residence in their churches: And this is added of new by the king's council; The king and his ancestors, since time out of mind, have used that clerks which are employed in his service, during such time as they are in service, shall not be compelled to keep residence at their benefices; and such things as be thought necessary for the king and commonwealth, ought not to be said to be prejudicial to the liberty of the church.

If they offend] This extendeth only to offences or crimes, whereof the ecclesiastical court hath cognizance, as hereby, adultery, and the like; which the ordinary may correct; and not unto civil actions. 2 Infl. 624.

Added of new by the king's council] By this is meant the parliament, or common council of the realm, as it is termed in original writs, and in other legal records, and so it is taken in other acts of parliament, and in the preambles of this act also. 2 Infl. 624.

That clerks which are employed in his service] This is general, and not limited (as the former is) to the privilege of the exchequer; but extendeth to any other service for the king and commonwealth; as if he be employed as an ambassador into any foreign nation, or the like service of the king, which is for the publick, which ever must be preferred before the private. 2 Infl. 624.

The king and his ancestors since time out of mind have used] The clergy in this parliament inveighing vehemently against this answer, and that it tended to the breach of the ecclesiastical liberty, which was granted to them by magna charta, and often confirmed by other acts of parliament, that the church of England shall be free; to this it was answered, that the words subsequent in the magna charta explained these words, and shall have all her whole rights and liberties inviolable; so as the clergy cannot claim any right but jus suum, nor any liberty but libertates suas (as the words are); and the point here in question, viz. to proceed
proceed against a clerk for non-residence, whilst he was in the king’s service for the commonwealth, was neither jus suum, nor libertas sua, but libertas regis. And therefore the parliament thought it fit to declare, that the king and his ancestors had used this liberty or prerogative time out of mind: and where it was said, that this tended to the prejudice of the liberty of the church, the parliament thereto answered (which is worthy, lord Coke says, to be written in letters of gold), Such things as be thought necessary for the king and commonwealth, ought not to be said to be prejudicial to the liberty of the church. 2 Inst. 624.

By the 21 H. 8. c. 13. commonly called the statute of non-residence: As well every spiritual person, now being promoted to any archdeaconry deanry or dignity in any monastery, or cathedral church, or other church conventual or collegiate, or being beneficed with any parsonage or vicarage; as all and every spiritual person and persons, which hereafter shall be promoted to any of the said dignities or benefices, with any parsonage or vicarage, shall be personally resident and abiding in at and upon his said dignity, prebend, or benefice, or at any one of them at the leaf; and in case he shall not keep residence at one of them as aforesaid, but absent himself wilfully by the space of one month together, or by the space of two months to be at several times in any one year, and make his residence and abiding in any other places by such time; he shall forfeit for every such default 10 l. half to the king, and half to him that will sue for the same in any of the king’s courts by original writ of debt bill plaint or information, in which action and suit the defendant shall not wage his law nor have any effoin or protection allowed. s. 26.

And if any person or persons shall procure at the court of Rome, or elsewhere, any licence or dispensation to be non-resident at their said dignities, prebends, or benefices, contrary to this act; every such person, putting in execution any such dispensation or licence for himsclf, shall incur the penalty of 20 l for every time so doing, to be forfeited and recovered as aforesaid, and such licence or dispensation shall be void. s. 27.

Provided, that this act of non-residence shall not extend nor be prejudicial to any such spiritual person as shall chance to be in the king’s service beyond the sea, nor to any person going to any pilgrimage or holy place beyond the sea, during the time that they shall be in the king’s service, or in the pilgrimage going and returning home; nor to any scholar or scholars being conversant and abiding for study, without fraud or covin, at any university within this realm or without; nor to any of the chaplains
of the king or queen, daily or quarterly attending and abiding in the king's or queen's most honourable household; nor to any of the chaplains of the prince or princes, or any of the king's or queen's children, brethren, or sisters, attending daily in their honourable households, during so long as they shall attend in any of their households; nor to any chaplain of any archbishop or bishop, or of any spiritual or temporal lords of the parliament, daily attending abiding and remaining in any of their honourable households; nor to any chaplain of any duchess, marquess, countess, viscountess, or baroness, attending daily and abiding in any of their honourable households; nor to any chaplain of the lord chancellor, or treasurer of England, the king's chamberlain, or steward of his household for the time being, the treasurer and controller of the king's most honourable household for the time being, attending daily in any of their honourable households; nor to any chaplain of any of the knights of the honourable order of the garter, or of the chief justice of the king's bench, warden of the ports, or of the master of the rolls, nor to any chaplain of the king's secretary, dean of the chapel, amner for the time being, daily attending and dwelling in any their households, during the time that they shall so abide and dwell without fraud or covin, in any of the said honourable households; nor to the master of the rolls, nor dean of the arches, nor to any chancellor or commissary of any archbishop or bishop, nor to as many of the twelve masters of the chancery and twelve advocates of the arches as shall be spiritual men, during so long time as they shall occupy their said rooms and offices; nor to any such spiritual persons as shall happen by injunction of the lord chancellor, or the king's council, to be bound to any daily appearance and attendance to answer, during the time of such injunction. f. 28.

Provided also, that it shall be lawful to the king, to give licence to every of his own chaplains, for non-residence upon their benefices; anything in this act to the contrary notwithstanding. f. 29.

Provided also, that every duchess, marquess, countess, baroness, widows, which shall take any husbands under the degree of a baron, may take such number of chaplains as they might have done being widows; and that every such chaplain may have like liberty of non-residence, as they might have had if their said ladies and mistresses had kept themselves widows. f. 33.

Promoted to any archdeaconry, deanry, or dignity.] Archdeaconries and deanries being mentioned first, the word dignity (according to the common rule of the interpretation
tion of statutes) shall nor extend to higher degrees, as to archbishops or bishops; but only to dignities of the like or inferior nature to those specified. But if a bishop be also an archdeacon, dean, or other inferior dignitary (not excepted by this statute) by commendam; he is, as such, punishable by this statute for non-residence. Gilb. 886.

Dignity] E. 41 Eliz. Broughton and Goufley. Information upon the statute for non-residence. The defendant pleaded, that he was chosen gospeller in the church of St Paul, London; and was resident there by reason of that dignity. And it was thereupon demurred. It was argued for the plaintiff, that this was not any dignity to excuse the defendant. The civilians divided spiritual functions in three degrees; 1. A function which hath jurisdiction; as bishop, or dean. 2. A spiritual administration with a cure; as parson of a church. 3. They who have neither cure nor jurisdiction; as prebendaries, chaplains, and such like. And they defined a dignity to be, an ecclesiastical administration, with jurisdiction or power conjoined; and thereby they excluded the two last degrees from being any dignity: a multo fortiori, the common law doth fo; and for that purpose were cited divers cases where it was shewn, that an archdeacon is not a name of dignity; that a parson is not a name of dignity; a provost; a precentor; a chaplain: and particularly, that if a vicar of St Paul's hath a benefice with cure, he ought to be resident upon it; and yet that this is a greater dignity than gospeller. And of that opinion were Popham and Clinch (the other justices being absent) that it was not a dignity within this statute. But they would advise upon hearing the defendant's counsel. And it was adjourned. But afterwards the defendant compounded. Cro. Eliz. 663.

Benefices, with any parsonage or vicarage] The sense being somewhat imperfect as these words stand, and the words differing in form of expression from the foregoing part of the sentence; there seemeth to have been a mistake either in the record or in the transcript, and that the words should stand thus, benefices with any parsonage or vicarage.

Shall be personally resident] In the case of Sands and Pinder, M. 44 Eliz. Where the parson claimed a way from his house to a hamlet there named, and it was not alleged in his plea in what will the said house was; it was nevertheless adjudged to be good, upon this reason, that the parson should be always intended to be resident within his parsonage. Cro. Eliz. 898.
Residence.

Or at any one of them at the leaf] So that persons who have a plurality of benefices with cure, or those who have a benefice and dignity, or benefices and dignities, are not punishable for non-residence by this statute, if they be duly resident upon any one dignity or benefice. Gibs. 886.

By the ancient canon law, where a benefice was annexed to a dignity or prebend, the person was not obliged to residence upon the benefice, but at the superior church, where his attendance was supposed to be more immediately necessary. Gibs. 887.

But absent himself wilfully] So that if he hath no parsonage house, or remove by advice of his physician for better air in order to the recovery of his health, or be removed and detained by imprisonment, or the like; he is not punishable within this statute, which supposeth the absence to be voluntary. Infomuch that an information upon the statute hath been adjudged insufficient, for want of the word wilfully expressly inserted, which the court agreed was of force, and must be in of necessity. Gibs. 887.

And make his residence and abiding in any other places] Altho' by the statute of the 13 Eliz. c. 20. where the words are ordinarily resident and serving the cure, a parson may live in another parish, and yet the leaf shall not be void, in case he serve and attend his cure, at the proper seasons; yet by this statute, where the words are, that he shall be abiding in at and upon, and not abiding in any other place, it is not only non-residence to dwell in another parish, in case the incumbent hath a parsonage house to dwell in, but it is also non-residence to dwell in another house of the same parish. Because the statute was made, not only that the cure should be served, and hospitality maintained; but also that the parsonage house should be upheld, and preserved in a condition fit for incumbents to live in, which cannot ordinarily be supposed, if the present incumbent doth not inhabit it. And if the statute should be otherwise construed, many inconveniences would infue. For parsons would purchase other houses within their parishes, and be always resident upon them, and suffer their parsonage houses to decay, and impoverish their glebe, and inrich their own posessions, in prejudice of their successors. Gibs. 887.

For these reasons, th'o' the incumbent in one case, demising the parsonage house, referred a chamber to himself; and in another case, held the whole parsonage house in his own hands and occupation, and kept it in good repair;
pair; yet both these were affirmed to be non-residence within this statute: because it appeared, that the incumbents were personally resident in other houses; even tho', in the second case, the house he resided in was within twenty yards of the rectory; and the first also was in the same town. *Gibf.* 887. 2 *Brownl.* 54.

*He shall forfeit for every such default.* [101] This (Dr Gibfon observes) is a coercion upon incumbents, which may be used by any person or persons whatsoever; and doth not supersede or affect the right that the ordinary hath, by the laws of the church, to punish non-residence by ecclesiastical censures: which (in case of obstinacy on the part of the incumbent) may be carried (as was said before) to deprivation. *Gibf.* 887.

But this hath been denied by others, who contend, that the statute superseded the canon law in this particular, and is now the only rule and measure of proceeding. The reasons which have been alleged on each side, will fall in after the three next statutes, which are supplementary to, and illustrate in some respects this statute.

*In any of the king's courts.* That is, as is further expressed, where there may be essoin, wager of law, and protection; and therefore not before the justices of assize, or of oyer and terminer. *Gibf.* 887.

So in the case of *Garland* and *Burton, M.* 12 G. 2. An information was brought at the assizes, against the defendant for non-residence upon this statute; by which the action is given to him that will sue in any of the king's courts, by bill plaint or information, in which no essoin is to be allowed. And upon demurrer the court held, that it would not lie at the assizes, but must be brought in the king's bench. For the 21 *fa.* c. 17. never intended to give a new jurisdiction to the assizes, in cases where they had it not before. *Str.* 1103.

*Shall procure at the court of Rome, or elsewhere, any licence or dispensation to be non-resident, contrary to this act.* [In our ecclesiastical records, we find abundance of licences for non-residence, granted by the ordinaries, on account of attendance upon bishops, abbots, earls, barons, and the like; which licences were so limited, as to continue in force for a year, or two, or three, or so long as they should continue in their lords service. And the provisos in this act (Dr Gibfon observes, according to the foregoing doctrine) being only exemptions from the penalties of it, the same canonical obligation (he says) rests upon those,
those, as well as other incumbents, who desire at any time to be non-resident on such occasions, namely, to pray and obtain the licence of the bishop, and to return to residence when cited and admonished by him; or otherwise to be liable to ecclesiastical censures, in such manner as they were before the making of this act. Gibs. 887.

To any person going to any pilgrimage] It is thought fit here, and in the subsequent clauses, to recite the exceptions at large, that the whole taken together may be the better understood; notwithstanding that divers of these particulars are now of no signification, as this (for instance) concerning pilgrimages, and those in some of the following statutes concerning the officers of the court of augmentations, the master of wards and liveries, and the like, which are now abolished by act of parliament.

Nor to any scholar being conversant and abiding for study, without fraud or covin, at any university] Instances of such licences in the ecclesiastical records are without number; but because they were much abused, to the cloaking of idleness and diffolute living, under pretence of study, they were specially regulated and limited by the statute of the 28 H. 8. c. 13. hereafter following.

Nor to any chaplain of any archbishop or bishop, or of any spiritual or temporal lords of the parliament] The service of the bishop is allowed by the canon law to be a sufficient licence for non-residence: For the necessary care and business of a diocese do require, that the bishop should have the assistance of one or more clergymen. And since it is much easier to find a proper curate to serve a parish, than a proper person to advise and assist the bishop in the general care of the diocese; the law considers the person who abides with the bishop for these purposes, as more usefully employed, than if he were confined to the care of one parish only. Bishop Sherlock's charge in the year 1759. page 9.

And the statute hath extended this exemption to other cases not expressly mentioned in the canon law; as to the chaplains of the nobility and great officers of the crown: tho' cases of this kind had usually been dispensed with before the act; which dispensations were founded upon the general power referred to the bishop by the canon law, to dispense where there appeared to him to be a just and reasonable cause. And since the virtue and example of great and potent families will necessarily have a great influence upon the manners and religion of any country; it was thought reasonable, to dispense with the personal attendance
dence of an incumbent in his parish, whilst he was em-
employed in performing the offices of his function in such 
families.  Id. p. 9, 10.

_During the time that they shall so abide and dwell without 
 fraud or covin, in any of the said honourable households_] The sta-
tute considers the service of the chaplain in the household of 
his lord, as the only ground of the exemption; and it cannot 
be doubted (Dr Sherlock says), but that such service is 
only meant, as is proper and peculiar to the office of chap-
lain. And therefore a mere retainer (he says) of a cler-
gyman to be chaplain to a nobleman, unless he actually 
abides and dwells in the household, is no title to the ex-
emption of the statute; and if one retained and titled 
chaplain abides in the household to do any _other_ service, 
and not the service of a chaplain, it is not such an abiding 
as the statute intends, but is fraudulent and covinous. 
_Id. p. 10, 11._

_It shall be lawful to the king to give licence to every of his 
own chaplains for non-residence_] In the former part of the 
act it was expressed, that the several chaplains therein 
mentioned might be dispensed withal for their non-refi-
dence, during such time only as they should be and remain 
in the household of those who retained them; but this 
clause seemeth to contain one exception to that limitation, 
with regard to the chaplains of the king; who may (as it seemeth) by this clause give licence to any of his own 
chaplains for non-residence generally, and not only dur-
ing the time of their attendance in the household: And 
this proviso seemeth only to be a saving of the king's 
right which he had before, as is set forth in the answer to 
one of the articuli cleri before mentioned, and in the com-
ment thereupon.

_Shall take any husbands under the degree of a baron_] If any 
of these retaineth chaplains, according to this statute, and 
afterwards taketh to husband one of the nobility (as it was 
in Acton's case, where the baroness Mounteagle, after 
such retainer, took to husband the Lord Compton); the 
retainer remaineth in force, notwithstanding such mar-
riage, and the chaplains, so long as they tend upon her 
shall not be adjudged non-residents within this act. 4 Co. 
117.

By the 25 H. 8. c. 16. _Whereas by the statute of the 
21 H. 8. c. 13. it was ordained, that certain honourable 
persons,
persons, as well spiritual as temporal, shall have chaplains beneficed with cure to serve them in their honourable houses, which chaplains shall not incur the danger of any penalty or forfeiture made or declared in the same parliament, for non-residence upon their said benefices; in which act no provision was made for any of the king's judges of his high courts, commonly called the king's bench and the common place, except only for the chief judge of the king's bench, nor for the chancellor nor the chief baron of the king's exchequer, nor for any other inferior persons being of the king's most honourable council: It is therefore enacted, that as well every judge of the said high courts, and the chancellor and chief baron of the exchequer, the king's general attorney and general solicitor, for the time that shall be, shall and may retain and have in his house or attendant to his person, one chaplain having one benefice with cure of souls, which may be absent from his said benefice, and not resident upon the same; the said statute made in the said one and twentieth year, or any other statute, act, or ordinance to the contrary notwithstanding.

By the 28 H. 8. c. 13. Whereas divers persons, under colour of the proviso in the act of the 21 H. 8. c. 13. which exempteth persons conversant in the universities for study, from the penalty of non-residence contained in the said act, do resort to the universities, where under pretence of study they live disolutely, nothing profiting themselves by study at all, but confume the time in idleness and other pastimes; it is enacted, that all persons who shall be to any benefice or benefices promoted as is aforesaid, being above the age of forty years (the chancellor, vice-chancellor, commissary of the said universities, wardens, deans, provosts, presidents, rectors, masters, principals, and other head rulers of colleges, halls, and other houses or places corporate within the said universities, doctors of the chair, readers of divinity in the common schools of divinity in the said universities, only excepted) shall be resident and abiding at and upon one of their said benefices, according to the intent and true meaning of the said former act, upon such pain and penalties as be contained in the said former act, made and appointed for such beneficed persons for their non-residence; and that none of the said beneficed persons, being above the age aforesaid, except before except, shall be excused of their non-residence upon the said benefices, for that they be students or refiants within the said universities; any proviso, or any other clause or sentence contained in the said former act of non-residence, or any other thing to the contrary in any wise notwithstanding.
Residence.

And further, that all and singular such beneficed persons, being under the age of forty years, resient and abiding within the said universities, shall not enjoy the privilege and liberty of non-residence, contained in the proviso of the said former act, unless he or they be present at the ordinary lecture and lectures, as well at home in their houses, as in the common school or schools, and in their proper person keep sophisms, problems, disquisitions, and other exercises of learning, and be opponent and respondent in the same, according to the ordinances and statutes of the said universities; any thing contained in the said proviso, or former act to the contrary notwithstanding.

Provided always, that nothing in this act shall extend to any person who shall be reader of any publick or common lecture in divinity, law civil, phylsick, philofophy, humanity, or any of the liberal sciences, or publick or common interpreter or teacher of the hebrew tongue, chaldee, or greek; nor to any persons above the age of forty years, who shall resort to any of the said universities to proceed doctors in divinity, law civil, or phylsick, for the time of their said proceedings, and executing of such sermons, disquisitions, or lectures, which they be bound by the statutes of the universities there to do for the said degrees so obtained.

By the 33 H. 8. c. 28. Whereas by the act of the 21 H. 8. c. 13, it was ordained, that certain honourable persons, and other of the king’s counsellers and officers, as well spiritual as temporal, should and might have chaplains beneficed with cure, to serve and attend upon them in their houses, which chaplains shall not incur the danger of any penalty or forfeiture made or declared in the said act for non-residence upon their said benefices; in which act no provision is made for any of the head officers of the king’s courts of the dutchy of Lancaster, the courts of augmentations of the revenues of the crown, the first fruits and tenths, the master of his majesty’s wards and liveries, the general surveyors of his lands, and other his majesty’s courts;

It is therefore enacted, that the chancellor of the said court of the dutchy of Lancaster, the chancellor of the court of augmentations, the chancellor of the court of first fruits and tenths, the master of his majesty’s wards and liveries, and every of the king’s general surveyors of his lands, the treasurer of his chamber, and the groom of the stole, and every of them, shall and may retain in his house, or attendant unto his person, one chaplain having one benefice with cure of souls which may be absent from the said benefice, and non-resident upon the same; the said statute made in the said twenty first year of his majesty’s
Residence.

majesty's reign, or any other statute, act, or ordinance to the contrary notwithstanding.

Provided always, that every of the said chaplains so being benefited as aforesaid, and dwelling with any the officers aforesaid, shall repair twice a year at the least to his said benefice and cure, and there abide for eight days at every such time at the least, to visit and instruct his said cure; on pain of 40l. for every time so failing, half to the king, and half to him that will sue for the fame in any of the king's courts of record, in which suit no effion protection or wager of law shall be allowed.

And here the question comes to be reconsidered, How far these statutes, taken together, do supersede the canon law, so as to take away the power which the ordinary had before, of injoining residence to the clergy of his diocese. It seems to be clear, that before these statutes, the bishops of this realm had and exercised a power of calling their clergy to residence; but more frequently, they did not exert this power, which so far forth was to the clergy a virtual dispensation for non-residence. But this not exerting of their power was in them not always voluntary; for they were under the controlling influence of the pope, who granted dispensations of non-residence to as many as would purchase them, and disposed of abundance of ecclesiastical preferments to foreigners who never resided here at all. The king also, as appears, had a power to require the service of clergymen; and consequently in such case to dispense with them for non-residence upon their benefices. This power of the king is referred to him by the aforesaid act of the 21 H. 8. c. 13. But it is the power of dispensation in the two former cafes which is intended to be taken away, namely, by the bishop, and by the pope; and by the said act residence is injoyed to the clergy under the penalty therein mentioned, notwithstanding any dispensation to the contrary from the court of Rome or elsewhere; with a proviso nevertheless, that the said act shall not extend nor be prejudicial to the chaplains and others therein specially excepted. It is argued, that this act being made to rectify what had been insufficient or ineffectual in the canon law, and inflicting a temporal penalty to enforce the obligation of residence, the parliament intended that the said act should be from thenceforth, if not the sole, yet the principal rule of proceeding in this particular; and consequently, that the persons excepted in the act need no other exemption than what is given to them by the act for their non-residence. Unto this it is answered, that the intention of the act was not
to take away any power which the bishop had of injoining residence, but the contrary; namely, it was to take away that power which the bishop or pope exercised of granting dispensations for non-residence; that is to say, the act left to them that power which was beneficial, and only took from them that which tended to the detriment of the church; and consequently, that the bishop may in-join residence to the clergy as he might before, only he may not dispense with them as he did before for non-residence. And indeed, from any thing that appears upon the face of the act, the contrary supposition seemeth to bear somewhat hard against the rule which hath generally been adhered to in the construction of acts of parliament, that an act of parliament in the affirmative doth not take away the ecclesiastical jurisdiction, and that the same shall not be taken away in any act of parliament but by express words. It is therefore further urged, that the three subsequent acts do explain this act, and by the express words thereof do establish the aforesaid interpretation. In the first of the three it is said, that the persons therein mentioned may retain one chaplain which may be absent from his benefice, and not resident upon the same; in the second, it is said, that persons above forty years of age residing in the universities shall not be excused of their non-residence, and again, that persons under forty years of age shall not enjoy the privilege of non-residence contained in the proviso of the said former act, unless they perform the common exercises there, and the like, which implies, that if they do this, they shall enjoy such privilege: and in the third, it is said, that the persons therein mentioned may retain one chaplain which may be absent from his benefice, and non-resident upon the same; and it is not to be supposed, that the parliament intended a greater privilege to the chaplains of the inferior officers mentioned in the said last act, than to the chaplains of the royal family and principal nobility mentioned in the first act. Unto this the most apposite answer seemeth to be, that it is not expressed absolutely in any of the said three acts, that the chaplains or others therein mentioned shall enjoy the privilege of non-residence, or may be absent from their benefices, and not resident upon the same; but only this, that they may be absent or non-resident as aforesaid, the said statute made in the said twenty first year, or any other statute or ordinance to the contrary notwithstanding. So that they are only exempted thereby from the restraints introduced by the statute law; but in other respects are left as they were before.
But concerning this, altho' it is a case likely enough to happen every day, there hath been no adjudication.

4. Peccham. We do decree, that rectors who do not make personal residence in their churches, and who have no vicars, shall exhibit the grace of hospitality by their stewards according to the ability of the church; so that at least the extreme necessity of the poor parishioners be relieved; and they who come there, and in their passage preach the word of god, may receive necessary sustenance, that the churches be not unjustly forsaken of the preachers through the violence of want: for the workman is worthy of his meat, and no man is obliged to warfare at his own cost.

Who do not make personal residence?] That is, altho' they be licensed to non-residence by their bishops or others to whom it appertaineth. For if they be non-resident without licence, they are not only bound to the observance of this constitution, but otherwise may be proceeded against according to law. Lind. 132.

And who have no vicars] This intimates, that they who have vicars in their benefices, are excused from personal residence: And this may be well admitted, where the parish church is annexed to a prebend or dignity; for then the principal is excused by the vicar from personal residence; and the reason is, because he is bound to reside in his greater benefice. But this reason (faith Lindwood) doth not hold, where in a church there is a rector and vicar, which church doth not depend on any other church; wherefore he who hath such church is not excused from residence by the vicar which he hath there: Nor doth it make against this, if it be alleged, that such rector hath not the cure of souls, but the vicar; for habitually, and in propriety, the cure of souls is in the principal rector; and in the vicar only, as to the exercise and effect thereof. Lind. 132.

Who come there, and in their passage preach the word of god?] This constitution was made by Peccham, in favour of his own brethren the friars, who travelled under the pretence of preaching. Lindwood here bears hard upon them, for fauntering up and down in the parishes where they preached, and begging the people's alms after they had received what was sufficient at the parsonage house. Johnf. Pecch. Lindw. 133.

Preach the word of god] That is, if they be licensed and lawfully sent to preach. Lind. 133.
5. By the 13 Eliz. c. 20. That the livings appointed for ecclesiasticall ministers may not by corrupt and indirect dealings be transferred to other uses, it is enacted, that no leaf to be made of any benefice or ecclesiasticall promotion with cure, or any part thereof, and not being impropriated, shall endure any longer than while the leflee shall be ordinarily resident, and serving the cure of such benefice, without absence above fourscore days in any one year; but every such leaf, immediately upon such absence, shall cease and be void; and the incumbent so offending shall for the same loss one year's profit of his said benefice, to be distributed by the ordinary among the poor of the parish: And all chargings of such benefices with cure with any pension, or with any profit out of the same to be yielded or taken, other than rents referred upon leaves, shall be void. f. 1.

Provided, that every parson by the laws of this realm allowed to have two benefices, may demise the one of them upon which he shall not then be most ordinarily resident, to his curate only that shall serve the cure for him: but such leafe shall endure no longer than during such curate's residence without absence above forty days in any one year. f. 2.

H. 1725. Mills and Etheridge. Bill by the leflee of Matthew Hawes, clerk, setting forth his leafe dated Feb. 4. 1723, for the tithes for 1724 and 1725 in the parish of Simpson in the county of Buckingham. The defendant pleaded, that it appears by the plaintiff's bill, that his leafe was dated Feb. 4. 1723; then pleads the statute of the 13 Eliz. c. 20. and avers, that Matthew Hawes the leflor was absent from his benefice eighty days and more in one year since the leafe, and before the filing of the bill; that the church of Simpson is not improper; and that it is a benefice or ecclesiasticall promotion with cure; and therefore by such non-residence, and by virtue of the said act, that the leafe was void. And the plea was allowed: and it was determined, that there is no necessity to aver that the absence was voluntary (for if it was otherwise, it lay upon the plaintiff to shew it); or to aver, that the absence was eighty days together. Bunb. 210.

The same plea came on E. 1726, in the case of Quilter and Lowndes, and allowed by the whole court. Bunb. 211.

But, query, says the reporter, if this is a good plea if the rector and leflee join; for by non-residence before sentence he only forfeits his leafe and rents, not his tithes. Atkinson and Progers v. Peasley. Bunb. 211.

6. Bishops
6. Bishops (as was observed before) are not punishable by the statute of the 21 H. 8. for non-residence upon their bishopricks; but altho' an archbishop or bishop be not tied to be resident upon his bishoprick by the statute; yet they are thereto obliged by the ecclesiastical law, and may be compelled to keep residence by ecclesiastical censures. *Watf. c. 37.*

Thus, by a constitution of archbishop Langton: Bishops shall be careful to reside in their cathedrals, on some of the greater feasts, and at least in some part of Lent, as they shall see to be expedient for the welfare of their souls. *Lind. 130.*

And by a constitution of Otho: *What is incumbent upon the venerable fathers the archbishops and bishops by their office to be done, their name of dignity, which is that of bishop (episcopus) or superintendent, evidently expresseth. For it properly concerns them (according to the gospel expression) to watch over their flock by night. And since they ought to be a pattern by which they who are subject to them ought to reform themselves, which cannot be done unless they shew them an example; we exhort them in the lord, and admonish them, that residing at their cathedral churches, they celebrate proper masses on the principal feast days, and in Lent, and in Advent. And they shall go about their dioceses at proper seasons, correcting and reforming the churches, consecrating, and sowing the word of life in the lord's field. For the better performance of all which, they shall twice in the year, to wit, in Advent and in Lent, cause to be read unto them the profession which they made at their consecration.* *Athon 55.*

And by a constitution of Othobon: *Atho' bishops know themselves bound as well by divine as ecclesiastical precepts to personal residence with the flock of God committed to them; yet because there are some who do not seem to attend hereunto, therefore we purposing the mention of Otho the legate, do earnestly exhort them in the Lord, and admonish them in virtue of their holy obedience, and under attestation of the divine judgments, that out of care to their flock, and for the solace of the churches espoused to them, they be duly present, especially on solemn days, in Lent and in Advent; unless their absence on such days shall be required for just cause by their superiors.* *Athon 118.*

7. Can. 42. Every dean, master, or warden, or chief governor of any cathedral or collegiate church, shall be resident in the same fourscore and ten days conjunction or division in every year at the least, and then shall continue there in preaching.
the word of god, and keeping good hospitality; except he shall be otherwise let with weighty and urgent causes to be approved by the bishop of the diocese, or in any other lawful sort dispensed with.

To be approved by the bishop] By the ancient canon law, personal attendance on the bishop, or study in the university, was a just cause of non-residence; and as such, notwithstanding the non-residence, intitled them to all profits, except quotidianas. Gib. 172.

8. Can. 44. No prebendaries nor canons in cathedral or collegiate churches, having one or more benefices with cure (and not being residentiaries in the same cathedral or collegiate churches) shall, under colour of their said prebends, absent themselves from their benefices with cure above the space of one month in the year, unless it be for some urgent cause, and certain time to be allowed by the bishop of the diocese. And such of the said canons and prebendaries, as by the ordinances of the cathedral or collegiate churches do stand bound to be resident in the same, shall so among themselves sort and proportion the times of the year, concerning residence to be kept in the said churches, as that some of them always shall be personally resident there; and all those who be, or shall be residentiaries in any cathedral or collegiate church, shall, after the days of their residency appointed by their local statutes or custom, expired, presently repair to their benefices, or some one of them, or to some other charge where the law requireth their presence, there to discharge their duties according to the laws in that case provided. And the bishop of the diocese shall see the same to be duly performed and put in execution.

So that besides the general laws directing the residence of other clergymen, these dignitaries have another law peculiar to themselves, namely, the local statutes of their respective foundations, the validity of which local statutes this canon supposeth and affirmeth. And with respect to the new foundations in particular, the act of parliament of the 6 An. c. 21. enacts, that their local statutes shall be in force, so far as they are not contrary to the constitution of the church of England, or the laws of the land. This canon is undoubtedly a part of the constitution of the church: So that if the canon interfereth in any respect with the said local statutes, the canon is to be preferred, and the local statutes to be in force only so far forth as they are modified and regulated by the canon.

9. There
9. There doth not appear to be any difference, either by the ecclesiastical or temporal laws of this kingdom, between the case of a rector and of a vicar concerning residence; except only that the vicar is sworn to reside (with a proviso, unless he shall be otherwise dispensed withal by his diocefan), and the rector is not sworn. And the reason of this difference was this: In the council of Lateran held under Alexander the third, and in another Lateran council held under Innocent the third, there were very strict canons made against pluralities; by the first of these councils, pluralities are restrained, and every person admitted ad ecclesiam, vel ecclesiasticum ministerium, is bound to reside there, and personally serve the cure; by the second of these councils, if any person, having one benefice with cure of souls, accepts of a second, his first is declared void ipso jure. These canons were received in England, and are still part of our ecclesiastical law.

At the first appearance of these canons, there was no doubt made but they obliged all rectors; for they, according to the language of the law, had churches in title, and had beneficium ecclesiasticum; and of such the canons spake. But vicars did not then look upon themselves to be bound by these canons, for they, as the gloss upon the decretals speaks, had not ecclesiari quoad titulum; and the text of the law describes them not as having benefices, but as bound personis et ecclesiis deservire, that is, as affilient to the rector in his church.

Upon this notion a practice was founded, and prevailed in England, which eluded the canons made against pluralities. A man beneficed in one church could not accept another, without voiding the first; but a man possessed of a benefice could accept a vicarage under the rector in another church, for that was no benefice in law, and therefore not within the letter of the canon, which forbids any man holding two benefices.

The way then of taking a second living in fraud of the canon was this: A friend was presented, who took the institution, and had the church quoad titulum; as soon as he was possessed, he constituted the person vicar for whose benefit he took the living, and by consent of the diocefan allotted the whole profit of the living for the vicar's portion, except a small matter referred to himself.

This vicar went and resided upon his first living, for the canon reached him where he had the benefice; but having no benefice where he had only a vicarage, he thought
thought himself secure against the said canons requiring residence.

This piece of management gave occasion to several papal decrees, and to the following constitution of archbishop Langton; viz. No ordinary shall admit any one to a vicarage, who will not personally officiate there. Lind. 64.

And to another constitution of the same archbishop, by which it is injoined, that vicars who will be non-resident shall be deprived. Lind. 131.

But the abuse still continued, and therefore Otho, in his legantine constitutions, applied a stronger remedy, ordaining, that none shall be admitted to a vicarage, but who renouncing all other benefices (if he hath any) with care of souls, shall swear that he will make residence there, and shall constantly so reside: otherwise his institution shall be null, and the vicarage shall be given to another. Athon 24.

And it is upon the authority of this constitution that the oath of residence is administered to vicars to this day. And this obligation of vicars to residence was further enforced by a constitution of Othobon, as followeth: If any shall detain a vicarage contrary to the aforesaid constitution of Otho, he shall not appropriate to himself the profits thereof; but shall restore the same; one moiety whereof shall be applied to the use of that church, and the other moiety shall be distributed half to the poor of the parish and half to the archdeacon. And the archdeacon shall make diligent inquiry every year, and cause this constitution to be strictly observed. And if he shall find that any one detaineth a vicarage contrary to the premises, he shall forthwith notify to the ordinary that such vicarage is vacant, who shall do what to him belongeth in the premises; and if the ordinary shall delay to institute another into such vicarage, he shall be suspended from collation institution or presentation to any benefice until he shall comply. And if any one shall strive to detain a vicarage contrary to the premises, and persist in his obstinacy for a month; he shall, besides the penalties aforesaid, be ipso facto deprived of his other benefices (if he have any); and shall be disabled for ever to hold such vicarage which he hath so vexatiously detained, and from obtaining any other benefice for three years. And if the archdeacon shall be remiss in the premises, he shall be deprived of the share of the aforesaid penalty assigned to him, and be suspended from the entrance of the church, until he shall perform his duty. Athon 95.

So that, upon the whole, the doubt was not, whether rectors were obliged to residence; the only question was, whether
whether vicars were also obliged: and to enforce the residence of vicars, in like manner as of rectors, the afore-
said constitutions were ordained. Sherl. ibid. page 20, 21, 22.

10. Can. 47. Every beneficed man licensed by the laws of curates, this realm, upon urgent occasions of other service, not to re-
side upon his benefice, shall cause his cure to be supplied by a curate that is a sufficient and licensed preacher, if the worth of the benefice will bear it. But whosoever hath two benefices, shall maintain a preacher licensed in the benefice where he doth not reside, except he preach himself at both of them usually.

And by the last article of archbishop Wake’s directions (which are inserted at large under the title Ordination), it is required, that the bishop shall take care, as much as possible, that whosoever is admitted to serve any cure, do reside in the parish where he is to serve; especially in livings that are able to support a resident curate: and where that cannot be done, that they do at least reside so near to the place, that they may conveniently perform all their duties both in the church and parish.

11. By the faculty of dispensation, a pluralist is re-
quired, in that benefice from which he shall happen to be most absent, to preach thirteen sermons every year; and to exercise hospitality for two months yearly, and for that time, according to the fruits and profits thereof, as much as in him lieth, to support and relieve the in-
habitants of that parish especially the poor and needy.

12. By the 1 W. c. 26. If any person presented or no-
minated by either of the universities to a popish benefice with cure, shall be absent from the same above the space of sixty days in any one year; in such case, the said benefice shall become void.

Resignation.

For general bonds of resignation, see the title Simony.

1. A resignation is, where a parson, vicar, or other beneficed clergyman voluntarily gives up and surrenders what his charge and preferment to those from whom he received the same. Deg. p. 1. c. 14.

2. That
Resignation.

2. That ordinary who hath the power of institution, hath power also to accept of a resignation made of the same church to which he may institute; and therefore the respective bishop, or other person who either by patent under him or by privilege or prescription hath the power of institution, are the proper persons to whom a resignation ought to be made. And yet a resignation of a deanry in the king's gift, may be made to the king; as of the deanry of Wells. And some hold, that the resignation may well be made to the king, of a prebend that is no donative: But others on the contrary have held, that a resignation of a prebend ought to be made only to the ordinary of the diocese, and not to the king as supreme ordinary; because the king is not bound to give notice to the patron (as the ordinary is) of the resignation; nor can the king make a collation by himself without presenting to the bishop, notwithstanding his supremacy. 2 Roll's Abr. 358. Watf. c. 4.

And resignation can only be made to a superior: This is a maxim in the temporal law, and is applied by lord Coke to the ecclesiastical law, when he says, that therefore a bishop cannot resign to the dean and chapter, but it must be to the metropolitan, from whom he received confirmation and consecration. Gibf. 822.

And it must be made to the next immediate superior, and not to the mediate; as of a church presentative to the bishop, and not to the metropolitan. 2 Roll's Abr. 358.

But donatives are not resignable to the ordinary; but to the patron, who hath power to admit. Gibf. 822.

And if there be two patrons of a donative, and the incumbent resign to one of them, it is good for the whole. Deg. p. 1. c. 14.

3. Regularly, resignation must be made in person, and not by proxy. There is indeed a writ in the register, intitled, litera procuratoria ad resignandum, by which the person constituted proctor was enabled to do all things necessary to be done in order to an exchange; and of these things, resignation was one. And Lindwood supposeth, that any resignation may be made by proctor. But in practice, there is no way (as it seemeth) of resigning, but either to do it by personal appearance before the ordinary, or at least to do it elsewhere before a publick notary, by an instrument directed immediately to the ordinary, and attested by the said notary; in order to be presented to the ordinary, by such proper hand as may pray.
pray his acceptance. In which case the person present-
ing the instrument to the ordinary doth not resign *nomine
procuratoris*, as proctors do; but only presents the resig-

4. A collateral condition may not be annexed to the
resignation; no more than an ordinary may admit upon
condition, or a judgment be confessed upon condition,
which are judicial acts. *Watf.* c. 4.

For the words of resignation have always been, *pure,
sponite, absolute et simplificiter*; to exclude all indirect
bargains, not only for money, but for other considerations.
And therefore in Gayton's case, *E.* 24 *Eliz.* where the
resignation was, to the use of two persons therein named,
and further limited with this condition, that if one of
the two was not admitted to the benefice resigned, with-
in six months, the resignation should be void and of none
effect; such resignation, by reason of the condition, was

1 *Still.* 334.

But where the resignation is made for the sake of
exchange only, there it admits of this condition, viz.
if the exchange shall take full effect, and not otherwise;
as appears by the form of resignation which is in the re-
gister. *Gibf.* 821.

By a constitution of Othobon: *Whereas sometimes a man
resigneth his benefices, that he may obtain a vacant fee; and
bargaineth with the collator, that if he be not elected to the
bishopsrick, he shall have his benefices again; we do decree,
that they shall not be restored to him, but shall be conferred
upon others as lawfully void. And if they be restored to him,
the same shall be of no effect; and he who shall so restore them,
after they have been resigned into his hands, or shall institute
the resigner into them again, if he is a bishop he shall be sus-
pended from the use of his dalmatic and pontificals, and if he
is an inferior prelate he shall be suspended from his office, un-
til he shall think fit to revoke the same.* *Athon* 134.

5. No resignation can be valid, till accepted by the
proper ordinary: That is, no person appointed to a cure
of souls, can quit that cure, or discharge himself of it,
but upon good motives, to be approved by the superior
who committed it to him; for it may be, he would quit
it for money, or to live idly, or the like. And this is
the law temporal, as well as spiritual; as appears by
that plain resolution which hath been given, that all
presentations made to benefices resigned, before such ac-
ceptance,
Resignation.

cectance, are void. And there is no pretence to say, that the ordinary is obliged to accept; since the law hath appointed no known remedy, if he will not accept, any more than if he will not ordain. Gibf. 822.

1 Still. 334.

Lindwood makes a distinction in this case, between a cure of souls, and a fine-cure. The resignation of a fine-cure, he thinks, is good immediately, without the Superior's consent; because none but he that resigneth hath interest in that case: but where there is a cure of souls it is otherwise, because not he only hath interest, but others also unto whom he is bound to preach the word of God; wherefore in this case it is necessary, that there be the ratification of the bishop, or of such other person as hath power by right or custom to admit such resignation. Gibf. 823.

Thus in the case of the marchioess of Rockingham and Griffith, Mar. 22. 1755. Dr Griffith beingpossessed of the two rectories of Leythley and Thurncfo, in order that he might be capacitiated to accept another living which became vacant, to wit, the rectory of Handworth, executed an instrument of resignation of the rectory of Leythley aforesaid, before a notary publick, which was tendred to and left with the archbishop of York, the ordinary of the place within which Leythley is situate. It was objected, that here doth not appear to have been any acceptance of the resignation by the archbishop, and that without his acceptance the said rectory of Leythley could not become void. And it was held by the lord chancellor clearly, that the ordinary's acceptance of the resignation is absolutely necessary to make an avoidance: But whether in this case there was a proper resignation and acceptance thereof, he reserved for further consideration; and in the mean time recommended it to the archbishop to produce the resignation in court. ——— Afterwards, on the 17th of April 1755, the cause came on again to be heard, and the resignation was then produced; but the counsel for the executors of the late marquis declaring that they did not intend to make any further opposition, the lord chancellor gave no opinion upon the resignation, or the effect of it; but in the course of the former argument, he held, that the acceptance of a resignation by the ordinary is necessary to make it effectual, and that it is in the power of the ordinary to accept or refuse a resignation.
Resignation.

And in the case of Hesket and Grey, H. 28 G. 2. where a general bond of resignation was put in suit, and the defendant pleaded that he offered to resign but the ordinary would not accept the resignation; the court of king’s bench were unanimously of opinion, that the ordinary is a judicial officer, and is intrusted with a judicial power to accept or refuse a resignation as he thinks proper: And judgment was given for the plaintiff.

6. After acceptance of the resignation, lapse shall not run but from the time of notice given: It is true, the church is void immediately upon acceptance, and the patron may present if he please; but as to lapse, the general rule that is here laid down, is the unanimous doctrine of all the books. Infomuch that if the bishop who accepted the resignation, dies before notice given, the six months shall not commence till notice is given, by the guardian of the spiritualities, or by the succeeding bishop; with whom the act of resignation is presumed to remain. Gibs. 823.

7. By the 31 El. c. 6. s. 8. If any incumbent of any benefice with cure of souls, shall corruptly resign the same; or corruptly take for or in respect of the resigning the same, directly or indirectly, any pension, sum of money, or other benefit whatsoever: as well the giver, as the taker, of any such pension, sum of money, or other benefit corruptly, shall lose double the value of the sum so given taken or had; half to the queen, and half to him that shall sue for the same in any of her majesty’s courts of record.

Any pension] Before this statute, the bishop in cases of resignation might and did frequently, assign a pension during life, out of the benefice resigned, to the person resigning. Gibs. 822.

And by the statute of the 26 H. 8. c. 3. intitled, an act for the payment of first fruits and tithes, it was enacted, that incumbents charged with pensions payable to their predecessors during their lives, should deduct the tenth part thereof out of such payment, inasmuch as they were charged by the said act to pay the tenths of their whole living unto the king.

And by the same act it was provided, that no pension thereafter should be assigned by the ordinary, or by any other manner of agreement by collateral security or otherwise, upon any resignation of any dignity, benefice, or promotion spiritual, above the value of the third part of the dignity benefice or promotion spiritual resigned.

But
But now by the aforesaid act, no pensions whatsoever can be reserved.

Respond.

RESPOND, was a short anthem sung, after reading three or four verses of a chapter; after which, the chapter did proceed. Gib. 263.

Restoration of king Charles the second. See Holidays.
Review (Commission of). See Appeal.

Rochet.

ROCHET (a part of the episcopal habit, is a linen garment gathered at the wrists; and differeth from a surplice, in that a surplice hath open sleeves hanging down, but a rochet hath close sleeves. Lindw. 251.
It was also one of the sacerdotal vestments; and in that respect differed from a surplice in that it had no sleeves. Lindw. 252.

Rogation days. See Holidays.
Right of patronage. See Advowson.
Rural dean. See Deans.

Sabbath. See Lord's day.

Sacraments.
Sacraments.

Art. 25. There are two sacraments ordained of Christ our Lord in the gospel, that is to say, baptism and the supper of the Lord.

Those five commonly called sacraments, that is to say, confirmation, penance, orders, matrimony, and extreme unction, are not to be counted for sacraments of the gospel; being such as have grown partly of the corrupt following of the apostles, partly are states of life allowed by the scriptures; but yet have not like nature of sacraments with baptism and the Lord's supper, for that they have not any visible sign or ceremony ordained of God.

For the sacrament of baptism, See the title Baptism.

For the sacrament of the Lord's supper, See the title Lord's supper.

Sacrilege. See Church.
Sanctuary. See Church.

Schools.

The determinations in the courts of law, relative to this title, do not seem to be delivered with that precision which is usual in other cases. And indeed, excepting in an instance or two in the court of chancery (as will appear), the general law concerning schools doth not seem to have been considered as yet upon full and solemn argument. And therefore liberty of animadversion is taken in some of the following particulars, which would not be allowable in matters finally adjudged and settled.

1. By the 7 & 8 W. c. 37. Whereas it would be a Power of foundation, great hindrance to learning and other good and charitable works, if persons well inclined may not be permitted to found schools for the encouragement of learning, or to augment the revenues of schools already founded, it shall be lawful for the king to grant licences to alien, and to purchase and hold in mortmain.

But
SCHOOLS.

But by the 9 G. 2. c. 36. After Jun. 24. 1736, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, nor any sum of money, goods, chattels, flocks in the publick funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands tenements or hereditaments, shall be given or any ways conveyed or settled (unless it be bona fide for full and valuable consideration), to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumberd, in trust or for the benefit of any charitable uses whatsoever; unless such appointment of lands, or of money or other personal estate (other than flocks in the publick funds,) be made by deed indented, sealed, and delivered in the presence of two witnesses, twelve kalendar months at least before the death of the donor, and be enrolled in chancery within fix kalendar months next after the execution thereof; and unless such flock in the publick funds be transferred in the publick books usually kept for the transfer of flocks, fix kalendar months at least before the death of the donor: and unless the same be made to take effect in possession for the charitable use intended, immediately from the making thereof, and be without power of revocation. And any assurance otherwise made shall be void.

2. By Can. 77. No man shall teach either in publick school or private house, but such as shall be allowed by the bishop of the diocefe, or ordinary of the place, under his hand and seal; being found meet, as well for his learning and dexterity in teaching, as for sober and honest conversation, and also for right understanding of god's true religion; and also except he first subscribe simply to the first and third articles in the 36th canon, concerning the king's supremacy and the 39 articles of religion, and to the two first clauzes of the second article, concerning the book of common prayer, viz. that it containeth nothing contrary to the word of god, and may lawfully be used.

And in the case of Cory and Pepper, T. 30 Car. 2. a consultation was granted in the court of king's bench, against one who taught without licence in contempt of the canons; and (the reporter says) the reason given by the court was, that the canons of 1603 are good by the statute of the 25 Hen. 8. so long as they do not impugn the
common law, or the prerogative royal. 2 Lev. 222. Gib. 955.

But this is unchronological and absurd: and as the office of a school-master is a lay office (for where it is supplied by a clergyman, that is only accidental, and not of any necessity at all;) it is clear enough, that the canon by its own strength in this case is not obligatory.

Therefore we must seek out some other foundation of the ecclesiastical jurisdiction: and there are many quotations for this purpose fetched out of the antient canon law (Gib. 1099.) which altho' perhaps not perfectly decisive, yet it must be owned they bear that way.

The argument in Cox's case, seemeth to contain the substance of what hath been alleged on both sides in this matter; and concluseth in favour of the ecclesiastical jurisdiction. Which was thus: M. 1700. In the chancery; Cox was libelled against in the spiritual court at Exeter, for teaching school without licence from the bishop: And on motion before the lord chancellor, an order was made, that cause should be shewn why a prohibition should not go, and that in the mean time all things should stay. On shewing cause, it was moved to discharge the said order, alledging, that before the reformation this was certainly of ecclesiastical jurisdiction; and in proof thereof, was cited the 11th canon of the council of Lateran held in the year 1215, which canon hath been received by custom in this kingdom, and so made part of our ecclesiastical laws; that the statute of the 1 Eliz. c. 1. having restored the spiritual jurisdiction to the crown, which had been usurped by the pope, immediately thereupon the queen set forth ecclesiastical injunctions, one of which was, that no man should teach school without being allowed thereto by the ordinary; that it must be admitted, these injunctions were not confirmed by any act of parliament, but their being referred to and mentioned in the 5 Eliz. c. 1. was an argument that the legislature did approve of them; that in the 12th year of that queen, the said injunctions (and amongst them, this of teaching school without licence from the ordinary) were, by the convocation then sitting, turned into canons; that afterwards the statute of the 23 Eliz. c. 1. was the first statute that prohibited it; since which, two others had followed; but none of them tended to destroy the ecclesiastical jurisdiction, only, by making the offence punishable in both courts, gave a remedy where there
was none before; that in the first year of king James, the convocation met, which reduced all the canons into one body, and then particularly made this canon, that none should teach school without licence from the ordinary; and tho' it might be difficult to prove, that these canons were directly confirmed by act of parliament, yet there was a sort of confirmation of them in the statute of the 4 W. 7. for the founding and incorporating a free grammar school at North-Leech in the county of Gloucester, whereby the provost and scholars of queen's college in Oxford were to nominate the schoolmaster and usher of the said school, and to make such ordinances for the government thereof as they should see meet, so that the same were not repugnant to the king's prerogative, to the laws and statutes of the realm, or to any ecclesiastical canons or constitutions of the church of England. But on the other side, it was answered, that there could not be one canon or precedent before the reformation, cited to prove the keeping of school to be of ecclesiastical cognizance; for that supposing the council of Lateran to have been in every part thereof received in England, yet the canon cited did not prove the point for which it had been produced, that canon only appointing schoolmasters in every cathedral church, and such schoolmasters to be licensed by the bishop; which was but reasonable, namely, that he who taught in the bishop's church, should be approved of by the bishop; that the teaching of school was not in the nature thereof spiritual; and it would be hard to affirm, that it was of ecclesiastical jurisdiction, or cognizable by the old ecclesiastical laws of the kingdom received by common use, at the same time that not one single precedent of any such law or usage before the reformation was to be found; and that as to the canons made since, they did not bind a layman (as Cox was suggested to be) because the laity was not represented in convocation; neither could a reference to the canons in a private act of parliament add any greater weight to them than they had before; that this was a case which deferred great consideration, having before been in the other courts of Westminster-hall, where several prohibitions had been granted on this very same point, in order that it might receive a judicial determination, but the other side would never venture to go on; as in Oldfield's case, M. 9 W. the case of Betham and Bernardiston, E. 10 W. Chedwick's case, M. 10 W. Scorrier's case, T. 11 W. and one Davison's case, T. 12 W. that
supposing it to have been originally a spiritual crime, yet being now made temporal by several acts of parliament, it was thereby drawn from the spiritual to the temporal jurisdiction. By Wright lord keeper: Both courts may have a concurrent jurisdiction; and a crime may be punishable both in the one and in the other: The canons of a convocation do not bind the laity without an act of parliament: But I always was, and still am of opinion, that keeping of school is by the old laws of England of ecclesiastical cognizance: And therefore let the order for a prohibition be discharged. Whereupon it was moved, that this libel was for teaching school generally, without shewing what kind of school; and the court christian could not have jurisdiction of writing schools, reading schools, dancing schools, or such like. To which the lord keeper assented, and thereupon granted a prohibition as to the teaching of all schools, except grammar schools, which he thought to be of ecclesiastical cognizance. 1 P. Will. 29.

By act of parliament the case stands thus:

By the 23 Eliz. c. 1. If any person or persons, body politic or corporate, shall keep or maintain any schoolmaster which shall not repair to some church chapel or usual place of common prayer, or be allowed by the bishop or ordinary of the diocese where such schoolmaster shall be so kept; he shall, upon conviction in the courts at Westminster, or at the assizes, or quarter sessions of the peace, forfeit for every month so keeping him 10l; one third to the king, one third to the poor, and one third to him that shall sue: and such schoolmaster or teacher, presuming to teach contrary to this act, and being thereof lawfully convicted, shall be disabled to be a teacher of youth, and suffer imprisonment without bail or mainprize for one year.

The following case seemeth to have happened upon this statute; which in the adjudication, by some oversight, hath not been attended to: viz. E. 13 W. K. and Douf. The defendant was indicted for having kept a school without licence of the bishop of the diocese, against the form of the statute. Upon which it was moved to quash the indictment (being removed into the king's bench by certiorari), and the exceptions taken to the indictment were, 1. That there was no statute that prohibited keeping school without licence, but the 1 Fa. c. 4. s. 9. and the said act preferred another method of proceeding.

2. This indictment was found before the justices of the peace at the quarter sessions; and they have no power by the
the act, and therefore it was void. 3. This school was not within the act of the 1 Fa. because the act extends but to grammar schools; and this school was for writing and reading. And afterwards, after a rule made to shew cause, the indictment was quashed. L. Raym. 672.

Further: By the 1 Fa. c. 4. § 9. No person shall keep any school, or be a schoolmaster, out of any of the universities or colleges of this realm, except it be in some publick or free grammar school, or in some such nobleman's or gentleman's house as are not recusants, or where the same schoolmaster shall be specially licensed thereunto by the archbishop bishop or guardian of the spiritualities of that diocese; upon pain, that as well the schoolmaster, as also the party that shall retain or maintain any such schoolmaster, shall forfeit each of them for every day so unwittingly offending 40sh; half to the king, and half to him that shall sue.

And by the 13 & 14 C. 2. c. 4. Every schoolmaster keeping any publick or private school, and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, shall before his admission subscribe the declaration following, viz. "I A. B. do declare, that I will con- form to the liturgy of the church of England, as it is now by law established." Which shall be subscribed before the archbishop, bishop, or ordinary of the diocese; on pain that every person so failing in such subscription, shall forfeit his school, and be utterly disabled and ipso facto deprived of the same, and the said school shall be void as if such person so failing were naturally dead.

And if any schoolmaster, or other person, instructing or teaching youth in any private house or family as tutor or schoolmaster, shall instruct or teach any youth as a tutor or schoolmaster, before licence obtained from the archbishop, bishop, or ordinary of the diocese, according to the laws and statutes of this realm, (for which he shall pay 12d only,) and before such subscription as aforesaid; he shall for the first offence suffer three months imprisonment without bail; and for every second, and other such offence, shall suffer three months imprisonment without bail, and also forfeit to the king the sum of 5l. § 8, 9, 10, 11.

M. 9 G. 2. The king against the bishop of Litchfield and Coventry. A mandamus infued to the bishop, to grant a licence to Rushworth a clergyman, who was nominated usher of a free grammar school within his diocese. To which he returned, that a caveat had been entred by some of the principal inhabitants of the place, with articles annexed, accusing him of drunkennes, incontinency, and neglect
neglect of preaching and reading prayers; and that the caveat being warned, he was proceeding to inquire into the truth of these things when the mandamus came; and therefore he had suspended the licensing him. And without entering much into the arguments, whether the bishop hath the power of licensing; the court held, that the return should be allowed as a temporary excuse: for tho' the act of the 13 & 14 C. 2. c. 4. obligeth them only to assent to and subscribe the declaration, yet it adds, according to the laws and statutes of this realm; which presupposeth some necessary qualifications, which it is reasonable should be examined into. Str. 1023.

By the several stamp acts, the licence to schoolmasters and tutors shall be on a double 5th stamp.

After licence obtained; the schoolmaster must take the oaths, and exhibit a certificate of his having received the sacrament, at the quarter sessions, as other persons qualifying for offices.

And by Can. 137. Every schoolmaster shall, at the bishop's first visitation, or at the next visitation after his admission, exhibit his licence, to be by the said bishop either allowed, or (if there be just cause) disallowed and rejected.

3. By the 11 & 12 Wil. c. 4. If any papist, or person making profession of the popish religion, shall keep school, or take upon himself the education or government or boarding of youth; he shall be adjudged to perpetual imprisonment, in such place within this kingdom, as the king by advice of his privy council shall appoint. f. 3.

4. By the 17 C. 2. c. 2. It shall not be lawful for any person who shall take upon him to teach or preach in any meeting or conventicle under pretence of any exercise of religion, or for any other person who shall not first take and subscribe the oath following, and who shall not frequent divine service established by the laws of this kingdom,—to teach any publick or private school, or take any boarders or tablers that are taught and instructed by himself or any other; on pain of 40 l, one third to the king, one third to the poor, and one third to him that shall sue in the courts at Westminster or at the assizes or quarter sessions. Which oath is as followeth: "I A. B. do swear, that it is not lawful upon any pretence whatsoever, to take arms against the king; and that I do abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him in pursuance of such commissions; X 3"
“and that I will not at any time endeavour any alteration of government either in church or state.”

But by the 1 W. c. 18. commonly called the act of toleration; neither the said act, nor the before recited act of the 23 Eliz. c. 1. nor any other made against papists or popish recusants (except as therein excepted), shall extend to protestant dissenters qualified according to that act.

Under which general words [nor any other made against papists or popish recusants] the aforesaid statute of the 17a. c. 4. seemeth also to be included. But the above recited clause of the statute of the 13 & 14 C. 2. c. 4. seemeth to stand clear of this branch. But then there is a further clause in the said act of toleration, by which it is enacted, that no protestant dissenters, qualified as therein directed, shall be prosecuted in any ecclesiastical court, for or by reason of their non-conforming to the church of England. From which, their exemption from ecclesiastical censures for teaching school without licence is pleaded, and in practice seemeth to be allowed; altho’ there doth not appear to have been any legal determination therein. But it doth not seem, by any words of this statute, that they are exempted from the temporal penalties above recited of the 13 & 14 C. 2. c. 4. § 8, 9, 10, 11.

5. In Bales’s cafe, M. 21 C. 2. it was held, that where the patronage is not in the ordinary, but in feoffees or other patrons; the ordinary cannot put a man out: and a prohibition was granted; the suggestion for which was, that he came in by election, and that it was his freehold. 2 Keb. 544.

Upon which Dr Gibfon justly observes, that if this be any bar to his being deprived by ordinary authority; the presentation to a benefice by a lay patron, and the parson’s freehold in that benefice, would be as good a plea against the deprivation of the parson by the like authority. And yet this plea hath been always rejected by the temporal courts. And in one circumstance at least, the being deprived of a school, notwithstanding the notion of a freehold, is more naturally supposed, than deprivation of a benefice; because the licence to a school is only during pleasure, whereas the institution to a benefice is absolute and unlimited. Gibf. 1110.

6. By Can. 78. In what parish church or chapel seeever there is a curate, which is a master of arts, or bachelor of arts, or is otherwise well able to teach youth, and will willingly to do, for the better increas of his living, and
training up of children in principles of true religion; we will and ordain, that a licence to teach youth of the parish where he serveth, be granted to none by the ordinary of that place, but only to the said curate: Provided always, that this constitution shall not extend to any parish or chapel in country towns, where there is a publick school founded already; in which case, we think it not meet to allow any to teach grammar, but only him that is allowed for the said publick school.

7. By Can. 79. All schoolmasters shall teach in English or Latin, as the children are able to bear, the larger or shorter catechism, heretofore by publick authority set forth. And as often as any sermon shall be upon holy and festival days, within the parish where they teach, they shall bring their scholars to the church where such sermon shall be made, and there see them quietly and soberly behave themselves, and shall examine them at times convenient after their return, what they have born away of such sermons. Upon other days, and at other times, they shall train them up with such sentences of holy scriptures, as shall be most expedient to induce them to all godliness. And they shall teach the grammar set forth by king Henry the eighth, and continued in the times of king Edward the sixth and queen Elizabeth of noble memory, and none other. And if any schoolmaster, being licensed, and having subscribed as is aforesaid, shall offend in any of the premises, or either speak or teach against any thing whereunto he hath formerly subscribed, if upon admonition by the ordinary he do not amend and reform himself, let him be suspended from teaching school any longer.

The larger or shorter catechism] The larger is that in the book of common prayer: The shorter was a catechism set forth by king Edward the sixth, which he by his letters patents commanded to be taught in all schools; which was examined, reviewed, and corrected in the convocation of 1562, and published with those improvements in 1570, to be a guide to the younger clergy in the study of divinity, as containing the sum and substance of our reformed religion. Gibb. 374.

Shall bring their scholars to the church] E. io & II IV. Betcham and Barnardifon. The chief question was, whether a schoolmaster might be prosecuted in the ecclesiastical court for not bringing his scholars to church, contrary to this canon. And it was the opinion of the court, that the schoolmaster, being a layman, was not bound by the canons. i P. Will. 32.
Grammar] Compiled and set forth by William Lily and others specially appointed by his majesty; in the preface to which book it is declared, that “as for the diversity of grammars, it is well and profitably taken away by the king’s majesty’s wisdom; who foreseeing the inconveniency, and favourably providing the remedy, caused one kind of grammar by sundry learned men to be diligently drawn, and so to be set out only; every where to be taught for the use of learners, and for avoiding the hurt in changing of schoolmasters.”

8. By the 43 Eliz. c. 4. Where lands rents annuities goods or money, given for maintenance of free schools or schools of learning, have been misapplied, and there are no special visitors or governors appointed by the founder; the lord chancellor may award commissions under the great seal, to inquire and take order therein.

9. Whether a mandamus lieth for restoring a schoolmaster or usher, when in fact they have been deprived by the local visitors, is doubtfully spoken of in the books of common law; and the pleadings upon them seem not to touch the present point, but to turn chiefly upon this, Whether they are to be accounted offices of a publick or private nature. Gibs. 1110.

Thus in the case of the king against the bailiffs of Morpeth. A mandamus was granted, to restore a man to the office of under-schoolmaster of a grammar school at Morpeth, founded by king Edward the sixth: The same being of a publick nature, being derived from the crown. Sir. 58.

And the distinction seemeth to be this: If they shall be deemed of a publick nature, as constituted for publick government, they shall be subject to the jurisdiction of the king’s courts of common law; but if they be judged matters only of private charity, then they are subject to the rules and statutes which the founder ordains, and to the visitor whom he appoints, and to no other. L. Raym.

5.

In the case of colleges in the universities, whether founded by the king or by any other, it seemeth now to be settled, that they are to be considered as private establishments, subject only to the founder, and to the visitor whom he appointeth: and it doth not seem easy to discern any difference between schools and colleges in this respect.

10. H. 1725. Eden and Foster. The free grammar school of Birmingham was founded by king Edward the sixth, who endowed the said school, and by his letters patent.
patent appointed perpetual governors thereof, who were
dtherby enabled to make laws and ordinances for the bet-
ter government of the said school, but by the letters pa-
tent no express visitor was appointed, and the legal estate
of the endowment was vested in these governors. After a
commission had issued under the great seal to inspect the
management of the governors, and all the exceptions be-
ing already heard and over-ruled, it was now objected to
this commission, that the king having appointed gover-
nors, had by implication made them visitors likewise; the
consequence of which was, that the crown could not
issue a commission to visit or inspect the conduct of these
governors. The matter first came on before lord chan-
celloM Macclesfield, and afterwards before lord King, who
defired the assistance of lord chief justice Eyre, and lord
chief baron Gilbert; and accordingly the opinion of the
court was now delivered seriatim, that the commission was
good. 1. It was laid down as a rule, that where the
king is founder, in that case his majesty and his succes-
sors are visitors; but where a private person is founder, there
such private person and his heirs are by implication of
law visitors. 2. That tho’ this visitatorial power did re-
sult to the founder and his heirs, yet the founder might
vest or substitute such visitatorial right in any other per-
on or his heirs. 3. They conceived it to be unreasonable,
that where governors are appointed, these by construc-
tion of law and without any more should be visitors, should
have an absolute power, and remain exempt from being
visited themselves. And therefore, 4. That in those
cases where the governors or visitors are said not to be ac-
countable, it must be intended, where such governors
have the power of government only, and not where they
have the legal estate and are intrusted with the receipt of
the rents and profits (as in the present case); for it would
be of the most pernicious consequence, that any persons
intrusted with the receipt of rents and profits, and espe-
cially for a charity, tho’ they misemploy never so much
these rents and profits, should yet not be accountable for
their receipts: this would be such a privilege, as might
of it self be a temptation to a breach of trust. 5. That
the word governor did not of it self imply visitor; and to
make such a construction of a word, against the common
and natural meaning of it, and when such a strained con-
struction could not be for the benefit, but rather to the
great prejudice of the charity, would be very unreasonable;
besides, it would be making the king’s charter operate to
a double
a double intent, which ought not to be: And the com-
mission under the great seal was resolved to be well isued.
1. The following case relateth particularly to a
church; but is equally applicable to, and far more fre-
quently happeneth in the case of schools. It is that of
Waltham church, H. 1716. Edward Denny, earl of Nor-
wich, being seised by grant from king Edward the sixth,
of the site and demesnes of the dissolved monastery of
Waltham Holy Crofs, and of the manor of Waltham,
and of the patronage of the church of Waltham, and of
the right of nominating a minister to officiate in the said
church, it being a donative, the abbey being of royal
foundation, by his will in 1636, amongst other things
the said earl devised a house in Waltham, and a rent
charge of 100 l a year, and ten loads of wood to be annu-
ally taken out of the forest of Waltham, and his right of
nominating a minister to officiate in the said church, to
six trustees and their heirs, of which Sir Robert Atkins
was one, in trust for the perpetual maintenance of the
minister, to be from time to time nominated by the trus-
tees; and directed that when the trustees were reduced to
the number of three, they should chuse others. It so fell
out, that all the trustees, except Sir Robert Atkins, were
death; and he alone took upon him to enforce others to
fill up the number; and now the surviving trustees (of
the said Sir Robert’s appointment) did nominate Lapthorn
to officiate; and the lady Floyer and Campion, who were
owners of the dissolved monastery and of the manor,
claimed the right of nomination to the donative, and had
nominated Cowper to officiate there, and he was got into
possession. The bill was, that Lapthorn might be admit-
ted to officiate there, and to be quieted in the possession,
and to have an account of the profits. By the defendants
it was amongst other things insisted, that the trustees hav-
ing neglected to convey over to others, when they were
reduced to the number of three, and the legal estate com-
ing only to one single trustee, he had not power to elect
others; but by that means the right of nomination resulted
back to the grantor, and belonged to the defendants, who
had the estate, and flood in his place; or at least the court
ought to appoint such trustees as should be thought pro-
per. By Cowper, lord chancellor; It is only directory
to the trustees, that when reduced to three, they should
fill up the number of trustees; and therefore altho’ they
neglected so to do, that would not extinguish or deter-
mine...
mine their right; and Sir Robert Atkins, the only surviving trustee, had a better right than any one else could pretend to, and might well convey over to other trustees; it was but what he ought to have done: and it was decreed for the plaintiff with costs, and an account of profits; but the master to allow a reasonable salary to Cowper, whilst he officiated there. 2 Vern. 749.

12. By the 43 Eliz. c. 2. All lands within the parish are to be assessed to the poor rate.

But by the annual acts for the land tax, it is provided, that the same shall not extend to charge any masters or ushers of any schools, for or in respect of any stipend, wages, rents, or profits, arising or growing due to them, in respect of their said places or employments.

Provided, that nothing herein shall extend to discharge any tenant of any the houses or lands belonging to the said schools, who by their leases or other contracts are obliged to pay all rates, taxes, and impositions whatsoever; but that they shall be rated and pay all such rates, taxes, and impositions.

And in general, it is provided, that all such lands revenues or rents, settled to any charitable or pious use, as were assessed in the 4th year of Will. & Mar. shall be liable to be charged; and that no other lands, tenements or hereditaments, revenues, or rents whatsoever, then settled to any charitable or pious uses, as aforesaid, shall be charged.

And the reason of this distinction seemeth to be, because in that year, the sums to be charged were fixed and determined upon every particular division; lands which were then appropriated to charities being exempted out of the valuation; therefore it is no hardship upon the neighbourhood, that lands then exempted shall be exempted still, for the other lands pay no more upon the account of such exemption: but if lands appropriated to charities since that time should by such appropriation become exempted, this would lay a greater burden upon all the rest, because the same individual sum upon the whole division is to be raised still.

Seats in churches. See Church.

Sees of bishops. See Cathedrals.

Select vestry. See Vestry, in the title Church.
Sentence.

A Sentence is either definitive, or interlocutory:

A definitive sentence is that, which puts an end to the suit in controversy, and regards the principal matter in question:

An interlocutory sentence determines only some incident or emergent matter in the proceeding, as some exception, or the like; but doth not affect the principal matter in controversy. *Ayl. Par. 487.*

By the ancient canon law, sentence of suspension, or excommunication, ought not to be given without a previous admonition; unless the offence is such as in its own nature immediately requires such sentence. In archbishop Arundel's register, mention is made of an appeal from a sentence of suspension, as unjust, for want of a canonical admonition. *Gib.'s. 1046.*

And every sentence must be in writing; otherwise it deserves not the name of a sentence, and needeth not the formality of an appeal to reverse it. *Id. 1047.*

And by the several stamp acts, every sentence or final decree must be on a double sixpenny stamp.

And the sentence must be pronounced in the presence of both parties; otherwise, sentence given in the absence of one of the parties is void. *Id.*

Sentences upon the church wall. See Church.

Separatists. See Dissenters.

Sequestration.

**During the vacancy of a benefice.**

1. **Where none will accept the benefice.**

If E N a living becomes void by the death of an incumbent, or otherwise; the ordinary is to send out is sequestration, to have the cure supplied, and to preserve the profits (after the expenses deducted) for the use of the successor. *God. Append. 14.*

2. Sometimes a benefice is kept under sequestration for many years together, or wholly; namely, when it is of so small value, that no clergyman fit to serve the cure
Sequestration.

The cure will be at the charge of taking it by institution: In which case, the sequestration is committed sometimes to the curate only, sometimes to the curate and churchwardens jointly. *Johns. 121.*

3. Sometimes the fruits and profits of a living which is in controversy, either by the consent of parties, or the judge's authority, are sequestr'd and placed for safety, in a third hand. And thus where two different titles are set on foot, the rights are carefully preserved, and given to him for whom the cause is adjudged. *God. Append. 14.*

And the judge is also wont to appoint some minister to serve the cure, for the time that the controversy shall depend; and to command those to whom the sequestration is committed, to allow such salary as he shall assign out of the profits of the church to the parson that he orders to attend the cure. *Watf. c. 30.*

4. Sometimes for neglect of serving the cure, the profits of the living are to be sequestr'd. *Id. 15.*

5. Sometimes upon the king's writ to the bishop, to satisfy the debts of the incumbent. *Id.*

And this is, where a judgment hath been obtained against a clergyman, and upon a *fieri facias* directed to the sheriff to levy the debt and damages, he returns, that the defendant is a clerk beneficed having no lay fee. Whereupon a *levari facias* is directed to the bishop to levy the same of his ecclesiastical goods, and by virtue thereof the tithes shall be sequestr'd.

And in this case the bishop may name the sequestrators himself, or may grant the sequestration to such persons as shall be named by the party who obtained the writ.

If the sequestration be laid and executed before the day of the return of the writ; the mean profits may be taken by virtue of the sequestration after the writ is made returnable, otherwise not.

6. Sometimes when the houses and chancels that the *Dilapidations* incumbent is bound to repair, are ruined and ready to fall, if after due admonition they shall delay to begin to amend the same within two months; then the bishop of the diocese, that time being elapsed, shall sequestr the fruits and tithes till those defects are amended: and though the admonition proceed from the archdeacon, yet the bishop only hath the power of sequestration. *Gst. Append. 14.*

7. Stratford.
7. Stratford. If an appeal be made against a sentence of sequestration, and lawfully prosecuted; the party sequestr'd shall enjoy the profits, pending the appeal.

8. It is usual for the ecclesiastical judge, to take bond of the sequestrators, well and truly to gather and receive the tithes fruits and other profits, and to render a just account. Watf. c. 30.

And those to whom the sequestration is committed, are to cause the same to be published in the respective churches, in the time of divine service. Id.

It is best and most legal for the sequestrators, to receive the tithes and dues in kind.

But the sequestrators cannot maintain an action for tithes in their own name, at the common law, nor in any of the king's temporal courts; but only in the spiritual court, or before the justices of the peace where they have power by law to take cognizance. John. 122.

Thus in the case of Berwick and Swantmén, T. 1692. It was resolved in the court of exchequer, that a sequestrator cannot bring a bill alone for tithes; because he is but as a bailiff, and accountable to the bishop, and hath no interest. Bunb. 192.

After the sequestrators have performed the duty required, the sequestration is to be taken off, and application of the profits to be made according to the direction of the ordinary. And he shall allow to them a reasonable sum out of the profits, according to the trouble they shall have had in gathering the tithes. And he is also to allow for the supply of the cure, what shall be convenient, relation being had to the charge, and to the profits; and likewise for the maintenance of the incumbent and of his family (in case where there is an incumbent), if he hath not otherwise sufficient to maintain them.

If the sequestrators refuse to deliver up their charge, they shall be compelled thereunto by the ecclesiastical judge; and if they shall, being called thereunto, delay to give an account, it is usual for the judge to deliver unto the party grieved the bond given, with a warrant of attorney to sue for the penalty thereof to his own use at the common law. Watf. c. 30.

Therefore, if the incumbent is not satisfied with what the sequestrators have done in the execution of their charge, his proper remedy is by application to the spiritual judge; and if he shall think himself aggrieved by the determination
Sequestration.

determination of such judge, he may appeal to a superior jurisdiction. Sometimes a bill in equity hath been brought; which yet, as it seemeth, ought not to be brought against the sequestrators solely, for that they are only bailiffs or receivers, and have no interest: As in the case of Jones and Barret, H. 1724. On a bill by the vicar of West Dean in the county of Suffex against the defendant, who was sequestrator, for an account of the profits received during the vacation; it was objected for the defendant, that the bishop ought to have been made a party, since the sequestrator is accountable to him for what he receives; and the court seemed to think the bishop should have been a party; but by consent the cause was referred to the bishop of the diocese. Bubb. 192.

Sermons. See Publick worship.

Sexton.

The sexton, segften, segerslave, (sacrista, the keeper of the holy things belonging to the divine worship) seemeth to be the same with the ostiarius in the Romish church; and is appointed by the minister or others, and receiveth his salary according to the custom of each parish.

It hath been adjudged, that a mandamus lies to restore a sexton; though as to this the court at first doubted, because he was rather a servant to the parish than an officer, or one that had a freehold in his place. But upon a certificate shewn from the minister, and divers of the parish, that the custom was to chuse a sexton, and that he held it for his life, and that he had 2d a year of every house within the parish; they granted a mandamus, directed to the churchwardens to restore him.

3 Bac. Abr. 530.

T. 12 G. Olive and Ingram. In assumpst for money had and received to the plaintiff's use, a case was made at nifi prius for the opinion of the court; that there being a vacancy in the office of sexton of the parish of St Botolph without Alderfgate in the city of London, the plaintiff and Sarah Bly were candidates; and Sarah Bly had
had 169 indisputable votes, and 40 which were given by women, who were housekeepers and paid to the church and poor; that the plaintiff had 174 indisputable votes, and 22 other votes given by such women as aforesaid; that Sarah Bly was declared duly elected: upon which the plaintiff brought a mandamus, and was sworn in, and the defendant had received 5 th belonging to the office. In this case two points were made: 1. Whether a woman was capable of being chosen sexton. And 2. Whether women could vote in the election. As to the first, the court seemed to have no difficulty about it; there having been many cases where offices of greater consequence have been held by women, and there being many women sextons at that time in London; in the second year of queen Anne, a woman was appointed governor of Chelmsford workhouse: lady Broughton was keeper of the Gatehouse: lady Packington was the returning officer for members at Ailefbury. As to the second point, it was shewn, that women cannot vote for members of parliament or coroners, and yet they have freeholds, and contribute to all publick charges; and tho' they vote in the monied companies, yet that is by virtue of the acts which give the right to all persons possess'd of so much stock; that military tenures never descended to them. But the court notwithstanding held, that this being an office that did not concern the publick, or the care and inspection of the morals of the parishioners; there was no reason to exclude women, who paid rates, from the privilege of voting: they observed, here was no usage of excluding them stated, which perhaps might have altered the case; and that as this case was stated, the plaintiff did not appear to have been duly elected; and therefore there ought to be judgment against him. Str. 1114.

M. 5 G. K. and the churchwardens of Thame in Oxfordshire. They who have power to appoint a sexton, have power to displace him at pleasure. Str. 115.
Sick.

I. Visitation of the sick.

II. Communion of the sick.

III. Departing out of this life.

I. Visitation of the sick.

BY Can. 76. When any person is dangerously sick in any parish: the minister or curate, having knowledge thereof, shall refer unto him or her (if the disease be not known or probably suspected to be infectious), to instruct and comfort them in their distress, according to the order of the communion book if he be no preacher, or if he be a preacher then as he shall think most needful and convenient.

And by the Rubrick before the office for the visitation of the sick: When any person is sick, notice shall be given thereof to the minister of the parish; who shall go to the sick person's house, and use the office there appointed.

And the minister shall examine the sick person, whether he repent him truly of his sins, and be in charity with all the world; exhorting him to forgive, from the bottom of his heart, all persons that have offended him; and if he hath offended any other, to ask them forgiveness; and where he hath done injury or wrong to any man, that he make amends to the uttermost of his power. And if he hath not before disposed of his goods, let him then be admonished to make his will, and to declare his debts, what he oweth, and what is owing to him for the better discharge of his conscience, and the quietness of his executors. But men should often be put in remembrance to take order for the settling of their temporal estates, whilst they are in health.

And the minister should not omit earnestly to move such sick persons as are of ability, to be liberal to the poor.

II. Communion of the sick.

By a constitution of archbishop Peccham; The sacrament of the eucharist shall be carried with due reverence,
to the sick, the priest having on at least a surplice and stole, with a light carried before him in a lantern with a bell; that the people may be excited to due reverence; who by the minister's discretion shall be taught to prostrate themselves, or at least to make humble adoration, wherefover the king of glory shall happen to be carried under the cover of bread.

But by the rubrick of the 2 Ed. 6. it was ordered, that there shall be no elevation of the hoft, or shewing the sacrament to the people.

By the present rubrick before the office for the communion of the sick, it is ordered as follows: Forasmuch as all mortal men be subject to many sudden perils, diseases, and sicknesses, and ever uncertain what time they shall depart out of this life; therefore to the intent they may be always in a readiness to die whensoever it shall please almighty god to call them, curates shall diligently from time to time (but especially in the time of perilence or other infectious sicknesses) exhort their parishioners to the often receiving of the holy communion of the body and blood of our saviour Christ, when it shall be publickly administered in the church; that so doing, they may in case of sudden visitation, have the less cause to be disquieted for lack of the same. But if the sick person be not able to come to the church, and yet is desirous to receive the communion in his house; then he must give timely notice to the curate, signifying also how many there are to communicate with him (which shall be three, or two at the least;) and having a convenient place in the sick man's house, with all things necessary so prepared that the curate may reverently minister, he shall there celebrate the holy communion.

But if a man either by reason of extremity of sickness, or for want of warning in due time to the curate, or for lack of company to receive with him, or by any other just impediment, do not receive the sacrament of Christ's body and blood; the curate shall instruct him, that if he do truly repent him of his sins, and stedfastly believe that Jesus Christ hath suffered death upon the cross for him, and shed his blood for his redemption; earnestly remembering the benefits he hath thereby, and giving him hearty thanks therefore; he doth eat and drink the body and blood of our saviour Christ, profitably to his soul's health, altho' he do not receive the sacrament with his mouth.
In the time of the plague, sweat, or other such like contagious times of sickness or diseases, when none of the parish can be gotten to communicate with the sick in their houses, for fear of the infection; upon special request of the deceased, the minister may only communicate with him.

III. Departing out of this life.

Can. 67. When any is passing out of this life, a bell shall be tolled, and the minister shall not then slack to do his last duty. And after the party's death (if it so fall out) there shall be rung no more but one short peal, and one other before the burial, and one other after the burial.

And this tolling of the bell seemeth to have been originally founded on the doctrine of masses satisfactory, or prayers for the dead; that every person, upon hearing of the bell, should apply himself to prayer for the soul of the person departing, or departed, out of this life.

And the alms usually given at funerals, seemeth to have been intended for the like purpose.

Sidesmen. See Churchwardens.

Simony.

SIMONY hath its name from Simon Magus, who thought to have purchased the gift of the holy ghost for money. 3 Inst. 153.

Simoniacus is he who maketh a corrupt contract; and simoniace promitus is he who is promoted upon such contract, altho' he was not privy to it himself.

I. Simony by the canon law.

II. By statute.
I. Simony by the common law.

1. Langton. We strictly forbid any man to resign his church, and then accept the vicarage of the same church from his own substitute; because in this case some unlawful bargain may be well suspected. And if any shall presume to do contrary hereunto, the one shall be deprived of his vicarage, and the other of his parsonage. Lind. 107.

It may seem strange, that any one should chuse to be vicar rather than rector; but as there might in some particular cases be other reasons for it, so there was one very apparent reason, viz. that the Lateran council under Innocent the third, had forbidden the holding two churches, that is, two rectories, but not two vicarages, or a rectory and a vicarage. For tho' the Lateran canon against pluralities was not yet put in execution here; yet the clergy were apprehensive that this would soon be done. Johnf. Langt.

2. Wetherfhead. It shall not be lawful to any man, to transfer a church to another in the name of a portion, or take any money or covenanted gain for the presentation of any one: And if any shall be found guilty hereof, by conviction, or confession; we do decree, by the king's authority and by our own, that he shall for ever be deprived of the patronage of that church. Lind. 281.

In the name of a portion] That is, as a portion from a father or grandfather, to his son or grandson. Johnf. Wether.

We do decree by the king's authority] Lindwood says, that de facto the king of England hath cognizance in causes of the right of patronage; which this constitution takes notice of as such: altho', he says, the contrary is true by the canon law. Lind. 281.

Shall for ever be deprived of the patronage] Which seemeth to be intended, during his life; and not to extend to his heirs after him; so as to punish them for their father's or other ancestor's crime. Lind. 281.

And Sir Simon Degge observes upon this, that a canon is not sufficient to deprive a man of his freehold or inheritance: and this canon (he says) was never put in execution, or attempted so to be, so far as he can find. Deg. p. 1. c. 5.

3. Othobon.
3. Othobon. Whereas we understand that it frequently happens, that when a presentation is to be made to a vacant church, he who is to be presented first maketh a bargain with the patron for a certain sum to be paid to him yearly out of the profits of the church, and he who hath made such contract is presented to the church; we, intending to provide against this act of simony and detriment to the church, do utterly revoke all pensions heretofore imposed on parish churches, unless they who have or receive the same, are warranted from the beginning by lawful prescription, or special privilege, or other certain right. Athon 135.

Neither was this canon (faith Sir Simon Degge) of better effect than the other, as to the making contracts void, which were only determinable at the common law, where this canon could not be pleaded in bar. Deg. p. 1. c. 5.

But there were some general canons (he says) of the church of greater force; whereby a person simoniacally promoted is punished by deprivation, and a simoniack by deprivation and perpetual disability, not only as to the church he was presented to upon a simoniacal contract, but also as to all others. Deg. p. 1. c. 5.

4. Simony is the more odious (lord Coke says) because it is ever accompanied with perjury; for the presentee is sworn to commit no simony. 3 Inst. 156.

Thus by a canon of archbishop Langton, it is ordained as followeth: We do decree, that the bishop shall take an oath of him who shall be presented, that for such presentation he neither promised nor gave any thing to the person presenting him, nor made any agreement with him for the same; especially if he who is presented be probably suspected of the same. Lind. 108.

Bishop] Or other ordinary who hath power to grant institution. Lind. 108.

He neither promised] By word or other stipulation. Lind. 108.

Nor gave] Either by exchange, or recom pense, or confirmation of what had been given before, or by bequest, or remission. Lind. 109.

To the person presenting him] And if he promise any thing to another, altho' it be not to him who hath the presentation; yet if it be so that he shall not otherwise have the benefice, this also is simony. Lind. 109.
And by Can. 40. To avoid the detestable sin of simony, because buying and selling of spiritual and ecclesiastical functions, offices, promotions, dignities, and livings is execrable before God; therefore the archbishop and all and every bishop or bishops or any other person or persons having authority to admit, institute, collate, install, or to confirm the election of any archbishop bishop or other person or persons, to any spiritual or ecclesiastical function dignity promotion title office jurisdiction place or benefice with cure or without cure, or to any ecclesiastical living whatsoever, shall before every such admission institution collation installation or confirmation of election respectively minister to every person hereafter to be admitted instituted collated installed or confirmed in or to any archbishopprick bishopprick or other spiritual or ecclesiastical function dignity promotion title office jurisdiction place or benefice with cure or without cure, or in or to any ecclesiastical living whatsoever, this oath in manner and form following, the same to be taken by every one whom it concerneth, in his own person, and not by a proctor: “I N. N. do swear, that I have made no simoniacal payment contract or promise, directly or indirectly, by my self, or by any other to my knowledge or with my consent, to any person or persons whatsoever, for or concerning the procuring and obtaining of this ecclesiastical dignity, place, preferment, office, or living, [respectively and particularly naming the same, whereunto be is to be admitted, instituted, collated, installed, or confirmed] nor will at any time hereafter perform or satisfy any such kind of payment contract or promise made by any other without my knowledge or consent: So help me God thro’ Jesus Christ.”

And this oath, whether interpreted by the plain tenor of it, or according to the language of former oaths, or the notions of the catholick church concerning simony, is against all promises whatsoever. Gibb. Soc.

Therefore tho’ a person comes not within the statute of the 31 El. hereafter following, by promising money, reward, gift, profit, or benefit; yet he becomes guilty of perjury, if he takes this oath, after any promise of what kind soever. Id.

Dr Watson queries, whether the oath against simony be not abolished with the oath ex officio: But Mr Johnson says, he may as well query the oaths of allegiance and supremacy; for that a clerk is no more obliged to accuse
cuse or purge himself of simony by the one, than of rebellion or poverty by the other. *Watf. c. 15. *Johnf. 73.

Which latter opinion is agreeable to the general practice and allowance, especially as the makers of the statute which repealeth the oath ex officio, do not seem to have had any thought or intention of touching upon this oath against simony; albeit the reason here alleged may of itself perhaps not be sufficient, for the oaths of allegiance and supremacy are injoined by statutes subsequent to that which abolisht the oath ex officio.

Which statute abolishing the oath ex officio, is as followeth; viz. *It shall not be lawful for any archbishop, bishop, vicar general, chancellor, commissary, or any other spiritual or ecclesiastical judge, officer, or minister, or any other person, having or exercising spiritual or ecclesiastical jurisdiction, to tender or administer unto any person whatsoever, the oath usually called the oath ex officio, or any other oath whereby such person to whom the same is tendered or administered, may be charged or compelled to confess, or accuse, or to purge him or her self of any criminal matter or thing, whereby he or she may be liable to censure or punishment: any thing in this statute, or any other law, custom, or usage heretofore to the contrary in any wise notwithstanding. 13 C. 2. c. 12. f. 4.

In the case of K. and Lewis, M. 4 G. an information was moved for against a clergyman, for perjury at his admission to a living, upon an affidavit that the presentation was simoniacal. But the court refused to grant it, till he had been convicted of the simony. *Str. 70.

II. By statute.

1. By the 31 Eliz. c. 6. For the avoiding of simony and corruption in presentations collations and donations of and to benefices dignities prebends and other livings and promotions ecclesiastical, and in admissions institutions and inductions to the same; f. 4.

It is enacted, that if any person or persons, bodies politic and corporate, shall or do, for any sum of money reward gift profit or benefit directly or indirectly, or for or by reason of any promise agreement grant bond covenant or other assurance of or for any sum of money reward gift profit or benefit whatsoever directly or indirectly, present or collate any person to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, or give or bestow the same for or in respect of any such corrupt cause or consideration; every such presentation collation gift and bestowing, and every admission institution investiture and induction thereupon, shall be utterly void, frustrate.
Simony.

trate, and of none effect in law: And it shall be lawful for the queen, her heirs and successors, to present, collate unto, or give or bestow, every such benefice dignity prebend and living ecclesiasticall, for that one time or turn only: And all and every person or persons, bodies politicke and corporate, that shall give or take any such sum of money reward gift or benefit directly or indirectly, or that shall take or make any such promise grant bond covenant or other assurance, shall forfeit and lose the double value of one year's profit of every such benefice dignity prebend and living ecclesiasticall: And the person so corruptly taking procuring seeking or accepting any such benefice dignity prebend or living, shall thereupon and from thenceforth be adjudged a disabled person in law to have or enjoy the same benefice dignity prebend or living ecclesiasticall. § 5.

And if any person shall for any sum of money reward gift profit or commodity whatsoever directly or indirectly (other than for usual and lawful fees) or for or by reason of any promise agreement grant covenant bond or other assurance of or for any sum of money reward gift profit or benefit whatsoever directly or indirectly, admit institute instituted induced invest or place any person in or to any benefice with cure of souls, dignity, prebend, or other ecclesiasticall living; every such person so offending shall forfeit and lose the double value of one year's profit of every such benefice dignity prebend and living ecclesiasticall; and thereupon immediately from and after the investing installation or induction thereof was, the same benefice dignity prebend and living ecclesiasticall shall be etfoons merely void; and the patron or person to whom the advowson gift presentation or collation shall by law appertain, shall and may by virtue of this act present or collate unto give and dispose of the same benefice dignity prebend or living ecclesiasticall, in such sort to all intents and purposes, as if the party so admitted instituted installed invested inducted or placed had been or were naturally dead. § 6.

Provided, that no title to confer or present by lapse, shall accrue upon any voidance mentioned in this act, but after six months next after notice given of such voidance, by the ordinary to the patron. § 7.

And if any incumbent of any benefice with cure of souls shall corruptly resign or exchange the same, or corruptly take for or in respect of the resigning or exchanging the same, directly or indirectly, any pension, sum of money, or benefit whatsoever; as well the giver as the taker of any such pension, sum of money, or other benefit corruptly, shall lose double the value of the sum so given taken or had: the one moiety as well thereof, as of the forfeiture of the double value of one year's profit before mentioned, to be to the queen, and the other to him that will sue for the same in any of her majesty's courts of record. § 8.

Provided
Simony.

Provided always, that this act or any thing therein contained, shall not in any wise extend to take away or restrain any punishment pain or penalty limited prescribed or inflicted by the laws ecclesiastical, for any the offences before in this act mentioned; but that the same shall remain in force, and may be put in due execution, as it might be before the making of this act; this act, or any thing therein contained, to the contrary thereof in any wise notwithstanding. s. 9.

And moreover, if any person shall receive or take any money fee reward or any other profit directly or indirectly, or shall take any promise agreement covenant bond or other assurance to receive or have any money fee reward or any other profit directly or indirectly, either to himself or to any other of his friends (all ordinary and lawful fees only excepted), for or to procure the ordaining or making of any minister, or giving of any orders, or licence to preach; he shall for every such offence forfeit the sum of 40l: and the party so corruptly ordained or made minister, or taking orders, shall forfeit the sum of 10l: And if at any time within seven years next after such corrupt entering into the ministry or receiving of orders, he shall accept or take any benefice, living, or promotion ecclesiastical; then immediately from and after the induction investing or installation thereof or thereinto had, the same shall be esteemed merely void; and the patron shall present, collate unto, give and dispose of the same, as if the party so invested invested or installed had been naturally dead: the one moiety of all which forfeitures shall be to the queen, and the other to him that will sue in any of her majesty's courts of record. s. 10.

S. 4. For the avoiding of simony] Almost all the authors who have treated of this subject, and even the learned judges in delivering their resolutions in cases of simony, have asserted that there is no word of simony in this act; and from thence a conclusion hath been drawn in favour of the ecclesiastical jurisdiction, that the temporal courts have nothing to do with simony as such, or to define what shall be deemed simony and what not, but only to take cognizance of the particular corrupt contracts therein specified. Which consequence, altho' deducible perhaps from other premises, yet doth not follow from the aforesaid observation; for it is plain here is the word simony: and the mistake seemeth to have happened from this short preamble being inadvertently printed at the end of the foregoing section, treating intirely of a different subject; so as to have been overlooked by the first person who made the observation, whom others have followed without examination.

Donations]
Simony.

Donations] For the like reason only (as it seemeth), a doubt was made in the case of Bawderock and Mackallar, M. 9 Car. whether this statute extendeth to donatives, Cro. Car. 330.

S. 5. If any person or persons] If one who hath no right, present by usurpation, and doth it by reason of any corrupt contract or agreement; that presentation and the induction thereupon are hereby void: for this statute extends to all patrons, as well by wrong as by right. In like manner, if when a church is void, the void turn is purchased; altho' the grant of a void turn, as being a thing in action, is of itself void, and the purchaser's presentee comes in quasi per usurpationem: yet because it is by means of a simoniacal contract, it is as much simony, as if the grant had not been void. 1 Instr. 120. 3 Instr. 153. Cro. Eliz. 789.

And it is to be observed, that this clause is general, "If any person or persons", and doth make no allowance in the case of father and son, more than in the case of other persons; and that therefore the notion that a purchase of the next avoidance when the incumbent is sick and ready to die, and the son's privity to that purchase, is less simony in the case of a son, than it would be in the case of any other person, hath no foundation in the act. Neither is the reason that a father is bound by nature to provide for his son, good to the aforesaid purpose; for a man is bound by nature also to provide for himself, and so might as well purchase for himself. Watf. c. 5. Gibs. 798.

So if a father, in consideration of a clerk's marrying his daughter, doth covenant with the clerk's father, that he will procure the clerk to be presented, admitted, instituted, and induced into such a church upon the next avoidance thereof; this is a simoniacal contract. Watf. c. 5.

Directly or indirectly] Simony may be committed, and yet neither the patron nor incumbent privy to it, or knowing of it. Thus in a writ of error to reverse a judgment, whereby the king had recovered in a quare impedit upon a title of simony, which was, that a friend of the patron agreed to give so much money to one (who was not the patron), to procure the said parson to be presented, who was presented according to that agreement; it was assigned for error, that it did not appear, that either patron or parson were knowing of this agreement. But by the court;
Simony.

Court; the parson is simoniacally promoted: and a case was mentioned, where the parson of St Clements was ousted, by reason that a friend had given money to a page belonging to the earl of Exeter, to endeavour to procure the presentation, and neither the earl nor the parson knew any thing of it. *Watf. c. 5.*

*Bond covenant or other assurance, or for any sum of money, reward, gift, profit or benefit whatsoever.* The bond and assurance here mentioned, being for money, reward, gift, profit or benefit, a way was found very early to defeat the intention of this act, by general bonds of resignation, whereby the presentee obliged himself to resign and void the benefice, within a certain time after warning to be given to him, or else indefinitely, whenever the patron should require it. *Gibf. 799, 800.*

And these bonds have been allowed both in law and equity: Thus in the case of *Peele* and the earl of Carlisle, *M. 6 G.* In the king’s bench: In an action of debt upon a bond, conditioned to resign a benefice; the court refused to let the defendant’s counsel argue the validity of such bonds, they having been so often established even in a court of equity; and that also, where the condition is general, and not barely to resign to a particular person. *Str. 227.*

So, *M. 9 G.* In the chancery. *Peele* and *Capel.* Capel on presenting Peele to a living, took a bond from him to resign when the patron’s nephew came of age, for whom the living was designed. When the nephew was of age, instead of requiring a resignation, it was agreed between them all, that Peele should continue to hold the living, paying 30l a year to the nephew. Peele makes the payment for seven years, but refusing to pay any more, the patron puts the bond in suit. And then Peele comes into this court for an injunction, and to have back his 30l a year. On hearing, the lord chancellor granted the injunction, not (as he said) upon account of any defect in the bond itself, which he held good, but on account of the ill use that had been made of it: and as to the money, it being paid upon a simoniacal contract, he left the plaintiff to go to law for it. *Str. 534.*

So, in the case of *Durflon* and *Sandys,* *M. 1686.* The defendant upon his presenting the plaintiff to a parsonage, took a bond of him to resign; which (as the reporter says) tho’ in itself lawful, yet the patron making an ill use of it, viz. to prevent the incumbent from demanding tithes
in kind, the court awarded a perpetual injunction against
the bond. 1 Vern. 411.

And in the case of Hefket and Grey, in the king’s bench,
H. 28 G. 2. (which was a case out of chancery):—Debt
upon a bond. Upon oyer of the condition, it appeared
that the obligor had been presented to the living of Stain-
ing by the obligee, and had agreed to deliver it up into the
hands of the ordinary, within three months after the ex-
piration of five years, at the request of the plaintiff his
heirs or assigns, or upon proper notice in writing, so that
a new presentation might be made. And after this recital
of the agreement, the condition was, that if the defendant
did deliver up into the hands of the ordinary the said living,
so as that the same might become void, then the obliga-
tion to be void. The defendant pleaded, that he did offer
to resign absolutely the living, and that he delivered the
resignation to the ordinary that he might accept the same
and the plaintiff make a new presentation, but that the
ordinary refused to accept it. He pleaded further, that
the agreement was corrupt; and that the bond was taken
to keep the defendant in awe, and therefore also corrupt
and void. Ryder chief justice delivered the resolution of
the court: The averring in the plea, that the agreement
was corrupt, will not make it so; but it should be set forth
what sort of corruption, that the court may judge whether
simoniacal or not. As to the point, whether a general
bond of resignation is good; we are all of opinion it is. It
was determined in the case of lord Carlisle and Prele. But
every simoniacal contract is void, where it is secured only
by promise. Otherwise it is, when a bond is given for
the performance of such a contract, when the condition
does not express the agreement, but is only a condition
for payment of money, because we cannot go out of the
written condition to vacate the obligation, and also be-
cause a specialty does not want a consideration to support
it, as a promissory note depending only upon simple contract does.
It has been objected, that these kinds of bonds, when the
contract appears upon the face of the condition to be for
a general resignation upon request, are void: Indeed it
does look so; but the law is otherwise. And as to the
other objection, we are all of opinion that the plea in bar
is bad, because it is not averred that the bishop has accep-
ted this resignation, and for these reasons: 1. Because
without the acceptance of the ordinary, the resignation is
not compleat, and the patron cannot have any benefit of such
a resignation. 2. Because the defendant has undertaken
for
for the acceptance of the bishop, as that is necessary to
make a compleat resignation, which he has by the condi-
tion of his bond agreed to. 3. Because the plea does
not contain a sufficient excuse for the bishop's non-accep-
tance of the resignation; for the defendant has undertaken
that the bishop shall do it, or if he does not he will make
a satisfaction by paying money or the like to the party who
is injured thereby; and this is reasonable, and is the law
in such cases, when the obligor undertakes for the act
of a stranger. The ordinary is a judicial officer, and is
intrusted with a judicial power to accept or refuse resigna-
tions as he thinks proper. And judgment was given for
the plaintiff.—But it appearing that the patron had ad-
vertised the living to be sold, and, in treating with a pur-
chafer for it, that he had declared he asked and expected
a greater price for it, as he could compel an immediate
resignation: lord Hardwicke, for this reason, and as it
was making a bad use of the bond, granted an injunction
to restrain the patron from proceeding further upon the
bond.

In order to prevent the evil consequences of this kind
of traffick, Dr Gibson takes occasion to wish, that the
ordinaries would do these two things: first, that they
would refuse to ordain any persons but upon good and
sufficient titles, which would lessen the number of those
who are ready to submit to such bonds; and in the next
place, that they would refuse to admit or accept any resig-
nations (without which the incumbent cannot void the
benefice in that way), but after the strictest enquiry, and
the fullest satisfaction, concerning the motives and rea-
sions upon which they are made. Gibs. 800.

And Sir Simon Degge wisheth (which indeed would
more effectually cure the evil) that an act of parliament
might be made, to declare all such bonds to be void. 
Deg. p. 1. c. 5.

Shall be utterly void, frustrate, and of none effect in law
] Before this act, they were only viodable by deprivation;
but hereby they are made void without any deprivation,
or sentence declaratory in the ecclesiastical court: as was
adjudged in the case of Hickock and Hickock. So as the
parishioners may deny their tithes, and alledge in the spi-
rntual court that he came in by simony. But Hutton said,
there was no remedy for the tithes, which a simoniaical
incumbent had actually received. 1 Inf. 120. Gibs.
800, 1.

But
But here is to be observed a diversitv, between a presentation or collation made by a rightful patron, and an usurper. For in case of the rightful patron, which doth corruptly present or collate, by the express letter of this act the king shall present; but where one doth usurp, and corruptly present or collate, there the king shall not present, but the rightful patron: for the branch that gives the king power to present, is only intended where the rightful patron is in fault; but where he is in no fault, there the corrupt act and wrong of the usurper shall not prejudice his title. 3 Inft. 153.

And it shall be lawful for the queen to present for that one time or turn only] In this particular, the penalty of simony which was by the canon law, with regard to the patron, is somewhat mitigated: the canons which had been made both at home and abroad (when they speak of this loss of patronage) making it perpetual. But because patronage in England is accounted a temporal matter, and corrupt patrons were not to be reached by the ecclesiastical laws (which could only touch the incumbent); therefore, for the more effectual discouragement of simony, by affecting the patron also, this statute was made. Gibs. 801.

And every person . . . . . that shall take or make any such promise] So that the penalty (as it seemeth) is incurred by such promise; tho' the patron should afterwards present the clerk gratis. Gibs. 801.

Shall forfeit and lose the double value of one year's profit] And this double value shall be accounted, according to the true value as the same may be letten, and shall be tried by a jury; and not according to the valuation in the king's books. 3 Inft. 154.

And the person so corruptly taking, procuring, seeking, or accepting] It was said by Tanfield chief baron, in Calvert and Kitchyn's cafe, that if a clerk seeketh to obtain a presentation by money, altho' afterwards the patron present him gratis; yet this simoniacal attempt hath disabled him to take that benefice. Gibs. 801.

Be adjudged a disabled person in law, to have or enjoy the same benefice] Many of the ancient canons of the church, make deposition the punishment of simony, whether in bishops or presbyters; others make it deprivation. But the civil and canon law observe a difference in point of penalty, between a person guilty of simony, and
and a person simoniacally promoted. If the clerk himself is privy or party to the simony, he is to be deprived of that, and for ever disabled to accept any other; but if he is only simoniacally promoted, by simony between two other persons, whereunto he was not privy, he is deprivable by reason of the corruption, but not disabled to take any other. In like manner, according to this statute, if the prefentee was not privy to the simony, tho' the church is become void by the simony, yet he is not disabled from being presented again; for a man cannot be said to be corruptly taking, who is not privy to the corrupt agreement. But a presentee who was privy to the simony, is a person disabled to enjoy the same benefice during life, nor can the king or any other dispenser with the disability. Gibs. 801. 2 Haw. 396.

12 Co. 101.

S. 6. Admit, institute, install, induce] The reason of this clause, lord Coke tells us, (for, he says, he was of that parliament, and observed the proceedings therein) was, to avoid hasty and precipitate admissions and institutions, to the prejudice of them that had right to present, by putting them to a quare impedit; and it is presumed, that no such hasty or precipitation is used, but for a corrupt end and purpose. 3 Inst. 155.

Immediately after the investing, installation, or induction] Albeit the church is full by institution, against all but the king: yet the church cometh not void by this branch of the act, until after induction. 3 Inst. 155.

S. 9. Shall not in any wise extend to take away or restrain any punishment pain or penalty, limited prescribed or inflicted by the laws ecclesiastical] So far are the ancient ecclesiastical laws against simony, and the power of the spiritual court in the execution of those laws, from being superseded by this act; that hereby they are expressly confirmed. And all promises and contracts, of what kind foever, being forbidden, and by consequence punishable, by the laws ecclesiastical; it follows, that it could not be the intention of the legislators, to make this statute the rule and measure of simony; but only to check and restrain it in the most notorious instances. Gibs. 801.

Which consideration seemeth fully to warrant bishop Stillingfleet's observation, that this statute doth not abrogate the ecclesiastical laws as to simony, but only enacts some
some particular penalties on some more remarkable simonicall acts, as to benefices and orders; but doth not go about to repeal any ecclesiastical laws about simony, or to determine the nature and bounds of it; And also the observation of archbishop Wake; that this act is not privative of the jurisdiction of the church, or its constitutions, but accumulative; that it leaveth to the church all the authority which it had before; only, whereas before these crimes were inquirable and punishable by the ecclesiastical judge alone, they may now, in some cases specified in this statute, be brought before the civil magistrate also. Gibs. 798.

And therefore still the ecclesiastical court may proceed against a simonist pro salute animae, and upon examination and evidence deprive him for that cause: and this, altho' he was not privy to the contract; for there are no accessaries in simony. And when the spiritual court hath sentenced the simony, the temporal court ought to give credence thereto, and ought not to dispute whether it be error or not. For the temporal court cannot take cognizance of their proceedings herein, whether they be lawful or not; which is the reason that in the temporal court it sufficeth to plead a sentence out of the spiritual court briefly, without shewing the manner thereof, and of their proceedings. And tho' it hath been said, that in the spiritual court they ought not to intermeddle to deprive the freehold, which is in the incumbent after induction; it is true indeed, they cannot alter the freehold, but they by their proceeding meddle only with the manner of obtaining the presentment, which by consequence only devesteth the freehold from the simonist by the dissolution of his estate, when his admission and institution are voided; and therefore may proceed: or rather, the church being made void by act of parliament, he who pretends to be incumbent thereof hath no freehold therein; so, depriving of him, cannot be said to devest any freehold from him. However, it is best, that not any of the articles to be examined upon in this case, be such as may expressly draw the right and title of the benefice into question; lest occasion be taken from thence to bring a prohibition. Watf. c. 5.

2. By the I W. c. 16. Whereas it hath often happened, that persons simoniack or simoniacally promoted to benefices or ecclesiastical livings, have enjoyed the benefit of such livings many years, and sometimes all their life time, by reason of the secret carriage of such simoniacal dealing; and after the death of
of such simoniack person, another person innocent of such crime, and worthy of such preferment, being presented or promoted by another patron innocent also of that simoniack contract, have been troubled and removed upon pretence of lapse or otherwise to the prejudice of the innocent patron in reversion, and of his clerk, whereby the guilty goeth away with the profit of his crime, and the innocent succeeding patron and his clerk are punished, contrary to all reason and good conscience: for prevention thereof it is enacted, that after the death of the person so simoniackally promoted, the offence or contract of simony shall neither by way of title in pleading, or in evidence to a jury, or otherwise, be alleged or pleaded to the prejudice of any other patron innocent of simony, or of his clerk by him presented or promoted, upon pretence of lapse to the crown or to the metropolitan or otherwise; unless the person simoniack or simoniackally promoted, or his patron, was convicted of such offence at the common law or in some ecclesiastical court, in the life time of the person simoniack or simoniackally promoted or presented. 1. 2.

And no leave really and bona fide made by any person simoniack or simoniackally promoted to any deanry prebend or parsonage or other ecclesiastical benefice or dignity, for good and valuable consideration, to any tenant or person not being privy to or having notice of such simony, shall be impeached or avoided for or by reason of such simony, but shall be good and effectual in law, the said simony notwithstanding. 1. 3.

3. By the 12 An. ft. 2. c. 12. Whereas some of the clergy have procured preferments for themselves, by buying ecclesiastical livings, and others have been thereby discouraged; it is enacted, that if any person shall for any sum of money reward gift profit or advantage directly or indirectly, or for or by reason of any promise agreement grant bond covenant or other assurance of or for any sum of money reward gift profit or benefit whatsoever directly or indirectly, in his own name or in the name of any other person, take procure or accept the next avoidance of or presentation to any benefice with cure of souls dignity prebend or living ecclesiastical, and shall be presented or collated thereupon; every such presentation or collation, and every admission institution incollation and induction upon the same, shall be utterly void frustrate and of no effect in law, and such agreement shall be deemed a simoniack contract; and it shall be lawful for the queen, her heirs and successors, to present or collate unto, or give or beflow every such benefice dignity prebend and living ecclesiastical, for that one time or turn only; and the person so corruptly taking procuring or accepting any such benefice dignity prebend or living, shall thereupon and from thenceforth
be adjudged a disabled person in law to have and enjoy the same, and shall also be subject to any punishment pain or penalty limited prescribed or inflicted by the laws ecclesiastical, in like manner as if such corrupt agreement had been made, after such benefice dignity prebend or living ecclesiastical had become vacant; any law or statute to the contrary in any wise notwithstanding.

Which statute having been understood as only prohibiting clergymen from purchasing livings for themselves; the intention thereof (if that was its sole intention) may be easily frustrated, by employing others to purchase for them.

4. By the 20 G. 2. c. 52. All offences of simony, and all proceedings and sentences thereupon, are excepted out of the general pardon granted by that act.

The form of a general bond of resignation hath been thus:

Know all men by these presents, that we A. B. of——
in the county of——clerk, and C. D. of——in the county of——gentleman, are held and firmly bound to E. F. of——in the county of——esquire, in the sum of——of good and lawful money of Great Britain, to be paid to the said E. F. or to his certain attorney, his executors administrators or assigns: For the true payment whereof, we bind ourselves and each of us, jointly and severally, and each and every of our joint and several heirs executors and administrators, firmly by these presents. Sealed with our seals, and dated this——day of——in the——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, and in the year of our lord one thousand seven hundred and sixty three.

Whereas the abovenamed E. F. is seised of or intitled to the advowson, nomination, right of patronage and presentation of the vicarage [or, rectory] of the parish church of G. in the county of——and diocese of——which is now become vacant; and whereas the said E. F. hath presented, nominated, and appointed the abovebound A. B. to supply the said vacancy, and to be vicar of the said vicarage and parish church of G. in order for him the said A. B. to be instituted and induced thereto by the proper ordinary; and whereas the said A. B. hath agreed to resign and deliver up the said vicarage and parish church of G. into the hands of the proper ordinary, upon the request of the said E. F. his heirs executors administrators or assigns, or upon notice in writing given to him or left for him
him for that purpose at the vicarage house of the said vicarage by the said E. F. his heirs executors administrators or assigns, so that whereby the said vicarage and parish church may become vacant, and the said E. F. his heirs executors administrators or assigns, patrons of the said church, may present anew: Now the condition of the above-written obligation is such, that if the abovebound A. B. do and shall upon the request of the said E. F. his heirs executors administrators or assigns, or upon notice in writing given to him the said A. B. or left for him for that purpose at the vicarage house of the said vicarage by the said E. F. his heirs executors administrators or assigns, absolutely resign and deliver up the said vicarage and parish church of G. aforesaid, with its appurtenances, into the hands of the proper ordinary or guardian of the spiritualities for the time being absolutely to accept of such resignation of the said vicarage and parish church of G. whereby the said vicarage and parish church of G. may become vacant, and the said E. F. his heirs executors administrators or assigns, patrons of the said church, may present anew to the said vicarage and parish church, discharged of all charges and incumbrances done or suffered by the said A. B. and also, if the said A. B. do not or shall not commit or suffer, or cause to be committed, any waste or dilapidations, upon the houses, lands, tenements, or hereditaments belonging to the said vicarage, during the time he shall be so vicar of the said vicarage and parish church; Then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered (the paper having been first duly stamp'd) in the presence of us

H. I.
K. L.

Sine-cure.

1. THE original of sine-curues was thus: The rector (with proper consent) had a power to intitle a vicar in his church, to officiate under him; and this was often done: and by this means, two persons were instituted to the same church, and both to the cure of souls, and both did actually officiate. So that however the rectors of sine-curues, by having been long excused from residence, are in common opinion discharged from the cure of souls (which is the reason of the name); and however
the cure is said in the law-books to be in them *habitualiter*
only; yet in *strictness*, and with regard to their original
institution, the cure is in them *actualiter*, as much as it is

That is to say, where they come in by institution; but
if the rectory is a donative, the cure is otherwise: for
there, coming in by donation, they have not the cure of
souls committed to them. And these are most properly
fine-cures, according to the genuine signification of the
word. *Johns*. 85.

2. But no church, where there is but one incumbent,
is properly a fine-cure. If indeed the church be down,
or the parish become destitute of parishioners without
which divine offices cannot be performed; the incumbent
is of necessity acquitted from all publick duty: but still
he is under an obligation of doing this duty, whenever
there shall be a competent number of inhabitants, and the
church shall be rebuilt. And these benefices are more
properly depopulations than fine-cures. *Johns*. 84.

3. Bishopricks, deanries, and archdeaconries, were of
old generally said to have the cure of souls belonging to
them; some have said the same of prebends, but with less
reason. Bishops have the cure of their whole dioceces;
and archdeacons do, in many particulars, share with them
in their spiritual cures. The dean was said to have the
cure of his canons, and of the rest belonging to the choir;
who were all in old time to make their confessions to him,
and receive absolutions from him; but it doth not appear,
that the canons or prebendaries have or had the cure of
souls, in this or any other respect. They are indeed for
the most part instituted, but not to the cure of souls.
*Johns*. 86.

4. Possession of fine-cures (not being exempt as is
aforesaid) must be obtained by the same methods by which
the possession of other rectories and vicarages is obtained,
namely, by presentation, institution, and induction. And
the reason is, because the vicarage had not its beginning by
appropriation and endowment (which was a discharge to
the parson from the cure), but by *institution*, that is by
being admitted to a title, or a share in the profits and cure
of the rectory, together with the rector, and in subordi-
nation to him as vicar. For altho' by a constitition of
archbishop Langton there might not be two rectors or par-
sons in one church; yet there might be, and sometimes
were established in the same church both a rector and
vicar, with cure of souls: and in such case, the rectory
came to be a fine-cure, not because it was really so in law, but because the rectors got themselves excused from residence, and by degrees devolved the whole spiritual cure upon the vicars. Gibs. 818.

Upon which ground, the possessors of fine-cures, are not bound to read the thirty nine articles by the 13 El. c. 12. And in this only, institution to fine-cures differs from institution to other benefices. John. 86.

5. Sine-cures are not within the statute of pluralities, such livings being not by the said statute deemed incompatible; but only those to which the cure of souls is actually, and not only habitually annexed. Deg. p. 1. c. 13.

Singing of psalms. See Publick worship.

Slander. See Defamation.

Sodomy. See Buggery.

Son, succeeding his father in a benefice. See Benefice.

Spoliation.

SPOLIATION is a writ obtained by one of the parties in suit, suggesting that his adversary (spolavit) hath wasted the fruits, or received the same, to the prejudice of him who sueth out the writ. 1 Ought. 13.

And a cause of spoliation shall be tried in the spiritual court, and not in the temporal. And this suit lieth for one incumbent against another, where they both claim by one patron, and where the right of the patronage doth not come in question or debate. As if a parson be created a bishop, and hath a dispensation to keep his benefice, and afterwards the patron presents another incumbent, who is instituted and inducted; now the bishop may have against that incumbent a spoliation in the spiritual court, because they claim both by one patron, and the right of the patronage doth not come in debate, and because the other incumbent came to the possession of the benefice by the course of the spiritual law, that is to say, by institution and induction; so that he hath colour to have it, and to be parson by the spiritual law: for otherwise, if he be not instituted and inducted, spoliation lies not against him,
but rather a writ of trespass, or an assise of novel disseisin.

Terms of the L.

So it is also, where a parson who hath a plurality doth accept another benefice, by reason whereof the patron presents another clerk, who is instituted and inducted: Now the one of them may have a spoliation against the other, and then shall come in debate whether he hath a sufficient plurality or not. And so it is in case of deprivation. T. L.

The same law is, where one telleth the patron that his clerk is dead; whereupon he presents another; there the first incumbent, who was supposed to be dead, may have a spoliation against the other. And so in divers other like cases. T. L.

If a patron do present a clerk unto an advowson, who is instituted and inducted, and afterwards another man doth present another clerk to the same advowson, who is also instituted and inducted; there, one of them shall not have a spoliation against the other, if he disturb him of the church, or do take away the fruits thereof; because the right of the patronage doth come in debate in the spiritual court which of the patrons hath a right to present. And therefore in that case, if one of them sue a spoliation against the other, he shall have a prohibition unto the spiritual court, and no consultation shall be granted for the cause aforesaid. F. N. B. 86.

When spoliation is brought to try which of two persons instituted is the rightful incumbent of a parsonage or vicarage, or after sentence given against one of the parties who hath appealed; it is usual for the ecclesiastical judge, at the petition of either of the parties, to decree that the fruits of the church be sequestred, and to commit the power of collecting them to the churchwardens or some others of the same parish, first taking bond of such persons, whereby they shall be obliged to collect and keep the tithes for the use of him that shall be found to have the right, and to render a just account when called thereunto. And the judge is also wont to appoint some minister to serve the cure, for the time that the controversy shall depend; and to command those to whom the sequestration is committed, to allow such salary as he shall assign out of the profits of the church, to the parson that he orders to attend the cure. And after the suit is determined, the sequestration is to be taken off, and the profits collected to be restored to him that prevails at law; to wit, in specie, if they remain so, or if not, the value of them. Wait. c. 30.
STAMP duties relating to the several matters treated of in this book, by the acts of 5 W. c. 21. 9 & 10 W. c. 25. 12 An. f. 2. c. 9. 30 G. 2. c. 19. and 32 G. 2. c. 35. seem to be as follows:

1. For every skin and piece of vellum or parchment, Treble 40s. or sheet of paper, on which shall be written any grant or letters patent under the great seal, of any honour, dignity, promotion, franchise, liberty or privilege, or exemplifications of the same (except charity briefs) — dispensation to hold two livings, or any dispensation or faculty from the archbishop of Canterbury, or master of the faculties;— admittance of a fellow of the college of physicians, or of any advocate, proctor, notary, or other officer in any ecclesiastical court;— appeal from the court of arches, or the prerogative courts—shall be paid a stamp duty of 6l or treble 40s.

2. Presentation or donation under the great seal, collation, or any presentation or donation by any patron to any spiritual promotion of 10 l a year in the king’s books, — 4l or double 40s.

3. Letters patent for charity briefs;— register, entry, Single 40s. testimonial, certificate of a degree in the universities (except the register or entry of a bachelor of arts) — 40s.

4. Institution, or licence, that shall pass the seal of Treble 5s. any bishop, chancellor, or other ordinary, or any ecclesiastical court (except licences to schoolmasters and tutors). — 15 s.

5. Exemplification that shall pass the seal of any Double 5s. court;— licence to schoolmasters and tutors;— probate of a will, or letters of administration for an estate above 20 l value (except of common seamen or soldiers slain or dead in the service) — 10 s.

6. Licence for, or certificate of marriage (except the Single 5s. or certificate of the marriage of a seaman’s widow);— commission issuing out of any ecclesiastical court, not otherwise particularly charged;— 5s.

7. Bond, lease, contract, or other obligatory instrument, protest, procuration, or any other notarial act, 2 s 6d.

8. Matriculation in the universities, 2 s. Double 1s.

9. Writ of dedimus potestatem out of chancery to appoint guardians, 1 s 6 d.

Z 4. 10. Affi-
Stamps.

10. Affidavit, (except for burying in woollen); copy thereof to be read or filed in court; citation, monition, libel, allegation, deposition, answer, sentence or final decree, inventory, or any copies of them; — 1s.

11. Copy of a will, 2d.

Stipendiary priests.

The stipendiary priests were for rentals, anniversaries, obits, and such like; grounded on the doctrine of purgatory and masses satisfactory. And for these, chantries were founded and endowed, to pray for the souls of the founder and his friends: Which chantries were dissolved by the statute of the 1 Ed. 6. c. 14.

Striking in the Church or Church-yard. See Church.

Subdeacon.

Subdeacon is one of the five inferior orders in the Romish church; whose office it is, to wait upon the deacon in the administration of the sacrament of the lord's supper. Gib. 99.

Suffragan. See Bishops.

 Suicide.

By the rubrick before the burial office; persons who have laid violent hands upon themselves, shall not have that office used at their interment.

And the reason thereof given by the canon law is, because they die in the commission of a mortal sin (Lind. 164); and therefore this extendeth not to idiots, lunatics, or persons otherwise of insane mind, as children under the age of discretion, or the like; so also not to those
those who do it involuntarily, as where a man kills himself by accident: for in such case it is not their crime, but their very great misfortune.

Sunday. See Lord's day.
Superinstitution. See Benefice.
Supposititious births. See Bastards.

Supremacy.

ORD chief justice Hale says; The supremacy of the crown of England in matters ecclesiastical is a most indubitable right of the crown, as appeareth by records of unquestionable truth and authority. 1 H. H. 75.

Lord chief justice Coke faith; By the ancient laws of this realm, this kingdom of England is an absolute empire and monarchy, consisting of one head, which is the king; and of a body consisting of several members, which the law divideth into two parts, the clergy and laity, both of them next and immediately under god subject and obedient to the head. 5 Co. 8. 40. Caudrey's case.

By the parliament of England in the 16 R. 2. c. 5. it is asserted, that the crown of England hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to god in all things touching the regality of the same crown, and to none other.

And in the 24 H. 8. c. 12. it is thus recited; By sundry and authentic histories and chronicles it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having dignity and royal estate of the imperial crown of the same: unto whom a body politic, compact of all sorts and degrees of people, divided in terms and by names of spirituality and temporalty, been bounden and owned to bear next unto god, a natural and humble obedience; he being also furnished by the goodness and sufferance of almighty god, with plenary whole and intire power, preeminence, authority, prerogative, and jurisdiction, to render and yield justice and final determination to all manner of persons resiants within this realm, in all cases matters debates and contentions, without restraint or provocation to any foreign reign.
reign princes or potentates of the world; in causes spiritual by judges of the spirituality, and causes temporal by temporal judges.

Again, 25 H. 8. c. 21. The realm of England, recognizing no superior under god, but only the king, hath been and is free from subjection to any man's laws, but only to such as have been devised made and obtained within this realm for the wealth of the same, or to such other as by sufferance of the king, the people of this realm have taken at their free liberty by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of the laws of any foreign prince potentate or prelate, but as to the customed and ancient laws of this realm, originally established as laws of the same by the said sufferance contents and custom, and none otherwise.

2. Can. 1. As our duty to the king's most excellent majesty requireth, we first decree and ordain, that the archbishop from time to time, all bishops, deans, archdeacons, parsons, vicars, and all other ecclesiastical persons, shall faithfully keep and observe, and as much as in them lieth shall cause to be observed and kept of others, all and singular laws and statutes made for restoring to the crown of this kingdom, the ancient jurisdiction over the state ecclesiastical, and abolishing of all foreign power repugnant to the same. Furthermore, all ecclesiastical persons having cure of souls, and all other preachers, and readers of divinity lectures, shall to the uttermost of their wit knowledge and learning, purely and sincerely (without any colour of dissimulation) teach manifest open and declare, four times every year at the leaf, in their sermons and other collation and lectures, that all usurped and foreign power (forasmuch as the same hath no establishment nor ground by the law of god) is for no just causes taken away and abolished, and that therefore no manner of obedience or subjection within his majesty's realms and dominions is due unto any such foreign power; but that the king's power, within his realms of England Scotland and Ireland and all other his dominions and countries, is the highest power under god, to whom all men, as well inhabitants as born within the same, do by god's laws owe most loyalty and obedience, afore and above all other powers and potentates in the earth.

Can. 2. Whoever shall affirm, that the king's majesty hath not the same authority in causes ecclesiastical, that the
the godly kings had amongst the jews and christian emperors of the primitive church, or impeach any part of his regal supremacy in the said causes restored to the crown, and by the laws of this realm therein established; let him be excommunicated ipso facto, and not restored but only by the archbishop, after his repentance and publick revocation of those his wicked errors.

Can. 26. No person shall be received into the ministry, nor admitted to any ecclesiastical function, except he shall first subscribe (amongst others) to this article following: that the king's majesty under god is the only supreme governor of this realm, and of all other his highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, preeminence, or authority ecclesiastical or spiritual, within his majesty's said realms dominions and countries.

3 Art. 37. The queen's majesty hath the chief power in this realm of England, and other her dominions; unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain; and is not, nor ought to be subject, to any foreign jurisdiction. But when we attribute to the queen's majesty the chief government, we give not thereby to our princes the ministring either of god's word, or of the sacraments; but that only prerogative which we see to have been given always to all godly princes in holy scripture by god himself, that is, that they should rule all estates and degrees committed to their charge by god, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil doers. The bishop of Rome hath no jurisdiction in this realm of England.

4. Albeit the king's majesty justly and rightfully is and so is recognised by the clergy of this realm in their convocations, yet nevertheles, for corroboration and confirmation thereof, and for the increase of virtue in Christ's religion, and to repref all errors, heresies, and other enormities and abuses; it is enacted, That the king our sovereign lord, his heirs and successors kings of this realm, shall be taken accepted and reputed the only supreme head in earth of the church of England; and shall have and enjoy annexed to the imperial crown of this realm, as well the style and title thereof, as all honours, dignities, preeminences, jurisdictions, privileges, authorities,
Supremacy.

authorities, immunities, profits and commodities to the
said dignity of supreme head of the same church belong-
ing and appertaining; and shall have power from time to
time to visit, repress, redress, reform, order, correct, re-
strain, and amend all such errors, heresies, abuses, of-
ences, contempts, and enormities whatsoever they be,
which by any manner of spiritual authority or jurisdic-
tion may lawfully be reformed, repressed, ordered, redressed,
corrected, restrained, or amended most to the pleasure of
almighty god, the increase of virtue in Christ's religion,
and for the conservation of the peace unity and tranquili-
ity of this realm; any usage, custom, foreign laws, fo-
ign authority, prescription, or any other thing to the
contrary notwithstanding. 26 H. 8. c. 1.

Recognized by the clergy of this realm in their convocations]
Which recognition, after deliberation and debate in both
houses of convocation, was at length agreed upon in these
words—ecclésiae et clericorum Angl., cujus singularem pra-
testorem unicum, et supremum dominum, et quantum per Christi
legem licet, etiam supremum caput ipsius majestatem recogno-
scimus. Gib. 23.

The king's style
and title. 5. Whereas the king hath heretofore been and is
justly lawfully and notoriously known named published
and declared, to be king of England France and Ireland,
defender of the faith, and of the church of England and
also of Ireland in earth supreme head, and hath justly and
lawfully used the title and name thereof; it is enacted,
that all his majesty's subjects shall from henceforth accept
and take the same his majesty's style, as it is declared and
set forth in manner and form following, viz. Henry the
eighth, by the grace of god king of England France and Ire-
land, defender of the faith, and of the church of England and
also of Ireland in earth the supreme head: and the said style
shall be for ever united and annexed to the imperial crown
of this realm. 35 H. 8. c. 3.

Defender of the faith] This title, altho' sometimes at-
tributed to our kings before, yet was peculiarly and in a
more solemn manner given to king Hen. 8. by pope Leo
10. for writing against Luther.

And of the church of England and also of Ireland in earth
the supreme head] These are the words which seem to be un-
derstood, in the abbreviated style of the king, as it
is now usually expressed [defender of the faith, and so
forth]
6. By the 1 Ed. 6. c. 12. If any person shall by open preaching, express words or sayings, affirm or set forth, that the king is not or ought not to be supreme head in earth of the church of England and Ireland, or of any of them, immediately under God; or that the bishop of Rome or any other person than the king of England for the time being is or ought to be by the laws of God supreme head of the same churches or of any of them; he, his aiders comforters abettors procurers and counsellors, shall (on conviction by the oath of two witnesses or confession) for the first offence forfeit his goods and be imprisoned during the king's pleasure; for the second offence shall forfeit his goods, and also the profits of his lands and spiritual promotions during his life, and also be imprisoned during his life; and for the third offence shall be guilty of high treason. f. 6, 22.

And if any person shall by writing, printing, overt deed or act, affirm or set forth, that the king is not or ought not to be supreme head in earth of the church of England and Ireland, or of any of them, immediately under God; or that the bishop of Rome, or any other person than the king of England for the time being, is or ought to be by the laws of God or otherwise, the supreme head in earth of the same churches or of any of them; he, his aiders comforters abettors procurers and counsellors, shall (on conviction by the oath of two witnesses or confession) be guilty of high treason. f. 7, 22.

But no person shall be prosecuted for the said offences by open preaching or words only, but within thirty days after such preaching or speaking, if the accusers be within the realm during the said thirty days; if not, then within six months after such preaching or words spoken; and not otherwise. ——-The accusation to be made to one of the king's council, or to a justice of assize, or a justice of the peace being of the quorum, or to two justices of the peace within the shire where the offence was committed. f. 19.

But as to offences made treason by this act, the same is so far repealed, by the 1 Mar. fess. 1. c. 1. which enacteth, that no offence made high treason by act of parliament, shall be adjudged high treason, but only such as is expressed in the statute of the 25 Ed. 3. But as to the rest this statute continueth in force.

But by the 1 El. c. 1. it is further enacted as followeth; viz. that no foreign prince, person, prelate, state or potentate spiritual or temporal, shall use enjoy or exercise
exercise any manner of power, jurisdiction, superiority, authority, preheminence or privilege, spiritual or ecclesiastical, within this realm or any other her majesty's dominions or countries; but the same shall be abolished thereout for ever: any statute, ordinance, custom, constitutions, or any other matter or cause whatsoever to the contrary notwithstanding. § 16.

And such jurisdictions, privileges, superiorities and preheminences spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority have heretofore been, or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation order and correction of the same, and of all manner of errors heretofore schisms abuses offences contempts and enormities, shall for ever be united and annexed to the imperial crown of this realm. § 17.

And if any person shall by writing, printing, teaching, preaching, express words, deed or act, ad'vesely maliciously and directly affirm, hold, stand with, set forth, maintain, or defend the authority, preheminence, power or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state or potentate whatsoever, heretofore claimed used or usurped within this realm or any other her majesty's dominions or countries; or shall advisedly maliciously and directly put in ure or execute any thing, for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, preheminence and authority, or any part thereof; he, his abettors aids procurers and confellors, shall for the first offence forfeit all his goods, and if he hath not goods to the value of 20l, he shall also be imprisoned for a year, and the benefits of every spiritual person offending shall also be void; for the second offence shall incur a premonire; and for the third shall be guilty of high treason. § 27—30.

But no person shall be molested for any offence committed only by preaching, teaching, or words, unless he be indicted within one half year after the offence committed. § 31.

And no person shall be indicted or arraigned but by the oath of two or more witnesses: which witnesses, or so many of them as shall be living, and within the realm at the time of the arraignment, shall be brought face to face before the party arraigned if he require the same. § 37.
7. If any person shall by writing, cyphering, printing, preaching, or teaching, deed or act, advisedly and wittingly, hold or stand with, to extol, set forth, maintain or defend the authority jurisdiction or power of the bishop of Rome or of his see, heretofore claimed used or usurped within this realm or in any of her majesty’s dominions; or by any speech, open deed or act, advisedly and wittingly attribute any such manner of jurisdiction authority or preheminence to the said see of Rome or to any bishop of the fame see for the time being; he, his abettors procurers and counsellors, his aiders assistants and comforters, upon purpose and to the intent to set forth, further, and extol the said usurped power, being indicted or presented within one year, and convicted at any time after, shall incur a praemunire. 5 El. c. 1. § 2.

And the justices of assize, or two justices of the peace (one whereof to be of the quorum) in their sessions, may inquire thereof, and shall certify the presentment into the king’s bench in forty days, if the term be then open; if not, at the first day of the full term next following the said forty days: on pain of 100l. § 3.

And the justices of the king’s bench, as well upon such certificate as by inquiry before themselves, shall proceed thereupon as in cases of praemunire. § 4.

But charitable giving of reasonable alms to an offender, without fraud or covin, shall not be deemed abetting, procuring, counsellling, aiding, assisting, or comforting. § 18.

8. The papal incroachments upon the king’s sovereignty in causes and over persons ecclesiastical, yea even in matters civil under that loose pretence of in ordine ad spiritualia, had obtained a great strength and long continuance in this realm, notwithstanding the security the crown had by the oaths of fealty and allegiance; so that there was a necessity to unrivet those usurpations, by substituting by authority of parliament a recognition by oath of the king’s supremacy, as well in causes ecclesiastical as civil; and thereupon the oath of supremacy was framed. 1 H. H. 75.

Which oath, as finally established by the 1 W. c. 8. is as follows: “I A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes expressed communicated or deprived by the pope or any authority of the fee of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare,
Supremacy.

"declare, that no foreign prince, person, prelate, state, 
or potentate, hath or ought to have any jurisdiction, 
"power, superiority, pre-eminence, or authority, eccle-
"siasitical or spiritual, within this realm: So help me 
"god."

9. But lastly, the usurped jurisdiction of the pope being 
abolished, and there being no longer any danger to the 
liberties of the church or state from that quarter; and di-
vers of the princes of this realm having entertained more 
exalted notions of the supremacy both ecclesiastical and 
civil, than were deemed consistent with the legal establish-
ment and constitution; it was thought fit at the revolu-
tion to declare and express, how far the regal power, in 
matters spiritual as well as temporal, doth extend: that 
so, as well the just prerogative of the crown on the one 
hand, as the rights and liberties of the subject on the 
other, might be ascertained and secured. Therefore by 
the statute of the 1 W. c. 6. it is enacted as followeth:

"Whereas by the law and ancient usage of this realm, 
the kings and queens thereof have taken a solemn oath up-
on the evangelists at their respective coronations, to main-
tain the statutes laws and customs of the said realm, and 
all the people and inhabitants thereof in their spiritual and 
civil rights and properties; but forasmuch as the oath it 
self, on such occasion administered, hath heretofore been 
framed in doubtful words and expressions, with relation to 
ancient laws at this time unknown; to the end therefore 
that one uniform oath may be in all times to come taken 
by the kings and queens of this realm, and to them respec-
tively administered, at the times of their and every of their 
coronation, it is enacted, that the following oath shall be 
administered to every king or queen, who shall succeed to 
the imperial crown of this realm, at their respective coro-
nations, by one of the archbishops or bishops of this realm 
of England for the time being, to be thereunto appointed 
by such king or queen respectively, and in the presence 
of all persons that shall be attending, assisting, or other-
wise present at such their respective coronations: That is 
to say,

The archbishop or bishop shall say, Will you solemnly 
promise and swear, to govern the people of the kingdom of Eng-
land, and the dominions thereto belonging, according to the sta-
tutes in parliament agreed on, and the laws and customs of the 
same? The king or queen shall say, I solemnly promise so 
to do.
Archbishop or bishop: *Will you to your power cause law and justice in mercy to be executed in all your judgments?* The king or queen shall answer, *I will.*

Archbishop or bishop: *Will you to the utmost of your power maintain the laws of god, the true profession of the gospel, and protestant reformed religion established by law? And will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges, as by law do or shall appertain unto them or any of them?* The king or queen shall answer, *All this I promise to do: After this, laying his or her hand upon the holy gospels, he or she shall say, The things which I have here before promised, I will perform and keep; So help me god: And shall then kiss the book.*

And by the 1 W. eff. 2. c. 2. " Whereas the late king James the second, by the assistance of divers evil counsellors judges and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom;

1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

3. By issuing and causing to be executed a commission under the great seal for erecting a court called The court of commissioners for ecclesiastical causes.

4. By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by parliament.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6. By causing several good subjects, being protestants, to be disarmed at the same time when papists were both armed and employed, contrary to law.

7. By violating the freedom of election of members to serve in parliament.

8. By prosecutions in the court of king’s bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

9. And whereas of late years, partial corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.
10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late king James the second, having abdicated the government, and the throne being thereby vacant, his highness the prince of Orange (whom it hath pleased almighty god to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did, by the advice of the lords spiritual and temporal and divers principal persons of the commons, cause letters to be written to the lords spiritual and temporal, being protestants; and other letters to the several counties, cities, universities, boroughs, and cinque ports, for the choosing of such persons to represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the 22d day of January in this year 1688, in order to such an establishment, as that their religion, laws and liberties might not again be in danger of being subverted: Upon which letters, elections having been accordingly made, and thereupon the said lords spiritual and temporal and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare:

1. That the pretended power of suspending laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal:

3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature are illegal and pernicious.

4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament,
5. That it is the right of the subjects to petition the king; and all commitments and prosecutions for such petitioning, are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That the subjects which are protestants, may have arms for their defence, suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impannelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that for redresses of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undisputed rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

The truth is, that after the abolition of the papal power, there was no branch of sovereignty with which the princes of this realm, for above a century after the reformation, were more delighted, than that of being the supreme head of the church: imagining (as it seemeth) that all that power which the pope claimed, and exercised (so far as he was able), was by the statutes abrogating the papal authority annexed to the imperial crown of this realm; not attending to the necessary distinction, that it was not that exorbitant lawless power which the pope usurped, that was thereby become vested in them; but only, that the ancient legal authority and jurisdiction of the kings of England.

A a 2
England in matters ecclesiastical, which the pope had en-

deavoured to wrest out of their hands, was reafferted and

vindicated. The pope arrogated to himself a jurisdiction;

superior not only to his own canon law, but to the munici-

pal laws of kingdoms. And those princes of this realm

abovementioned seem to have considered themselves plain-

ly as popes in their own dominions. Hence one reason,

why a reformation of the ecclesiastical laws was never

effectuated, seemeth to have been, because it conduced more

to the advancement of the supremacy to retain the church

in an unsettled state, and consequently more dependent

on the sovereign will of the prince. Hence became esta-

blished the office of lord vicegerent in causes ecclesiastical;

and after that, the high commission court; and last of all,

the dispensing power, or a power of dispensing with or

suspending the execution of laws at the prince's pleasure.

Therefore, to remove these grievances, these acts pre-

scribed the just boundaries of the prerogative, both ecclesiastical

civil, and established the rights both of prince and

people upon the firmest and surest foundation, namely,

the known law of the land; and thereby rendered the name

of an English monarch respectable among the princes of the

earth. A king ruling by the established laws of his king-

dom, that is, with an extensive power of doing right, and

an utter inability of doing wrong, is the perfection of the

human nature, and the glory of the divine; and renders

kings, in a most emphatical sense, god's vicegerents.

From which premises may be deduced also the genuine

cause, why the civil and canon laws have received so much

check and discouragement from time to time within this

kingdom. They are founded upon the principles of arbi-

trary power.

The civil law is said to be the common municipal law

of all the arbitrary states in Europe (modified only accord-

ing to the different circumstances of each government);

and those princes of this realm who have most affected

absolute sovereignty, have been proportionable encouragers

of the civil law. The canon law hath the same lineaments

and features; being framed to render the pope in the

church, what the emperor was in the state. And it must

be owned, they are both perhaps more for the ease of the

governors, but not so convenient for the governed.

Particularly, as to the enacting part: They owe their

very existence to the sovereign will of the supreme gover-

nor; and consequently, what is law to day, may not be law
to morrow; for the same power which enacteth may repeal.——*For such is our will*——is a harsh and grating sound to an English ear; being the fullen voice of insolence and wanton power. How much more humane is that declaration——*Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same.*

Again, as to the executive part, especially with respect to criminal prosecutions——A person accused in the dark; witnesses not confronted with the party face to face; the cruel oath ex officio, whereby a man is compelled to accuse himself; (not to mention the diabolical rack and torture;) and the whole determined at last by the sole decision of the judge, who must needs be oftentimes an entire stranger to the parties; are disparagements of those laws, which will always obstruct their progress in a land of liberty. How much more mild and gentle is that law, which is the birthright of every Englishman however otherwise destitute and friendless, whereby he shall not be called upon to answer for any crime he is charged withal, but upon the oaths of at least twelve men of considerable rank and fortune within the county in which the offence is supposed to have been committed, if they shall see probable cause for further inquiry; and afterwards, shall not be condemned, but by the unanimous suffrage of other twelve men, his neighbours and equals in degree and station of life, upon their oaths likewise; and at the same time he hath a right to object to any one who is summoned to try him for his offence, if he hath a reasonable cause of exception.——The one is the law of tyrants; the other of freemen, and may it ever prosper in the British soil!

10. Finally, by the act of union of the two kingdoms of England and Scotland, 5 An. c. 8. it is enacted, that after the demise of her majesty queen Anne, the sovereign next succeeding, and so for ever afterwards every king or queen succeeding and coming to the royal government of the kingdom of Great Britain, at his or her coronation, shall in the presence of all persons who shall be attending, assisting, or otherwise then and there present, take and subscribe an oath, to maintain and preserve inviolably the settlement of the church of England, and the doctrine, worship, discipline, and government thereof, as by law established within the kingdoms of England and Ireland, the dominion of Wales, and...
town of Berwick upon Tweed, and the territories thereunto belonging.

And shall also swear and subscribe, that they shall inviolably maintain and preserve the settlement of the true protestant religion, with the government, worship, discipline, right, and privileges of the church of Scotland, as then established by the laws of that kingdom.

Surgeons. See Physicians.

Surplice. See Church, and Publick worship.

Surrogate.

By Can. 128. No chancellor, commissary, archdeacon, official or any other person using ecclesiastical jurisdiction, shall substitute in their absence any to keep court for them, except he be either a grave minister and a graduate, or a licensed publick preacher, and a beneficed man near the place where the courts are kept, or a bachelor of law, or a master of arts at least, who hath some skill in the civil and ecclesiastical law, and is a favourer of true religion, and a man of modest and honest conversation; under pain of suspension, for every time that they offend therein, from the execution of their offices for the space of three months toties quoties: and he likewise that is deputed, being not qualified as is before expressed, and yet shall presume to be a substitute to any judge, and shall keep any court as aforesaid, shall undergo the same censure in manner and form as is before expressed.

And by the statute of the 26 G. 2. c. 33. No surrogate deputed by any ecclesiastical judge, who hath power to grant licences of marriage, shall grant any such licence before he hath taken an oath before the said judge, faithfully to execute his office according to law, to the best of his knowledge; and hath given security by his bond in the sum of 100l to the bishop of the diocese, for the due and faithful execution of his office.
His office and duty in granting such licences, is treated of in the title Marriage.

Suspension.

In the laws of the church, we read of two sorts of suspension; one relating solely to the clergy, the other extending also to the laity. Gibs. 1047.

That which relates solely to the clergy, is suspension from office and benefice jointly, or from office or benefice singly; and may be called a temporary degradation, or deprivation, or both. So we find it described by John of Athon: A person deposed, is he who is deprived of his office and benefice, altho' not solemnly; a person degraded, is he who is deprived of both solemnly, the ensigns of his order being taken from him; a person suspended, is he who is deprived of them both for a time, but not for ever. Gibs. 1047.

And the penalty upon a clergyman officiating after suspension, if he shall persist therein after a reproof from the bishop, is (by the ancient canon law) that he shall be excommunicated all manner of ways, and every person who communicates with him shall be excommunicated also. Gibs. 1047.

The other sort of suspension, which extendeth also to the laity, is suspension ab ingressu ecclesia, or from the hearing of divine service, and receiving the holy sacrament; which may therefore be called a temporary excommunication. Gibs. 1047.

Which two sorts of suspension, the one relating to the clergy alone, and the other to the laity also, do here in agree, that both are inflicted for crimes of an inferior nature, such as in the first case deserve not deprivation, and such as in the second case deserve not excommunication; that both, in practice at least, are temporary; both also terminated, either at a certain time when inflicted for such time, or upon satisfaction given to the judge when inflicted until something be performed which he hath enjoined: and lastly, both (if unduly performed) are attended with further penalties; that of the clergy, with irregularity, if they act in the mean time; and that of the laity (as it seemeth) with excommunication, if they either presume to join in communion during their suspension.
Suspension.

...ion, or do not in due time perform those things which the suspension was intended to enforce the performance of. Gibs. 1047.

By the ancient canon law, sentence of suspension ought not to be given without a previous admonition; unless where the offence is such, as in its own nature requires an immediate suspension: and if sentence of suspension, in ordinary cases, be given without such previous admonition, there may be cause of appeal. Gibs. 1046.

Sweating.

1. CAN. 109. If any offend their brethren by swearing; the churchwardens or questmen and fidemen, in their next presentment to their ordinaries, shall present the same, that they may be punished by the severity of the laws, according to their deserts: and such notorious offenders shall not be admitted to the holy communion, till they be reformed.

2. By the 19 G. 2. c. 21. If any person shall profanely curse or swear, and be thereof convicted on the oath of one witness before one justice of the peace or mayor of a town corporate, or by confession; every person so offending shall forfeit as followeth: that is to say, every day labourer, common soldier, common sailor, and common seaman, 1s; and every other person under the degree of a gentleman, 2s; and every person of or above the degree of a gentleman, 5s. And if he shall after conviction offend a second time, he shall forfeit double; and for every other offence after a second conviction treble.

f. 1.

And if such profane cursing or swearing shall be in the presence and hearing of a justice of the peace, or in the presence or hearing of such mayor as aforesaid; be shall convict the offender without other proof.

f. 2.

And if it shall be in the presence and hearing of a constable or other peace officer, he shall (if such person be unknown to him) seize, secure, and detain him, and forthwith carry him before the next justice of the peace for the county or division, or before the mayor of such town corporate, wherein the offence was committed; who
who shall on the oath of such constable or other peace officer convict the offender; but if such person be known to the said constable or other peace officer, he shall speedily make information before such justice or mayor, that the offender may be by him convicted. f. 3.

And such justice or mayor shall immediately, upon information given upon oath of such constable or other peace officer, or of any other person whatsoever, cause the offender to appear before him; and upon such information being proved as aforesaid, shall convict him. And if he shall not immediately pay down the sum fo forfeited, or give security to the satisfaction of such justice or mayor before whom the conviction is made; such justice or mayor shall commit the offender to the house of correction, there to remain and be kept to hard labour for the space of ten days. f. 4.

Provided, that if any common soldier belonging to any regiment in his majesty's service, or any common sailor or common seaman belonging to any ship or vessel, shall be convicted of profane cursing or swearing as aforesaid, and shall not immediately pay down the penalty or give security for the same as aforesaid, and also the cost of the information, summons, and conviction, as by this act is directed; he shall, instead of being committed to the house of correction, be ordered by such justice or mayor to be publicly set in the stocks for the space of one hour for every single offence, and for any number of offences whereof he shall be convicted at one and the same time two hours. f. 5.

And if such justice or mayor shall wilfully and wittingly omit the performance of his duty, in the execution of this act; he shall forfeit 5l, half to the informer, and half to the poor of the parish where he shall reside; to be recovered in any of his majesty's courts of record at Westminster. f. 6.

And if any constable or other peace officer shall wilfully and wittingly omit the performance of his duty, in the execution of this act; and be thereof convicted by the oath of one witness, before one justice or mayor aforesaid; he shall forfeit 40s, to be levied and recovered by distress and sale, and to be disposed of half to the informer and half to the poor; and if he have not sufficient goods whereon to levy the same, such justice or mayor shall commit him to the house of correction, to be kept to hard labour for one month. f. 7.
And the conviction shall be drawn up in the words and
form following:
Middlesex. Be it remembered, that on the—day of
to wit— in the—year of his majesty's reign,
A. B. was convicted before me of his majesty's justices of the
peace for the county, riding, division, or liberty aforesaid; [or,
before me mayor, justice, bailiff, or other chief magistrate of
the city or town of—within the county of— as the
case shall be] of swearing one or more profane oath or oaths; or
of cursing one or more profane curses or curses; as the case shall
be. Given under my hand and seal, the day and year aforesaid. f. 8.
Which said form and conviction shall not be liable to
be removed by certiorari, but shall be final to all intents.
And the said justice or mayor, before whom the conviction
shall be, shall cause the same to be fairly wrote upon
parchment, and returned to the next general or quarter
sessions of the peace for the county, to be filed by the clerk
of the peace, and kept amongst the records. f. 8.
The penalties to be disposed of for the benefit of the
poor; and all charges of the information and conviction
shall be paid by the offender if able, over and above the
penalties; which charges shall be settled and ascertained
by such justice or mayor (to as that the clerk of such justi-
tice or mayor shall have for the information, summons,
and conviction of every offender, the sum of 1s and no
more. f. 14.) And if such party shall not be able, or
shall not immediately pay the said charges and expences,
or give security for the same to the satisfaction of such
justice or mayor; he shall commit him to the house of
correction, there to remain and be kept to hard labour for
the space of six days, over and above such time for which
he may be committed in default of payment of the penal-
ties; and in such case, no charges of information and
conviction shall be paid by any person whatsoever. f. 10.
And if any action shall be brought against any justice of
the peace, constable, or any other person whatsoever, for
any thing done in execution of this act; he may plead the
general issue, and give the special matter in evidence: and
if a verdict shall be given for him, or the plaintiff be non-
suit, or discontinue, he shall have treble costs. f. 11.
Provided, that no person shall be prosecuted or troubled
for any offence against this statute, unless the same be
proved or prosecuted within eight days next after the
offence committed. f. 12.

And
Synod.

1. General or ecclesiastical councils or synods are assemblies of bishops from all parts of the church, to determine some weighty controversies of faith or discipline. These were first called by the emperors, afterwards by christian princes; till in the latter ages the pope usurped to himself the greatest share in the calling of them, and by his legates presided in them when called. Johnf. 139.

By Art. 21. General councils may not be gathered together, without the commandment and will of princes; and when they be gathered together (forasmuch as they be an assembly of men, whereof all be not governed with the spirit and word of god) they may err, and sometime have erred, even in things pertaining unto god. Wherefore things ordained by them as necessary for salvation, have neither strength nor authority, unless it may be declared that they be taken out of holy scripture.

But since the great divisions of christendom, especially in the western church, a free universal synod is scarcely now to be hoped for. Johnf. 140.

2. A national synod consists of all the archbishops and bishops within one nation, assembled together to determine any point of doctrine or discipline. The first of this
this fort which we read of here in England, was that of Herudford (now Hartford) in the year 673. The last was that held by cardinal Pool, in the year 1555. *Johns.* 137.

But altho' national synods be now laid aside, yet upon any great emergency, the synods of the two provinces of Canterbury and York do act by mutual correspondence and joint consent, or by having commissioners from the province of York present in that of Canterbury. *Id.* 140.

3. A provincial synod consisteth of the metropolitan and the bishops subject to him; being what is now called the Convocation, and is treated of in this book under that title.

4. A diocesan synod is the assembly of the bishop and his presbyters, to enforce and put in execution canons made by general councils, or national and provincial synods, and to consult and agree upon rules of discipline for themselves. And these were frequently held, while the bishop and clergy lived together in a community; and were not wholly laid aside, till by the act of submission, 25 H. 8. c. 19. it was made unlawful for any synod to meet, but by royal authority. *Johns.* 140.

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**Synodals.**

SYNODALS and synodaticum, by the name, have a plain relation to the holding of synods; but there being no reason why the clergy should pay for their attending the bishop in synod, pursuant to his own citation, nor any footsteps to be found of such a payment by reason of the holding of synods, the name is supposed to have grown, from this duty being usually paid by the clergy when they came to the synod. And this in all probability is the same which was anciently called catbedraticum, as paid by the parochial clergy, in honour to the episcopal chair, and in token of subjection and obedience thereto. So it stands in the body of the canon law, "No bishop shall demand "any thing of the churches but the honour of the cathe-
draticum, that is, two shillings" (at the most, faith the glofs, for sometimes less is given.) And the duty which we call synodals, is generally such a small payment; which payment was referred by the bishop, upon settling the revenues of the respective churches on the incumbents; whereas
whereas before, those revenues were paid to the bishop, who had a right to part of them for his own use, and a right to apply and distribute the rest, to such uses, and in such proportions, as the laws of the church directed.

Gib. 976.

Synodals are due of common right to the bishop only: So that if they be claimed or demanded by the archdeacon, or dean and chapter, or any other person or persons, it must be upon the foot of composition or prescription. Id.

And if they be denied where due, they are recoverable in the spiritual court: And in the time of archbishop Whitgift, they were declared, upon a full hearing, to be spiritual profits; and, as such, to belong to the keeper of the spiritualties sede vacante. Gib. 977.

Also constitutions made in the provincial or diocesan synods, were sometimes called synodals; and were in many cases required to be published in the parish churches: in which sense the word frequently occurreth in the ancient directories.

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Templars. See Monasteries.

Temporalties (of bishopricks). See Bishops.

Tenths. See First fruits.

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Terrier.

By Can. 87. The archbishops and all bishops within their several dioeceses, shall procure (as much as in them lieth) that a true note and terrier of all the glebes, lands, meadows, gardens, orchards, houses, flocks, implements, tenements, and portions of tithes lying out of their parishes, (which belong to any parsonage, vicarage, or rural prebend,) be taken by the view of honest men in every parish, by the appointment of the bishop, whereof the minister to be one; and be laid up in the bishop's registry, there to be for a perpetual memory thereof.

It may be convenient also, to have a copy of the same exemplified, to be kept in the church chest. Gad. Append. 12.
These terriers are of greater authority in the ecclesiastical courts, than they are in the temporal; for the ecclesiastical courts are not allowed to be courts of record: and yet even in the temporal courts these terriers are of some weight, when duly attested by the register. John 242.

Especially if they be signed, not only by the parson and churchwardens, but also by the substantial inhabitants: but if they be signed by the parson only, they can be no evidence for him; so neither (as it seemeth) if they be signed only by the parson and churchwardens, if the churchwardens are of his nomination. But in all cases they are certainly strong evidence against the parson. Theory of Evidence. 45.

Form of a terrier.

A True note and terrier of all the glebes, lands, meadows, gardens, orchards, houses, flocks; implements, tenements, portions of tithes, and other rights, belonging to the vicarage and parish church of Orton, otherwise Overton, in the county of Westmorland, and diocese of Carlisle, now in the use and possession of Richard Burn, clerk, vicar of the said church; taken, made, and renewed according to the old evidences and knowledge of the ancient inhabitants, this tenth day of November in the year of our lord one thousand seven hundred and forty nine, by the appointment of the right reverend father in god Richard lord bishop of Carlisle, at his primary visitation held at Appleby in the said county and diocese aforesaid, the eighth day of June in the same year, and exhibited before the reverend and worshipful John Waugh, doctor of laws, chancellor of the aforesaid diocese, on the twentieth day of November in the year aforesaid.

Imprimis, One slated dwelling house, in length fifty one feet, in breadth nineteen feet, within the walls. One thatched barn, stable, cow house, and peat house, contiguous to each other under the same roof; in length eighty one feet, in breadth twenty one feet, without the walls. One other little stable, in length thirteen feet, in breadth twelve feet and an half; adjoining to the peat house at the south-west side and end. Item, The church yard, containing three roods and nineteen perches; adjoining to the grounds of Robert Teafdale on the south, of Richard Alderson on the west and north, and to a close belonging to the said vicarage, called prior garth; on the east: The walls and gates thereof round about made by the parson. Item, One inclosure called prior garth, containing three roods and seven perches; adjoining to the church lane on the south, to the church yard.
yard on the west, to the ground of Richard Alderson on the north, and to the highway on the east: Through which there lies a foot path from the vicarage house to the church, but for no other purpose: The wall and hedge on the south, north, and east made by the vicar; and on the west, where it adjoins to the church yard, by the parish. Item, One garden, containing one rood and eleven perches; adjoining to the vicarage garth, and to the ends of the barn and of the dwelling house, on the south; to the highway on the west, and north; and to the said garth on the east: The fence round about made by the vicar. Item, one parrock, containing twenty four perches and an half; adjoining to Orton green on the south, to the highway on the west, to the end of the dwelling house on the north, and to the vicarage garth on the east: The fence round about made by the vicar. Item, One garth, containing one acre, fifteen perches and an half; adjoining to the grounds of John Powley, Daniel Teasdale, and Orton green on the south; to the said parrock, barn, and garden on the west; to the pent house end, garden, and highway on the north; and to a close belonging to the said vicarage, called corn close, on the east: The fence round about made by the vicar, except that John Powley makes the fence where it adjoins to his ground, and Daniel Teasdale from thence to the bottom of the old lime kiln: Through which garth lies a foot path for the said John Powley and Daniel Teasdale to and from their said grounds, and likewise a driving way for their sheep; which they frequented whilst the common field was uninclosed, but is now become almost useless. Item, One inclosure, called corn close, containing one acre, one rood, and twenty one perches; adjoining to the said John Powley's lane, and to a piece of ground before his barn called a stee-room, and to his garth, on the south; to the vicar's said garth, on the west; to the highway on the north; and to the highway and John Powley's lane on the east: The fence all about made by the vicar, except where it adjoins to John Powley's garth and barn. All which said corn close, garth, garden, and parrock, have been inclosed ground for time immemorial, and the vicar in respect thereof hath not repaired any part of the highways adjoining thereunto. Opposite to the same, on the north side, is an inclosure made by Daniel Teasdale, about nine years ago, by which the highway was made into a lane. Item, One inclosure called fore-dale, containing three acres and fifteen perches; adjoining to the grounds of Robert Teasdale and John Nelson on the south, of John Nelson on the west, of John Powley and Robert Teasdale on the north, and of Robert Teasdale on the east: All the fence made by the vicar, except where it adjoins to the said John Nelson's.
Nelson's inn croft, and except half the length of the said John Nelson's out-croft, from the middle to the east end, the said John Nelson's fence being stone wall: From the east end of which inclosure lies a way through Robert Teasdale's ground, which the present incumbent purchased of the said Robert Teasdale, to an inclosure belonging to the said vicar (but not to the vicarage), called long roads; which is to continue for ever, and may be of use if at any time hereafter the said two inclosures (foordeale and long roads) shall be occupied by the same person, or otherwise. Item, One other inclosure, called the greater mil-brow, containing one acre, three roods and seven perches; adjoining to the ground of John Powley on the south, to a tillage way enjoyed and repaired by the said vicar on the west, to the ground of Thomas Ireland on the north, and of John Powley on the east: All the fence made by the vicar, except about sixteen yards of stone wall at the north east end, belonging to John Powley. Item, One other inclosure, called little mil-brow, containing twenty-eight perches; adjoining to the ground of John Powley on the south, of Isabel Atkinson on the west, of Isabel Atkinson and Thomas Ireland on the north, and the said tillage way on the east: The fence all made by the vicar: Through the south west corner of which inclosure is the ancient watercourse. The said three last inclosures were made out of the common field by the present incumbent. Item, One other inclosure, called glebe close, lying at Firbiggins, containing eight acres and three roods; adjoining to the ground of Elizabeth Turner on the south, of Elizabeth Turner and William Thwaytes on the west, of William Thwaytes on the north, and to the common on the east: The wall at the east end is made by the vicar, at the west end by Elizabeth Turner and William Thwaytes: The right of repairing the fence on the north side, and on the south side is in dispute, and not yet determined. At the end of Elizabeth Turner's house, an oak gate is to be maintained by the owners of coat garth; for which they enjoy a liberty of ingress and egress for themselves and families, and liberty of driving cattle in the winter from martinsmas to lady day, doing as little damage as may be; and of passing with peats or other firing in summer. Belonging to the said glebe close, and occupied therewith, there is likewise a parcel of ground, leading from the said gate at Elizabeth Turner's house end, north-eastward, to the said glebe close, having the wall on the left hand, and mered out from Elizabeth Turner's ground on the right, in breadth three yards or upwards, being the way to and through the said glebe close. Item, Another parcel
cel of ground, in the common field, called north lands, containing two roods and five perches; adjoining to the ground of Robert Teasdale on the south, of John Nelson on the west and north, and of Robert Teasdale on the east. Item, Another parcel of ground in the common field, called pot-lands head, containing one rood; adjoining to the ground of Robert Teasdale on the south, of Elizabeth Waller on the west down by the runner, of John Nelson on the north, and of Robert Teasdale on the east. All which said lands, containing in the whole nineteen acres and upwards, are situate within the lordship and manor of Orton, free from the payment of any fines, rents, or services to any chief lord; the royalties of which said lands are also in the vicar. Item, a parcel of meat mofs in Orton low moor, containing by estimation ten acres, known by the name of the vicar's mofs.

Item, to the said vicarage is also belonging the tithe of wool throughout the parish; and the manner of tithing is this: The owner lays his whole year's produce in five parcels or heaps; the vicar, or person employed by him, chooses one of the five heaps, which he pleases, and divides the same into two parts; of which two parts the owner chooses one, and leaves the other to the vicar for his tenth part. Item, the tithe of lambs in their proper kind throughout the parish; and the custom concerning them is this: If a person's number is one, he pays a penny; if two, he pays two pence; if three, he pays three pence; if four, he pays four pence; if five, he pays half a lamb; if six, a whole lamb, the vicar paying back four pence; if seven, three pence; if eight, two pence; if nine, one penny; if ten, the vicar hath a lamb compleat: And in like manner for every number above ten. And if a man's number is under fifty, the tithe is taken thus: the owner takes up two, then the vicar takes one; next the owner takes nine, then again the vicar one; and so on till the vicar hath taken the number due to him: if they are fifty, or upwards, they are put into a place together, and run out singly thro' a hole or gap; the two first that come out are the owner's; the third, the vicar's; then the owner has the next nine; then the vicar one; and so on, till the vicar hath his number. And if sheep are sold in the spring, the tithe of lambs is paid by the person with whom they were lambed, whether seller or buyer. Item, the tithe of geese, taken up about Michaelmas, in the same manner as the lambs; except that whereas a penny is paid on the account of each odd lamb, an halfpenny only is paid for each odd goose. Item, the tithe of pigs in like manner. Item, the tithe of eggs about Easter; two eggs for each old hen and duck, and one egg for each chicken and duck of the first year.
Item, by every person who sows hemp, is paid yearly one penny. Item, for each plough is paid yearly one penny. Item, by every person keeping bees is paid yearly one penny. Item, an obligation of four pence at every churching of women. Item, for every wedding by publication of banns, one shilling; by licence, ten shillings. Item, for every funeral (without a sermon) six pence. Item, mortuaries, according to act of parliament. Item, for every person of age to communicate, three halfpence yearly, due at Easter. Item, a pension of twenty shillings yearly out of the rectory of Sedbergh in the county of York. The glebe, tithe, and profits of the vicarage, are worth at the improved value, communibus annis, about ninety pounds a year.

There is also due to the parish clerk; for every family keeping a separate fire, three pence yearly. For every wedding by publication, or by licence, one shilling. For every funeral six pence. For every proclamation in the church yard, two pence.

To the sexton for making a grave, sixpence.

Belonging to the said parish—-are, first, The parish church, an ancient building, containing in length (with the chancel) ninety six feet, in breadth forty-eight feet: The chancel in breadth one part thirty feet, the other part twenty-one feet. The steeple fifteen foot square within the walls, in height sixty feet. Within, and belonging to which, are, one communion table with a covering for the same of green cloth. Also one linen cloth for the same, with two napkins. Two pewter flaggons. Two silver chalices, weighing about ten ounces each. One paten. One hason for the offertory. One table of degrees. One chest with three locks, in the vestry; of little use because of the damp. One pulpit and reading desk, made in the year 1742. One pulpit cushion, covered with green cloth. One large bible of the last translation. Two large common prayer books. The book of homilies. Comber on the common prayer, and Tillotson’s first volume of sermons, given by Mr. Thomas Haftwell, merchant in London, 1703. The king’s arms with the ten commandments. One church clock. Four bells with their frames: The first, or least bell, being two feet seven inches and an half in diameter; with this inscription: [Jesus be our speed, 1637.] The second, two feet and eleven inches in diameter, with an ancient inscription [omnium animarum], perhaps by a mistake of the bell-founder for [omnium fæctorum], to whom the church is dedicated: The third, three feet and two inches in diameter; with this inscription: [Joh deo gloria, 1637.] The fourth, or largest, three feet six inches and an half in diameter; with this inscription,
Terrier.

[Mr Tho. Nelson, vicar. John Bownes. John Winter. 1711.] Two biers. One herse cloth. Two surplices. Three parchment register books; one, beginning in 1596, and ending in 1646, imperfect; the second, beginning in 1654, and ending 1743, complete; the third, beginning 1743, and continued to the present time. The seats in the church and chancel (except the vicars pew) have been repaired for time immemorial at the publick expense of the parish. There are also several new common seats erected this year by the churchwardens, at the low end of the church, adjoining to the belfry. —— There is also belonging to the said parish, the rectory thereof, together with the tithes of corn, hay, calves, milk, and other duos, which did formerly belong to the priory of Conishead in Lancashire, and after the dissolution of monasteries were purchased by the inhabitants. —— Also the advowson of the vicarage, which did belong to the said priory, and was likewise purchased with the rectory. —— Also one box with three locks, in the keeping of John Unthank of Orton; in which are the purchase deeds of the rectory and advowson; a copy of the endowment of the vicarage in 1263; the purchase deeds of the manors of Orton and Raifbeck by the inhabitants; border rolls; and other publick writings. —— There is also belonging to the said parish, one inclosure in the lordship of Raifbeck, called Barrough close, containing by estimation fifteen acres, of the yearly rent of six pounds; adjoining to the river Lune on the south, to the ground of Thomas Fothergill on the west, to the common on the north, and to the grounds of Leonard Scaife on the east: The fence on the south made by the parish; on the west by the parish and Thomas Fothergill; each a part; on the north, by the parish; and on the east by the parish and Leonard Scaife, each a part. —— Also the sum of twenty pounds, in the hands of Thomas Winter of Wood-end, given by John Dalton, esquire, of Acornebank. Also the sum of three pounds ancient poor stock, in the hands of the administrators of the late George Overend of Raifbeck. Also the sum of ten pounds, now in the hands of the vicar, given by Daniel Wilton, esquire, of Dalham Tower. Also the sum of five pounds, in the hands of Mr. Edward Branthwaite of Carlingill, given by him towards a fund for the poor stock. Also the sum of five pounds in the hands of Thomas Hodgson of Tebay-gill Edge, given by Mr. Robert Harrison of Low Scailes, deputed, for the same purpose. The interest of which money, and the rent of which inclosure, are applied by the churchwardens and overseers of the poor, by the direction of the Twelve, to the relief
relief of the poor, and defraying other parish charges. Which said twelve men are chosen yearly in Easter week at a vestry meeting by a majority of votes, to be sidesmen and a select vestry for the year ensuing.

There are also three schools in the said parish. One at Orton, lately built by the inhabitants, and endowed by Agnes Holme of Orton, widow, with a parcel of land lying in Orton field, containing by estimation one acre, of the present yearly rent of ten shillings; adjoining to the grounds of Christopher Parker on the south, west, and east, and to a land belonging to the vicarage of Burgh on the north: Endowed also by Robert Wilfon of Long Sleddale, yeoman, with the sum of five pounds, now in the hands of Thomas Green of Langdale.

Another school at Tebay, founded by Robert Adamson of Blacket Bottom in Grayrigg, gentleman, in the year 1672, and endowed by him with the estates called Ormondie Biggin and Blacket Bottom in Grayrigg, now of the yearly rent of sixteen pounds.

Another school at Greenholme, founded by George Gibbon of Greenholme, gentleman, in the year 1733, and endowed by him with four hundred pounds original bank stock; of the yearly produce of about twenty two pounds.

In testimony of the truth of the before mentioned particulars, and of every of them, we, the minister, churchwardens, and principal inhabitants, have set our hands the tenth day of November, in the year of our lord one thousand seven hundred and forty nine.

Ri. Burn, vicar.

Joseph Powley
John Bowyness
Edmund Dent
Stephen Matthews
George Wilfon
Will: Rowlandson

Churchwardens.

John
John Unthank
John Nelson
John Bowness
Robert Bownes
John Wilfon
Jonathan Whitehead
Edward Branthwaite
Thomas Brown
John Wilfon
William Atkinfon
John Farrer

Eleven of the twelve, one of them being dead.

Note, In 2 Dugd. Monast. 424. There is a copy of a charter of king Edward the second, confirming (amongst others) a grant which had been made to god and saint Mary and the house of Conyngsesheed and the confurers there, by Gamellus de Penighton, of the churches of Penighton and Molcafter with their chapels and other appurtenances, and of the church of Wytebec, and of the church of Skeroverton [so denominated from the Icelandic skier, a scar, or rock, (which word is still in use in the county of Lancashire;) the town of Orton being situate under the mountain which still beareth the name of Orton-Scar.]

[Note, Conyngses-heved is the same as the king's-head; from the Saxon cyning, or conyng, which signifieth king; and heafod, head.]

**Lithes.**

Oblations, offerings, prestation, pensions, and other church dues not properly tithes, are treated of under their respective titles.


II. Of the several kinds of tithes, with their nature and properties.

III. Of what things tithes shall be paid; and therein of exemptions and discharges from tithes.

IV. Of
IV. Of modus's, or exemptions from payment of tithes in kind; and therein of custom and prescription.

V. Of the several particulars tithable.

VI. Of the setting out, and the manner of taking and carrying away of tithes.

VII. Tithes how to be recovered.

VIII. Tithes in London.


What was paid to the church for several of the first ages after Christ, was all brought to them by way of offerings; and these were made either at the altar, or at the collections, or else occasionally. Prideaux on tithes. 139.

Afterwards, about the year 794, Offa king of Mercia (the most potent of all the Saxon kings of his time in this island) made a law, whereby he gave unto the church the tithes of all his kingdom; which, the historians tell us, was done to expiate for the death of Ethelbert king of the East Angles, whom in the year preceding he had caused basely to be murdered. Id. 165.

But that tithes were before paid in England by way of offerings, according to the ancient usages and decrees of the church, appears from the canons of Egbert archbishop of York about the year 750; and from an epistle of Boniface archbishop of Mentz, which he wrote to Cuthbert archbishop of Canterbury about the same time; and from the seventeenth canon of the general council held for the whole kingdom at Chalchuth, in the year 787. But this law of Offa was that, which first gave the church a civil right in them in this land by way of property and inheritance, and enabled the clergy to gather and recover them as their legal due, by the coercion of the civil power. Id. 167.

Yet this establishment of Offa reached no further than to the kingdom of Mercia, over which Offa reigned; until Ethelwulph, about sixty years after, enlarged it for the whole realm of England. Id. 167.
II. Of the several kinds of tithes with their nature and properties.

1. Tithes, with regard to their several kinds or natures, are divided into pradial, mixt, and personal:

- **Pradial** tithes are such as arise merely and immediately from the ground; as grain of all sorts, hay, wood, fruits, herbs: for a piece of land or ground being called in Latin pradium (whether it be arable, meadow, or pasture), the fruit or produce thereof is called pradial, and consequently the tithe payable for such annual produce is called a pradial tithe. 

- **Mixt** tithes are those which arise not immediately from the ground, but from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chickens, milk, cheese, eggs.

- **Personal** tithes are such profits as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain, after charges deducted.

2. Tithes, with regard to value, are divided into great and small:

- **Great tithes**; as corn, hay, and wood. 

- **Small tithes**; as the pradial tithes of other kinds, together with those which are called mixt, and personal.

But it is said, that this division may be altered, (1) By custom; which will make wood a small tithe, under the general words minuta decimae, in the endowment of the vicar. (2) By quantity; which will turn a small tithe into great, if the parish is generally sown with it. (3) By change of place; which makes the same things, as hops in gardens small tithes, in fields great tithes. But this seems to be contradicted in the case of Wharton and Life, E. 5 W., where the tithe of flax, tho' sown in great fields, was adjudged to the vicar as a small tithe. Holt chief justice (who was of another opinion) being absent. 4 Mod. 184. Gibs. 663.

And Dr Watson is of opinion, that the quantity of land within any parish sowed with any thing, cannot make the tithe...
Tithes.

Tithes restrained to the proper parish.

Tithes of another nature; and that what is called small tithes seemeth to be in respect of the thing itself, and not from the small quantity of land sowed therewith, whereby the tithes thereof are but small, and of little value; for if that were to be the rule to determine what shall be said to be of small tithes, then corn and hay in some places might be accounted small tithes. Watf. c. 39.

And according to this latter opinion the law is now settled; namely, that the tithes are to be denominated great or small tithes, according to the nature and quality thereof, and not according to the quantity.

3. It is said by lord Coke and many others, that before the council of Lateran in the year 1180, a man might have given his tithes to what church or monastery he pleased.

But this Dr Pridcaux doth utterly deny, for two reasons; 1. Because of the absurdity of the thing; for all the laws which had been made for tithes would have signified nothing, if no one had been certainly invested in a right to them; for in such case, no one could claim them, and in case of non-payment no one could make process in law for them; and consequently no one having a special right to demand them, it must have followed in practice, that what was thus paid to every spiritual person, would in fact and reality be paid to none at all. 2. Because before the said council there were in this land many appropriations, whereby the tithes of whole parishes were assigned to convents or other spiritual corporations; all which would have signified nothing, if the parishioners had been at liberty to pay their tithes to what spiritual person they should think fit. Prid. 302.

But be that as it will, it is certain that now tithes of common right do belong to that church, within the precincts of whose parish they arise.

4. Yet notwithstanding, one parson may prescribe to have tithes within the parish of another; and this is what is called a portion of tithes. Gibs. 663.

One reason of which might be, the lord of a manor's having his estate extending into what is now apportioned into distinct parishes; for there were tithes before the present distribution of parishes took place.

But whatever original these portions might have, they are in law so distinct from the rectory, that if one who hath them do purchase the rectory, the portion is not extinct, but remaineth grantable. But as to the cognizance thereof,
Tithes.

thereof, the cafe being between parson and parson, and concerning a spiritual matter; that belongs, like the cognizance of other tithes, to the ecclesiastical court. Gib. 663.

5. Tithes extraparochial, or within the compass of no certain parish, belong to the crown. By the canon law, they were to be disposed of at the discretion of the bishop; but by the law of England, all extraparochial tithes, as in several forests, do belong to the king, and may be granted to whom he will. And accordingly they have been actually adjudged to him, not only by several resolutions of law; but also in parliament, in the case of the prior and bishop of Carlisle, in the 18th of Edward the first, concerning tithes in Inglewood forest, to wit, that the king in his forest aforesaid may build towns, asfart lands (or make them fit for tillage), and confer those churches, with the tithes thereof, at his pleasure, upon whomsoever he pleaseth; because that the same forest is not within the limits of any parish. 1 Roll's Abr. 657. 2 Infl. 647.

III. Of what things tithes shall be paid; and therein of exemptions and discharges from tithes.

1. Of common right tithes are to be paid for such things only as do yield a yearly increase by the act of god. new yearly. Wats. c. 46. 1 Roll's Abr. 641.

Yet this rule admits of some exceptions; as for instance, tithe is due of saffron, tho' gathered but once in three years: and concerning sylva caedua, there is an entry in the register, that consultations shall be granted thereof, notwithstanding that it is not renewed every year. Gib. 669.

2. Generally, of things increasing yearly, tithes shall be paid only once in the year. Gib. 669.

But this rule also is not universally true. And it is evidently against the rule of the canon law; which requireth, that if seeds be sown upon the same ground, and renew oftner than once in the year, the tithes thereof shall be paid so often as they do renew. And this feemeth still to be the law; as in the case of clover, for instance, which reneweth oftner than once in the year, tithes thereof shall be paid as often as it doth renew.

3. Of common right, no tithes are to be paid of quarries of stone or flake, for that they are parcel of the freehold, and the substance of the earth.
the parson hath tithes of the gräis or corn which grow upon the surface of the land in which the quarry is; so also, not for coal, turf, flags, tin, lead, brick, tile, earthen pots, lime, marle, chalk, and such like; because they are not the increase, but of the substance of the earth. And the like hath been resolved of houses (considered separately from the soil) as having no annual increase. But by particular custom, tithes of any of these may be payable. 2 Inst. 651.

4. By the common law of England, there is no tithe due for things that are ferae naturæ; and therefore it hath been resolved, that no tithe shall be paid for fish taken out of the sea, or out of a river, unless by custom, as in Wales, Ireland, Yarmouth, and other places: neither, for the same reason, is any tithe due of deer, conies, or the like. But if the tithe thereof be due by custom, it must be paid. Degge p. 2. c. 8. 2 Inst. 651.

5. By the statute of the 2 & 3 Ed. 6. c. 13. All such barren, heath, or waste ground, other than such as be discharged from the payment of tithes by act of parliament, which before this time have lain barren, and paid no tithes by reason of the same barrenness, and now be or hereafter shall be improved and converted into arable ground or meadow, shall after the end and term of seven years next after such improvement fully ended and determined, pay tithes for the corn and hay growing upon the same. 1. 5.

Provided, that if any such barren, waste, or heath ground hath before this time been charged with the payment of any tithes, and the same be hereafter improved or converted into arable ground or meadow; the owner thereof shall, during the seven years next after the said improvement, pay such kind of tithe as was paid for the same before the said improvement. 1. 6.

Barren] Altho' it doth yield some fruit, and do pay tithes for wool and lamb or the like, yet if it be barren land as to agriculture or tillage, which this clause meant to advance, it is within this act. 2 Inst. 655.

But yet if the ground be not apt for tillage, yet if it be not of its own nature barren, it is not within this act. As if a wood be stubbed and grubbed, and made fit for the plough, and employed thereunto; yet it shall pay tithes presently: for wood ground is fertile, and not barren. 2 Inst. 656. Burnb. 159.

In the case of Stockwell and Terry, July 14, 1748, it was held by lord Hardwicke, that such land only is with-
in this clause, as above the necessary expense of inclosing and clearing, requires also expense in manuring, before it can be made proper for agriculture; and he decreed tithes to be paid, on its being proved, that the land bore better corn than the arable land in the parish, without any extraordinary expense of manure.

In a prohibition between Sharington and Fleetwood, H. 38 Eliz. for tithes in Orwell in the county of Lancaster, it was resolved, that if marsh meadow, or other land, for not cleansing of the trenches or sewers, or by sudden accident, or inundation of waters, be surrounded; or by ill husbandry or unprofitable negligence any land become overrun with bushes, furze, whins, and briers; yet are not they or any of them paid to be barren land within this statute, because of their own nature they are fruitful; and the parson shall not by this act be barred of his tithes, by the ill husbandry or negligence of the owner or possessor. 2 Inst. 656.

Shall after the end and term of seven years next after such improvement fully ended and determined pay tithe] Note, here are no express words of discharge of the tithes during the seven years; but by reasonable construction it doth impliedly amount to a discharge during the seven years: and the seven years are to be accounted next after the improvement. 2 Inst. 656.

The trial whether lands are barren or not within the statute, must be in the temporal, and not in the spiritual court. And therefore in a suit for tithes in the spiritual court, if the defendant plead that it is barren land, and that plea be refused, or issue taken upon it, there a prohibition shall be granted. But a prohibition shall not be granted upon a suggestion only that it is barren land, before it be pleaded in the spiritual court. Degge p. 2. c. 19.

1 Keb. 253.

6. As lands which are in no parish, pay tithes to the king; so lands lying within the precincts of a forest (tho' also in a parish) if they be in the hands of the king, do pay no tithes. And this privilege extends to the king's lessee, but not to his seoffee. But if the forest be disafforested, and be within any parish; then they ought to pay tithes in the hands of the king's lessee. Bob. 163, 177.

Gib. 680.

It hath been questioned, where a park hath paid a modus, and is disparked, whether the modus shall continue, or be discharged and tithes paid in kind; and all the books
are clear, that if the modus was a certain consideration in money for all the tithes of such a park, such modus shall hold, notwithstanding it be disparked; but if the modus was, for the deer and herbage of such a park, the modus is gone, upon disparking. Gibs. 684. Watf. c. 47.

In like manner, if the modus hath been to pay a buck and a doe for all the tithes of such a park, and the park is disparked, the modus shall continue, and the owner may give a buck and a doe out of another park; but if it was, to pay the shoulder of every deer, or expressly a buck or a doe out of the same park, the modus is gone. Gibs. 684. Watf. c. 47.

But where the modus was, part in money, and part in venison out of the park (namely, two shillings and the shoulder of every deer); the court was divided, two being of opinion that the two shillings continued, and that the spiritual court should assign an equitable recompence for the shoulders, according to the number that had been usually paid; and the other two, that the money and venison making one intire modus, the one being gone, the whole was disfolved. Gibs. 684. Watf. c. 47.

7. Glebe lands in the hands of the parson shall not pay tithes to the vicar, tho' endowed generally of the tithes of all lands within the parish; nor being in the hands of the vicar, shall they pay tithes to the parson: and this is according to the known maxim of the canon law, that the church shall not pay tithes to the church. But if the vicar be specially endowed of the small tithes of the glebe lands of the parsonage; then he shall have them, tho' they are in the hands of the appropriator. Gibs. 661. Deg. p. 2. c. 2.

If a parson lease his glebe lands, and do not also grant the tithes thereof; the tenant shall pay the tithes thereof to the parson. Deg. p. 2. c. 2. 1 Roll's Abr. 655.

And if a parson lets his rectory, reserving the glebe lands; he shall pay the tithes thereof to his leesee. Gibs. 661.

If a parson sow his glebe, and dieth before severance, and afterwards his successor is inducted, and his executor or vendee severeth the corn; the successor shall have the tithes thereof; for altho' the executor represent the person of the testator, yet he cannot represent him as parson, inasmuch as another is inducted. 1 Roll's Abr. 655.

Otherwise, if the parson dieth after severance from the ground, and before the corn is carried off; in this case, the
the successor shall have no tithe: because, tho' it was not set out, yet a right to it was vested in the deceased parson by the severance from the ground. The same is true in case of deprivation, or resignation, after glebe fown: the successor shall have the tithe, if the corn was not severed at the time of his coming in; otherwise if severed. Gibs. 662.

8. All abbots and priors, and other chief monks originally paid tithes as well as other men, until pope Paschal the second exempted generally all the religious from paying tithes of lands in their own hands. And this continued as a general discharge, till the time of king Henry the second, when pope Hadrian the fourth restrained this exemption to the three religious orders only of Cistercians, Templars, and Hospitalers; unto which pope Innocent the third added a fourth, to wit, the Praemonstratenses. And this made up the four orders, which are commonly called the privileged orders; for that they claimed a privilege to be discharged of tithes by the pope's establishment.

Then came the general council of Lateran in the year 1215, and further restrained the said exemption from tithes of lands in their own occupation, to those lands which they were in possession of before that council.

But the Cistercians, as it appeareth, in process of time did procure bulls to exempt also their lands which were letten to farm: For the restraining of which practice, the statute of the 2 H. 4. c. 4. was made; by which it was enacted, that as well they of the said order, as all other religious and seculars, which should put the said bulls in execution, or from thenceforth should purchase other such bulls, or by colour thereof should take advantage in any manner, should incur a præmunire.

So that this statute restrained them from purchasing any such exemptions for the future; and as to the rest, left their privileges as they were before the said statute, that is to say, under a limitation to such lands only as they had before the Lateran council aforesaid; and it is certain they obtained many lands after that council, which therefore were in no wise exempted: And also the said statute left them, as it found them, subject to the payment of divers compositions for tithes of their demesne lands made with particular rectors; who, contesting their privileges even under that head, brought them to compound. Which two restraints were also followed by a third, at the time of

Abbey land.
of the dissolution; when, as many of them as did not fall under the statute of the 31 H. 8. c. 13. lost their exemptions, there being no saving clause in the acts of their dissolution or surrender to preserve or to revive them.

But as to those which were dissolved by the 31 H. 8. c. 13. it is enacted as followeth; viz. Where divers abbots, priors, and other ecclesiastical governors of the monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places dissolved by this act, have had divers parsonages appropriated, tithes, pensions, and portions, and also were acquitted and discharged of the payment of tithes for their monasteries or other religious and ecclesiastical houses and places as aforesaid, manors, meafuages, lands, tenements and hereditaments; it is enacted, that as well the king our sovereign lord, his heirs and successors as all other persons, their heirs and assigns, who shall have any of the said monasteries, abbaties, priories, nunneries colleges, hospitals, houses of friers, or other ecclesiastical houses or places, sites, circuits, precincts of the same or any of them, or any manors, meafuages, parfonages appropriate, tithes, pensions, portions, or other hereditaments, which belonged to any such religious house, shall hold and enjoy as well the said parfonages appropriate, tithes, pensions, and portions of the said monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, meafuages, lands, tenements, and other hereditaments, according to their estates and titles, discharged and acquitted of payment of tithes, as freely and in as large and ample manner, as the said late abbots priors and other ecclesiastical governors held and enjoyed the same. c. 21.

By reason of which discharge from tithes of lands, which were given to the king by this act, and which were discharged in the hands of the religious, it hath been more strictly inquired, what were the houses dissolved by this act, than by any other of the acts of dissolution; which will best appear by the following catalogue:

Catalogue of monasteries of the yearly value of 200l or upwards, dissolved by the statute of the 31 H. 8. and by that means capable of being discharged of tithes: In which are the following abbreviations;

Ab. Abbey; Pr. Priory; C. Aust. Canons of St. Austin; Bl. M. Black monks; Wh. C. White Canons; Ben.
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<tr>
<th>Monasteries</th>
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<th>Value</th>
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<tbody>
<tr>
<td>Berkshire</td>
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<tr>
<td>Reading</td>
<td>Ben.</td>
<td>T. Hen.</td>
<td>1938 14 3</td>
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<td>Bus僖ham Ab.</td>
<td>C. Aust.</td>
<td>13 Ed. 3</td>
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<td>Abingtion Ab.</td>
<td>Ben.</td>
<td>720.</td>
<td>1876 10 9</td>
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<tr>
<td>Newnham Pr.</td>
<td>C. Aust.</td>
<td>T. Hen.</td>
<td>293 15 11</td>
</tr>
<tr>
<td>Elmefton Ab.</td>
<td>Ben.</td>
<td>T. W. Conq.</td>
<td>284 12 11</td>
</tr>
<tr>
<td>Wardon Ab.</td>
<td>Cist.</td>
<td>1139.</td>
<td>389 16 6</td>
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<tr>
<td>Chickfand Pr.</td>
<td>{ Wh. C. }{ Cist. }{ T. W. Rufus. }</td>
<td>212 3 5</td>
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<tr>
<td>Dunstable Ab.</td>
<td>C. Aust.</td>
<td>T. Hen.</td>
<td>344 13 3</td>
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<td>Woodburn Ab.</td>
<td>Cist.</td>
<td>T. John.</td>
<td>391 18 2</td>
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<td>Bedfordshire</td>
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<tr>
<td>Ashrugg Coll.</td>
<td>C. Aust.</td>
<td>T. Ed. 1</td>
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<td>Notely Ab.</td>
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<td>Millenden Ab.</td>
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<td>Thorney Ab.</td>
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<td>411 12 11</td>
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<td>Barewel Pr.</td>
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<td>St Werburge Ab.</td>
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<td>Cornwall</td>
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<td>Bodmin Pr.</td>
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<td>St Germans Ab.</td>
<td>C. Aust.</td>
<td>T. Ethelstan.</td>
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<td>Carlisle Pr.</td>
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<td>Darley Ab.</td>
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<td>T. Hen. 2</td>
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<td>Devonshire</td>
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<td>Ford Ab.</td>
<td>Cist.</td>
<td>1133.</td>
<td>374 10 6</td>
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<tr>
<td>Newnham Ab.</td>
<td>Cist.</td>
<td>ab. 1246.</td>
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Dinkelfeill
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<td>Dinkefwel Ab.</td>
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<td>Hertland Ab.</td>
<td>C. Auft.</td>
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<td>Torre Ab.</td>
<td>Prem.</td>
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<td>Buckfast Ab.</td>
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<td>Plimpton Ab.</td>
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<td>Tavestock Ab.</td>
<td>Ben.</td>
<td>961</td>
<td>902</td>
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<tr>
<td>Exon Pr.</td>
<td>Clun.</td>
<td>T. Hen. 1</td>
<td>502</td>
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Dorsetshire.

| Abbotbury        | Ben.  | ab. 1016 | 390   |
| Middleton Ab.    | Ben.  | T. Ethelfstan | 538   |
| Tarrent Ab.      | Cist. | By Hen. 3  | 214   |
| Shafton Ab.      | Ben.  | 941      | 1166  |
| Cerne Ab.        | Ben.  | T. Edgar  | 515   |
| Sherburn Ab.     | Ben.  | ab. 370  | 682   |

Durham.

| St. Cuthbert Ab. | Ben.  | ab. 842 | 1366  |
| Tinmouth Pr.     | Ben.  |         | 397   |

Eftex.

| Berking Ab.      | Ben.  | 680     | 862   |
| Stratford Langthorn Ab. | Cist. | 1135 | 511   |
| Waltham Ab.      | C. Auft. | ab. 1060 | 900   |
| Walden Ab.       | Ben.  | 1136    | 372   |
| St Oiwith Ab.    | C. Auft. | 1120   | 677   |
| Colchester Ab.   | C. Auft. | T. Hen. 1 | 523   |

Gloucestershire.

| Bristol Ab.      | C. Auft. | T. Hen. 1 | 670   |
| Hayles Ab.       | Cist.   | 1246     | 357   |
| Winchcomb Ab.    | Ben.    | 787      | 759   |
| Tewkesbury Ab.   | Ben.    | 715      | 1598  |
| Cirencester Ab.  | C. Auft. | T. Hen. 1 | 1051  |
| Kingwood Ab.     | Cist.   | 1139     | 244   |
| Gloucester Ab.   | Ben.    | 680      | 1946  |
| Lanthony Pr.     | C. Auft. | 1136   | 641   |

Hampshire.

| St Swithin's Winton Ab. | Ben.  | 634 | 1507  |
| Hyde Ab.                | Ben.  | By Alfred | 865   |
| Wherwell Ab.            | Ben.  | By Edgar  | 339   |
| Romsey Mon.             | Ben.  | 907   | 393   |
| Twinham Pr.             | C. Auft. | Before 1042 | 312   |
| Belloloco Ab.           | Cist. | 1024    | 326   |
| Southwick Pr.           | C. Auft. | T. Hen. 1 | 257   |
| Tichfield Ab.           | Przm. | T. Hen. 3 | 249   |
Hertfordshire.

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<td>ab. T. Hen. I</td>
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<td>C. Aust.</td>
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<td>1144</td>
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<tr>
<td>Roffen Ab.</td>
<td>Ben.</td>
<td>600</td>
<td>486 11</td>
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<td>Malling Ab.</td>
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<td>By Edmund.</td>
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<td>Croxden Ab.</td>
<td>Prem. ab. R. I</td>
<td>385 0 10</td>
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</tr>
<tr>
<td>Launda Ab.</td>
<td>C. Aust.</td>
<td>T. W. Rufus</td>
<td>399 3 3</td>
</tr>
<tr>
<td>Lincolnshire.</td>
<td></td>
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</tr>
<tr>
<td>Lincoln St Cath. Pr.</td>
<td>Gilb.</td>
<td>T. Hen. 2</td>
<td>202 5 0</td>
</tr>
<tr>
<td>Kirkstead Ab.</td>
<td>Cift.</td>
<td>1129</td>
<td>286 2 7</td>
</tr>
<tr>
<td>Reveley Ab.</td>
<td>Cift.</td>
<td>1142</td>
<td>287 2 4</td>
</tr>
<tr>
<td>Thornton Ab.</td>
<td>C. Aust.</td>
<td>1139</td>
<td>594 17 10</td>
</tr>
<tr>
<td>Barney Ab.</td>
<td>Ben.</td>
<td>712</td>
<td>366 6 1</td>
</tr>
<tr>
<td>Croyland Ab.</td>
<td>Ben.</td>
<td>716</td>
<td>1803 15 10</td>
</tr>
<tr>
<td>Spalding Ab.</td>
<td>Ben.</td>
<td>1052</td>
<td>761 8 11</td>
</tr>
<tr>
<td>Sempringham Ab.</td>
<td>Gilb.</td>
<td>1148</td>
<td>317 4 1</td>
</tr>
<tr>
<td>Epworth Mon.</td>
<td>Carth.</td>
<td>1386</td>
<td>237 15 2</td>
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<table>
<thead>
<tr>
<th>London and Middlesex.</th>
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<tbody>
<tr>
<td>St. John Jerusalem Pr.</td>
<td></td>
<td>1100</td>
<td>2385 12 8</td>
</tr>
<tr>
<td>St Barth. Smithfield.</td>
<td>C. Aust.</td>
<td>1102</td>
<td>653 15 0</td>
</tr>
<tr>
<td>St Mary Bishopsg. Pr.</td>
<td></td>
<td>1187</td>
<td>478 6 6</td>
</tr>
<tr>
<td>Clerkenswel Pr.</td>
<td>Ben.</td>
<td>T. Stephen.</td>
<td>262 19 0</td>
</tr>
<tr>
<td>London Minors.</td>
<td>Ben.</td>
<td>T. Edw. 1</td>
<td>318 8 5</td>
</tr>
<tr>
<td>Westminster Ab.</td>
<td>Ben.</td>
<td>T. Edgar.</td>
<td>3471 0 2</td>
</tr>
<tr>
<td>Sion Ab.</td>
<td>C. Aust.</td>
<td>By Hen. 5</td>
<td>1731 8 4</td>
</tr>
<tr>
<td>London, a house of.</td>
<td>Carth.</td>
<td>T. Ed. 3</td>
<td>642 0 4</td>
</tr>
<tr>
<td>St Clare withi. Aldg. Mon.</td>
<td></td>
<td>1292</td>
<td>418 8 5</td>
</tr>
<tr>
<td>St. Mary charter house.</td>
<td>Carth.</td>
<td>1379</td>
<td>736 2 7</td>
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Vol. III.
### Liches.

<table>
<thead>
<tr>
<th>Monasteries</th>
<th>Order</th>
<th>Founded</th>
<th>Value</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1/2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>d</td>
</tr>
</tbody>
</table>

**St John Holiwell.**
- Order: Bl. M.
- Founded: 1318.
- Value: 347 1/2
- Norfolk.

**St Mary East Smithf. Ab.**
- Order: Cift.
- Founded: 1360.
- Value: 602 1/2

**Thetford Ab.**
- Order: Clun.
- Founded: 1103.
- Value: 312 1/2

**Wymundham Ab.**
- Order: Ben.
- Founded: 1139.
- Value: 211

**Hulmo Ab.**
- Order: Ben.
- Founded: By Canute.
- Value: 583

**Westderham Ab.**
- Order: Praem.
- Founded: T. Hen. 2.
- Value: 228 0

**Walsingham Ab.**
- Order: C. Aust.
- Value: 391 1/2

**Castle-acre Ab.**
- Order: Clun.
- Founded: 1090.
- Value: 306

**West-acre Ab.**
- Order: Clun.
- Founded: T. W. Rufus.
- Value: 260 1/2

**Northamptonshire.**
**Burg St. Peter Ab.**
- Order: Ben.
- Founded: By Rosere king of Mercia.
- Value: 1721

**Pipewel Ab.**
- Order: Cift.
- Founded: 1143.
- Value: 286

**St Andrews Pr.**
- Order: Clun.
- Founded: 1067.
- Value: 263

**Salby Ab.**
- Order: Praem.
- Value: 258

**Nottinghamshire.**
**Lenton Pr.**
- Order: Clun.
- Value: 329

**Thurgarton Pr.**
- Order: C. Aust.
- Value: 259

**Welbeck Ab.**
- Order: C. Aust.
- Value: 249

**Warfop Pr.**
- Order: C. Aust.
- Founded: 239

**Bella Valla Pr.**
- Order: Carth.
- Founded: ab. 16 Ed. 3.
- Value: 227

**Newfled Pr.**
- Order: C. Aust.
- Founded: T. Edw. 3.
- Value: 219

- The two last are under value in Dugdale, but thus by Speed.

**Northumberland.**
**Tinmouth, a cell to St. Albans, a nunnery.**

**Oxfordshire.**
**Godflow Ab.**
- Order: Ben.
- Value: 274

**Eynefham Ab.**
- Order: Ben.
- Founded: By Ethelred.
- Value: 441

**Osney Ab.**
- Order: C. Aust.
- Value: 654

**Thame Ab.**
- Order: Cift.
- Value: 256

**Oxford Pr.**
- Order: Bef. Conq.
- Founded: 224

**Dorchester Ab.**
- Order: C. Aust.
- Founded: 635.
- Value: 219

**Shropshire.**
**Haghealth Ab.**
- Order: C. Aust.
- Founded: 1100.
- Value: 259

**Lilleshull Ab.**
- Order: C. Aust.
- Founded: By Elfleda, king of Mercia.
- Value: 229

**Wigmore Ab.**
- Order: C. Aust.
- Founded: 1172.
- Value: 267

**Wenlock Pr.**
- Order: Clun.
- Founded: 1181, or before.
- Value: 401

**Salop Ab.**
- Order: C. Aust.
- Founded: 1681.
- Value: 615

**Hales Owen Ab.**
- Order: Praem.
- Value: 337

**Somer-**
### Somersetshire

<table>
<thead>
<tr>
<th>Monasteries</th>
<th>Order</th>
<th>Founded</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
<td>Glastonbury Ab.</td>
<td>Ben.</td>
<td>About 300.</td>
<td>£331 4s. 7d.</td>
</tr>
<tr>
<td>Brewton Ab.</td>
<td>C. Auft.</td>
<td>ab. T. Conq.</td>
<td>£439 6s. 8d.</td>
</tr>
<tr>
<td>Henton Pr.</td>
<td>Carth.</td>
<td>T. Hen. 3.</td>
<td>£248 19s. 2d.</td>
</tr>
<tr>
<td>Witham Pr.</td>
<td>Carth.</td>
<td>By Hen. 2.</td>
<td>£215 15s. 0d.</td>
</tr>
<tr>
<td>Taunton Pr.</td>
<td>C. Auft.</td>
<td>T. Hen. 1.</td>
<td>£286 8s. 10d.</td>
</tr>
<tr>
<td>Bath Ab.</td>
<td>Ben.</td>
<td>T. Hen. 3.</td>
<td>£617 2s. 3d.</td>
</tr>
<tr>
<td>Keynsham Ab.</td>
<td>C. Auft.</td>
<td>T. Hen. 1.</td>
<td>£419 14s. 3d.</td>
</tr>
<tr>
<td>Michelney Ab.</td>
<td>Ben.</td>
<td>740.</td>
<td>£447 4s. 11d.</td>
</tr>
<tr>
<td>Buckland Pr.</td>
<td>Cift.</td>
<td>T. Ed. 1.</td>
<td>£223 7s. 4d.</td>
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</table>

### Staffordshire

<table>
<thead>
<tr>
<th>Monasteries</th>
<th>Order</th>
<th>Founded</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dela Cres Ab.</td>
<td>Cift.</td>
<td>1153.</td>
<td>£227 5s. 0d.</td>
</tr>
<tr>
<td>Burton upon Trent.</td>
<td>Ben.</td>
<td>T. Eadred.</td>
<td>£267 14s. 3d.</td>
</tr>
<tr>
<td>Croxden Ab.</td>
<td>Cift.</td>
<td></td>
<td></td>
</tr>
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</table>

### Suffolk

<table>
<thead>
<tr>
<th>Monasteries</th>
<th>Order</th>
<th>Founded</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>St Edmundsby Ab.</td>
<td>Ben.</td>
<td>1020.</td>
<td>£1659 13s. 11d.</td>
</tr>
<tr>
<td>Butley Ab.</td>
<td>C. Auft.</td>
<td>1171.</td>
<td>£318 17s. 2d.</td>
</tr>
<tr>
<td>Sibeton Ab.</td>
<td>Cift.</td>
<td>1150.</td>
<td>£250 15s. 7d.</td>
</tr>
<tr>
<td>Ixworth Pr.</td>
<td>C. Auft.</td>
<td>T. W. Conq.</td>
<td>£280 9s. 5d.</td>
</tr>
</tbody>
</table>

### Surrey

<table>
<thead>
<tr>
<th>Monasteries</th>
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<tbody>
<tr>
<td>Merton Pr.</td>
<td>C. Auft.</td>
<td>1414.</td>
<td>£957 19s. 5d.</td>
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<tr>
<td>Shene Pr.</td>
<td>Carth.</td>
<td>1414.</td>
<td>£777 12s. 0d.</td>
</tr>
<tr>
<td>Chertsey Ab.</td>
<td>Ben.</td>
<td>666.</td>
<td>£659 15s. 8d.</td>
</tr>
<tr>
<td>Newark Pr.</td>
<td></td>
<td></td>
<td>£258 11s 11d.</td>
</tr>
<tr>
<td>St Mary Ovrs Ab.</td>
<td>C. Auft.</td>
<td>1106.</td>
<td>£625 6s. 6d.</td>
</tr>
<tr>
<td>Bermundsey Ab.</td>
<td>C. Auft.</td>
<td>1106.</td>
<td>£474 14s. 4d.</td>
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### Sussex

<table>
<thead>
<tr>
<th>Monasteries</th>
<th>Order</th>
<th>Founded</th>
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</thead>
<tbody>
<tr>
<td>Lewes Ab.</td>
<td>Clun.</td>
<td>T. W. Ruf.</td>
<td>£920 4s. 6d.</td>
</tr>
<tr>
<td>Roberts-bridge Ab.</td>
<td>Cift.</td>
<td>T. Hen. 2.</td>
<td>£248 10s. 6d.</td>
</tr>
<tr>
<td>Battaile Ab.</td>
<td>Bl. M.</td>
<td>1066.</td>
<td>£987 0s. 11d.</td>
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### Warwickshire

<table>
<thead>
<tr>
<th>Monasteries</th>
<th>Order</th>
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<th>Value</th>
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<tbody>
<tr>
<td>Combe Ab.</td>
<td>Cift.</td>
<td>T. Steph.</td>
<td>£311 15s. 1d.</td>
</tr>
<tr>
<td>Kenelworth Ab.</td>
<td>C. Auft.</td>
<td>T. Hen. 1.</td>
<td>£538 19s. 0d.</td>
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<tr>
<td>Meryval Ab.</td>
<td>Cift.</td>
<td>1148.</td>
<td>£254 1s. 8d.</td>
</tr>
<tr>
<td>Nuneaton Mon.</td>
<td>Ben.</td>
<td>T. Hen. 2.</td>
<td>£253 14s. 5d.</td>
</tr>
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</table>

### Wiltshire

<table>
<thead>
<tr>
<th>Monasteries</th>
<th>Order</th>
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<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malmesbury Ab.</td>
<td>Ben.</td>
<td>ab. 670.</td>
<td>£803 17s. 7d.</td>
</tr>
<tr>
<td>Bradenstoke Pr.</td>
<td>C. Auft.</td>
<td>T. W. Conq.</td>
<td>£212 19s. 3d.</td>
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<tr>
<td>Edington Pr.</td>
<td>C. Auft.</td>
<td>1352.</td>
<td>£442 19s. 7d.</td>
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<td>Ambresbury Ab.</td>
<td>Ben.</td>
<td>1177.</td>
<td>£494 15s. 2d.</td>
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<tr>
<td>Monasteries</td>
<td>Order</td>
<td>Founded</td>
<td>Value</td>
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<tr>
<td>---------------------------------</td>
<td>-------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>Wilton Ab.</td>
<td>Ben.</td>
<td>T. Ethelw.</td>
<td>601 1</td>
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<tr>
<td>Fairly, a cell to Lewes.</td>
<td>Clun.</td>
<td>1125.</td>
<td>217 0</td>
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<tr>
<td>Laycock Ab.</td>
<td>C. Auft.</td>
<td>1232.</td>
<td>203 12</td>
</tr>
<tr>
<td>Malverne Ab.</td>
<td>Ben.</td>
<td>1083.</td>
<td>308 1</td>
</tr>
<tr>
<td>Evecham Ab.</td>
<td>Ben.</td>
<td>T. Offa.</td>
<td>1183 12</td>
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<tr>
<td>Pershore Ab.</td>
<td>Cift.</td>
<td>—</td>
<td>643 4</td>
</tr>
<tr>
<td>Bordesley Ab.</td>
<td>Cift.</td>
<td>1138.</td>
<td>388 1</td>
</tr>
<tr>
<td>St Mary's York, Ab.</td>
<td>Ben.</td>
<td>1088.</td>
<td>1550 7</td>
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<tr>
<td>Selby Ab.</td>
<td>Ben.</td>
<td>T. W. Conq.</td>
<td>720 12</td>
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<tr>
<td>Kirkftal Ab.</td>
<td>Cift.</td>
<td>1147.</td>
<td>329 211</td>
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<tr>
<td>De Rupe Ab.</td>
<td>Cift.</td>
<td>1147.</td>
<td>224 2</td>
</tr>
<tr>
<td>Monks Burton Ab.</td>
<td>Cift.</td>
<td>—</td>
<td>323 2</td>
</tr>
<tr>
<td>Noftel Ab.</td>
<td>C. Auft.</td>
<td>T. Hen. i.</td>
<td>492 18</td>
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<tr>
<td>Pomfrait Ab.</td>
<td>Clun.</td>
<td>T. W. Conq.</td>
<td>237 14</td>
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<tr>
<td>Gifbourn Ab.</td>
<td>C. Auft.</td>
<td>T. Steph.</td>
<td>628 3</td>
</tr>
<tr>
<td>Whitby Ab.</td>
<td>Ben.</td>
<td>T. W. Conq.</td>
<td>437 2</td>
</tr>
<tr>
<td>Montegratioe Ab.</td>
<td>Carth.</td>
<td>ab. 1396.</td>
<td>323 8</td>
</tr>
<tr>
<td>Newburge Pr.</td>
<td>C. Auft.</td>
<td>1145.</td>
<td>367 8</td>
</tr>
<tr>
<td>Belland Ab.</td>
<td>Cift.</td>
<td>1134.</td>
<td>238 9</td>
</tr>
<tr>
<td>Kirkham Ab.</td>
<td>C. Auft.</td>
<td>T. Hen. i.</td>
<td>269 5</td>
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<tr>
<td>Melfa Ab.</td>
<td>Cift.</td>
<td>1136.</td>
<td>299 6</td>
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<tr>
<td>Brillington.</td>
<td>C. Auft.</td>
<td>T. Hen. i.</td>
<td>547 6</td>
</tr>
<tr>
<td>Walton Ab.</td>
<td>Gilb.</td>
<td>T. Stephen.</td>
<td>360 16</td>
</tr>
<tr>
<td>Bolton in Craven. Pr.</td>
<td>C. Auft.</td>
<td>T. Hen. i.</td>
<td>212 3</td>
</tr>
<tr>
<td>Rival Ab.</td>
<td>Cift.</td>
<td>1132.</td>
<td>278 10</td>
</tr>
<tr>
<td>Jerval Ab.</td>
<td>Cift.</td>
<td>—</td>
<td>234 18</td>
</tr>
<tr>
<td>Furnes Ab.</td>
<td>Cift.</td>
<td>1127.</td>
<td>805 16</td>
</tr>
<tr>
<td>De Fontibus.</td>
<td>Cift.</td>
<td>1132.</td>
<td>998 6</td>
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<tr>
<td>Warter Pr.</td>
<td>C. Auft.</td>
<td>T. Hen. i.</td>
<td>221 3</td>
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<td>Richal.</td>
<td>—</td>
<td>—</td>
<td>351 14</td>
</tr>
<tr>
<td>Old Maulton Ab.</td>
<td>—</td>
<td>T. Stephen.</td>
<td>257 7</td>
</tr>
<tr>
<td>St Michael near Hull.</td>
<td>Carth.</td>
<td>1377.</td>
<td>231 17</td>
</tr>
</tbody>
</table>

**In Wales.**

| Valle de Sancta Cruce in Denbeighshire. | Cift. | T. Edw. i. | 214 3 | 5 |
| Strata Florida in Cardiganshire. | Cift. or | T. W. Conq. | 1226 6 | 0 |

*At*
At the time of the dissolution, the religious were discharged from payment of tithes three several ways; either by the pope's bulls, or by their order as aforesaid, or by composition: which discharges would have vanished and expired with the spiritual bodies whereunto they were annexed, if they had not been continued by the special clause abovementioned (as it happened to those which were dissolved by the other statutes of dissolution, for want of such clause). And by the said clause also is created a new discharge, which was not before at the common law, that is, unity of the possession of the parsonage and land tithable in the same hand: for if the monastery, at the time of the dissolution, was feised of the lands and rectory, and had paid no tithes within the memory of man for the lands; those lands shall now be exempted from payment of tithe, by a supposed perpetual unity of possession; because the same persons that had the lands, having also the parsonage, they could not pay tithes to themselves. God. 383. Bob. 241, 248.

But tho' by such union the persons so possessed were discharged from the payment of tithes, yet the lands were not absolutely discharged of the tithes; for upon any disunion that might happen, the payment of tithes again revived: so that the union only suspended the payment, but was no absolute discharge of the tithes themselves. And therefore such union is not to be pleaded as a discharge from tithes, but only as a discharge from the payment of tithes. Bob. 248.

And such union must appear to have had these four qualities: First, it must have been just; that is, claimed by right, and good and lawful title; and not by dissipin, or other tortious, unjust, or unlawful act: for such an union would not have been a good discharge within the statute. Secondly, it must have been equal; that is, there must have been a free simple both in the lands and in the tithes; as well of the lands upon which the tithes are, as of the parsonage or rectory: for if those religious persons had held but by lease, that had not been such a unity as the statute intended. Thirdly, it must have been free; that is, free from the payment of any tithes in any manner: for if the abbots, or their farmers, or their tenants at will or for years, had paid any manner of tithes before the dissolution; it may be alleged as a sufficient bar to avoid the unity pleaded in discharge of tithes. Fourthly, it must have been perpetual, time out of mind, that such religious houses were endowed, and such religious persons
persons must have had in their hands both the rectory and lands united, perpetually, and without interruption, before the memory of man, or (as it seems according to the rule of the common law) before the first year of king Richard the first, discharged of tithes: for if by any records, or ancient deeds, or other legal evidence, it can be made to appear, that either the lands or the rectory came to the abbey since the said first year of king Richard the first, such union cannot be said to be perpetual. Bob. 250.

And moreover, the lands of such houses dissolved as aforesaid, shall be free from the payment of tithes only so far, as they were free in the hands of the churchmen, namely, whilst they are in the hands and manurance of the owners thereof; and therefore it is necessary for the party who would have the advantage of this privilege, expressly to shew and aver, that the lands are in his hands and manurance: for to say that he is feised of the lands is not sufficient; for he may be feised thereof, and yet another manure them. Comyns 498. Fox and Bardwell, E. 8 G. 2. Wood b. 2. c. 2.

It hath been held also, that a tenant in tail, who hath an estate of inheritance, shall be discharged in virtue of the clause aforesaid, so long as he occupies the same himself; but that unity of possession doth not discharge a copyholder (tho' a prior in that case was seised in fee of the manor of which it was parcel, and was also impropriator); much less a tenant for life or years. Gibs. 673. [For in such case, the possession is in the copyholder or other tenant, and not in the landlord or lessor; and consequently it is not a unity of possession.]

But it is otherwise with regard to the king; whose farmers shall be discharged of such tithes, as the spiritual persons were, because the king cannot cultivate the lands himself. And so long as the king hath the freehold, his farmers shall have such privilege: but if after having leased them, he shall sell the same, or shall grant over the reversion; then the farmers shall pay tithes. And it hath been said, that this privilege extends no further than to the king's tenants at will; not to tenants for life or years. Gibs. 673. Bob. 282, 3.

Upon the whole: Not all lands that belonged to the religious houses in general are discharged from tithes; but only such lands are capable of discharge, as belonged to the houses which were dissolved by the statute of the 31 H. 8. And not all those lands, which belonged to the religious
Lithes.

Religious houses dissolved by that statute are discharged from tithes; but only such of them as were discharged at the time of their dissolution. But what shall be sufficient evidence of such discharge, and of the manner of such discharge, that is, whether by order, bull, composition, or unity of possession, at this distance of time, seemeth difficult to determine with precision; as strictness of proof may be more or less requisite, according to the particular circumstances of the case.

9. M. 14 C. 2. Compo's case. It was held, that the Ancient demesne king is not by virtue of his prerogative discharged of tithes for ancient demesnes of the crown, but that as persona mixta he is capable of a discharge de non decimando by prescription, as well as a bishop. But if the king alien any of the lands for which he is so discharged of tithes, his patentee shall pay tithes; and not only so, but the prescription is destroyed for ever, altho' the same lands should afterwards come into the king's hands again, by escheat, or otherwise. Hardr. 315.

10. In the case of Lambert and Cumming, M. 1723; On a bill for tithes in the parish of Warton in the county of Lancaster, it was decreed, that an exemption of an estate from tithes shall extend to a common appurtenant to such estate. Bunb. 138.

But in the case of a modus, or customary payment in lieu of tithes, it seemeth, that where commons are divided, inclosed, and improved, the modus can only extend to such tithes as the common yielded before its improvement and dividing into severalties; as of the aitement of cattle, wool and lamb, or such like; and not to the tithes of corn, hay, or other tithes accruing de novo after the improvement.

But where there is a modus in lieu of all the tithes of such an estate, it seemeth that such modus shall cover the common appurtenant to such estate when divided into severalties and inclosed: As in the case of Stockwell and Terry, July 14. 1748; It was held by lord Hardwicke, where a modus of 13 l was paid for Grange farm, to which there was common appurtenant, a parcel of which common was allotted to the said farm under an act of parliament for inclosing the said common, that the modus extended to such new inclosed land.
IV. Of modus's, or exemptions from payment of tithes in kind; and therein of custom and prescription.

1. The difference between custom and prescription is this: Custom is that which gives right to a province, county, hundred, city, or town, and is common to all within the respective limits; in pleading of which, it is alleged, that in such a county, or the like, there is and time out of memory hath been such a custom used and approved therein. Gibs. 674.

Prescription is that which gives a right to some particular house, farm, or other thing: in pleading of which it is alleged, that all they whose estate he hath in such land, have time out of mind paid so much yearly, or the like, in full satisfaction of all tithes arising on those lands. Gibs. 674.

2. Custom and prescription are either de non decimando, or de modo decimandi:

De non decimando is, to be free from the payment of tithes, without any recompence for the same. Concerning which, the general rule is, that no layman can prescribe in non decimando; that is, to be discharged absolutely of the payment of tithes, and to pay nothing in lieu thereof; unless he begin his prescription in a religious or ecclesiastical person, and derive a title to it by act of parliament. But all spiritual and religious persons, as bishops, deans, prebends, parsons, vicars (as heretofore abbots and priors), may prescribe generally in non decimando, for they are more favoured than lay persons; for this is still in a spiritual person, and no thing is taken from the church: for such spiritual person was capable of a grant of tithes at the common law in pernancy. And hence it is that the parson or vicar of one parish, that hath part of his glebe lying in another parish, may prescribe in non decimando for it; that is, (as hath been said) to be free from the payment of any manner of tithes for the same. 1 Roll's Abr. 653.

But this general rule, that none but spiritual persons or corporations may prescribe in non decimando, is to be understood with several exceptions; as, first, that the king, as being mixta persona, may prescribe de non decimando; by the same reason that, as such, he is capable of tithes. Gibs. 674.
Secondly, that the leesee, tenant at will, and copyholder of a spiritual person, tho' a layman, shall in this respect enjoy the exemption of the lessor, who is supposed to reap the benefit of it, in reserving so much of the greater rents by reason of such exemption. 1 Roll's Abr. 653.

Deg. p. 2. c. 16.

Thirdly, that a county, or part of a county, may well plead a custom de non decimando, in respect of this or that particular tithe; as hath been pleaded and allowed in the case of tithe milk of ewes, and of tithe of underwood in the wild of Kent and in forty parishes in the wild of Suff. But a single parish may not prescribe de non decimando for particular tithes; nor may any larger district plead a custom absolutely, to have their lands freed from the payment of all tithes, without any thing in lieu. And left this allowance of a custom de non decimando to laymen, in any case, should seem to break in upon the general rule, the distinction which hath been laid down is this; that in things tithable by custom only, and not de jure, a county or hundred may prescribe in non decimando generally, for in that case they are discharged, without a custom to the contrary; so that it is but to infilt upon the old right, against which the custom hath not prevailed: but for things which are tithable de jure, a county or hundred cannot prescribe in non decimando, no more than a particular person; for it would be absurd to say, that a hundred shall prescribe in non decimando, where the particular persons of which it consists cannot so prescribe. 2 Salk. 655. L. Raym. 187. Gibs. 674.

Nov. 8. 1762. In the exchequer. Christopher Spencer Breary, clerk, rector of Middleton upon the Wouls in Yorkshire, brought his bill against Mr Manby, one of his parishioners, for great and small tithes arising from the defendant's lands. The defendant by his answer insisted, that part of his farm had time out of mind been exempt from payment of tithes of any kind, or any modus or compensation in lieu thereof; and by his witnesses proved, that no tithe, modus, or compensation had within the memory of man been paid for such part of his farm. The court, at the hearing of the cause, was clearly of opinion, that the mere non-payment of tithes, tho' for time immemorial, would not be an exemption from payment of them, without setting out and establishing such exemption to have arisen from the lands having been parcel of one of the greater abbies; and therefore decreed the defendant to account for the tithes of that part of his estate for which he claimed the said exemption.
It was long a question undetermined, whether a lay impropriator, as well as a clergyman, be intitled to recover the tithes without proving payment; or, whether a non decimando may be pleaded against a lay impropriator: But in the case of Bensôn and Olive, T. 1730, in the exchequer; Pengelly chief baron delivered it as his opinion, that a lay impropriator is under no necessity of proving payment of tithes unto him. Bumb. 274.

So in the case of lady Charlton against Sir Blundel Charlton, in the same court; lord chief baron Reynolds declared it as his opinion, that there can be no prescription in non decimando against a lay rectory, any more than against a spiritual rector, and that they are equally intituled to tithes of common right; and that it is sufficient for a lay rectory to set forth in a bill that he is seised of the impropriate rectory; and if he maketh out his title to that, it will be sufficient, without putting him to the proof of having received tithes. And to this opinion baron Comyns seemed to assent; but he made a distinction between one who sets up a title to the rectory, and one who intitiles himself only to the tithes or any species of tithes within a parish; for in this last case, the plaintiff shall be held to strict proof, not only of his title, but also of the perception of all the tithes he sets up a title to: and, in this present case, the plaintiff having set forth a title in Sir Francis Charlton (under whom he claimed) to all the tithes in the parish of Lucford (except such small tithes as the vicar usually received) and not to the rectory; and the defendant denying the plaintiff's title to the herbage, and the plaintiff not being able to prove any herbage tithe ever paid, tho' he attempted to prove an unity of possession for above seventy years, yet the bill was dismissed. Bumb. 325.

And finally, in the case of the corporation of Bury against Evans, T. 1739, this point seemeth at last to have been settled; wherein it was determined, that there can be no prescription in non decimando, even against a lay impropriator: and that the presumption which arises from a constant non-payment will not be sufficient, unless the defendant can shew, either that the lands were parcel of one of the greater abbeys dissolved by the 31 H. 8, or that some of the impropriators had released the tithes. Comyns 643. Bumb. 345.

But if a vicar sue for tithes, and the parishioner being a layman denies that the said tithes are due to him; in such case, unless the vicar shall prove that the tithes in question
question are due to him by endowment or prescription, he shall fail in his suit: and the reason is, because all tithes de jure or in presumption of law belong to the rector; and therefore the vicar shall receive only those tithes which he enjoyeth by custom or prescription, or by the endowment. 1 Ought. 264.

3. Modus decimandi, is thus described by lord Coke: Modus decimandi is, when lands tenements or hereditaments have been given to the parson and his successors, or an annual certain sum or other profit, always, time out of mind, to the parson and his successors, in full satisfaction and discharge of all the tithes in kind of such a place. And this may be pleaded by the lord of a manor, for the tithes of his manor; on account of lands of the gift of one who was lord of the manor, and held by the parson and his successors time out of mind: And by a parish or hamlet, for this or that sort of tithe, by reason of lands enjoyed by the parsons time out of mind within such parish or hamlet: And, lastly, by any private person, for his own lands or part thereof, in consideration of a certain sum of money or other recompence.

Gib. 674. Deg. p. 2. c. 16.

4. But to make any of these a good custom or prescription, it must have the several qualifications following: As, first, every modus must be supposed to have had a reasonable commencement; and in every prescription de modo decimandi, it is to be intended the rate tithe was the full value of the tithe, at the time of the original composition; for it cannot be presumed, that the bishop, patron, and ordinary would make a composition to the prejudice of the church; and if the modus do not now reach the value, it is to be intended, that either the tithes are improved, or else that money is now become of less value, which makes the present inequality. Deg. p. 2. c. 16.

By composition real is meant, where the present incumbent of any church, together with his patron and ordinary, do agree by deed under their hands and seals, or by fine in the king's court, that such lands shall be freed and discharged of the payment of all manner of tithes for ever, paying some annual payment, or doing some other thing, to the ease profit or advantage of the parson or vicar to whom the tithes did belong. And these real compositions have ever been held and allowed here in England, to be a good discharge of the payment of tithes. And from these real compositions it is intended, that all prescriptions de modo
modo decimandi first took their rise and beginning; tho' it is to be doubted, that most of them at this day have grown from the negligence and carelessness of the clergy themselves. Deg. p. 2. c. 20.

But now, since the statute of the 1 El. (in the case of archbishops and bishops), and the statute of the 13 El. (in the case of all other ecclesiastical corporations, sole and aggregate), it is agreed on all hands, that no real compositions, any more than alienations, can be made; since all grants are thereby expressly restrained, and made void, which are not according to the tenor of those statutes. And the only modus's that can grow now, must be from the inadvertency of the clergy, acquiescing in the self same agreements from one successor to another. Gibs. 675, 676.

Where a real composition hath been made; if the lands discharged thereby be transferred or granted to another, the seoffice or grantee shall have the benefit of it. Gibs. 675.

But it is not now necessary to shew, that the modus had at first a reasonable commencement; for these modus's having been from time immemorial, none can know but that there were such circumstances in those ancient times, as might have made such a composition reasonable, tho' at present they may not be discoverable. It is enough to satisfy us at this great distance of time, that the parson patron and ordinary, before the restrictive statutes, might bind the revenues of the parson; and that all these modus's must have had their commencement from an instrument signed by the parson patron and ordinary; but there can be no colour to say, that because such instrument in so great a length of time hath been lost, therefore the modus shall be lost also. Indeed so far the law hath gone in favour of the church, as that if the instrument which the parson patron and ordinary had given to a layman, owner of such a farm, to discharge the farm of all tithes (tho' this would be good while the instrument could be shewn) should be once lost; this being a privilege in non decimando, the privilege would be lost by the loss of the deed.

2 P. Will. 573.

Upon the whole, no modus can be established at this day; but by act of parliament. An agreement by parson, patron, and ordinary, confirmed and established by a decree in equity, can only bind the parties thereto; because no man's property can be affected but by the law of the land. As in the following case, June 17th, 1765.
tween his majesty's attorney general at the relation of John Blair, doctor of laws, rector of Burton Coggles in the county of Lincoln, and the said John Blair in his own right, plaintiffs; John Cholmly, Esq; John Hopkinson, and George Nidd, and John lord bishop of Lincoln, defendants. — By the lord chancellor Northington: This is an information brought by the attorney general, at the relation of Dr. Blair, for an account and payment of tithes in kind. The claim of the rector arises de communi jure. The defence set up against the claim, is first an agreement entered into in the year 1664, between the then rector and the owners of the lands in the parish, for accepting a yearly sum of 80l. in lieu of tithes. But I am of opinion, that the agreement on the face of it is unequal, as to the consideration thereby agreed to be paid to the rector; for it appears that the agreement was entered into in order to effectuate an inclosure of the open fields in the parish, and no consideration is given as to the future improvement of the lands by such inclosure, of which the occupiers would reap the benefit. But I am clear, that even if the agreement was equal, it would not bind the successor in the rectory, but would be void as against him.

The next defence set up against the plaintiff's claim, is a decree in 1677, which appears to be made in a cause instituted by consent between the same parties that were parties to the agreement in 1664. For as to the bishop of the diocese being a party, I consider him as set up merely for form. And it is material to observe, that the parties themselves did not consider the agreement which had been executed as binding on the rector; for they considered the annuity of 80l., as not being an adequate consideration for the rector's having given up his tithe in kind; and therefore they entered into a new agreement of allowing him an addition thereto of 16l. 8s. 7d. per annum: and on being allowed that addition, the rector by his answer contends to have the agreement established. It is true, that the decree founded on this agreement doth in verbis bind the successors in the rectory: But this was a decree founded on an agreement, which the court never enters into the propriety of, when a bill is brought by consent of parties; and all such decrees are drawn up by the register of the court in the words of the agreement, as a matter of course. But I am of opinion, that such decree cannot bind the successor. The defendants counsel have, it is true, cited cases of a similar nature; and urged the case of Egerly and Price, reported in Finch's reports: which I have looked into, and
and think it a very extraordinary one, for the judge to send for the parties to attend him. I can pay no credit to that case, nor do I look on it as any authority, but only the dream of some note taker in this court.

The agreement and the decree being laid out of the case, the next consideration is, whether a court of equity can relieve in the present case. And I am of opinion, there is not a better rule than *Equitas sequitur legem*. It is a fixed rule, that the crown and church cannot be prescribed against; the first, on account of its high dignity; the second, on account of its imbecility, *Quia fuguatur vice minoris, conditionem suam meliorare potest, deteriorare nequit*. At common law, altho' the church could alienate with consent of patron, parson, and ordinary; yet it was under various restrictions. The patron must be absolutely seised in fee simple: If he was seised only of a fee simple conditional, or base fee, the alienation was void. In the present case, the bar set up by the defendants amounts to a mode of alienation. And if the decree is void, as I am of opinion it is, what then is there to send to law, when the point is about the extent of a decree of this court? And if it were sent thither, it must come back to be ultimately determined here.

It has been also objected, that the length of time ought in this case to bar the plaintiff. But I think the legal rule, that no prescription can run against either the king or church, must be adhered to. And indeed the length of time in which this agreement was acquiesced under, is not so great as at first sight it appears; for the person who was rector in 1677, and party to the decree, and had a right to establish the agreement during his life, did not die till the year 1718.

Upon the whole, the inclosure of the lands was for the general benefit of the parish; and such lands will be continually increasing in value, while the composition given to the rector in lieu of tithe will be gradually diminishing in value. The composition here regarded only the value of the past tithes, without any regard to the future increasing value of tithes, which is always allowed for in every private bill for an inclosure.—If in the present case, the parties had made an allowance for the future improved value of tithes, I should not have been inclined to relieve, but would have left the rector to his legal remedy.

I shall therefore decree, that the information, as against the bishop of Lincoln, be dismissed with costs: And let it be referred to the master, to take an account of the value of
of the tithes which have accrued from the time of filing
the information, and let what shall be coming on the ba-
 lance of such accounts be paid to the relator Dr. Blair;
and no costs hitherto; but I do referre the considera-
tion of subsequent costs, till after the master shall have made
his report; and any of the parties to be at liberty to apply
to the court as there shall be occasion.

5. The modus must be something for the benefit and
interest of the parson: and therefore, the finding straw
for the body of the church, the finding a rope for a bell,
the paying five shillings to the parish clerk, the paying a
quit rent to the lord of the manor, when these have been
urged as discharges from tithes in kind, the modus's have
been held not to be good. Deg. p. 2. c. 16.

But it is a good modus to be discharged, for that he hath
used time out of mind to employ the profits for the repara-
tion of the chancel; for the parson hath a benefit by this.
1 Roll's Abr. 650.

6. The modus must not be, one tithe paid in considera-
tion of another; as, it must not be to pay tithes of other
kinds, to be discharged of tithes for dry cattle; it must
not be so much for every cow and calf, for the tithe of
herbage. Deg. p. 2. c. 16.

E. 1729. Fox and others, against Ayde and others. A
bill was brought in chancery, to establish a modus, in fa-
vour of the inhabitants of the parish of Sturton in Not-
tinghamshire. The modus was, in consideration that af-
ter the grases was cut, the parishioner at his own costs and
charges did make the tithe grass into hay, by strowing the
grases on the ground (which is called tedding of it), and
afterwards gathering it into week and windrows; there-
fore the persons that inhabited within this parish (which
parish appeared to be the greatest part thereof meadow
land) were to pay no tithes for the herbage of dry
and unprofitable cattle. But tho' it was proved in the
cause, that the parishioners time out of mind had paid no
tithe of this herbage, yet there was no evidence that this
excuse for not paying tithes of herbage was in considera-
tion of the parishioners making the tithe grases into hay.
On the other hand it was proved, that foreigners living
out of the parish made the tithe grases into hay as well as
the inhabitants, and yet paid tithe herbage. And it was
proved by the plaintiffs, that the grases was tedded and
spread, and not divided into heaps or cocks, until the
same was made into hay. By King lord chancellor: 1.
This may be a good custom or modus, to excuse the oc
cupier
cupier of the same land wherein the parisioner made the
grasfs into hay, from paying tithes for the after herbage;
but it can be no good modus, to excuse the herbage tithe
of other land: for at that rate, a man might mow and
make into hay only a small parcel of ground, containing
a quarter or half an acre of land, and by this means be
excused from the tithe herbage of a hundred head of cattle.

2. It seems to be a material objection against this custom,
that foreigners living out of the parish, tho’ they have no
privilege of being tithe free as to their herbage, yet have
made the tithe grasfs into hay; which looks as if it was the
usage of that parish, for the parisioners to make their grasfs
into hay of course. 3. It seems material what some of
the witnesses have proved, that in this parish the parisioners
when they cut down the grasfs, did not divide it into
ten parts, until such time as they had made it into hay:
for of consequence, the parson could not have any oppor-
tunity of making his tithe grasfs into hay himself.
And the bill was ordered to be dismissed with costs; but
without prejudice as to any litigation that may be made
touching the same at law. 2 P. Will. 520.

7. It must alfo be something in its kind different from
the thing that is due; and therefore a load of hay in
lieu of tithe hay, or certain sheaves of corn for all tithes
of corn, is not a good prescription: but it hath been said,
that this holds only in case the things are de jure titheable,
and not by custom only. Deg. p. 2. c. 2.

M. 3 An. In the exchequer: Archbifhop of York against
the duke of Newcastle. The prescription was, to pay ten
fleeces of wool and two lambs in lieu of all tithes. And
Price and Bury barons were of opinion that this was an ill
modus; because it is one species of tithe for another; and
there is great uncertainty, for one fleece may be twice as big,
and three times the value of another. But Ward chief
baron and Smith baron were of the contrary opinion; for
that a modus is nothing but a real composition, for or in
lieu of tithes; or an annual profit certain and permanent:
and they held, that the payment of any one chattel for
tithe was or might be a good modus, as well as money;
for why might not the parfon originally agree to take ten
fleeces for his tithe as well as a penny? They admitted
that payment of tithe of one species, or payment of a
modus for one species of tithe, could not be a discharge as
to another species: but they held, that this was not a pay-
ment of tithe, nor a payment for a species of tithe; be-
cause it was to be paid at all events, whether there be sheep
sheep or no; and they denied the case of 1 Roll's Abr. 651. and held it no more uncertain than to pay a modus of ten cheeses, which may differ vastly both in nature, quantity, and value; and it tends to the disquiet of the country, to break in upon customs and usages, and it ought not to be done but on plain and manifest reason. 2 Salk. 656.

T. 9 G. Mason, rector of Luggershall in Bucks, v. Holton. The defendant insisted, that a small meadow had been always enjoyed by the rector, in lieu of the tithe hay of another very large one. It appeared, that the first bore, one year with another, about four loads of hay, the other about 150. The court said, it could never be sup-
posed, that any men in their wits would agree, to take four loads instead of 15. And the modus was set aside as unreasonable.

8. Every modus must be certain; and if it is uncertain, no length of time will make it good. Thus a prescription to pay a penny, or thereabouts, for every acre of arable land, is void for the uncertainty. 2 P. Will. 572.

Thus in the case of Blacket and Finney, T. 1725: On a bill to establish a modus, payable on or about the twenty fifth day of April yearly; it was objected to the uncertainty of the time of payment. And the court allowed the ob-
jec
tion; but gave the plaintiff liberty to amend, upon paying the costs of the day. Bunb. 198.

So also, a modus to pay four shillings for every day's ploughing of wheat, and two shillings for every day's ploughing of barley, hath been adjudged to be ill; it be-
ing uncertain how much every day's ploughing was. 2 P. Will. 462. 2 Salk. 657.

So in the case of Bean, vicar of Lydd in Kent, T. 12 An. The defendant insisted on a custom to pay 1 s in the pound according to the rent, when their land was let to the full value, or at rack rent; when it was not let, or let and a fine taken, then according to the value. After a full debate on both sides, it was decreed to be a void mo-
dus. This decree was cited 1 Geo. in the case of Shapter vicar of St Goram in Cornwall v. Mitchel, and allowed of for this reason, that it exposes the parson to be greatly impos'd on, who cannot know what rent is reserved, nor what fine is taken; and as to the value of the land, that is still more uncertain.

M. 11 G. Webber and Taylor. A bill was brought to establish a modus; which was laid thus: For payment of such a sum of money, while the lands are in the hands of

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the proprietors; but if in the hands of any other person, to pay tithes in kind, or the money, at the election of the parson. Lord chancellor King said, that he would never establish a modus against a parson, without a trial at law, if he desires it; but this modus is clearly ill, for a modus cannot be defultory. *Caf. Châ. King. 52.*

But in the case of *Chapman and Monson, H. 1729.* A modus that every occupier of land within the parish, living out of the parish, shall pay a penny an acre for all pasture land within the parish, but if he lives within the parish, to pay tithes in kind, was adjudged to be a good modus: and this was said to be the less unreasonable, because the tithes are given as a reward for the trouble and care which the parson takes of the souls of his parishioners, in which case the labourer is worthy of his hire; but then, as the parson is not bound to go out of his parish to visit those who only occupy land within the parish, so it is but reasonable, that they who have not the benefit of the parson's care should answer the less duty to him. *2 P. Will. 565.*

†. 1733. *Gibb and Goodman.* It was said by Pengelly chief baron, that in an answer to a bill for tithes, it is not absolutely necessary to express the day of payment of a modus insistib, but this may be supplied by evidence, so as to be a foundation for the court to direct an issue at law to try the modus; but in a cross bill to establish a modus, a day must be expressly alleged, otherwise it will be fatal. *Bunb. 328.*

And many modus's have been set aside, in regard that no day of payment was set forth by the defendant. As in the case of *Whitehall and Offley, T. 5 G.* Mr. Offley had sued Whitehall in the spiritual court for tithes. Whiethall moved for a prohibition, and suggested a modus, but set forth no day of payment. For want of which, the court was of opinion it was naught.

E. 8 G. *Godard* rector of Castle Eaton in Wilts v. *Kable.* The defendant insisted upon several modus's, viz. 3d for a milk cow, 3d for a lamb, 3d for a colt, 1d for a garden, and the like: But they were all set aside, in regard no time for the payment thereof was ascertained by the defendant.

†. 8 G. *Woodford* vicar of Ebelshame alias Ensom in Surrey, against *Crofe.* Modus, 4d a cow for milk and calf, 2d for a dry beast, 3d for a lamb, and so on, but no day of payment set forth by the defendant; set aside for the same reason.
Penrice, vicar of Dodderhill in Worcestershire, versus Du-
gard. Modus 41 10s for all small tithes arising on an estate
called Impney: Set aside, because no day of payment was
set forth by the defendant in his answer.

Pemberton vicar of Belchamp St Paul’s in Essex, against
Sparrow and others. Several modus’s set aside for the same
reason.

T. 9 G. Corpus Christi v. Vincent. Modus, ½d for a
young milk cow, and 2d for an old milk cow, set aside
for the same reason.

And the reason these decrees go upon is, that tithes in
kind being a provision made by law for the clergy, which
become due at a certain determinate time, and which if
not then set forth are immediately demandable, shall not
be taken from them by an uncertain payment which be-
comes due on no determinate day, and which they cannot
know when to demand or go about to receive if it be with-
held. Besides that such an uncertainty lays a foundation
for many disputes; as in the case of the death of an in-
cumbent, where tithes are paid in kind, all tithes fevered
before his death go to his executor, the rest to his suc-
cessor; but if a modus to be paid on no certain day should
be allowed, no one could determine in that case, whether
it should go to the executor of the preceding incumbent,
or to the successor.

But it seemeth to be now held, where an annual modus
hath been paid, and no certain day for the payment there-
of is limited; that the same shall be due and payable on the
last day of the year.

9. A modus must be ancient: And therefore if it is any thing near the present value of the tithe, it will be
supposed to be of late commencement, and for that reason
will be set aside. As in the case of Benson impropriator of
Bromley St Leonard, Middlesex, against Watkins and
others, H. 3 Geo. The following modus’s, viz. 5s an
acre for tithe of winter corn, 4s an acre for summer corn,
2s 6d an acre for upland meadow, and 3s an acre for
lowland, were set aside as too big.

So in the case of Lloyd vicar of Epping in Essex, against
Small and others, 4 Geo. The defendants insisted on se-
veral modus’s for all small tithes arising out of their re-
spective farms. But it appearing by their answer, that
their small tithes in kind, in the year demanded by the bill,
did not amount to more in that year than the pretended
modus’s, the modus’s were set aside.
**Lithes.**

T. 2 G. Franklin v. Jenkins and others. The bill was brought by the parishioners of Farnham in Hampshire against the vicar and tenant of the impropriator there under the hospital of St Crofs, to establish several modus's amongst other things: Some of which were fet aside as too big; and among the rest, a pretended modus of 6d for the tithe of a calf.

So in the case of Layfield rector of Chiddingford in Surrey, against Euknap: 2s 6d. for a tithe lamb was some years ago fet aside as too big for a modus.

And the reason these decrees go upon is this: That the value of money being much greater at the time when all modus's are presumed to have begun than it is now, a modus near the value of the tithes at this day must have been at that time a great deal more; and it is not to be supposed, that the parishioners would at any time give so much more than the value of their tithes.

**Must be durable.**

10. A modus must be something durable; because the tithe in kind is an inheritance certain, and it is against nature that it should be extinguished by a recompence not as durable at least, tho' not so valuable: for this reason, four pence to be paid yearly, by two persons inhabiting two such houses, in consideration of all tithes, hath been adjudged ill; because the houses may decay, or none live in them. Gibs. 675.

**Must be without interruption.**

11. Custom or prescription must be constant, without interruption; and perpetual, from the time whereof the memory of man is not to the contrary: for if there have been frequent interruptions, there can be no custom or prescription obtained. But after a custom or prescription is once duly obtained, a disturbance for ten or twenty years shall not destroy it. Deg. p. 2. c. 13.

12. As every consideration will not make a good modus; so a modus, tho' founded upon good consideration, may be several ways discharged, and tithes become due in kind: As,

(1) Where land is converted to other uses: so, when the prescription is for hay and grass, specially, in so many acres of land; if the land is converted into a hop garden or tillage, the prescription is gone.

(2) By the alteration or destruction of the thing for which the money was paid: as where two fulling mills were under the same roof, and turned into a corn mill; where also there was one pair of stones in a mill, and another pair was added; and where the watercourse was altered by the owner, and the mill was pulled down and re-edified
re-edified upon it; in all these cases, it was adjudged that the modus was gone. But where a man was feised of eight acres of meadow and one of pasture, for the tithes whereof he had paid time out of mind five shillings and four pence, and afterwards the owner built a corn mill upon the same; it was adjudged that he should pay no tithes for the corn mill, because the land was discharged by the modus. 2 Hyl. 490.

(3) By non-payment of the consideration, or payment of tithes in kind, for so long a time, as to destroy the possibility of making proof that such custom or prescription was: but an interruption for some short time only, will not discharge it; especially if made by the lefsee, to the prejudice of the lefser. Watson, c. 47. Gib. 675.

13. The rule is, that the modus is to be sued for in the ecclesiastical court, as well as the very tithe; and if it betried, allowed between the parties, they shall proceed there; but if the custom be denied, it must be tried at the common law; and if it be found for the custom, then a consultation must go; otherwise the prohibition standeth. The like is affirmed, in case a jury upon an issue joined in a prohibition upon a modus decimandi, find a different modus; since a modus is found, they shall not have consultation. 2 Hyl. 490.

The principal reasons why the courts of common law prohibit the spiritual court from trying of modus's, are, that whereas every modus is less than the real value, the rule of the canon law is, that less than the real value shall not be taken, and that a custom to the contrary is void; and that the ecclesiastical and temporal laws differ in the times of limitation, forty years or under making a good custom by the ecclesiastical laws, whereas by the temporal laws it must be beyond the time of memory. Gib. 691.

But the spiritual courts have commonly allowed and do allow pleas of modus decimandi; and the averment in the prohibition is not that they do take cognizance, but that the plea hath been offered and refused; which supposeth, that if the plea be admitted, the prohibition ought not to go. And accordingly it hath been affirmed by Doderidge and others, that the spiritual court may as well try the modus, as the right of tithes, and that a prohibition is not to be granted, till the spiritual court either refuse to admit the plea, or proceed to try it by methods different from the rules of the temporal law, as to the time of limitation, or number of witnesses, or the like. And where lord Coke
contended for the contrary doctrine, it was declared by Kelynge and Twifden, in the case of the bishop of Lincoln against Smith, that in case one libel for a modus decimandi, if the spiritual court allow the plea, they may try it. Gibs. 691.

But, notwithstanding, it seemeth now to be clearly settled, that if a modus decimandi be sued for in the ecclesiastical court, a prohibition lies to stop the trial of it, if the modus be denied; and the reason is, not upon the account that the spiritual court wants jurisdiction, but in regard of the notion the temporal law hath of custom, different from the spiritual: And seeing that every modus is due by custom, it is the common law only that can determine, what time and usage with us shall be sufficient to create such custom, that is, time beyond all memory to the contrary. Whereas by the spiritual law, sometimes ten years, sometimes twenty, they will adjudge sufficient to create a custom. And prohibitions in such cases are granted, not because the spiritual court hath not jurisdiction of the matter, but in respect of the trial which is to be by the temporal law only; and if upon the trial it be found for the modus, the proceedings shall go on in the spiritual court; if against the modus, the prohibition shall stand. Wats. c. 56.

But if in the trial of a modus, the defendant permits the spiritual court to proceed to sentence, he is then too late to come for a prohibition; because it is only for defect of trial, and not for defect of jurisdiction: but a man is never too late for a prohibition, where it is for defect of jurisdiction. Bumb. 17.

V. Of the several particulars tithable.

I. Corn and other grain, as beans, pease, tares, vetches.

II. Hay and other like herbs and seeds, as clover, rape, wood, broom, heath, furze.

III. Agistment or pasturage.

IV. Wood.

V. Flax and hemp.

VI. Madder.

VII. Hops.
Lithes.

VIII. Roots and garden herbs and seeds; as turnips, parsley, cabbage, saffron, and such like.

IX. Fruits of trees, as apples, pears, acorns.

X. Calves, colts, kids, pigs.

XI. Wool and lamb.

XII. Milk and cheese.

XIII. Deer and conies.

XIV. Fowl.

XV. Bees.

XVI. Mills, fishings, and other personal tithes.

I. Corn and other grain, as beans, pease, tares, vetches.

Corn is a prædial, great tithie; and is tithable according to the custom of the place; and is commonly tithed by the tenth shock, cock, or sheaf, where the custom of the place is not otherwise. God. 393.

Of common right, the owner of the corn ought to cut down and prepare the same, and to make it up into sheaves, cocks, or shocks; and if the owner refuse to do it, the parson may sue him for the same in the spiritual court; but then the suit ought to be special, for not setting them forth in cocks, and not generally for not setting them forth. But having made the corn into sheaves, he is not bound to set it up in heaps, unless the custom of the place oblige him thereunto. Watf. c. 49.

If a prescription be, to pay certain sheaves of corn for all tithes of corn, this is no good prescription; for the parishioner ought to make it into sheaves; and therefore part of his duty in kind, cannot be in satisfaction of the residue. Watf. c. 49.

If the custom of the place be, to measure forth to the parson the tenth part of the corn whilst growing upon the land; it seemeth that this manner of tithing ought to be observed; or if the custom be, that the parson ought to have for his tithe of corn, the tenth land of corn, beginning at such land as is next to the church, this custom is good: but when in such case the parishioners by covin, to defraud the parson, did not manure and
and sow such lands (the corn of which would by the
custom be to the parson) so sufficiently as their other
lands, and the parson therefore did sue in the spiritual
court generally for the tenth sheaf and shock, and a
prohibition was awarded because it was said that the par-
son might have his remedy at the common law for the
fraud; yet afterwards in the same case a consultation
was granted, Wray chief justice saying, that this cus-
tom was against common reason. \textit{Wats. c. 49. 2 P. Will.}

569.

If the custom be, that if the odd sheaves or shocks,
under the number of ten, shall not be tithed, by reason
that they set up the tithes in heaps or shocks, which of
common right the owner of the corn is not bound to do;
the owner is not bound to divide the said sheaves or
shocks, and set forth the tenth thereof, for that such
custom upon such consideration is good. \textit{Wats. c. 49.}

2. Tithes are not to be paid (lord Coke says) for the
herbage of meres or balks in corn fields; but the same
are freed thereof by the common law and custom of the
realm. 2 \textit{Infl. 652.}

3. So, it is said, no tithes shall be paid for hay which
growth upon headlands, where the horses and plough
turn when the land is ploughed, if there be alleged a
custom not to pay this, and also it be averred that the
headland is only sufficient to turn the plough. 1 \textit{Roll's}
\textit{Abr. 645.}

4. So, if a man pay tithes of corn, it is said, he shall
not pay any tithes for the stubble which growtheth the same
year upon that land, tho' the same be cut for thatch or
other uses. 2 \textit{Infl. 652. 1 Roll's Abr. 640.}

[Nevertheless, altho' the law is so delivered, in this
and other like instances; yet it is certain, the stubble,
as also the after-catage, and the like, are as much a part of
the increase, as the corn or hay. And therefore perhaps
these general assertions may require some limitation or
restriction.]

5. For ordinary rakings of stubble, not voluntarily
scattered, no tithes shall be paid:

But for rakings voluntarily scattered, and upon col-
lusion, a man shall pay tithes. 1 \textit{Roll's Abr. 645. 2 Infl.
652.}

6. If a man pay tithes of corn, he shall not pay any
tithes for the after pasture of that land for that same
year, nor for agistment in such after grafts. 1 \textit{Roll's Abr.}
641.

But
But if, after the crop is taken off, the land shall be
fown with turneps; he shall pay tithes of such turneps:
for that is a new increase. *Bunb. 314. Viner. Dismes,
Z.

7. Fallow ground pays no tithes for those years where-
in it lies fallow, nor is the pasture thereof tithable, un-
less it be kept lay beyond the course of husbandry: for if
land lie fallow every two or three years, the same is a
charge to the owner and tenant for that time, and an ad-
vantage to the parson in the bettering of his crop the year
following, when the same is fowed with corn or grain.
And therefore altho' the grass and feeding of the fallow
ground for that year be some small profit to the owner of
the foil, yet he shall not pay tithe for the same. 1 Roll's
Abr. 642, 649.

8. A prescription may be within a parish, that by
reason they have not sufficient meadow for milch kine and
draught cattle, they have used to cut some of their tares
green, and give them to the aforesaid flock, and to be
discharged of tithes for the same: and this is a good
custom and consideration, for that the parson hath an
advantage thereby as well as the parifhioner, namely, in
the tithe milk, and manuring of the other corn land; and
the matter is, the want of meadow and pasture; and the
farmise is as if it had been said, that for want of meadow
and pasture, they have used to eat their meadows with
their plow cattle, and for so much as they did eat to pay

So if a man, according to the custom of the country,
doth sow his land to feed his horses for tillage, and the
ufe hath been to suffer the horses to be fed upon the land
without any mowing of the grain; the parson shall not
have any tithes thereof, because it is no more than pa-
fure for his horses. *Wats. c. 49.

9. If a man gather green pease to spend in his house,
and there spend them in his family, no tithes shall be
paid for the same; but if he gather them to sell, or to
feed hogs, there tithes shall be paid for them. 1 Roll's
Abr. 647. Deg. p. 2. c. 3.

It hath been disputed, whether the tithe of beans and
pease, gathered by the hand, and sold for man's food, is
a great or small tithe. As in the case of *Sims, vicar of
Eastham in Essex, against Bennet and *Johnson, occupiers
of lands within the said parish, and *Wilkes and *Hitch,
appropriators of the rectory of the said parish; Dec. 6.
1762. *Mr Sims, the vicar, brought his bill in chancery in
in the year 1756, setting forth, that by the endowment of the vicarage he is intituled to the tithes of gardens and curtilages, and all sorts of tithes, except the tithes of sheaves and hay and mills [præter decimas garbarum et fænt existence malendarorum ad ventum]; that the defendants Ben-net and Johnson, holding several parcels of land in the said parish, did in the same year cultivate several pieces of such land with beans and peafe, of such sort as are generally used for the food of man, which they gathered in the months of June, July, and August, by the hand in the field, by plucking them from the stalk whilst green, and sent the same to market, and sold them for the food of man accordingly; and insifting, that by the gathering beans and peafe by the hand, so cultivated as aforesaid, he the said Sims, as vicar, by virtue of the said endowment, became intituled to the tithe thereof, and that no tithe ought to be paid for the same to the impropriator, nor ought beans and peafe so cultivated and gathered by the hand, by plucking from the stalk whilst green, to be considered as part of the tithes appropriated to the rectory.

To this bill the defendants put in their answers. And the defendant Bennet said, that in the year 1756, he sowed thirteen acres or thereabouts with peafe and beans, in the open fields in the said parish, and believed that in June, July, and August in the same year, he gathered ten acres and a half or thereabouts of the same by the hand in the field, by plucking, them from the stalk whilst they were green, and sold them in a cart by retail by pecks and smaller quantities, in and about the parish of Eastham, and in the streets of London, and the remainder of such peafe and beans were gathered into the barn and threshed. And the defendant Johnson said, that he sowed five acres of beans and peafe in like manner, and part thereof he plucked by the hand when green, and sold the same in London streets and at market, and gathered and threshed the remainder in the barn. And both the said defendants said, that all their ground in the said parish, sowed with peafe and beans in the said year, was ploughed for that purpose, and no part thereof was dug with a spade except under or near the hedges, where the same could not be ploughed, or in such places as were too wet to be ploughed; and that the tithe of all beans and peafe, whether gathered green or otherwise, having been always paid to the rector, and esteemed to belong to him, they had therefore compounded with the impropriators for the same, and hoped they should not be compelled
Lithes.

compelled to account also with the vicar for the same tithes. The defendants Wilkes and Hitch, in their answer, insisted on their right as imprpropriators. Witneffes were examined on both fides. Several of whom depofed, that fuch peafe and beans as are used for the food of man, had been cultivated in the fields and grounds of the parish of Eaffham, only for about thirty years past, and were cultivated and gathered green off the ftem, as ufually done in a garden (fave only that in the field the plough hath been generally used and in the garden the fpaide), and in rows, but in a different manner from thofe planted and fowed in fields in the common course of husbandry for provender and not for man's food. And one of the witneffes, Mr Wyat, vicar of the parish of Weftham (adjoining to that of Eaffham), faid, that in the year 1753, he commenced a fuit in chancery againft the imprpropriator and others of his faid parish for fuch tithes, and that the then lord chancellor decreed in his favour, and he hath enjoyed the faid tithes ever fince. On hearing, the lord keeper Henly decreed, Nov. 10. 1760. that the vicar's bill fhould be difmiffed, without colts. Upon this, Mr Sims appealed to the house of lords, fettling forth the following reafons. 1. It is admitted by the respondents, that if the tithes of beans and peafe, cultivated in a garden-like manner, and gathered by hand whilst green, is a small tithe, the fame is not included in the exception out of the vicar's endowment. Many arguments may be offered to prove it fuch. The quality of all tithes is to be determined at the time offeverance, when the right accrues. The fame thing which produces a great tithe in one flate and mode of culture, produces a small tithe in another. If clover is cut for hay, it is confidered as a great tithe; when fuffered to grow for feed, it is con- fidered as a small tithe. This is alfo the cafe of tares; when cut green, they are referred to the class of small tithes; when matured and dried before cut, they are re- ferred to the class of great tithes. The tithe in queftion is certainly not a tithe of corn or grain; and it bears two marks of a small tithe; the one, that it is in the na- ture of a garden tithe, being diftinguifhcd out of the de- fcription, not by difference of culture, but merely by the locality of fetting beans and peafe in fields: the other that it is a new and modern culture. 2. Supposing the tithe in queftion to be a great tithe; ftil the vicar was intended to be endowed with it, because it is not in- cluded in the exception out of his endowment. Peafe
and beans plucked by the hand, whilst green, from the
item, however cultivated, or wherever planted, can never
be tithed under the description of *decima* garbarum.
Spelman in his glossary interprets *garba* to be *fasciculus*
either of fruits or wood. Du Fresne calls it *spica* manipulus. And Matthew of Westminster faith, *frumenti*
manipulus quem patriae lingua dicimus sheaf, gallice vero gar-
bam. But the tithe in question cannot fall under the
meaning of the word *garba*, being set out and taken by a
measurfe totally different. 3. It doth not seem an ob-
jection of weight to the appellant's demand, that if tithes
are paid to the vicar for peafe and beans gathered green,
another tithe will be claimed by the rector, when the
stalks ripen and are cut down, by which means a double
tithe is said to be payable for the fame thing. This will
appear otherwife, when the matter is considered not in
the light of paying two tithes for one thing, but of di-
viding the same tithe between two different owners, ac-
cording to the grant of appropriation. The vicar will
have his tithe of what is actually gathered green, and the
rector of what is left, after it shall be cut down. 4. It is
submitted to be an objection of as little weight as the ob-
jection just anwered, namely, that in consequence of the
appellant's reasoning, the farmer will have it in his
power to determine the property of tithes between rector
and vicar, from the manner or place of culture, or time
of gathering. But this is a contingency, which attends
this fort of right; the occupier being allowed by law to
cultivate his lands, as he and the landlord shall think pro-
per; which makes tithes in their own nature, a fluctuating
and uncertain inheritance. — On the other hand the
respondents hope the decree will be affirmed, for these
(amongft other) reasons. 1. Because a vicar cannot
claim tithes of any kind but by endowment, or by u-
fage (which is only evidence of an endowment). In this
case, there is no evidence of ufrage; and therefore if the
vicar is not intitled to the tithes in question under the
endowment, he is not intitled at all. But, 2. By the en-
dowment, the tithes in question are excepted out of the
grant to the vicar; for the words *decima* garbarum, in the
exception, have been always considered as technical
terms, appropriated to, and descriptive of great tithes,
and to diftinguish them from small tithes. And *garba* in
its signification comprehends peafe and beans growing in
fields, as well as all other sorts of corn and grain growing
in fields. So that peafe and beans are in their own na-
ture
ture a great tithe, and excepted out of the vicar's endowment in this case, under the name of garbarae. 3. As to the objection, that in the present case, the pease and beans being plucked green, and sold for the food of man, they are applied to the same use as beans and pease growing in gardens, which are a small tithe; and that this tithe ought to take its denomination from the use the thing tithable is applied to, and therefore is a small or vicarial tithe, and not within the meaning of decimae garbarum: It is answered, that all the cases relative to tithes, taken together, serve to prove, that the law denominates and adjudges tithes to be great or small, according to the nature of the thing, and not from the mode of cultivation, or use to which the thing is applied. And therefore in this case, the application of the pease and beans in question for the food of man, they not being nor falling under the denomination of tithes of gardens, technically called decimae hortorum, ought not to convert the tithes in question into small tithes. —And, after a full hearing, Dec. 6th and 7th, 1762, the lords affirmed the decree.

H. Hay, and other like herbs and seeds; as clover, rape, woad, broom, heath, furze.

1. By a constitution of archbishop Winchellia, it is Hay ordained, that the tithes of hay wherefoever it groweth, whether in large meadows or small, or in the highways, shall be demanded and (as is expedient) shall be paid to the church.

In the highways] In chiminis: But in a constitution of Gray archbishop of York, from which this constitution is taken and in a great measure copied, it is in chevissis, in the four-acres, or heads of the ploughed land; (altho' the common law, as it hath been said, will not admit of this.) Johnf. Winch.

It hath been resolved, that if a man cut grass, and before it be made into hay, but only put into swathes, he carrieth and giveth it to his plough cattle for their necessary sustenance, not having sufficient for their sustenance otherwife; no tithes shall be paid thereof. 1 Roll's Abr. 645. Bumb. 279.

But in the case of Webb and Warner, M. 2 Ja. when the inhabitants of divers marshes and fenny lands, who used to gather a rough hay, called fenny fodder, for want of sufficient grass to sustain their beasts in winter, alleged that
that they did this for the sustenance of their beasts and the better increase of their husbandry, and ought therefore to be freed from the payment of tithes; the court held, that this furnishe was not sufficient, for one may not prescribe in non decimando; and in that it is alledged they bestow it upon their cattle there, that is not any cause of discharge; for so they may prescribe for corn spent in their family, or for corn given for provender to their cattle; whereby no tithes should be paid. Cro. Fa. 47.

Hay is a pradial, great tithe; and is to be tithed in swathes, windrows, or cocks, as the custom of the place is. God. 412.

Of common right, it seemeth that grafs is tithable when it is put into grafs cocks, and not before; for that then the tenth may be severed from the nine parts. Watf. e. 49.

In the case of Fox and Ayde, E. 1729, in the chancery; it was objected, that the parishioners de jure ought to make their tithe grays into hay. But the lord chancellor King declared the law to be otherwise, and interrupted the counsel when they began to speak to this, saying that all which the parishioners were bound to do was, to cut down the grays and divide it into ten parts, after which the parson was to make it into hay; and that this had been so resolved in a Devonshire case (the case of one Reynolds.) 2 P. Will. 520.

Yet in the notes upon the said case, by the editor, it is observed, that it is called the tithes of hay, and not of grays: and so is the aforesaid constitution.

But whatever the owner is obliged to do of common right, the custom of every place is to be observed; and therefore, if the custom be to measure out the tenth part of the grays standing for the tithe thereof, and that the parson shall cut and make it, this is good. And in this and all other cases, when the tithe of the grays is set forth, and the owner is not bound to make the parson's tithe into hay; the parson de jure may make the grays into hay upon the land on which it grew, altho' the usage time out of mind hath been to the contrary: And it is needless for the parson to alledge a custom for the doing of it. Watf. e. 49.

The finding straw for the body of the church, is no discharge from tithe hay, because it is no advantage to the parson, who is not charged with the repairs of the church. Cro. Eliz. 276.

But
But a meadow in the parish, of which the parson and his predecessors had been seised time out of mind, was judged a good consideration for the parishioners to be discharged of tithe hay; for it shall be intended, that it was originally given on that account. 1 Roll's Abr. 649.

2. Rolle says, that of aftermowth, that is, the second mowth, tithes shall be paid de jure, without a special prescription to be discharged by payment of the tithes out of the first mowth, and then it shall be discharged. 1 Roll's Abr. 640.

But Sir Simon Degge says, that tithes are not to be paid of the aftermaths of meadows: But if the meadowing be so rich that there are two crops of hay got in one year, there the parson shall have tithe as well of the latter as of the former crop. Deg. p. 2. c. 3.

But if the occupier of the land can prescribe, that in consideration the owner doth make the first tonfure into good and sufficient hay, and set it forth in cocks sufficiently dried, then he shall be discharged of the tithes of the aftermath; this is a good prescription and discharge, by reason of the labour and costs he bestowed in making the first tonfure into hay. Boh. 46, 47.

Or if the prescription be, to be discharged of the tithe of the aftermath, only upon consideration that they have used time out of mind to cut down the grases of the first mowth, and the same to ted and shake abroad, and the same grases so dispersed and cast abroad to gather into weaks and windrows, and put it into small cocks at their own costs; this is sufficient, tho' it be not made into perfect hay. Cro. Ja. 42.

And in the case of Norton and Briggs, T. 9 W. it was said by Treby chief justice, that tithes are not payable for aftermath de jure; and therefore it is but form to lay a custom to be discharged of tithes of aftermath, in consideration of making the former mowing into hay; for tithes are payable only of things renewing once in the year. L. Raym. 242.

[But it is to be observed, that this was extrajudicial, being not relative to the matter there in question. And this rule, as hath been intimated before, is not universally true.]

3. If a man pay tithes of hay, it is said, that no tithes ought to be paid de jure afterwards for the pasture of the same land for the same year; for he shall not pay tithes twice in a year for the same thing: for the after pasture
pasture is only the relics of the hay of which he hath paid tithes before. 2 Inst. 652. 1 Roll's Abr. 640.

Nor for agistments in such after grass. 1 Roll's Abr. 640. Bunb. 1, 7.

But this is to be understood, where no more grass is left by the scythe than is usual; for if more grass than usual is fraudulently left, the case is otherwise. Bubh. 48.

If an innkeeper pay tithes of hay of certain land, and the rest of the year afterwards putteth into the same land the horses of his guests which come to market there in the same town; it is said, no tithes shall be paid for the herbage of those horses, for this is only the afterpasture of the land, whereof he hath before paid tithes. 1 Roll's Abr. 641.

4. Dr. Watson says, the tithes of clover grass shall go to him that hath the tithe hay. Wats. c. 39.

And in the case of Franklyn and the master and brethren of St Cross, T. 1721; the vicar being endowed of tithe hay, it was decreed, that he was thereby intitled to clover, saint foin, and rye grass; which are species of hay that is the genus. Bunb. 79.

But the seed of clover is in its nature a small tithe. Wats. c. 49.

Thus in the case of Wallis against Pain and Underhill, H. 1738, a bill was exhibited in the exchequer by the plaintiff Wallis, who was tenant or farmer under the improvisor of the great tithes in the parish of Prittlewell in Kent, and insisted that the defendant Pain sowed a field with clover which was cut for hay; and that he let the aftermath grow for seed which was cut and threshed for seed, of which the plaintiff ought to have the tithe as a great tithe. The defendant Pain insisted, that he had paid the plaintiff for the tithe hay of his clover; and that the aftermath of clover flood for seed, which was a small tithe, and payable to the vicar. And Mr Underhill the vicar, insisted upon the tithe of clover seed as a vicarial or small tithe. By the depositions of several witnesses it appeared, that the difference between clover cut for hay, and that cut for seed, is considerable; when made into hay, it is cut while the grass is green, and fit for cattle to eat; when cut for seed, it stands till the stalk is good for little or nothing, and the seed is the only thing of value or regarded. It was argued for the plaintiff, that clover seed is in the nature of it a great tithe, and therefore due to the plaintiff; for as tithe hay
is due to him, the feed of that hay must of consequence belong to him also; that where the parson is intitled to tithe hay, he will be intitled to the hay made of clover, as well as of other gras; and if to the hay, likewise to the feed. On the other side it was inferred, that clover feed is in its nature a small tithe; that the tithe of no feed was ever looked on as a great tithe; and as to what was said that the flax and feed should go together, it is frequent that the feed or fruit of trees goes to the vicar, when the tree goes to the parson: wood is always reckoned a great tithe, and goes to the rector, unless the vicar be specially endowed with it; but acorns, as well as the fruits of all other trees, were always held as small tithes. Lord chief baron Comyns delivered the resolution of the court: That by the canon law, as long as the distinction hath been made between great and small tithes, which is as ancient as appropriations to the religious houses, who usually engrossed the great tithes, but left the small tithes to the curate, all seeds have been reckoned as small tithes. The common law seems to follow the canon law in this point. And all the resolutions relating to tithes which proceed from things newly introduced into England, have held them to be small tithes; as saffron, wood, flax, hops, tobacco. As to clover feed, there doth not appear to have been any express determination in this point: But it is a feed, and all feeds are mentioned as small tithes. It is true, that clover gras made into hay is of the nature of all other gras made into hay, and consequently must belong to the parson, or other who is intitled to tithe hay; but it does not follow, when it stands for feed, and is not made into hay, that the feed may not be small tithes. Rape feed, caraway feed, turnip feed, mustard feed are small tithes; but if the herb be growing with other gras and made into hay, it would be great tithe. And all the barons agreed in opinion, that the plaintiff's bill should be dismissed. Baron Parker seemed to doubt, as it partook of the nature of the flax, from whence it was taken. Comyns 633.

And it hath been decreed, since this case, that the feed of clover is a small tithe. Bunb. 344.

A modus may extend to clover, altho' of late only brought into England; if the modus be such as covers all tithes of hay. Bunb. 20.

5. Rape feed, is a small tithe. It has not been sown many years in large quantities in this country. And I do
Lithes.

do not find or know of any judicial determination concerning this particular species of tithe. The method of cultivation of rape seed is this: It is sown in August or September; and suffered to grow till the seed is quite ripe; and then it is cut down, with the greatest care, and if possible in calm weather, with sickles, left any of the seed should drop from the pods, and be lost upon the ground. And for the same reason it is never bound up in sheaves, or made into hattocks: but, as soon as may be, it is gathered upon a large cloth, brought into the field for the purpose: and upon such cloth is threshed and dressed; and then the seed is removed out of the field in sacks or bags. The ripeness of the seed when proper for cutting, and the smallness of it, renders this method of cultivation absolutely necessary; for if it was to be bound up in sheaves, or gathered into heaps, and then removed in carriages or otherwise out of the field to be threshed and dressed, a great part of the seed would be shaken and lost, which would not only be a damage to the owner, but also to the land, for the shaken seed would grow again, and spoil the future crop of grain.

It is usual for the occupier of the land to agree with the owner of the tithe, for the tithe of rape seed at so much an acre.

It never has been determined, in what manner the tithe of rape seed shall be set out by the occupier of the land, where he does not agree to pay a composition for it. But the better-opinion seems to be, that it should be set out by measure in the field, after it is threshed and dressed; as, from the manner of its cultivation, the owner of the tithe cannot sooner remove it from the land; and as he has no right to enter upon the land for any other purpose than to take away his tithe, which in this case is not capable of being taken away before it is threshed and dressed.

6. Woad growing in the nature of an herb, the tithe thereof is a small tithe: as was agreed by all the justices, in the case of Udal and Tindal, H. 1 Car. Cro. Car. 28.

7. No tithes shall be paid of fearn. 2 Infl. 652.

8. It is said, that for heath, furze, and broom, tithe shall be paid; unless the party set forth a prescription or special custom, that time out of mind there hath been paid milk, calves, or other tithes, for the cattle that have been kept upon the same lands; in which case they shall not pay tithes. God. 413. Giff. 680.
Tithes.

Also if they be burned in the owner's house kept for husbandry within the parish, they may be discharged. Wood b. 2. c. 2. Boh. 53. But otherwise if sold. Boh. 53.

So in the case of Rosse and Harding, M. 12 Ax. It was admitted, that no tithes are due for furze spent upon the premises; but for furze cut into faggots and sold, it was decreed by the lord chancellor Harcourt, that tithes should be paid. Vin. Diimes. Z. 31.

III. Agistment or pasture.

1. Agistment is the feeding of cattle upon pasture lands, which pay no other tithes: and is so called from the French geoyer, gifter, [jacere] to lie; because the beasts are bivouac and couchant, that is, lying and rising. So agisier in a forest, in an old version of the charta de forciata is called gyft-taker. 4 Inft. 293. Ken. Par. Ant. Ghiff.

2. Tithe of agistment of cattle is due of common right; Agistment due because the grass which is eaten is de jure tithable, and de jure.

must have paid tithe if cut when full grown. L. Raym. 137. 2 Salk. 655. 2 Inft. 651.

3. Concerning which, the general rule is, that it is to be paid for beastes agisted for hire; or for dry or barren cattle, that do otherwise yield no profit to the parson: and not for cattle which are nourished for the plough or pail, and so employed in the same parish; because the parson hath tithe for them in another kind. 2 Inft. 652. Deg. p. 2. c. 5.

But if a foreigner that lives in another parish departures ground with cattle bred for the plough and pail, to be employed in a foreign parish; he shall pay tithe for the agistment of such cattle. Deg. p. 2. c. 5. L. Raym. 129.

Also if the same cattle are turned off to be fattened, and are grazed, there tithes of agistment shall be paid; since they are no way beneficial to the parson in any other tithes. And so of cows after they are become barren, and are fatted for sale. Gibs. 676.

The like is to be paid of horfes; that while they are kept for the use of husbandry, no tithe shall be paid: but if horfes be kept for sale, or to carry coals, or for the like offices which are profitable to the owner, and not profitable to the parson, tithe shall be paid for them. Gibs. 676.

But saddle horses shall pay no tithes, no more than cattle for the plough and pail, or cattle killed for the use of
a man's own family; in respect of the profit that other-
wife accrues to the parson from these. Bunb. 3. 1 Roll's
Abr. 641.
But if they be horses of travellers or others taken in as
guest horses; it is agreed by all, that tithe of agistment is
due, because no profit otherwise accrues to the parson from
them. Gibs. 682.
In the case of Thorp and Bendlowes, in the exchequer,
T. 1762. Thorp, as rector of Houghton in the county
of Durham, filed his bill against Bendlowes (amongst
other things) for the tithe agistment of his coach horses,
suggesting that the horses were not kept for pleasure only,
but that the defendant made a profit of them, by employ-
ing them to fetch his coals at ten miles distance out of the
parish, and in leading manure, bricks, and wood from the
parish of Houghton to the defendant's lands in the parish
of Darlington, which is the next adjoining parish. Which
fact was proved in the cause. The defendant by his an-
swer insisted, that the horses were kept for his coach, and
for pleasure only, and were not liable to pay any tithe for
agistment as barren and unprofitable cattle. The court
were unanimously of opinion, that coach horses were liable
to pay tithe of agistment, and decreed the defendant to ac-
count for the same, and to pay the plaintiff his costs.

4. If a man pay tithes in kind to the parson, for his
lambs, fleeces, and other things, going and arising upon
his pastures, wastes, or other lands; it is said, that he
shall not afterwards in the same year pay tithes of agist-
ment for the same pastures, wastes, or other lands. 1 Roll's
Abr. 641.
But in the case of Coleman and Barker, E. 1726; where
the suit was for the tithe of agistment of sheep which were
depastured on turnips remaining on the ground unsevered,
it appeared that the defendant had paid tithe wool, and af-
ter shearing time fed his sheep with turnips, by which they
were bettered five shillings a sheep; and tithes were de-
creed for the depasturing of those sheep. Gibs. 231.
And the like was decreed in the case of Swinfen and
Dicky, H. 1731. Bunb. 314. For in such case, the sheep
being turned off to be fattened, cease to be profitable to the
parson in any other way.

5. The tithes for depasturing unprofitable cattle ought to
be paid by the occupier of the ground, and not by the
owner of the cattle. Bunb. 3.
For if the occupier of the ground were not in such case
made liable, it would be greatly inconvenient for the par-
Lithes.

Ion to sue every owner of the beasts; and perhaps it would be hard to be known, and infinite. 1 Roll's Abr. 656. Deg. p. 2. c. 5.

But if it is a common that is depastured, the owner of the cattle (if known) must pay the tithes, and not the owner of the soil; because the owner of the soil hath no profit by it. Bunb. 3.

6. As to the manner of paying tithe for agistment, where no special custom is, if it be paid for guest cattle taken in, it is said, that the tenth part of the money received is payable for agistment; if for the owner's cattle, then the tithe shall be according to the value of the land, after the rate of two shillings in the pound: for that they cannot otherwise be valued, or accounted for, because the profits of the lands for which they are paid, are received by the mouths of the beasts. Watf. c. 50.

But this way of estimation, according to the value, is only for convenience; for the tenth part of the produce, and not a sum of money, is undoubtedly due de jure.

But by custom, or prescription, such tithes may be paid in other manner, as by the acre, and for all manner of cattle together, or the like. Watf. c. 50. Bunb. 1.

Where profitable and unprofitable cattle feed together, tithe shall be paid in kind for the profitable, and agistment for the unprofitable. Gibs. 677.

7. In the case of Smith and Roociff, H. 1717; the barons were of opinion, that a modus of one shilling in the pound for pasture, according to the value of the land, was a void modus; as is also a modus of one shilling in the pound, according to the value of the rent. Bunb. 20.

And the like was adjudged in the case of Harrison and Sharp, T. 1724. The same being no other than payment of a part for the whole. Id. 174.

IV. Wood.

1. In the case of Hicks and Woodson, H. 8 & 9. W. it is said, that wood is not de jure tithable, because it doth not renew annually; and that therefore in libels in the spiritual court for wood, they alledge a custom. Altho' it was said, that the practice of the spiritual court at this day is otherwise: but the court did not regard that; for Holt chief justice said, that they made stones, gravel, and all things tithable. L. Raym. 137. 2 Salk. 656.

And prescriptions of nondicamando for tithe wood have often been allowed; particularly in the wilds of Kent and

E c 3
of Suffolk: which seemeth to suppose that it is not due of common right, but only by custom. Gibs. 686.

But in the case of Jordan against Colly and others, E: 1720: On a bill by the rector for tithe wood in the parish of Little Wenlocke in the county of Salop, as it had been time out of mind paid in that parish, against the defendants, as vendees of Sir William Forrester; the defendants in their answer say, that no tithe hath been paid for this coppice wood called Holebrook coppice, when felled before, and that they never heard that any tithe or modus had been paid for wood in that parish. It was insisted upon for the defendants, that tithe wood was not due of common right, and therefore that the proof lay upon the plaintiff, and that it was only founded upon a canon in bishop Stratford's time, and therefore that the defendants need not allege any prescription or custom by way of exemption: But it was answered for the plaintiff, that occupants must always set forth an exemption. And by the court, The defendants ought to have shewn some exemption; and there is no instance, that a parish can prescribe in non decimando for tithe wood; wilds and hundreds are upon another consideration.— But note, says the reporter, altho' the court decreed against the defendants, yet it doth not seem to have been yet certainly determined, that tithe wood is due of common right. Bunb. 61.

But in the case of Boulton and Hurster, T. 2 G. 2. The plaintiff having libelled in the spiritual court for the tithe of Silva cadua, the defendant moved the court of king's bench for a prohibition: And the suggestion was, that they were timber trees, and of twenty years growth. It was urged further, that the court might grant a prohibition even upon the face of the libel, because the demand is set forth generally, and therefore must be intended that this tithe is due of common right; whereas the right of tithe wood is only by custom. And that was the reason given in the case of Hicks and Woodson, why a hundred may prescribe in a non decimando of tithe wood; for as by custom it grows due, by custom it may be made not due. But the court said, that this reason indeed was laid down by the judges of this court in that case; but they said, this has never been allowed for law by any of the other judges of Westminster Hall. And it certainly is not law: for tithe is as much due of Silva cadua by the law of England, as any other tithe whatsoever. And judge Reynolds said, this may evidently be shewn not to be the reason of this law in relation to hundreds; for if it was, the same rea-
son would prove that every private man may prescribe in a
non decimando of this nature. And for this reason, and
also because the defendant in the spiritual court had not
alleged in his plea there that the trees were of twenty
years growth, a prohibition was denied. 1 Barnard. 71.

2. That wood is a preordial tithe is plain; but whether
whether it is
great or small, hath been a question between the parsons
and vicars; and it hath been resolved, that if a vicar be
only endowed with the small tithes, and have by reason
thereof always had tithe wood, in such case it shall be ac-
counted a small tithe, otherwise it is to be accounted
amongst the great tithes. Deg. p. 2. c. 1. — But this doth
not alter the quality of the tithe: and the vicar's having
received it, may be evidence of a grant thereof having
been made subsequent to the endowment, altho' such orig-
inal grant is now loft; but is not evidence that wood in
it self is a small tithe.

3. By a constitution of archbishop Winchelsea; Tithes
shall be paid of trees, if they be sold: Which Lindwood
explains of large trees, which bear no fruit, and being
cut down are not fit for timber, but are used for fuel.
Lind. 200.

And by a constitution of archbishop Stratford: Foras-
much as divers persons do refuse to pay tithes, which are
notoriously due, of their sylva caedua, and of the wood
thereof being felled, which things do not require so much
labour as the fruits of the ground; and think that they
lawfully refuse the same, because they have not paid tithes
thereof in times past; and withal do render it doubtful
what shall be deemed sylva caedua: We do therefore de-
clare that sylva caedua is that, which of whatsoever kind
of trees it is, is kept on purpose and is mature and fit to
be cut down, and which being cut down springs again
from the stumps or roots; and that the tithe ought to be
paid thereof as a real and praelial tithe; and that the po-
ßessors of such woods shall by all manner of ecclesiastic
ences be compelled to pay the tithe thereof when cut
down, as of hay and corn. Lind. 190.

4. But by the statute of the 45 Ed. 3. c. 3. it is enacted
as followeth: At the complaint of the great men and the
commons, shewing by their petition, that whereas they
tell their great wood of the age of twenty years, or of
greater age, to merchants to their own profit, or in aid of
the king in his wars, parsons and vicars of holy church do
implead and draw the said merchants in the spiritual court
for the tithes of the said wood in the name of this word

E e 4.
called *sylva cadua*, whereby they cannot sell their woods to the very value, to the great damage of them and of the realm; it is ordained and established, that a prohibition in this case shall be granted, and upon the same an attachment, as it hath been used before this time.

5. The wood intended in this statute, is such as is fit for building of houses and ships; and therefore without doubt it comprehends oak, elm, and ash; but it hath also been adjudged to include beech as timber, in Buckinghamshire and some other counties, where better timber is not to be had, or is very scarce. And those trees are free, not only as to the trunk of timber, but also as to the bark, root, and germis that grew upon the ancient stock; and it is not material, how oft or how seldom the branches thereof are lopped, because being once free they are always free. 2 Infr. 643.

And it hath been also resolved, that *oak under 20 years, being fit for timber in time to come, shall not pay tithe; and that tho' it stands till it is rotten, and unfit not only for timber, but for all manner of uses, except the fire, it shall be privileged, upon this general maxim, that once discharged and always discharged. 1 Rollb. Abr. 640.

But in the case of *Buckle and Vanacre, 1792*. Upon a bill for tithe wood in Erith in Kent, above 20 years growth, part used for timber, and part made into billets and faggots; it was resolved, that the last shall pay tithes: for the trees being above 20 years growth alone will not privilege them, but the use. And the same resolution was in the case of *Action and Smith*, which was reheard and reviewed; and of *Franklin and Jones*, in the year 1694; and also in the case of *Cowper and Layfield*, Bunb. 99.

And in the case of *Greenaway* and the earl of Kent, *H. 1704*; timber trees above twenty years growth, cut and corded for fuel, and the bark stripped from the same, were adjudged to pay tithes, as well as underwood; but that no tithe was due for such wood above twenty years growth, nor of the bark thereof, which was not corded. Bunb. 98.

But, finally, in the case of *Walton* and *lady Mary Tyr- on*, Dec. 15. 1751. The plaintiff brought his bill, as rector of Micham in Surry, for the tithe of the tops and lops of old pollard oaks, ashes, and elms; and of the tops, lops, and bodies of beeches.—Mr Wilbraham ar- gued
gued for the plaintiff: The tithe of wood is certainly payable; and the law as to this is now pretty certain. The 45 Ed. 3. is an explanatory law; and all lops and tops are tithable if the tree be under 20 years growth. Before the statute of sylva cæduæ, all were tithable; but by that law it is declared that all timber trees should be exempt: And the reason is plain; for timber trees yield but one profit, and that but once in a century; and therefore as it was so long before the owner had a profit, that wood was exempt. But even by this act it was not meant that the whole tree was exempt; the body only, not the tops and lops were so. Since this act, the courts have gone so far, as to exempt all parts of the tree: and even germins from these trees have also been determined to be exempt. After this, the courts endeavoured to bring it to some rule; and the buyers were always to pay the tithes. Afterwards, the courts held, that trees not converted to the use of timber were tithable; and on this some cases have been determined. As the case of Man and Somerton, 1 Brownl. 94. So the case of Hawes and Cornwall, 1 Lev. 189. where it is said, that wood for firewood, tho' of 25 years growth, shall pay tithe when felled. So in the case of Rapley and Lloyd, all wood for burning was held tithable. In the case of Briggs and Martin, 1. 6 W. a bill was brought by the plaintiff, as leflee of the rectory of Bromley in Kent, for tithe wood made into havings: The defendants by their answer insisted, that old pollards and dotards paid no tithe; but notwithstanding this, the court decreed an account and satisfaction to the plaintiff for them. The courts seem to have gone a step further. They have had regard to the use made of the wood, and not to the age of the pollard: namely, what was used for timber, and what for firewood; the former was held to be exempt, the latter to pay tithes. And agreeable to this was the case of Greenaway and the earl of Kent, before the lord chief baron Ward. The bill was brought by the plaintiff as vicar of Walford in Herefordshire. The defendant insisted, that no tithes were due of such wood as was above twenty years growth. A cross bill was brought. And on hearing the court declared, that the plaintiff was intitled to the tithe of all wood above 20 years growth as well as under, which was corded, but not otherwise. But it may be objected, shall tithes be so uncertain, as to be determined by the use of them? I answer, that in many cases tithes must depend upon the use of them. As in wood,
wood, if it is made into bavings for firing, it is tithable; if to make fences, it is not so. So if one fatt cattle on land, agistment is due for them; so if he keeps cattle as barren, tithes are paid: but cattle kept for the plough are exempt, and even those reared for the plough are exempt. These are all established cases, and do not want any confirmation. The case of Brook and Rogers, Moor 908. is very express, that if timber is lopped before 20 years growth, tithes shall be paid of the loppings. And if these trees in question have been constantly cut, and tithes have been paid of them without any contradiction (as is now in proof), why is not this an evidence that these trees were cut before 20 years growth, and so out of the statute of sylva caedia? And this presumption may more naturally arise in this case, for the falls here happen but once in 16 or 20 years; and one of the plaintiff's witnesses speaks to tithes being paid of these trees 45 years ago without any molestation whatsoever; and there is not one witness produced for the defendant, who will venture to swear, that ever one load of timber was cut without paying tithes: And if that be the case, the natural presumption is, that this wood is tithable; for it has paid tithes, as long as memory can go back. As to the beech; if it be timber, as insinuated upon by the defendant, then it comes within the statute of sylva caedia: And this matter must be tried, if the parties think it worth their while to dispute it.—By Mr Sollicitor General for the defendant: The question now put is, Whether the tops and lops cut from trees above 20 years growth are liable to pay tithe if cut in order to be used as fuel. And this is a question of a very extraordinary nature indeed, and contrary to both old and modern law. For no point was ever laid down more clearly, from the time of Edward the third to the present time, than this, that tops and lops of trees above 20 years growth are always exempt: And the reason is, when once it is privileged, it always remains so. The case in Moor 908, cited for the plaintiff, is expressly for the defendant; for that particularly states, that if not cut within the 20 years, then it is exempt. And so have been abundance of other cases. And how can the right of the parson arise from the use of the thing? How is it possible for the parson to know the owner's intent? The right therefore ought to commence from the time it is cut, and severed. The earl of Kent's case does not prove the present distinction. For that proves, that the trees themselves were in question;
question; and nothing at all was said of the lops and tops. Besides they were not pollards or dotards, but young oaks. This proves that all trees cut down and used for fire would be liable to tithes. But this proves too much. But there is a note on the back of Mr Browne's brief in that cause (which I have), that settles what this case was: He says, there was positive evidence, that the trees corded had grown from stems of old wood, and was formerly coppice wood; and this will alter the case greatly. The case of Layfield and Cowper, T. 1698, was on a bill for tithes of lops and tops of timber trees; the defendant insisted, that they were the product of beech and ash trees; he admitted, he did convert them to fuel and cordwood; but, in regard that they were above 20 years growth, insisted, that they were exempt: By the decree, an account was directed for wood in general; and exceptions were taken to the remembrancer's report, that he had taken no notice that these beeches were some 30, some 50 years growth, and were timber, and therefore exempt; and of that opinion was the court. In the case of Bibey and Huxley, H. 1724, the bill was for tithe of coppice and other wood: The defendant insisted, that he had felled several timber trees of twenty years and upwards, and had dug up several roots, and made them into stacks, and made the tops into faggots; some were used for repairs, others for fuel; and as these were all above the age of 20 years, the body with all the rest are exempt from paying tithes by law: And it was decreed, that the plaintiff should have an account of the tithe wood; except for the tithe of oak, ash, and maiden trees of beech proceeding from stools above 20 years growth: The application therefore to fuel, does not make the difference. But it is objected, that it must be presumed these trees now in question were cut before 20 years growth; and therefore never had the privilege: But as that is not charged by the bill, it cannot be presumed. As to the beech, if insisted on, it must be tried.—By the lord chancellor Hardwicke: the tithes demanded by the bill are of two sorts; first, tops and lops of old pollard oaks, ashes, and elms; secondly, beech trees, both body and branches. The principal question arises on the tops and lops of old pollard oaks, and the rest. There is no difference in point of fact. It is admitted on both sides, that there is no coppice wood in this ground; that that they are ancient pollards; and as to the beeches, that they are of 20 years growth and upwards and the greatest
greatest part of them was cut and made into billets, and folded fold for fire, except a small part of them which was used for posts and rails. The plaintiff has proved, that at two former falls, tithes were set out and taken of this wood, the one in 1712, the other in 1728. On the other hand, the defendant has not proved any fall when the tithe was not paid; but has proved, that in these two falls the family lived in Northamptonshire, and knew nothing of their being set out and taken, and that no other wood in the parish does pay tithe, or ever had paid. The plaintiff has founded his right on this; namely, the use and application of the things of which tithe is demanded: But tho' this be the general right set forth in the bill; yet if any other right appears, the plaintiff will be intitled to an account. This is a question of very great consequence, both to the owners of wood, and to the clergy also; and has been argued both from reason and authorities. And upon the reason of the thing, it has been said, that there is no more reason why tithes should not be paid of wood, than of any other product of the earth, for it annuatim renovat: But this proves too much; for according to this reasoning, all wood in general would be liable; and tho' this does annuatim crescite, yet it does not annuatim renovare; at common law coppice wood is subject to tithes, tho' it does not annuatim renovare; yet in its nature it ought to pay; for it is cut under a certain course of years, and is looked upon as an ordinary flated renewal, like the case of saffron; but of timber trees the flated rule is otherwise, there the law does not wait for a flated course of felling. It was further reasoned for the plaintiff, that the lops and tops of pollards are tenancy profits: But this is no rule of tithes; and varies in different counties; and would make the affair of tithes very uncertain; and in many places, the lops of spiral trees are allowed to tenants for fire wood, and yet such lops are not titheable. It was further said to be reasonable, that the use and application should determine whether the thing was titheable or not; that as a coppice is liable, so it is reasonable that any other wood, not timber, but used for fuel, should be so too: But this goes to the question put in issue by the bill, and I am afraid would be a very dangerous innovation; the subsequent use of the thing, as it does not alter the nature, cannot give a titheable quality which it had not before; if it could, why not vice versa, that is to say, if wood not timber should be applied to the use of timber, why
why should not such use exempt it from the payment of tithes? This was never heard of, yet it is equally reasonable. It is said, there are certain cases, where the use and application of the thing shall make it tithable; and there will appear no greater uncertainty in one case than in the other; as for instance, wood cut to be burned in the house of a parochioner, this was said to be not tithable; but that is not true, unless by custom; for it was otherwise determined in the case of Norton and Fermer, Cro. Cha. 113. It was said also, that cattle for the plough and pail are not tithable; so there the use determines: But this is not a prædial, but a mixt tithe, which the parson is not obliged to set out at a particular place or time; and the parson receives it in another manner, by taking the tenth part of the profits. In many cases it is impossible to say, to what uses the wood may be applied: the owner may sell it standing, the buyer to cut it; and if so, how is the intention to be known? and in many counties where timber is very plentiful, there it is often cut down and used as fuel; and if the use and application was to prevail, it would make two different common laws of tithe, and this without any custom. The law for tithes of wood is a positive law; to wit, that of all timber trees of 20 years growth or upwards, whether timber by law or custom, no tithe is to be paid, either of bodies, lops, or tops. It has been much controverted, whether the statute of sylva cædus is a new law or only declaratory of the common law: the latter is now the settled opinion; for the words of the statute are, it has been used of old. In the statute the wood is particularly mentioned, and its age and growth; but not one word is said of the use: and the opinion of all the courts upon the construction of this statute has been, that where the tree is timber, by law or custom, of 20 years growth or upwards, it is exempt. And in 2 Diff. 642, 643. the rules are very particularly laid down. These rules have not been contradicted, except in the case of germins that came from old stools, and which is the case of most coppices in England. But it is asked, what difference is there, if germins grow from trees entirely cut down, or from trees that have been lopped? I answer, that the difference is great; for in the case of germins that come from stools, no tree remains from whence the privilege is derived; but in the case of lops and tops the tree remains, and so does the privilege. I come now to consider the cases cited
cited against this doctrine by the counsel for the plaintiff. The case of Man and Somerton, 1 Brownl. 94. is not applicable to the present case. The case of Hawes and Cornwall, 1 Lev. 189. is this: "Wood cut for firing, "tho' above 20 years growth, shall pay tithes; and so "pollards, if above 50 years": But this is very short and imperfectly stated, and is not supported by law at all; and by report of the same case in 1 Sid. it is said, that the wood was coppice wood; and by the determination, most probably it was so, and therefore proves nothing for the plaintiff. But it is said, there is no difference between pollards and underwood, for pollards are not timber: but I answer, that pollards having gained this privilege, always retain it; and the bodies of pollards may serve to many uses as timber doth; and if dotard trees are privileged, much more ought pollards. The next case cited was that of Briggs and Martin, which was on a bill for lops and tops of old pollard and dotard trees; and an account was accordingly directed: But on what this was founded, does not appear, nor whether these pollards were under the time of privilege or not; and what makes this case the more extraordinary is, the decree in the case of Northley and Colbe in the very next term, and it is directly contrary; and the only way of reconciling these two cases is, that in the first case it must have appeared that the pollards were cut before 20 years growth. Greenaway and the earl of Kent, was the next case, and most principally relied on; and the ground of this decree was, that all wood, even above 20 years, that was cut and cored, should be tithable; and goes further than any case before or since: but the lord chief baron Ward in that case was of a quite different opinion, and made a learned argument against the decree; but the other three barons differed from him; therefore, I observe this was not a uniform authority; and I think the chief baron Ward's was the best opinion: baron Price's reasons in that cause do not satisfy me at all; when he was considering the statute of Sylva cædæa, he said, that ancient statutes must be construed according to the intent, and not literally; and that great wood does not in its strict sense mean trees of this sort, but such wood as is applicable to large buildings; which is in effect to say, that a tree which in its nature is timber, yet if it is not large, and is applied to firing, shall be tithable; another ground that he went upon was, the statutes relating to the
the rules of felling of wood, but these are rules laid down only for the preservation of timber, and cannot be applicable to tithes that are demanded of them: and upon the whole, this determination is directly contrary to all the other authorities; for there is a *tempus constitutum*, and that cannot be departed from; and I will say further that there has been no precedent since to follow it; for as to that case of Bibey and Huxley, that is rather against it. If these trees now in question, were lopped and made pollards before 20 years growth, and so have continued to be lopped, then they will be liable to tithes: But this is a question of fact proper to be tried, being too much for me to determine upon the evidence now laid before the court: I am rather inclined to think that they were not, for the plaintiff himself in his bill has stated them to be ancient pollards and large. The second question relates to the tithe of *beeches*, both bodies and branches: And it is not disputed, but that this wood is above 20 years growth: And then the matter of fact must be tried, whether it is timber by the custom of the country: And if so, it will be exempt; otherwise it must pay tithes.

[After all, it must needs be difficult oftentimes precisely to determine the age of *oaks*, *ashes*, and other trees; which spring frequently from seeds sown upon the ground, of which no account is, or can be, kept by the owner or any other. In many places, where wood is plentiful and grows freely, it is the custom to estimate the same by measuring round the middle part of the tree: and if it is 24 inches in circumference, it is deemed of 20 years growth; if under that measure, it is accounted underwood.]

6. For of wood not fit for timber, tithes shall be paid. As of hazel, birch, willow, whitethorn, holly, alder, maple, *alp*, hornbeam, and such other like trees of bale and inferior nature, and unfit for building; of these tithes shall be paid, tho' they be above 20 years growth. *Roli's Abr.* 640.

Yet the scarcity of other timber (as hath been said) and custom of the country to put such trees to the uses of good timber, may free them, being of twenty years growth or under, from payment of tithes; as hath particularly been adjudged of *alp*, cherry tree, and other like trees in Buckinghamshire: so of willows in the county of Southampton.

7. And
Lithes.

7. And if a man cut down a coppice wood, and thereof pay his tithes, and afterwards before any new branches spring out, he grubbeth up the roots and stubbs of the wood, he shall not pay tithes thereof, for that they are parcel of the frank tenement, and not annually renewing. 1 Roll's Abr. 637.

8. Also trees cut only for mounds, plough gear, hedging, fencing, fuel, maintenance of the plough or pail, are not titheable. 2 Inst. 655.

But this is to be alledged, not absolutely, that by the law of the land wood so applied shall not pay tithe; but sub modo, that is, that the parson hath some consideration for it, or at least that the house is for maintenance of husbandry, by reason of which the parson hath more plentiful tithes. By which rule, if a man hath an house of husbandry with lands, and demifing the lands, reserveth the house, tithe of firewood is payable. Gibs. 686.

9. For others employed in hurdles for sheep, no tithe shall be paid. Gibs. 684.

10. If wood be cut to make hop poles, and so employed, no tithes are due, where the parson or vicar hath tithe hops. Bunb. 20.

11. If a man cut down wood, and burneth it to make brick for the reparation of his house within the parish, for the habitation of himself and his family; no tithes shall be paid for this, inasmuch as the parson hath the benefit of the labour of his family. 1 Roll's Abr. 645.

But if a man cut down wood, and burn it to make bricks for the enlargement of his house within the parish, more than is necessary for his family, as for his pleasure and delight, he shall pay tithes for this. Accordingly, where the plaintiff in prohibition had affirmed, that he burned it for the reparation and enlargement of his house, generally, without paying for the necessary habitation of his family, a consultation was awarded; for the court said, that by this furnishe he might build a castle, and yet pay no tithes. 1 Roll's Abr. 645.

12. If a man pay tithes for the fruits of trees, and afterwards cut down the same trees, and maketh them into billets or faggots, and selleth them; he shall not pay tithes for the billets or faggots, for that this is not a new increase. 2 Inst. 621. 1 Roll's Abr. 641.

13. Concerning nurseries, or trees transplanted, it hath been resolved, that where the owner dug them up, and made profit of them, and sold them in another parish, tithe should be paid thereof; and if the owner sells them, and
and pulls them up himself, the owner shall pay the tithes; but if he sell them particularly to another, the vendee shall pay the tithes. Gibs. 683, 684. God. 431.

14. When wood is titheable, it is set out while standing, by the tenth acre, pole, or perch; or when cut down, by the tenth faggot, or billet, as the custom hath been. Wood b. 2. c. 2. Or, if there be no custom, then the general rule seemeth to be, so soon as the tenth can be severed from the nine parts.

Where a wood is cut, consisting of the loppings of great trees and of underwood, and the proportion on one side or the other side is so small, as not to quit the charge of separating; it is said, that the whole shall pay tithe or be discharged, according as the greatest part is titheable or not titheable. Gibs. 667.

But this can only be an argument of convenience; and cannot in any respect alter the nature of the tithe.

15. Of underwoods fold standing, the tithe shall be paid, not by the seller, but by the buyer. God. 455.

Dee. p. 2. c. 4.

But if a man sell wood to another, and the vendee burneth it in his house; in this case, it is said, that the vendor shall be charged for the tithes, and not the vendee; for that no tithes are due for wood burned in one's house. By the civil law, it is said, that the parson hath election to sue either of them; but this is against the common law. 1 Roll's Abur. 656.

[In short, the matter seemeth to be plainly this: That he shall pay tithe, to whom the other nine parts belong when the tithe becomes due.]

16. A prescription by one, to pay but three farthings for the tithe of all willows cut down by him in such a parish, was declared to be ill; because if he cut down all the willows of other men too, only three farthings should be paid for all: but to have prescribed for all willows cut down upon his own land, would have been good. Godb. 60.

It is a custom in some places, to give an hearth penny for leftovers burnt; by which they are free from the tithe of wood burnt for fuel. Bob. 57.

V. Flax and hemp.

Flax hath been adjudged to be a small tithe; and so to continue, notwithstanding its being sown in large fields. Gibs. 680.
Concerning which, by the 11 & 12 W. c. 16. it is enacted as followeth: Whereas the sowing of hemp and flax is and would be exceeding beneficial to England, by reason of the multitude of people that are and would be employed in the manufacturing of those two materials, and therefore do juftly deserve great encouragement; and whereas the manner of tithing hemp and flax is exceeding difficult, creating thereby chargeable and vexatious suits and animosities, between parfons vicars impropriators and their parishioners; for remedying whereof, it is enacted, that every person who shall sow any hemp or flax, fhall pay to the parfon vicar or impropriator yearly the sum of five fhillings and no more, for each acre of hemp and flax sown, before the fame be carried off the ground, and fo proportionably for more or lefs ground sown: for the recovery of which sum or sums, the parfon vicar or impropriator fhall have the common and ufual remedy allowed of by the laws of this land. f. 1.

Provided, that this fhall not extend to charge any lands discharged by any modus decimandi, ancient composition, or otherwise discharged of tithes by law. f. 2.

VI. Madder.

By the fame rule, that the tithe which proceeds from things newly introduced into England hath been adjudged to be a small tithe, the tithe of madder may be deemed also a small tithe.

Concerning which, it is enacted by the 31 G. 2. c. 12. (which is in force for fourteen years) as followeth: Whereas madder is an ingredient essentially necessary in dying and in callicoe printing, and of great consequence to the trade and manufactures of this kingdom, and may be raised therein equal in goodness, if not superior, to any foreign madder; therefore, for the encouragement of the growth thereof, it is enacted, that every person who shall plant grow raise or cultivate any madder, fhall pay to the parfon vicar curate or impropriator of the parish or place, the sum of five fhillings an acre and no more, and fo proportionably, in lieu of all manner of tithe of madder; for the recovery whereof, the parfon vicar or impropriator fhall have the common and ufual remedy allowed of by the laws of this realm. f. 1.

Provided, that no madder fhall be carried off the ground on which it grows, before payment of the said sum here- in directed in lieu of tithes. f. 2.
Provided also, that this shall not extend to charge any lands discharged by any modus decimandi, ancient composition, or other discharge of tithes by law. f. 3.

VII. Hops.

Hops pay a prædial tithe; and regularly are accounted among small tithes. God. 414.

Thus in the case of Franklyn and the matter and brethren of St Crofs, T. 1721; the vicar being endowed of small tithes, it was decreed, that he was thereby intitled to hops, being a small tithe, tho' of growth since the endowment. Bunb. 79.

Tithes of hops are not to be paid till after they are picked, and before they are dried; every tenth measure. Bunb. 20.

In a late case, Mr Chandler, planter at Maidstone in Kent, having set forth the tithe of his hops by the tenth pole unpicked, Mr Bliss the improper brought this matter before the court of exchequer; where after long debate of counsel on both sides, and reading three former decrees, the court again declared this method of setting forth to be illegal.

And, finally, in the case of Walton and Tyers, May 17, 1753. Mr Tyers, having planted a considerable number of acres with hops in the parishes of Mickleham and Dorking in Surrey, of both which parishes Mr Walton was incumbent, offered to pay to him after the rate of 20l. an acre for the tithe thereof; which Mr Walton refused. Whereupon Mr Tyers gave him notice, that on such a day he would begin to gather his hops, and would regularly set out every tenth hill thro' all his hop plantations as the tithe thereof, by fevering the bind of the hops from the foil, and leaving the same on the poles; and that he would in the same manner daily set out the tithe of his hops, in order that Mr Walton's agent might be present at the respective times of setting out the tithe, and might carry away the same in due time. Mr Walton said, that this method of tithing was new and contrary to law, and that he would not take the tithe in that manner; but that he expected the whole crop should be gathered, and afterwards measured in baskets, and that every tenth basket of hops, after being so measured, should be set out for the tithe thereof. This Mr Tyers refused to do, and proceeded according to his notice to set out the tithe in the manner abovementioned; leaving every tenth
tenth hill ungathered, having cut or severed from the soil the binds or items on which the hops on every such tenth hill grew; and renewed his notice daily whilst his hop gathering continued. Mr Walton did not meddle with the tithe so set out; and after the hops had continued for some months upon the poles on every tenth hill as aforefaid ungathered, and so became spoiled and rotted, Mr Tyers brought an action for damages against Mr Walton, forasmuch as he was thereby hindered from dressing and cultivating his hop plantations. Upon this, Mr Walton filed his bill in the exchequer against Mr Tyers, thereby insisting, that the manner in which Mr Tyers had set out the tithe of his hops, by leaving the hops on every tenth hill, and severing the binds from the soil, was not a proper method for setting out such tithes; but that the tithe of hops ought by law to be set out after the same are picked from the bind or item. And, on hearing, the court declared, that the method of tithing hops insifted on by the defendant in his answer, is not a good setting out of the tithe of hops; but that hops ought to be picked and gathered from the binds, before they are titheable. Mr Tyers appealed to the house of lords; setting forth, that the manner of setting out the tithes by the admeasurement of the hops in baskets, would be very prejudicial and inconvenient to both parties, as the hops by that means would be necessarily bruised, the flower and condition thereof hurt, and the hops thereby very much damaged; that it hath been usual of late years, for hop planters to direct their gatherers to pick or afford their hops into different pokes, according to their different degrees of fineness and colour, to wit, the fine and the brown; and such assortment is the most material and expensive part of the manufacturing of hops, thrice as much time and expence being required in picking and assorting hops into two different parcels, as is necessary in picking them into one poke when first gathered; and that it is unreasonable, that persons claiming tithes should have the benefit of this part of the manufacture of hops, which costs about 5l an acre, without making any allowance, or contributing any share to the expense; and praying relief, for these (amongst other reasons): First, There is no positive law, to regulate the manner of tithing hops; neither is it fixed by immemorial usage or custom; the determinations of courts relating thereto have been various; and therefore that manner of tithing seems most just and equitable, which is both the least prejudic-
cial to the owner, and most beneficial to the parson or impropritor. Secondly, The manner insisted on by the respondent, by picking and then setting out the tithes by admeasurement in baskets, is so very detrimental to the planter, that it must inevitably be the ruin of the plantation of hops, the cultivation whereof is of extensive benefit to this kingdom: The method insisted on by the appellant is undeniably fair and equitable, not liable to any fraud whatsoever; whereas the method insisted on by the respondent is avowedly oppressive and injurious, in no wise productive of any benefit, or preventive of any fraud.——Mr Walton, the respondent, hoped the decree would be affirmed, (amongst other reasons) for these following: First, the setting out the tith of hops by measure, after they are picked from the bind or stem, is the fairest and most equal method, and liable to the least inconvenience; whereas the method of tithing contended for by the appellant, by every tenth hill, would be liable to great fraud, inasmuch as the planter of hops would have a right to set out for tith every tenth hill to be computed from the place he began at, and he might any year determine before he manured his hop ground where he would begin to set out the tith, and thereby would certainly know every tenth hill thro' the whole plantation, and might neglect to manure or improve them so much as the other hills, which would be unjust and unreasonable. Secondly, The method of tithing contended for by the appellant, would give occasion to many disputes and controversies; as the hops growing on one hill are apt naturally to intermix with the hops growing on the hills adjoining, so that it is scarce possible to sever the one from the other intire; and the owner of tithes, or his agents, or servants, exercising the right of entering into the hop grounds, and pulling up the planter's poles, most frequently furnish matter for suits and vexations; which would be inconvenient both to the owner of the tithes and the parishioners. Thirdly, The appellant hath not made the least proof, that the tith of hops was ever set out before they were picked from the bind or stem, or that they were tithed by the tenth hill (which is the method of tithing he contends for); but on the contrary, in many instances, where the method of setting out the tith hops has been disputed or brought in question, it has been uniformly determined and adjudged, after solemn argument, that the tith of hops by law ought to be set out by measure, after they are picked from the

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the bind or item. — And the decree was affirmed by the lords.

There can be no modus for tithe hops, because the court will take notice, that hops have not been ancient but used in beer of late times only, being first introduced into England about the year 1524. Yet a prescription to pay so much in lieu of all small tithes, may include hops and other such small things which have come in use of late years. Watf. c. 49. Bumb. 20.

**VIII. Roots and garden herbs and seeds; as turnips, parsley, cabbage, saffron, and such like.**

Out of gardens is paid tithe of all garden herbs and plants; as parsley, fage, cabbage, turnips, saffron, and the like: Which are small tithes, and may be demanded in kind. Bumb. 10.

So potatoes are a small tithe; and consequently due to the vicar, where he is endowed of the small tithes: and when gathered, the tenth part must be set out.

So also turnips; which, when pulled, ought to pay tithes, tho' never so often sowed, and tho' upon the same land. As in the case of Benson impropritor of Bromley St Leonard, Middlefex, against Watkins and others, H. 3 G. The court declared the tithe of turnips to be due toties quoties, tho' fevered never so often in the same year.

**M. 6 G. Crow tenant under the church of Rochester of the tithes in the hamlet of Modingham in the parish of Chippinghurst in Kent, against Stoddart.** The court declared the tithe of turnips sowed after corn, and eaten by unprofitable cattle, to be due; tho' it was urged to be an improvement of the land, and that the parson has the benefit of it the next year.

**T. 9 G. Harwood vicar of Erith in Kent, against Railston.** The court declared tithe to be due of turnips sowed after corn in the same year, and fed upon the land by barren cattle.

So in the case of Swinson and Digby, H. 1731; it was declared by the court, that where land is sown with turnips after the corn is cleared, and fed with sheep and barren cattle, tithes shall be paid of such turnips; altho' in this case it was insisted upon for the defendant, that the soil in that county, to wit, in Staffordshire, is dry and Sandy, and that this method of husbandry improveth the land, so that the plaintiff had thereby better tithes
tithes of corn, and had before received the tithes of
lambs and wool of the sheep so fed: But the court over-
rulled this defence, and said it amounted to a non decli-
mando as to turnips. Bunb. 314.

That is to say, if the cattle are fed upon the turnips
unfevered from the ground, an agistment tithe shall be
paid for such cattle: But if the turnips are severed from
the ground, then the tithe in kind of such turnips shall
be due from the severance.

If tobacco be planted here, the tithes thereof are small

Saffron also is tithable, tho' gathered but once in three

And it is a prædial small tithe: for where the parson
had the great tithes, and the vicar the small, and a land
which had been sown with corn was sown with saffron,
the tithe was adjudged to the vicar as a small tithe, not-
withstanding the statute of the 2 Ed. 6. c. 13. that tithes
shall be paid in such manner as they have been for forty
years past. Gibs. 685.

Most commonly, a certain consideration in money is
paid in lieu of the tithes of gardens, either by custom, or
by agreement with the parson. If the custom be a paro-
chial custom, or extending to gardens throughout the pa-

And the fame thing is to be said of
Franklyn and the master and brethren of St Crofs, it was
decreed by the court, that a penny for gardens and

Bunb. 79.

IX. Fruits of trees, as apples, pears, acorns.

1. Fruit of trees, as apples, pears, plums, cherries, fruits of or-
and the like, are prædial tithes, to be paid in kind when chards.
they are gathered; unless there is some modus or rate tithe
paid in lieu thereof. God. 408.

Which fruits if they are stolen, and not gathered by
the owner, the parson as well as the owner shall bear the
loss: But if the owner doth suffer a stranger to pull or
take his fruits, the tithe shall be answered.
Heil. 100.
If the soil of an orchard be sown with any kind of grain, the parson shall have the tithe of the fruit trees and of the grain, as also of the grass or hay; for they are of several and distinct kinds. 1 Roll's Abr. 642. Deg. p. 2. c. 3. God. 412.

2. Dr Godolphin says, mast of oak or beech, if sold, the tenth penny is payable for the tithe thereof; but if eaten by swine, then the tenth of the value or worth thereof. God. 417.

And so Lindwood faith, if the said fruits shall be sold, there shall be paid the tenth penny: and if they be not sold, but the hogs do feed thereupon, then the owner of the hogs shall pay the tithe according to the value of such fruits. Lindw. 200.

And there is a writ of consultation in the register for the tithes of pannage. And lord Coke says, for acorns tithes shall be paid, because they renew yearly. And in Reynolds's case, T. 2 Fa. it was said, that of acorns fevered tithes are payable. Gibs. 676. Mo. 762.

But where the case was, that the acorns dropt from the trees, and the hogs eat them, a distinction was made, that they shall not be tithable, unless gathered and sold, Het. 27. Litt. 40. Gibs. 676.

In short, the case of acorns seemeth not different from that of other things tithable; if gathered, they shall pay tithes in kind; and the tenth penny, or 2sh in the pound, in all such like cases, is not to be considered as exclusive of the tithes to be paid in kind, but only as a reasonable satisfaction when the parishioner disposes of his whole produce unfevered. And where the acorns are not gathered by the owner, but suffered to be fed upon as they drop; the case seemeth to fall under the same equity, as where turnips are fed upon by unprofitable cattle, for which an agistment tithe shall be paid.

X. Calves, colts, kids, pigs.

The tenth calf is due to the parson of common right, to be taken when it is weaned, and not before: and it is recoverable in the spiritual court, as appears from a writ of consultation in the register. And in case there are fewer than ten, it hath been adjudged a good custom (which evidently did spring from the canon law), that if there are seven, the parson shall have one calf; if under seven, then an halfpenny, or what custom shall direct for each calf. Gibs. 708.

But
Lithes.

But in most places, as it seemeth, at this day, the custom hath obtained (which is the proper rule in all such cases, and is equitable in itself), that if there are five, the parson shall have the value of half a calf, lamb, or other such like; if there are six, he shall have one entire; and shall receive or pay out respectively a proportionable sum, for each number under five or above six.

The canon law leaves it to the choice of the parson, when they are under the full number, whether he will proceed in the like manner, or let them run on till one becomes due in the ensuing year; but the common law will not allow of this, because tithe must be paid annually 1 Roll's Abr. 648.

Thus in the case of Egerton and Still, T. 1725. it was decreed, that where there are above ten calves, lambs, pigs, or the like; the tithe of the odd number above ten shall be paid according to the value, and not be carried over to the next year. Bunb. 198.

Colts are tithable in the same manner as calves. Gibs. 678.

Also tithe of pigs is to be paid in the same manner as tithe of calves. Gibs. 684.

And generally, the time of payment of the tithe of calves, colts, kids, pigs, and such like young of cattle, is when they are so old that they may be weaned, and live without the dam upon the same food that the dam cateth; unless the custom of the place confine the payment to any certain time or age. Deg. p. 2. c. 6.

In the case of Heaton impropriator of Garnthorp in Lincolnshire, against Regal: The defendant insisted on a custom in that parish, to set forth tithe lambs on the first of May. But the court disallowed of it, for that they were not fit to live without their dams, as appeared by the depositions in the case. And it was referred to three neighbouring justices of the peace, to inquire what was a fit time for setting forth tithe lambs in that country; who certified the first of August in their judgment to be a proper time. And the court approved of it.

So in the case of Crofts, rector of Upper Clatford in Hampshire. The defendant insisted on a custom in that parish, to set forth tithe lambs at St Mark's day. The court declared it to be a void custom, and that the time for setting forth tithe lambs is, when they are fit to live without their dams, and thrive on the same food that their dam lives on, and when the owner weans his own.

T. 9 G.
T. 9 G. Reynolds rector of Stoke Charitie in Hampshire, against Vincent. The defendant insisted on the same custom with that before insisted on at Upper Clatford. Which, on citing the two former decrees, and hearing counsel on both sides, was again set aside for the same reason.

Upon the whole, one precise determinate day cannot be equally applicable to all places and seasons. This must depend in some measure upon the situation of the country, the time of putting their ewes to the ram, and the forwardness or backwardness of the season in general. What cometh nearest to the matter, where there is no special custom concerning the same, feemeth to be, what was declared by the court in the case of Upper Clatford above-mentioned; namely, that the properest time for the parson to take the tithe is, when the owner weaned the reft: for it is not supposable, that the owner will wean his lambs sooner, or keep them with the ewes longer, than they are fit to be weaned; the former being a prejudice to the lamb, and the latter to the ewe.

And as the parson is to have the tithes of the young and increase of the cattle, so he on his part is to observe the custom of the place, for the better propagation of their increase; otherwise any parishioner grieved may have an action on the case against him. As in the case of Yielding and Fay, T. 39 Eliz. An action upon the case was brought against the defendant as parson of Quarbee in the county of Southampton, declaring that within the parish there is a custom, that the parson at all times of the year had used to keep a common bull and a boar, for the common use of the kine and fows of the parishioners, for the increase of calves and pigs within the parish; and that the defendant being parson there, had neglected to keep them; by reason whereof, the plaintiff being an inhabitant had lost the increase of his cattle. And the court was of opinion, that this was a reasonable custom; and that every inhabitant, prejudiced by the not keeping the bull and boar might maintain the action. Cro. El. 569.

And the like was decreed in the case of Philips and Symes, T. 1724. Bunb. 171.

XI. Wool and lamb.

1. Wool and lamb are generally reckoned mixt small tithes. Gilb. 682, 686.

2. Tithe
2. Tithe of wool de jure is due at the time when it is clipped; but by prescription it may be set out all together at another time. *Warf.* c. 50.

Regularly, the time of payment of the tithe of lambs (as was observed more particularly under the last head) is, when they are weaned, and can live without the dam; unless the custom of the place be otherwise. *God.* 416. *Bunb.* 133.

3. In the case of *Wilfon* and the bishop of *Carlisle,* T. *Ja.* Wilfon brought a prohibition against the bishop, who held the living of Graystock in commendam; and said, that there was within the parish of Graystock this custom for tithing of wool, that if any inhabitant have five fleeces of wool or above, he shall after the shearing and binding up of the same, without fraud or deceit, pay to the rector (after notice given) the tenth part thereof, at the door of the mansion house of such person inhabiting within the said parish, without sight or touch of the nine parts by the rector or his agent; and that the parsons have so accepted it. To this the bishop demurred in law. And it was adjudged for the bishop with one consent. For the substance of the prescription is laid, that the very true tenth is and ought to be paid without fraud; which is not prescriptible, for it is common right. Then the sole point prescriptible is, that this is without view or touch of the nine parts; which is, in effect, repugnant to the other: for when you have laid the truth in the former part, you lay the way to fraud in the latter. For it is against common reason, that any man judge or divide for himself, and then take choice of his own division, against the rule of partition laid down by Littleton; for the truth of the tenth depends upon the proportion it holds with the nine parts; and therefore for the parishioner to set out a part for the tenth, which he only affirms to be just, is to give him merely power to tithe as he lifts; and the prescription were as reasonable as to say plainly, that they might set out what tithe they pleased. And it is a weak answer to say, that if it be not a just tenth, he may refuse it, and sue for his due. For he hath no means to be assured whether it be true or not; so his suit may be causeless: Sure he may be, it will be fruitless. But the law was provided, not to cause, but to prevent suits; and therefore provides, that things be done by indifferent means and persons, that there be no just suspicion of indirect dealing. *Hob.* 107.
In the case of Christian against Wren and others, M. 1732; on a bill by the vicar of Crosthwaite in the county Cumberland for tithes, the defendants insifted on a customary manner of payment of tithe wool of the elder sheep, by weighing the wool, and delivering the tenth part without fraud to the vicar, without his seeing or touching it: but this was over-ruled, on the authority of the aforesaid case in Hobart. Bumb. 301.

In the fame cafe, the parishioners insifted, that they ought to pay no tithe of hog wool (that is, of the wool of sheep of a year old); alledged that to tithe thereof had ever been paid; that the tenth lamb having been paid (or a composition for the fame), the other nine should not pay tithe of their wool that same year; and insifted further, that a modus being paid for the tithe lambs, the said modus included also the tithe of the hog wool. But the evidence not coming up to the proof of its being included within the modus, and the other allegations being plainly setting up a non decimando; it was decreed, that the tithes of the hog wool should be paid as well as of all the other wool. (For it is clearly a new increafe.)

By a conftitution of archbishop Wincbelfa, it is ordained as follows: Of the young of animals, as of lambs, we do ordain, that for six lambs and under, six half pence be given for the tithe; but if there be seven lambs in number, the seventh lamb shall be given to the rector for tithe; yet so, that the rector of the church who taketh the seventh lamb, shall pay to the parishioner of whom he taketh the tithe three half pence in recompence; he that taketh the eighth lamb shall give a penny; he that taketh the ninth shall give an halfpenny to the parishioner: or the rector (if he pleafeth) shall flay till the next year, until he may take a full tenth lamb; and he who fo flayeth, shall take always the second best lamb, or the third at leaft, of the lambs of the second year; and this, for his flaying the firft year. And fo it is to be understood of the tithe of wool. Lind. 191.

And these sums, according to the value of money at that time, were computed as a reasonable equivalent.

But where it is faid that the rector fhall have his election to take his tithe in that manner, or to let them run on till a lamb or fleece be due in the ensuing year, that is not allowed by the common law; for tithes must be paid annually. Deg. p. 2. c. 6.

Alfo (as was obferved before) cuftom, which is a part of the common law, seemeth to have eftablifhed in moft places,
places, that the parson shall have half the value of a lamb at
five, and a lamb intire at six, and shall receive or pay out
proportionably for the numbers under five and above six.
If the custom be to pay the tithe of wool by the pound,
and there be under ten pounds of wool; in such case a rea-
sonable consideration shall be paid; because being due de
jure, a modus in non decimando cannot be allowed in any
case. 1 Roll's Abr. 648.
4. By a constitution of archbishop Winchelsey; lambs,
and other tithable young, shall be tithed proportionably,
having regard to the different places, where they are be-
gotten, brought forth, and nourished, and to the times which
they have continued therein. Lind. 197.
And by another constitution of the same archbishop; if
the sheep be kept in one parish in winter, and in another
parish in the summer, the tithe shall be divided propor-
tionably, according to the time that they shall continue in
each parish. Lind. 194.
But no space less than that of thirty days, shall be reck-
ed in the computation; that is to say, of thirty days to-
gether, and not by intermission. Lind. 198.
Whereupon Dr Wood observes, that if lambs are
yeaned in another parish, and do not tarry there thirty
days or more; no tithe is due for them to the parson of
that place. Wood b. 2. c. 2.
And Dr Godolphin says, If sheep stray out of one pa-
ris into another, and there yeane, no tithe is payable for
this to the parson of that place; but if they go there for
thirty days or more, for this a rate tithe is payable to that
place; for, for sheep removed from one parish to another,
each parish must have tithe pro rata: but under thirty
days no rate tithe is to be paid. God. 438.
Again, by one of the aforesaid constitutions, If sheep
do couch in one parish, and feed in another, the tithe
shall be divided between the two churches: Yet (faith
Lindwood) not equally, but proportionably; for the far
greater part ought to be assigned to that church, within
the parish whereof they fed for the time, than to that
where they only couched. Lind. 198.
And further; by the said constitution it is ordained,
that if foreign sheep shall be shorn in any parish, the tithe
shall be there delivered to the rector of the church, unless
he can be sufficiently informed, that satisfaction hath been
made for the tithe elsewhere, so as lawfully to hinder the
payment thereof in such parish where they are shorn.
Lind. 197. God. 438.
In like manner, If a person shall buy or sell any sheep, and it is certain from what parish the sheep do come, the tithe thereof shall be proportionably divided between the two parishes: but if it be uncertain, that church shall have the whole tithe, within the limits whereof they are found at the time of shearing. *Lind. 194.*

But Mr Bunbury seemeth to be of opinion, that the tithe of lambs must be paid where they fall, and is not a divisible thing, as wool is. *Bunb. 139.*

And it is now clearly held, that the tithe both of wool and lamb shall be paid where the sheep or lamb are shorn.

Indeed, if the sheep be carried away unnecessarily, and but a little before shearing or lambing time; this is fraudulent: and the tithes shall be paid, in such case, in that parish from whence they were fraudulently removed.

But if they shall be removed without fraud; it is held in equity, that no part of the tithe of wool or lamb will be payable in that parish from whence they were removed, but an agistment tithe must be paid for them, as for cattle yielding no profit to the incumbent there; and that these tithes are in no case to be divided, but the whole to be paid where they lamb or are shorn, and an agistment tithe for them as unprofitable cattle in every other parish where they have been depastured.

And no regard is had to the distinction, whether they have continued for less than a month; for there is the same equity, that tithes shall be paid for one day as for thirty.

5. In the case of *Boys and Ellis, M. 1723*; in a bill for tithes, a question arose, whether there was fraud in tithing lambs, on this case: The ewes were kept by the defendant in the parish of Driffield in the county of York (where the demand lay), all the year until Christmass, when they were ready to drop their lambs, and then were removed into the parish of Skern (where there was a small modus only for lambs), and there kept till lady day, for convenience of forage (as insinuated upon by the defendant); and at lady day were brought back to Driffield: Note, the land in Skern was the defendant’s own land. By the court; Here is not a sufficient proof of fraud: and the plaintiff’s bill was dismissed. But Page and Gilbert barons thought, at first, it might be proper to send it to an issue, to try whether fraud or not fraud; and whether this had been the usual method of the defendant’s course of husbandry; but afterwards they concurred with baron Price. *Bunb. 139.*

6. There
6. There is no doubt, but that wool is tithable de jure; and therefore it hath been adjudged, that however for the pels or fells of sheep killed and spent in the house, no tithe shall be paid, yet the wool shall pay tithe: and for these, as well as for sheep which die, a consultation is provided in the register. Roll's Abr. 646. God. 429, 463. Deg. p. 2. c. 6. Gibb. 686.

But others have held, that if sheep be throrn, and die of the rot or other disease before the next shearing time, the wool is not tithable, unless the parson can prescribe to have it. Walf. c. 49.

In the case of Brinklow and Edmonds, M. 1731; an halfpenny payable on the shearing day, for the wool of each sheep dying between Candlemas and shearing day, was admitted and established as a good modus. Bumb. 307.

7. If a man pay tithe lamb at Mark's tide, and afterwards at Midsummer he sheareth the residue of the lambs, to wit, the nine parts; he ought to pay tithe of the wool thereof, altho' there are only two months between the time of payment of the tithe of the lambs unthrorn, and of the shearing of the residue, for this is a new increase. Roll's Abr. 642.

So in the case of Baker and Sweet, M. 1721, it seemed to be admitted, that the wool of lambs shall pay tithes, altho' the lambs had paid tithes two months before. Bumb. 90.

And in the case of Carthew and Edwards, T. 1749. The plaintiff brought his bill, amongst other things, for the tithe of the wool of lambs. The defendant answered, that he apprehended no tithe of lambs wool to be due, the plaintiff having received the full tithe of the lambs in their wool. But by the court it was declared, that the tithe of the wool of lambs was due to the plaintiff, and decreed accordingly.

So where a modus is paid for a tithe lamb, and the other nine lambs are throrn; tithes shall be paid of the wool thereof: for wool and lamb are different species of tithes, and therefore a modus for lambs is no satisfaction for the tithe of wool.

8. By a constitution of archbishop Winchelsea; tithes of wool shall be paid to the incumbent, in whose parish the sheep have remained constantly from the time of shearing till Martinmas, tho' they be afterwards removed; and if they be removed within the said time from parish to parish, each incumbent in whose parish they shall re-
main at least thirty days shall have his proportion of the wool; but if they be removed from parish to parish after the said time (that is, from Martinmas to the time of shearing), a reasonable agistment shall be paid by the owners for the time they stay. Lind. 197.

But this seemeth not to be law at this day: but the tithe in kind of wool shall be paid only in the parish where the sheep are shorn; and an agistment tithe in the other parishes where they have been depastured. Otherwise it might be very inconvenient to proportion and divide the wool; especially where the parishes shall be (as it may happen) at a very great distance.

And in a case where the owner of the sheep had depastured them in the parish, from Michaelmas to lady day, and then sold them; upon suit in the spiritual court for a tenth of the bargain, the owner to obtain a prohibition surmised that he could pay a tenth of the wool, according the custom of the parish: But a prohibition was denied, because the parson was defrauded of all, if he had not the tenth of the bargain; inasmuch as the sheep were gone out of the parish, and he could not have any wool, because it was not the time of shearing. Poph. 197.

[Upon the whole, it is observable, that the measure of right in the ecclesiastical courts by the canons, and in the courts of equity by the rules of equity (without much regard to the canons), is very different; which may cause confusion in these respects. In the former case, the last resort is to the delegates; in the latter, to the house of lords.]

9. No tithe shall be paid of locks of wool, if it appear that they were casually lost, but otherwise, if by contrivance and fraud. 2 Instr. 652. God. 462.

Where the custom is, to sheare the necks of sheep about Michaelmas, to prevent the tearing off of the same by thorns and briars in the winter; if this be done without fraud, and not to deceive the parson, then no tithe shall be paid for the same. 1 Roll's Abr. 645.

So if a parishioner cut off the dirty locks of his sheep for their better preservation from vermin, before the time of shearing, and this without fraud; no tithes shall be paid thereof. 1 Roll's Abr. 646.

10. If several mens sheep depasture together in one flock, or under one shepherd; yet this shall not make them to be tithed together, but every owner shall pay his tithe of them by himself: but if the head of a family hath his
his flock mixed with his children's sheep which are under his tuition, and he takes the profit of them to his own use, in that case they shall be tithed together. *Lind.* 193.

11. It hath been held, that if a man prescribe to pay modus an halfpenny for every lamb that he shall fell before the first day of May, and (to deceive the parson) shall fell all his lambs the day before May day; this is fraudulent, and the custom shall be no discharge. *Roll's ABR.* 652.

It is not a good modus, to pay every tenth pound of wool for the tithe of wool, if he doth not shew that he hath paid something if his wool do not amount to ten pounds; for otherwise this is in non decimando if it be under ten pounds; for the tenth part thereof is due. *Roll's ABR.* 648.

If a prescription be, that if the owner hath under the number of ten fleeces of wool, he shall pay one penny to the parson for the tithe of each of them; and if he hath more, that then he shall deliver to the parson the tenth part of his wool upon his conscience without fraud or covin, without the parson's seeing or touching the nine parts; this is not a good modus, for that it is unreasonable, and is in effect to give to the parson no more than the parifhioner pleased. *Roll's ABR.* 648.

A custom to pay tithes in kind for sheep, if they continue in the parifh all the year, and if they be sold before shearing time, but a halfpenny for every one so sold, hath been held an unreasonable custom. *Bob.* 94.

A modus to pay the tenth part of the wool of all the sheep which he had before lady day, in satisfaction of all the wool of such sheep as should by him be brought into the parifh after lady day, hath been allowed to be good. *Roll's ABR.* 649.

So also a modus to be discharged of tithe of those he should sell but two days before the shearing, in consideration that time out of mind he hath paid tithe wool of those which he bought but two days before the shearing, hath been allowed to be good. *Roll's ABR.* 649.

**XII. Milk and cheese.**

1. Milk is a mixt tithe. *Gib.* 713.

2. Where tithe milk is paid in kind, no tithe cheese is due; and where tithe cheese is paid in kind, no tithe milk is due: In which case, as in all other like cases, the cui...
tom of the place is to be observed.  *Deg. p. 2. c. 6. God. 392.*

3. And by a constitution of archbishop Winchelsea: *The tithe of milk shall be paid, from the time of its first renewing, as well in the month of August as in other months.* Lind. 199.

Upon what pretence the people pleaded exemption from paying tithe of milk in August, Lindwood doth not inform us: probably it was, because this was the principal harvest month; and they thought it too much to pay tithe of milk while they were paying tithe of corn; and fed their harvest people with the milk. *Johnf. Winch.*

Lindwood explains the milk here spoken of, to signify either that of cows, or sheep, or goats, or other cattle which are milked. *Lind. 200.*

But the tithe of the milk of ewes seemeth only to be due by custom: for a man may prescribe that by the custom of the country where he is fixed for tithes of the milk of ewes, no tithes of the milk of ewes have been paid for time whereof the memory of man is not to the contrary; and in such case a prohibition will be granted. 1 *Roll's Abr. 654.*

4. By a constitution of archbishop Winchelsea: *The tithe of the milk and cheese of cows and goats shall be paid where they feed and couch.* Otherwise, if they couch in one parish, and feed in another, the tithe shall be divided between the rectors. Lind. 199.

But it may be doubted perhaps, as the law seemeth now to stand, whether they shall not pay tithe in kind only in the parish where they are milked, and an agistment tithe in the other parish.

*M. 8 W. Scoles and Lowther.* Lowther was parson of the parish of Swillington; and Scoles lived in Kippax the next adjoining parish, and occupied a large parcel of arable land in Kippax, and had also forty acres of meadow and pasture in Swillington, and four acres of arable land. Lowther libelled in the spiritual court of York against Scoles, for tithes of the cattle depastured in Swillington. *Scoles, upon a suggestion that cattle kept for the pail for the use of the house ought not by the law to pay tithes, and that this cattle for the tithes whereof Lowther now libels is such, moved for a prohibition. And it was granted to him, unless cause shewn. And now, upon affidavit that Scoles carried the milk of this cattle to his house in Kippax, and used it there, it was moved that the rule might be discharged. And it was resolved*
resolved by the whole court, that the defendant Lowther should have the tithes of this milk. L. Raym. 129.

And as to the tithe of the milk of sheep, it is ordained by the said constitution, that in the parishes where the sheep continually feed from the time of shearing to the feast of St Martin in the winter, the tithe of their milk and cheese shall be fully paid to the churches there, although they shall be afterwards removed from that parish and be born elsewhere. And if within the aforesaid time, they be removed to pasture in divers parishes; every church, according to a proportionable part of the time shall receive the tithe thereof; but no space less than that of thirty days shall be reckoned in the computation. But if after the feast of St Martin, they be carried to pastures elsewhere, and be fed even until the time of shearing in one or in divers parishes, in the pastures of their owner or of any other; the pastures shall be valued having respect to the number of sheep, and according to such valuation of the pastures, the tithes shall be demanded of the owners of such pastures. Lind. 197.

And the reason is, because after the feast of St Martin sheep are not usually milked. And therefore this constitution requireth, that the tithe be paid according to the value of the pasture for so many sheep there depastured. Otherwise if they should lie there, and in the mean time give milk, and cheese should be made thereof, then the tithe of milk and of cheese should be paid as they should fall out. Lind. 198.

5. By another constitution of the same archbishop, the tithe of milk shall be paid in cheese, whilst the parsonioner maketh cheese; but in the autumn and winter it shall be paid in kind; unless the parsonioners will for the same make a competent redemption, to the value of the tithe and the benefit of the church. Lind. 194.

But the canon in this, as in other instances, is generally overruled by the custom of the place; for in many places they pay the milk in kind all the year; in some places they pay only cheese; and in some neither cheese nor milk, but some small rate for it: and the custom of the place in this, as in all other tithing, is to be observed, notwithstanding the canon. Deg. p. 2. c. 6.

6. When milk cows are become dry, and are depastured as dry cattle, tho’ but for a month; an agistment of milk cattle, the tithe shall be paid for them: and so it is, if they are fattened and sold. Boh. 96.
7. The tithe of milk is to be paid, not by the tenth part of every meal, but by every tenth meal intire. Bunb. 20.

In the aforesaid case of Scoles and Lowther, it was laid by the court, that of common right tithe milk is payable at the parsonage or vicarage house; in which particular this tithe differs from all others, which must be fetched by the receiver: but by custom the payment may be made in the church porch, whither it shall be brought by the parishioners. L. Raym. 129. Wood b. 2. c. 2.

But in the case of Dodson and Oliver, E. 1721; it was decreed, that if there be any custom in a parish for the manner of tithing milk, as to carry it to the church porch, or parsonage house, that must be observed by the parishioner; but if there be no particular custom or usage, the parishioner is obliged de jure to pay every tenth meal, to milk the cows at the usual place of milking into his own pails, and the parson is obliged to fetch it away from the milking place in his own pails in a reasonable time; and if he doth not fetch it before the next milking time, the parishioner may justify pouring the milk upon the ground, because he hath occasion for his own pails. And it was determined by the whole court of exchequer in this case, that the milk ought not to be carried either to the church porch, or to the parson’s house, and that it ought to be fetched by the parson. Bunb. 73.

So in the case of Carthew and Edwards, T. 1749. Edward Carthew, clerk, rector of St Mewan in Cornwall, brought his bill in the exchequer (amongst other particulars) for the tithe of milk. The defendant Edwards in his answer set forth, that the plaintiff having declared he would not send for or fetch the tithe milk, he did order every tenth meal of his cows to be turned upon the ground; it not being usual or customary for the parishioners of the said parish, to carry their tithe milk home to the rector. The court, upon hearing the cause, and ordering two decrees in the said court to be read, wherein Dodson was plaintiff and Oliver defendant, did declare, that the defendant ought to have milked the tenth meal of his cows, in vessels of his own, at the place and in the manner he milked the other nine meals, and that the plaintiff ought to have fetched it away in his own vessels.

8. It hath been adjudged a good modus, in consideration of the payment of the tenth cheese made from the first of May until the last of August, to be discharged from the
the tithes of milk; for this is not tithe in kind of part in discharge of the whole, for no tithe in kind is due of cheese, but only of milk, and so this is a good consideration. 1 Roll's Abr. 651.

A custom that every inhabitant in the parish, who kept cows there, had used time out of mind to set out the whole meal of milk upon the ninth day of May at night, and upon the tenth day of May in the morning, and so upon every ninth day then next following, until one lamb (to be yeaned in the year following) should be heard to bleat there, hath been adjudged an unreasonable custom; because in such case it might be contrived that lambs shall come so soon, as to deprive the parson of the tithe milk for a great part of the year. L. Raym. 358.

M. 1731. Brinklow and Edmonds. A bill was exhibited to establish several modus's in the parish of Newton Longville in the county of Buckingham: One of which was, that tithe milk ought to be paid by every tenth evening and morning's meal in kind, from Hoe Monday to the second day of November, to commence upon the evening of Hoe Monday (that is, the monday fortnight after Easter day), and the morning following, to be taken by the rector at the place of milking, and no tithe milk to be paid for the residue of the year. But by the court, this is void upon the face of it, being only a payment of part for the whole. Bubn. 307.

XIII. Deer and conies.

1. Deer, being sære naturæ, are not tithable without Deer special custom.

But if tithe thereof be due by custom, it must be paid.

2. Conies also, being sære naturæ, are not tithable of common right. ¹ Roll's Abr. 635.

But tithes in kind, or a modus for them, may be by custom.

In the case of Walton and Tryon, M. 1751. A bill was brought by the plaintiff (amongst other things) for the tithe of rabbits, in a warren called Ashurst's warren. And he proved by the former incumbent's book, that the same had been compounded for, by payment of 20 sh in money and four couple of rabbits. For the plaintiff it was argued, that it is a great question, whether this be a prædial, mixt, or personal tithe. Custumary tithes are generally deemed personal tithes; and if so, then a payment in lieu of tithes will be good. Rabbits are of that nature, that they
they are difficult for the parson to get them, the times of
taking them uncertain, and therefore a small composition
probably was taken for them. Suppose a composition was
made for hay, originally at 5l; and afterwards a new
agreement was made for 4l and one load of hay: this
would be good, and an assumpfit would lie. The parson's
book proves, that several couples were paid, and money
also; and that book is always held to be good evidence.—
For the defendant, it was answered, that this tithe can
only depend on a customary immemorial right; and so
ought to be laid in the bill. Here it is laid, to the tenth
of the rabbits in kind; and the plaintiff demands it as
such. But his evidence is directly contrary. For by that
he proves a composition in lieu of tithes for them. There-
fore, as his evidence contradicts his manner of laying his
prescription, he must fail in his suit. As to the rector's
book in this case, it is very modern; for it goes no further
back than the year 1728. This indeed may be evidence
of payment; but it can never be admitted as an evidence
to support the right.—— By the lord chancellor Hard-
wicke: The plaintiff by his bill demands tithes in kind.
But there is no evidence of that. The evidence offered is,
that four couple of rabbits have always been sent and de-
ivered at the parson's house by the warrener, and 20 fh
a year paid; and so proved by the former incumbent's
book. And the argument by the plaintiff from this evi-
dence is, that this is a composition for tithes in kind; and
rightly argued, for the modus would be too rank. But
the great thing with me is, this 20 fh a year. For the
four couple of rabbits can neither be modus nor compo-
sition. Indeed payment of part of a thing in money, and
part in kind, has been held to be good. But I can deter-
mine nothing on this question: but it must go to be tried
as to the custom.

XIV. Fowl.

1. Of fowls which are domestick, and not feræ naturæ,
tithes are to be paid; as geese, hens, ducks: and the
manner of tithing them is, either by paying the tenth egg,
or the tenth of their young, according to the custom of
the place, but not both; for where tithe of eggs is paid,
there is no tithe of the young; and where the tithe of
young is paid, there shall be no tithe of eggs. God. 405.
Deg. p. 2, c. 11.

2. It
2. It is said that swans also, as being tame fowl, shall Swans. pay tithe. Deg. p. 2. c. 11.

3. In the case of Haughton and Prince, it was affirmed, Turkies, that turkies are to be ranked amongst things that are feræ nature; and consequently not tithable. Mo. 599.

But in the case of Carleton and Brightwell, T. 1728; where tithes were demanded of turkies, and it was objected that turkies were things feræ nature, and not tithable any more than partridges, and that turkies were not brought hither from beyond sea before the time of queen Elizabeth; it was declared by the court, that it doth not appear but that turkies are birds as tame as hens, or other poultry, and therefore must pay tithes. 2 P. Will. 462, 463.

4. It is said, that of pigeons sold tithes ought to be paid; but not if they be spent in the house. 1 Roll's Abr. 635.

But by custom pigeons spent in the house may be tithable; tho' not of common right. 1 Roll's Abr. 642.

5. If a man hath pheasants or partridges, and keepeth them in a place inclosed, and clips their wings, and from their eggs hatcheth and bringeth up young pheasants or partridges; no tithes shall be paid of these eggs or young, because they are not reclaimed, but continue feræ nature, and would fly out of the inclosure, if their wings were not clipped. 1 Roll's Abr. 636.

6. It hath been adjudged, that the paying of thirty eggs in lent, is a good modus for all tithes of eggs: which seemeth to cross the rule of the law, that every modus ought to be somewhat, as to kind, different from the thing that is due. Gibs. 679.

But it is to be considered, that this custom doth bind the parishioner to the payment of so many eggs, whether he hath hens or not; so that he may be obliged to buy eggs, to pay the prescription; and this is what makes it a good custom: but if the custom had been, that he should pay thirty eggs of his own hens; the custom would have been ill. L. Raym. 358.

XV. Bees.

Bees are reckoned amongst the things that are feræ nature; and by consequence tithe free; and it hath been adjudged, that they shall not be paid in kind by the tenth swarm. Gibs. 677.
Lithes.

But of the wax and honey of bees tithes shall be paid in kind de jure. 1 Roll's Abr. 635.

And that is, by the tenth measure of honey, and the tenth weight of wax. God. 389. Deg. p. 2. c. 7.

And there is a consultation provided in the register, for the tith of honey and of the wax of bees.

XVI. Mills, fishings, and other personal tithes.

1. By the books of common law it appeareth, that some tithe or other is due for a mill. 2 Infr. 621.

The canonists hold, that this is a prædial tithe, and that the tenth toll dish ought to be paid for the same, without deduction of expences: but this doth not agree with the common law, and therefore is not binding. Deg. p. 2. c. 9.

In the case of Dadsom and Oliver, E. 1721, in the exchequer; Price and Mountague barons were of opinion, that an ancient corn mill ought to pay the tenth toll dish, which being a tenth part of the thing it self, was a prædial tithe, and due of common right: But the chief baron Bury and baron Page, that it is a personal tithe, and not due of common right; and the mill not having paid, is now exempt by the statute of the 2 Ed. 6. So the court being divided, the plaintiff had no decree. Bunb. 73.

But before this, in the case of Newte and Chamberlain, in the year 1706, it was decreed in the house of lords, on an appeal from the court of exchequer, that the tithes of a mill are personal tithes, contrary to several seeming authorities; and that in consequence of their being personal tithes, not the tenth of the toll, or the tenth dish of the corn ground belongs to the parson, but the tenth part of the clear profits, after the charges of erecting the mill, and the other charges of servants, horfes, and other expences are deducted. Vin. Difmes. M. a.

And in the case of Carleton and Brightwell, T. 1728; a demand being made by the bill of the tithe of a corn mill, it was insifted, that every tenth toll dish was due. But it was replied, that this matter was determined in the aforesaid case of Newte and Chamberlain, in the house of lords, where a bill was brought for the tithes of a malt mill in Tiverton in Devonshire, and where the lords determined with the assistance of eight judges (whereof Holt chief justice was one) that mills were tithable, but that the same was.
was a personal tithe, and so ought to be paid out of the
clear gain after all manner of charges and expenses de-
ducted: Upon which authority, the master of the rolls
decreed the mill in question to pay tithes, but that they
should be paid only as a personal tithe. 2 P. Will. 463,

By the statute of the 9 Ed. 2. st. 1. c. 5. If any do erect
in his ground a mill of new, and afterwards the parson of the
same place demandeth tithe for the same, the king's prohibition
shall not lie.

A mill ] This is only meant of a corn mill: for it hath
been resolved, that fulling mills, tin mills, lead mills,
plate mills, and the like, are not within this statute, nor
is tithe due of such otherwise than by custom. Gibs.
666.

Of new ] Therefore all corn mills, not erected before
this statute are tithable. But because many mills since
erected may be to us ancient, and their first erection not
known, the rule of their discharge seemeth to be, that all
such mills whose first erection was before time of memory
and is not otherwise known by matter of record, and have
not been subject to the payment of tithes, shall be intend-
ed to be erected before the statute, and so to be tithe free.
But as to mills for which tithes have been paid, and new
mills; tithes must be paid for them. Bob. 127.

Therefore when prohibitions are moved for to stay suits
for tithes in the ecclesiastical courts for ancient mills, it
must not only be suggested that the mill is an ancient mill,
but also that it hath never paid tithes; and the courts of
common law do generally require an affidavit to be made
of the truth of such suggestion, to wit, that the mill is
ancient, and hath not within memory paid any any tithes.
Bob. 127.

The king's prohibition shall not lie] T. 15 Ja. A prohibi-
tion was prayed to the spiritual court, upon a suggestion,
that the parson libelled for tithes of a mill which was
erected upon land discharged of tithes by the statute of mo-
nasteries 31 H. 8. c. 13. And denied by the whole court:
for of a mill erected of new, a prohibition lieth not.

If there is a modus in lieu of all tithes issuing out of a
messuage and an ancient water mill for corn, and a new
water mill for corn is erected within the said messuage;
or if the stream on which an ancient mill stood is diverted by
by the owner (and not by the act of god), and a new mill erected upon the new stream; they shall not be discharged by virtue of any former modus. 1 Roll's Abr. 641.

But if there hath been an ancient corn mill for which a modus hath been paid for time immemorial, and afterwards by continuance of time the mill stream changeth its course, and goeth in a place a little distant from the ancient stream, and thereupon the owner of the mill pulleth it down, and rebuildeth it in the new place where the stream now runneth; this shall be discharged of tithes by force of the ancient modus, for this cometh by the act of god, and not by the act of the party. 1 Roll's Abr. 641.

So, the addition of a pair of stones to an ancient mill, doth not destroy the modus. Carth. 215.

But if the surmise be of a certain rate or modus for all mills erected and to be erected, and a mill there appears to be new; the modus cannot extend to it, by reason of the statute aforesaid. 2 Bulst. 212.

2. It doth not seem to be agreed, whether or how far fish in ponds or private fisheries are liable to pay tithes; and therefore the same must be referred to the customs of particular places.

But it seems that of these no tithe can be due, where no profit is made thereof, and where they are kept only for pleasure, or to be spent in the house or family; as fish kept in a pond generally are. Bob. 135.

Also fish taken in common rivers are tithable only by custom. God. 406. Wood b. 2. c. 2.

And in this case Lindwood says it is only a personal tithe, and shall be paid to that church where he who taketh them heareth divine service and receiveth the sacraments. Lindw. 195.

Where fish are taken in the sea, tho' they are ferae naturae, and consequently not tithable of common right, yet by the custom of the realm they are tithable as a personal tithe, that is, not by the tenth fish, or in kind, but by some small sum of money in consideration of the profits made thereby after costs deducted. 1 Roll's Abr. 636.

Upon which foundation, it is said, that if the owners of a ship do lend it to mariners to go to an island for fish, and are in consideration of such loan to have a certain quantity of fish when they come back; no tithe shall be paid by the mariners for what is given to the owners, because they are only to pay for the clear gain. Gibs. 679.

3. By
Lithes.

3. By a constitution of archbishop Winchelsea, it is ordained, that personal tithes shall be paid of artificers and merchandizers, that is, of the gain of their commerce; as also of carpenters, smiths, masons, weavers, inn-keepers, and all other workmen and hirelings, that they pay tithes of their wages; unless such hirelings shall give something in certain to the use or for the lights of the church, if the rector shall so think proper: That is to say, they shall pay the tenth part of the profit, deducting first all necessary and reasonable expenses.

And by the statute of the 2 & 3 Ed. 6. c. 13. Every person exercising merchandizes, bargaining and selling, clothing, handicraft, or other art or faculty by such kind of persons, and in such places as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay (other than such as be common day labourers), shall yearly at or before the feast of Easter, pay for his personal tithes the tenth part of his clear gains; his charges and expenses, according to his estate condition or degree, to be therein abated allowed and deducted. f. 7.

Provided, that in all such places where handicrafts men have used to pay their tithes within these forty years, the same custom of payment of tithes to be observed and continue. f. 8.

And if any person refuse to pay his personal tithes in form aforesaid, it shall be lawful to the ordinary of the diocese where the party is dwelling, to call the same party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the party's own corporal oath, concerning the true payment of the said personal tithes. f. 9.

Provided, that nothing in this act shall extend to any parish which stands upon and towards the sea coasts, the commodities and occupying whereof consisteth chiefly in fishing, and have by reason thereof used to satisfy their tithes by fish; but that all such parishes shall pay their tithes according to the laudable customs, as they have heretofore of ancient time within these forty years used and accustomed, and shall pay their offerings as is aforesaid. f. 11.

Provided also, that nothing in this act shall extend in any wise to the inhabitants of the cities of London and Canterbury, and the suburbs of the same, nor to any other town or place that hath used to pay their tithes by their houses, otherwise than they ought or should have done before the making of this act. f. 12.

This act restrains the canon law in three things: First, where the canon law was general, that all persons in all places should pay their personal tithes, the act restraineth it
it to such kind of persons only, as have accustomably used to pay the same within forty years before the making of the act. Secondly, whereas by the ecclesiastical laws they might before this act have examined the party upon his oath concerning his gain; this act restrains that course, so that the party cannot be examined upon oath. Thirdly, by this act the day labourer is freed from the payment of his personal tithes. Deg. p. 2. c. 22.

It cannot be intended upon this act, that if such tithes have been sometimes paid within forty years, they are therefore due; but they must have been accustomably, that is, constantly paid for forty years next before the act. Deg. p. 2. c. 22.

If it be demanded how such payment must now be proved forty years before the making of the act; the answer is, as in other like cases, a posteriori; by what has been done all the time of memory since the act. Deg. p. 2. c. 22.

Sir Simon Degge says, the only case that he could find for above a hundred years before his time, where the tithes of the profits of such trades were sued for by any clergyman, was that of Dolley and Davis, M. 11 Ja. which was thus: The parson of a parish in Bristol libelled in the spiritual court against an innkeeper, to have tithes of the profits of his kitchen, stable, and wine cellar, and did set forth in his libel, that he made great gain in selling of his beer, having bought it for 500l, and sold it for 1000l, of which gain he ought to have the tithe by the common law of the realm. Upon which occasion, the clerk of the papers informed the court, that when one had libelled for tithes of the gain of 10l for 100l put out, a prohibition was granted: and the same was also granted in this case. 2 Bulst. 141.

And personal tithes are now scarce any where paid in England, unless for mills, or fish caught at sea; and then payable where the party hears divine service, and receives the sacraments. Wood b. 2. c. 22.

VI. Of the setting out, and the manner of taking and carrying away of tithes.

1. By a constitutions of archbishop Winchelsea, it is ordained as follows: Because by reason of divers customs in the taking of tithes throughout divers churches, quarrels contents scandals and very great hatreds between the rectors of the churches
churches and their parishioners do oftentimes arise; we will and ordain, that in all the churches established throughout the province of Canterbury, there be one uniform taking of tithes and profits of the churches. Lind. 192.

Between the rectors of churches] Which is to be understand also of vicars, where the tithes belong to their portion. Lind. 192.

Throughout the province] Per provinciam: Lindwood says, in some copies it was archiepiscopatum (as also it was in archbishop Grey’s constitutions, from whence this was taken); but in a provincial council held at London under archbishop Chicheley the word archiepiscopatum by consent of the prelates and the whole clergy was taken away, and provinciam inserted in its place; Lindwood himself being then prolocutor. Lind. 192.

And profits of the churches] That is, which do not confift in tithes: as, oblations, mortuaries, and such like. Lind. 192.

But notwithstanding the canon, the manner or form of setting out or payment of tithes, is for the most part governed by the custom of the place.

2. If the owner will not cut his crop before it be not before the crop is cut.

3. The parson, vicar, impropriator, or farmer, cannot come himself and set forth his tithes, without the licence and consent of the owner; for if he shall of his own head the corn or hay of any landholder within his parish, and carry it away, he is a trespasser, and an action will lie against him for it. Deg. p. 2. c. 14.

4. But every person is bound of common right, to cut down, and set out the tithes of his own lands. And that it may be done faithfully and without fraud, the laws of the church set title the parson to have notice given him; but by the declarations of the common law, such notice is not necessary. Yet nevertheless, the common law declared a custom of tithing without view to be an absurd custom: And by the statute of the 2 & 3 Ed. 6. c. 13, it is enacted, that at all times whenever, and as often as any prædial tithes shall be due at the tithe of the same, it shall be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or servant, to view and see their said tithes to be justly and truly set forth and severed from the nine parts.

3 5. The
5. The care of the tithes, as to waste or spoiling, after severance, rests upon the parson, and not upon the owner of the land. For it seemeth, that the parson is at his peril to take notice of the tithes being set out; and so it hath been declared, that altho' the parishioner ought de jure to reap the corn, yet he is not bound to guard the tithes of the parson. Gib. 689.

6. But after the tithes are set forth, he may of common right come himself, or his servants, and spread abroad, dry and stack his corn, hay or the like, in any convenient place or places upon the ground where the same grew, till it be sufficiently weathered and fit to be carried into the barn. But he must not take a longer time for the doing thereof, than what is convenient and necessary; and what shall be deemed a convenient and necessary time, the law doth not nor can define; for the quantity of the corn or hay, and the weather, in this case are to be considered; and what shall be in this and all other cases of like nature be said to be a reasonable and convenient time, is to be determined by the jury, if the point come in issue triable by a jury; but if it come to be determined upon a demurrer, or other matter of law, the judges of the court where the cause depends are to resolve the same. Deg. p. 2. c. 14. Str. 245.

7. And it shall lawful quietly to take and carry the same away. And if any person carry away his corn or hay, or his other prædial tithes, before the tithe thereof be set forth; or willingly withdraw his tithes of the same or of such other things whereof prædial tithes ought to be paid; and if any person do flop or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take, and carry away their tithes as is above said; he shall forfeit double value, with costs; to be recovered in the ecclesiastical court. 2 & 3 Ed. 6. c. 13. f. 2.

And he may carry his tithes from the ground where they grew, either by the common way, or any such way as the owner of the land useth to carry away his nine parts. But if there are more ways than one, and the question is, which is the right way; this is cognizable in the temporal court. Deg. p. 2. c. 14.

And if the owner of the foil, after he hath duly set forth his tithes, will stop up the ways, and not suffer the parson to carry away his tithes, or to spread, dry, and stack them upon the land; this is no good setting forth of his tithes without fraud within the statute: but the parson may have an action upon the said statute, and may recover the treble value; or may have an action upon the
the case for such disturbance, as it seemeth; or he may, if he will break open the gate or fence which hinders him, and carry away his tithes. *Deg.* p. 2. c. 14.

8. But in this he must be cautious, that he commit no riot, nor break any gate, rails, lock, or hedges more than necessarily he must for his passage. *Deg.* p. 2. c. 14.

And when he comes with his carts, teams, or other carriages, to carry away his tithes; he must not suffer his horses or oxen to eat and depasture the grasses growing in the grounds where the tithes arise, much less the corn there growing or cut: but if his cattle (as cannot be avoided) do in their passage, against the will of the drivers, here and there snatch some of the grasses, this is excusable. *Deg.* p. 2. c. 14.

9. It seems, that if tithes set forth remain too long upon the land, the owner of the soil may take them damage feant; but then, if he be sued for them, in order to justify he must set forth how long they had remained before he took them; and when they shall be said to remain too long is triable by the jury. *Wat.* c. 54.

Or an action upon the case will lie against the parson for his negligence in this behalf: But no action in such case will lie, unless the parishioner hath duly set forth his tithes, and hath also given notice to the parson that they are so set forth. *Deg.* p. 2. c. 14. *L. Raym.* 187.

But the occupier of the ground cannot put in his cattle, and destroy the corn or other tithe; for that is to make himself a judge, what shall be deemed a convenient time for taking it away: but the court and jury, upon an action brought, are to determine of the reasonableness of the time, and of the recompence to be made for the injury sustained. *L. Raym.* 189.

VII. Tithes how to be recovered.

1. That tithes may not be lost to the successors, it is incumbent injoined by a constitution of archbishop Winchelsey, that the rectors and vicars of churches, who respecting the fear or favour of men more than the fear of God, shall not demand their tithes with effect, shall be suspended, until they pay half a mark of silver to the archdeacon for their disobedience. *Lind.* 191.

2. The
2. The general rule is, that the owner of the nine parts is to be sued for the tenth. But this rule admits of divers exceptions: As,

First, If a parishioner let his ground or herbage, it is said, that the parson may sue either the owner of the ground, or the owner of the cattle, at his election, for the tithe; if the custom be not against it. *God. 413.*

But in the case of *Fisher* and *Lemen*, where cattle were depastured occasionally in another man's ground; it was agreed by the whole court of exchequer, that the owner of the land, and not the owner of the cattle, was to pay the tithes: And baron Page said, that as to what had been said, that the demand might be either against occupier or agifter, that could not be; for the same duty could not arise in two different persons at the same time. *Viner. Difmes. L. a.*

So, If hay be put into ricks on the ground, and after sold; the buyer cannot be sued for the tithe, but the seller may, in case the tithe thereof was not paid before. *God. 412.*

But if one sells underwood standing, or corn or grass on the ground; the buyer, and not the seller, shall pay the tithes. *Bob. 158.*

But if any part thereof be cut before the sale, the seller must answer the tithe thereof. *Bob. 159.*

So where one sells sheep, whereof the parson is to have a rate tithe; the seller, and not the buyer, must pay the tithe for them. *Bob. 158.*

So if one that is owner of a coppice or wood, do cut it down, and fell it all together; in this case the seller, and not the buyer, must answer for the tithes. *Bob. 159.*

If cattle or other goods tithable be pawned or pledged; it is said, that he to whom they are pledged must pay tithe of them. *Bob. 159.*

But if a man deliver cattle or goods to one, to be re-delivered to him; he himself, and not the person to whom they are delivered, must pay the tithe for them. *Bob. 159.*

If a parishioner die before he pay his tithes; his executor, if he hath assents, must pay them. *Bob. 159.*

3. By the 2 & 3 Ed. 6. c. 13. Every person who shall have any beasts or other cattle tithable, going feeding or depasturing in any waste or common ground, whereof the parish is not certainly known, shall pay tithes for the increase of the said cattle, so going in the said waste or common, to the parson, vicar, proprietor, portionary, owner, or
or other their farmers or deputies, of the parish, hamlet, own, or other place, where the owner of the said cattle inhabiteth or dwelleth. \( f. 3 \).

4. In theaxon times, tithes were recoverable in the county court, where the bishop or his deputy, and the sherriff, did fit as co-ordinate judges, there being at that time no separate court of ordinary ecclesiastical jurisdiction. Recoverable in the spiritual court; by the canon law, and by divers statutes.

5. By a constitution of archbishop Winchelsea: Forasmuch as many are found, who are not willing freely to pay their tithes; we do ordain, that the parishioners be admonished once, twice, and thrice to pay their tithes to god and the church. And if they do not amend, they shall be suspended from the entrance of the church, and so at last be compelled to pay their tithes by confession ecclesiastical, if it shall be necessary. And if they shall desire a relaxation or absolution of the said suspension, they shall be remitted to the ordinary of the place to be absolved and punished in due manner. Lind. 191.

By the statute of circumstpecte agatis, 13 Ed. 1. st. 4. The king to his judges sendeth greeting: Use your selves circumstpectly in all matters concerning the clergy, not punishing them if they hold plea in court christian, in the case where a parson doth demand of his parishioners oblations or tithes due and accustomed: In which case, the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

Due and accustomed Debitas vel confuetas: By this act, lord Coke says, modus decimandi and real composition are established [perhaps he had better have said, distinguished; for both of them were established long enough before this act:] for hereby tithes are divided into two parts, viz. tithes due, which is the tenth part; and tithes accustomed, which is a duty personal due by custom and usance to the parson in satisfaction of tithes, as a yearly sum of money, or other duty. And these are here called tithes accustomed; and for this modus decimandi the parson may sue in court christian, and is warranted by this act. 2 Infl. 490.

By the statute of articuli cleri, 9 Ed. 2. st. 1. c. 1. Whereas laymen do purchase prohibitions generally upon tithes, obventions, oblations, mortuaries; the king doth answer to this article, that in tithes, oblations, obventions, mortuaries (when they are propounded under these names) the king's prohibition shall hold no place, altho' for the long withholding of the same
the money may be esteemed at a sum certain. But if a clerk, or a religious man, do sell his tithes being gathered in his barn, or otherwise, to any man for money, if the money be demanded before a spiritual judge, the king's prohibition shall lie; for by the sale, the spiritual goods are made temporal, and the tithes turned into chattels.

By the 18 Ed. 3. st. 3. c. 7. Whereas writs of scire facias have been granted to warn prelates, religious, and other clerks, to answer dismes in our chancery, and to show if they have any things, or can anything say, wherefore such dismes ought not to be restored to the said demandants, and to answer as well to us as to the party to such dismes; such writs from henceforth shall not be granted, and the process hanging upon such writs shall be annulled and repealed, and the parties dismissed from the secular judges of such manner of pleas.

Writs of scire facias] This is a writ, where one hath recovered debts or damages in the king's courts, and saith not for execution within a year and a day; after which he shall have this writ, to warn the party; who coming not, or saying nothing to stay execution, a writ of scire facias goes, commanding the sheriff to levy the debts or damages, of his goods. Terms of the law.

To warn prelates, religious, and other clerks] This scire facias was not brought against the poffeffors of the land for subtraction of tithes, but against the prelates or other clerks, which took the tithes after they were severed. Commissions out of the chancery were directed to certain persons, giving them authority to inquire, whether such a spiritual person ought to have tithes of such lands; whereupon inquisitions were taken and returned; and if it were found for the spiritual person, upon this record he might have a scire facias against any prelate, religious, or other clerk, that took them after severance. 2 Inl. 640.

By the 1 R. 2. c. 13. The prelates and clergy of this realm do greatly complain them, for that the people of holy church, pursuing in the spiritual court for their tithes and their other things, which of right ought and of old times were wont to pertain to the same spiritual court; and that the judges of holy church, having cognizance in such causes, and other persons thereof meddilling according to the law, be maliciously and unduly for this cause indicted, imprisoned, and by secular power horribly oppressed, and also infirned with violence by oaths and
grievous obligations and many other means unduly compelled to
defend and cease utterly of the things aforesaid, against the liber-
ties and franchises of holy church: Wherefore it is assented,
that all such obligations made or to be made by durefs or violence
shall be of no value. And as to those that by malice do procure
such indictments, and to be the same indictors, after the same
indictors be so acquit; such procurers shall suffer a year's impris-
onment, and restore to the parties their damages, and shall ne-
verthelesse make a grievous fine unto the king. And the justices
of affize, or other justices, before whom such indictors shall be
acquit, shall have power to inquire of such procurers and in-
dictors, and duly to punisb them according to their desert.

By the 1 R. 2. c. 14. At what time that any person of
the holy church be drawn in plea in the secular court, for his
own tithes taken by the name of goods taken away; and he which
is so drawn in plea maketh an exception, or alledged, that the
substance and suit of the busines is only upon tithes due of right
and of possession to his church or other his benefice: in such case
the general averment shall not be taken, without shewing specially
how the same was his lay chattel.

By the 27 H. 8. c. 20. when by the noise of the dissolu-
tion of monasteries in this parliament, laymen took oc-
casion upon trifling pretences to withdraw their tithes, it
was enacted as followeth: Forasmuch as divers evil disposed
persons, inhabited in sundry counties cities towns and places of this
realm, having no respect to their duties to almighty god, but against
right and good conscience having attempted to subtract and with-
hold in some places the whole and in some places great part of
their tithes and oblations, as well personal as prudial, due unto
god and holy church; and pursuing such their detestable enor-
mities and injuries, have attempted in late time past to disobey
and contemn the process laws and decrees of the ecclesiastical courts
of this realm, in more temerarious and large manner than be-
fore this time hath been seen: for reformation of which said
injuries, and for unity and peace to be preserved amongst the
king's subjects of this realm, our sovereign lord the king, being
supreme head on earth (under god) of the church of England,
willing the spiritual rights and duties of that church to be pre-
served, continued and maintained, hath ordained and enacted by
authority of this present parliament, That every of his subjects
of this realm, according to the ecclesiastical laws and ordinances
of his church of England, and after the laudable uses and cus-
toms of the parish or other place where he dwellth or occupieth,
shall yield and pay his tithes and offerings and other duties of holy
church;
church; and that for such subtractions of any the said tithes and offerings or other duties, the parson vicar curate or other party in that behalf grieved, may by due process of the king's ecclesiastical laws of the church of England, convenst the person offending, before bis ordinary or other competent judge of this realm having authority to hear and determine the right of tithes, as also to compel the same person offending to do and yield his duty in that behalf: And in case the ordinary of the diocese or bis commissary, or the archdeacon or bis official, or any other competent judge aforesaid, for any contempt customary disobedience or other misdemeanor of the party defendant, shall make information and request to any of the king's most honourable council, or to the justices of the peace of the place where such offender dwelleth, to assist and aid the same ordinary commissary archdeacon official or judge, to order or reform any such person in any cause before reheard; that then he of the king's said honourable council, or such two justices of the peace (whereof one to be of the quorum), to whom such information or request shall be made, shall have power to attach or cause to be attached the person against whom such information or request shall be made, and to commit him to ward, there to remain without bail or mainprize, until he shall have found sufficient surety to be bound by recognizance or otherwise before the king's said counsellor or justice of the peace, or any other like counsellor or justice of the peace, to the use of our said lord the king, to give due obedience to the process proceedings decrees and sentences of the ecclesiastical court of this realm wherein such suit or matter for the premises shall depend or be; and that every of the king's said counsellors, or two justices of the peace whereas the one to be of the quorum as is aforesaid, shall have power to take and record such recognizances and obligations. f. 1.

Provided, that this shall not extend to any inhabitant of the city of London, concerning any tithes offering or other ecclesiastical duty, grown and due to be paid within the said city; because there is another order made for the payment of tithes and other duties within the said city. f. 2.

Provided also, that all persons, being parties to any such suit, may have their lawful action demand or prosecution, appeals, prohibitions, and all other their lawful defences and remedies in every such suit, according to the said ecclesiastical laws, and laws and statutes of this realm, in as ample manner as they might have had if this act had not been made f. 3.

Shall have power to attend] In the case of K. and Sambee, H. 9 17. when several quakers had been committed upon
Lithes.

upon this Statute, it was alledged, that the Jurisdiction of the spiritual court was taken away by the Act of Parliament which gives the Parson a remedy to recover such tithes by distress, by warrant of a justice of the peace: But by the court, the said Act seems only to be an accumulative remedy, and not to repeal the former Act of the 27 H. 8. L. Raym. 323.

By the 32 H. 8. c. 7. (which was also made upon occasion of the dissolution of monasteries, and which was chiefly intended to enable laymen, that by the dissolution had estates or interests in parsonages, or vicarages improper, or otherwise in tithes, to sue for subtraction of tithes in the ecclesiastical courts,) it is enacted as followeth: Where divers persons inhabiting in sundry countries and places of this realm, not regarding their duties to Almighty God and to the king our sovereign lord, but in few years past more contemptuously and commonly profaning to offend and infringe the good and wholesome laws of this realm and gracious commandments of our sovereign lord, than in times past hath been seen or known, have not letted to substra and withdraw the lawful and accustomed tithes of corn hay pasturages and other sort of tithes and oblations, commonly due to the owners proprietaries and possessors of the parsonages vicarages and other ecclesiastical places within this realm; being the more encouraged thereto, for that divers of the king's subjects, being lay persons, having parsonages vicarages and tithes to them, and their heirs, or to the heirs of their bodies, or for term of life or years, cannot by the order and course of the ecclesiastical laws of this realm sue in any ecclesiastical court for the wrongful withholding and detaining of the said tithes or other duties, nor can by the order of the common laws of this realm have any due remedy against any person, his heirs or assigns, that wrongfully detaineth or withholdeth the same; by occasion whereof much controversy suit and variance is like to ensue among the king's subjects, to the great damage and decay of many of them, if convenient and speedy remedy be not provided: It is therefore enacted, that all persons of this realm, of what estate degree or condition soever they be, shall fully truly and effectually divide set-out yield or pay, all and singular tithes and offerings aforesaid, according to the lawful customs and usages of parishes and places, where such tithes or duties shall arise or become due; and if any person, of his ungodly and perverse will, shall detain and withhold any of the said tithes or offerings or any part thereof, then the person or persons, being ecclesiastical, or lay, having cause to demand the said tithes or offerings, being thereby wronged or
grieved, shall and may convene the person so offending, before the ordinary, his commissary, or other competent minister or lawful judge of the place where such wrong shall be done, according to the ecclesiastical laws; and in every such cause or matter of suit, the same ordinary or other judge, having the parties or their lawful procurators before him, shall proceed to the examination hearing and determination of every such cause or matter, ordinarily or summarily, according to the course and process of the said ecclesiastical laws, and thereupon give sentence accordingly. f. 1, 2.

And if any of the parties shall appeal from the sentence, order, and definitive judgment of the said ordinary or other competent judge as aforesaid; then the same judge shall, upon such appellation made, adjudge to the other party the reasonable costs of his suit therein before expended; and shall compel the same party appellant to satisfy and pay the same costs so adjudged, by compulsory process and censures of the said laws ecclesiastical; taking surety of the other party to whom such costs shall be adjudged and paid, to restore the same costs to the party appellant, if afterwards the principal cause of that suit of appeal shall be adjudged against the same party to whom the same costs shall be yielded: And so, every ordinary or other competent judge ecclesiastical shall adjudge costs to the other party, upon every appeal to be made in any suit or cause of subtraction or detention of any tithes or offerings, or in any other suit to be made concerning the duty of such tithes or offerings. f. 3.

And if any person, after such sentence definitive given against him, shall obstinately and wilfully refuse to pay his tithes or duties, or such sums of money so adjudged, wherein he shall be condemned for the same; it shall be lawful for two justices of the peace for the same shire, whereof one to be of the quorum, upon information certificate or complaint to them made in writing by the said ecclesiastical judge that gave the same sentence, to cause the same party so refusing to be attached and committed to the next gaol, and there to remain without bail or mainprize, till he shall have found sufficient sureties to be bound by recognizance or otherwize, before the same justices, to the use of our lord the king, to perform the said definitive sentence and judgment. f. 4.

Provided, that no person shall be sued or otherwize compelled to pay any tithes, for any manors lands tenements or other hereditaments, which by the laws or statutes of this realm are discharged or not chargeable with the payment of any such tithes. f. 5.

Provided also, that this shall not in any wise bind the inhabitants of the city of London and suburbs of the same, to pay their
their tithes and offerings within the same city and suburbs, otherwise than they ought to have done before. f. 6.

And in all cases where any person shall have any estate of inheritance, freehold, term, right, or interest in any parsonage, vicarage, portion, pension, tithes, oblations, or other ecclesiastical or spiritual profit, which shall be made temporal or admitted to be in temporal hands and lay yses and profits by the laws or statutes of this realm, shall be devised deforced wronged or otherwise kept or put from their lawful inheritance, estate, seisin, possession, occupation, term, right, or interest therein, by any other person claiming to have interest in or title to the same; the person so devised deforced or wrongfully kept or put out, his heirs, his wife, and such other to whom such injury and wrong shall be done, may have their remedy in the king's temporal courts, or other temporal courts, as the case shall require, for the recovery or obtaining of the same, by writs original of precipe quod reddat, affize of novel disseisin, mortdancetor, quod ei deforcat, writs of dower, or other writs original, as the case shall require, to be devised and granted in the king's court of chancery, in like manner and form as they might have had for lands tenements or other hereditaments in such manner to be demanded: and writs of covenant and other writs for fines to be levied, and all other assurances to be had of the same, shall be granted in the said chancery, according as hath been used for fines to be levied and assurance to be had of lands tenements or other hereditaments. Provided, that this shall not give any remedy, cause of action or suit, in the courts temporal, against any person who shall refuse to set out his tithes, or shall withhold or refuse to pay his tithes or offerings; but that in all such cases the party, being ecclesiastical or lay, having cause to demand or have the said tithes or offerings, and thereby wronged or grieved, shall have his remedy for the same in the spiritual courts, according to the ordinance in the first part of this act mentioned, and not otherwise. f. 7, 8.

6. By the 2 & 3 Ed. 6. c. 13. the aforesaid acts of Recovery of treble value in the the 27 H. 8. c. 20. and the 32 H. 8. c. 7. shall stand in full force: And moreover, it is further enacted as followeth; viz. All persons shall truly and justly, without fraud or guile, divide set out yield and pay all manner of the pradial tithes, in their proper kind, as they arise and happen, in such manner and form as hath been of right yielded and paid within forty years next before the making of this act, or of right or custom ought to have been paid; and no person shall take or carry away any such or like tithes, which have been yielded or paid within the said forty years, or of right ought.
to have been paid, in the place or places titheable of the same, before he hath justly divided or set forth for the tithe thereof the tenth part of the same, or otherwise agreed for the same tithes with the parson, vicar, or other owner proprietary, or farmer of the same tithes; under the pain of forfeiture of treble value of the tithes so taken or carried away.

Truly and justly, without fraud or guile] In the case of Heale and Sprat, T. 44 Eliz. In a prohibition: The case was, Heale did set out his prædial tithes, and divided them justly from the nine parts, and soon after carried the same away. Sprat sued for a subtraction of the same in the ecclesiastical court. Heale pleaded that he had set them out, as above. Whereunto Sprat said, that presently after his setting out, he carried the same away, to the defrauding of the statute. And it was adjudged, that this was fraud and guile within this act, albeit he did justly divide the same within the letter of this law. It was further resolved, that if the owner of the corn before severance grant the same to another, of intent that the grantee should take away the same, to the end to defraud the parson of his tithe; this is fraud and guile within this statute. 2 Inst. 649.

Prædial tithes] This branch extends only to prædial tithes. Thus in the case of Booth and Southwaike, E. 1 Ja. In debt upon this statute by the parson of the church, for not setting forth of the tithes of cheese, calves, lambs, cherries, and pears, to have the treble value; the defendant pleaded nihil debet, and it was found against him. And it was moved in arrest of judgment, that the said tithes of cheese, or calves, and lambs were not prædial tithes, and therefore not within this branch of the statute; and this act is penal, and shall not be taken by equity. Which was allowed by the whole court. 2 Inst. 649.

Within forty years next before the making of this act] This time of forty years is here set down, because forty years in the ecclesiastical court about tithes make a prescription. 2 Inst. 649. 1 Ought. 263.

Or of right or custom ought to have been paid] The sense of these words of right ought to have been paid, is of tithes to be yielded in specie within forty years; and the sense of the words of right or custom, is, by rightful custom de modo decimandi. 2 Inst. 650.
Under the pain of forfeiture of treble value of the tithes so taken or carried away. This branch doth not give the forfeiture to any person in certain; and therefore it was pretended, that the forfeiture should be given to the king: And thereupon, the attorney general, H. 29 Eliz. did exhibit an information in the exchequer, against one Wood a parson of Iclington in the county of Cambridge, for this treble forfeiture, for carrying away his tithes before they were justly divided. The defendant pleaded not guilty; and by a jury at the bar he was found guilty; and in arrest of judgment it was moved, that in this case the forfeiture was not given to the king, for that the words of the act be, under the pain of forfeiture of treble value of the tithes so taken away: and whenever a forfeiture is given against him that doth dispossess the owner of his property, as here he doth of his tithes, there the forfeiture is given to the party grieved or dispossessed; and the rather for that this is an additional law, and made for the benefit of the proprietor of the tithes. And so it was adjudged by Manwood and the whole court of exchequer. And this was the first leading case that was adjudged upon this point; and ever since, it hath been received for law, that the party interested in the tithes shall in an action of debt recover the treble value. 1 Inf. 159. 2 Inf. 650.

And it is to be observed, that the treble value only, and not the tithes themselves, nor any satisfaction for them, may be recovered in the temporal court: that being out of the jurisdiction of those courts, and wholly in the spiritual court. Which is the reason why in all suits upon this statute, the action is not laid for subtraction of tithes but for a contempt of the statute in not setting them out. And being a contempt, the action dies with him who committed the contempt; and doth not lie against his executor. Gibs. 697. 1 Vern. 60.

And it hath been held, that an action grounded on this statute, for not setting forth of tithes, is not within the statute of limitations; that statute not extending to actions grounded on acts of parliament: therefore the plaintiff is not by law confined to six years, or to any other time certain, within which to bring his action. Wait. 8. 58.

Thus, in the case of Marston and Chepole, E. 1726; on a bill by a lay impropriator for tithes in the court of exchequer, for about twenty four years; the defendant, as to such part of the bill as prayed discovery and relief for any time before within six years next before filing the bill
bill or serving the subpoena, pleaded the statute of limitations, and that he did not promise to make any satisfaction for any tithes before the said six years; but it was over-ruled by the court; because the defendant, as to tithes, is only in the nature of a receiver or bailiff for the plaintiff; in which case the statute of limitations doth not operate. *Bunb. 213.*

If a jury give a verdict for the plaintiff, they must find the real value of the tithes, which shall be trebled by the court; as if the jury find the real and single value to be twenty pounds, they ought to give the plaintiff only so much, and the court shall treble it, and make that sum given by the jury to be sixty pounds, which is the treble value. But if the issue be upon the custom of tithing, or any other collateral point, the jury then need not to find any value of the tithes; for that in such case the defendant shall pay the value expressed by the plaintiff in his declaration: because by the collateral matter pleaded in bar, the value of the tithes set forth in the declaration is confessed. Therefore in all actions brought upon this statute, if the defendant plead any collateral matter in bar of the action, he must take the value of the tithes mentioned in the declaration by protestation; that is, he must by the form of a protestation aver, that the tithes were not of that value as is declared; otherwise he will be charged with the value the plaintiff hath by his declaration set upon them. And the same law is said to be, if judgment be given for the plaintiff by *nihil dicit, non sum informatus*, or upon demurrer. *Wats. c. 58.*

And neither damages nor costs can be recovered with the treble value; because the statute hath not expressly given them: except that by the statute of the 8 & 9 *W. c. 11.* it is enacted, that in all actions of debt upon the statute for not setting forth of tithes, wherein the single value or damage found by the jury shall not exceed the sum of twenty pounds; the plaintiff obtaining judgment, or any award of execution after plea pleaded or demurrer joined therein, shall recover his costs of suit; and if the plaintiff shall become non-suit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs. *f. 3.*

7. *By the aforesaid statute of the 2 & 3 Ed. 6. c. 13.*

At all times whenever, and as often as any praedial tithes shall be due at the tithing of the same; it shall be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or servant, to view and see their said tithes to be justly and truly set forth and severed from the nine parts; and the...
fame quietly to take and carry away: and if any person carry away his corn or hay, or his other prædia! tithes, before the tithes thereof be set forth; or willingly withdraw his tithes of the fame, or of such other things whereof prædial tithes ought to be paid; or do stop or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take, and carry away their tithes as is above said; by reason whereof the said tithes or tenth is lost, impaired or hurt: then upon due proof thereof made before the spiritual judge, or any other judge to whom heretofore he might have made complaint; the party so carrying away, withdrawing, letting, or stopping, shall pay the double value of the tenth or tithes so taken, lost, withdrawn, or carried away, over and besides the costs charges and expences of the suit in the same: The same to be recovered before the ecclesiastical judge, according to the king's ecclesiastical laws. § 2.

Provided, that no person shall be sued or otherwise compelled to yield give or pay any manner of tithes, for any manors, lands, tenements, or hereditaments, which by the laws and statutes of this realm, or by any privilege or prescription, are not chargeable with the payment of any such tithes, or that be discharged by any composition real. § 4.

Shall pay the double value] The reason why the double value is by this branch to be recovered in the ecclesiastical court, where by the former branch the parson at the common law shall recover the treble, is, for that in the ecclesiastical court he shall recover the tithes themselves: and therefore the value recovered in the ecclesiastical court is equivalent with the treble forfeiture at the common law. 2 Inf. 650.

And the double value, together with the statute, ought to be expressly mentioned in the libel: but yet the libel must be so ordered, as not to be grounded directly upon the statute for more than double value; for if the single damages, that is, the value of the tithes, be also grounded upon it, this will be interpreted a suing in the spiritual court for treble value; and a prohibition will lie. Godb. 245. Gibbs. 607.

Over and besides the costs, charges, and expences] So as the suit in the ecclesiastical court is more advantageous, than the suit for the treble forfeiture at the common law. For at the common he shall recover no costs; but he shall recover in the ecclesiastical court his costs, charges, and expences. 2 Inf. 651.

8. And if any person do subtract or withdraw any manner of tithes, obventions, profits, commodities, or other duties (before-mentioned), or any part of them, contrary to the true meaning of

Manner of suing for tithes in the ecclesiastical court.
Lithes.

of this act, or of any other act heretofore made; the party so subtracting or withdrawing the same may be convicted and fined in the king’s ecclesiastical court, by the party from whom the same shall be subtracted or withdrawn; to the intent the king’s ecclesiastical judge may hear and determine the same, according to the king’s ecclesiastical laws: And it shall not be lawful to the parson, vicar, proprietor, owner, or other their farmers or deputies, contrary to this act, to convene or sue such withholder of tithes, obventions, and other duties aforesaid, before any other judge than ecclesiastical. 2 & 3 Ed. 6. c. 13. f. 13.

And if any archbishop, bishop, chancellor, or other judge ecclesiastical, give any sentence in the aforesaid causes of tithes, obventions, profits, emoluments, and other duties aforesaid, or in any of them (and no appeal or prohibition hanging), and the party condemned do not obey the said sentence; it shall be lawful to every such judge ecclesiastical, to excommunicate the said party so as aforesaid condemned and disobeying: In which sentence of excommunication, if the said party excommunicate wilfully stand and endure still excommunicate by the space of forty days next after, upon denunciation and publication thereof in the parish church or the place or parish where the party is excommunicate is dwelling or most abiding; the said judge ecclesiastical may then at his pleasure signify to the king in his court of chancery, of the state and condition of the said party so excommunicate, and thereupon require process de excommunicato capiendo to be awarded against every such person as hath been so excommunicate. f. 13.

And if the party in such case shall sue for a prohibition; he shall, before any prohibition granted, deliver to some of the justices or judge of the court where he demandeth prohibition, a true copy of the libel, subscribed by his hand; and under the copy of the said libel shall be written the suggestion wherefore he demandeth the prohibition: And in case the said suggestion, by two honest and sufficient witnesses at least, be not proved true in the court where the said prohibition shall be so granted, within six months next following after the said prohibition shall be so granted and awarded; then the party that is letted or hindered of his suit in the ecclesiastical court by such prohibition, shall upon his request and suit, without delay, have a consultation granted by the same court; and shall also recover double costs and damages, against the party that so pursueth the prohibition, to be assigned or assessed by the same court, for which costs and damages the party may have an action of debt. f. 14.

Provided, that nothing herein shall extend to give any minister or judge ecclesiastical, any jurisdiction to hold plea of any matter cause or thing, contrary to the statute of Westminster 2. c. 5.
2. c. 5. the statutes of artifici, circumspecte agatis, sylva cedua, the treaty de regia prohibione, nor against the statute of 1 Ed. 3. c. 10; nor to hold plea in any matter, whereof the king's court of right ought to have jurisdiction.

f. 15.

S. 13. May be convented] In the case of Machin and Molton; E. 11 W: It was moved for the discharge of a rule by which a prohibition was granted unless cause shewed, to the consistory court of the archbishop of York; where Molton, rector of the church of South Collingham in the diocefe of York, preferred a libel against Machin for subtraction of tithes. And the motion for the prohibition was grounded upon a suggestion, that Machin lived within the diocefe of Lincoln, and therefore ought not to be cited out of the diocefe where he lived, by the 23 H. 8. c. 9. And the cause which was shewed to the court to discharge the rule was, because Machin had lands within the diocefe of York, namely, in the parish of South Collingham; for the tithes of corn growing upon which lands, Molton libelled in the consistory court of York; and when the citation was served, Machin was there, tho' he lived generally within the diocefe of Lincoln. And by Holt chief justice; if a man lives within the diocefe of A, and occupies lands in the diocefe of B, if he subtracts tithes in B, he may be cited and sued there; and it is not within the said statute: for when he occupies lands in B, that makes him an inhabitant there, and out of the intent of the statute; and by the statute of the 32 H. 8. c. 7.f.

2. the suit for withholding of tithes in express words is appointed to be, before the ordinary of the place where the wrong was done. L. Raym. 452, 534.

Or the place or parish] It seemeth that the words should be, of the place or parish.

S. 14. By two honest and sufficient witnesses at least] This clause was made in favour of the clergy, for proof to be made by witnesses; which they had not at the common law. But if the suggestion be in the negative, as if the proprietary of a parsonage improper; sue for tithes, and the cause of the suggestion be, that the parsonage is not improper; or if a parson sue for tithes of lands in his parish, and the party sue for a prohibition for that the land lieth not in that parish, or that the parson that sueth for tithes was not indited, or any the like cause in the negative of any matter of fact; he shall not produce any witnesses by force of this branch, because a negative cannot be proved; and therefore a prohibition upon causes in the negative
negative remains as it was at the common law. 2 Inf. 662.

Proved true] It is sufficient in this case that enough is proved, upon which to ground a prohibition, tho' the suggestion be not shewn to be strictly and wholly true. So where the suggestion was for twenty acres of pasture and as many acres of wood in lieu of tithes, and proof was only made of the wood; or where the suggestion was for wool and lamb, and the witnesses only proved as to the lamb; or for a hundred acres, when there were only sixty; or for twenty shillings by way of modus, where the sum was forty shillings: in these cases, the proofs were adjudged to be sufficient, because enough was proved to shew, that the court Christian ought not to hold plea thereof. But if proof is neither made of the modus laid, nor of any other modus; then the suggestion is not proved. Gibs. 699.

As to the clearness of the evidence, it is sufficient in this case, if the witnesses do declare as to the matter of the suggestion, that they believe it, or have known it so, or have heard it, or that there is a common fame of it. Gibs. 699.

Within six months] If there is no certainty in the first proof, it cannot be supplied by good proof after the six months; but if good proof is made within the time, it may be certified after the time. Gibs. 700.

Six months] That is, six calendar months; and not to be reckoned by twenty eight days to the month. 2 Salk. 554.

Six months next following] Which must be computed from the test of the writ; and not six months in the term time only, but the vacation shall be included as part of the time. 2 Salk. 554. L. Raym. 1172.

Have a consultation granted] After which, the party may have a new prohibition upon the same libel; inasmuch as the statute of the 50 Ed. 3, against prohibition after consultation, extends not to those consultations for defect of proof within six months, but only to consultations which are granted upon the matter of the suggestion. Gibs. 700.

S. 15. Contrary to the statute of Westminister the second] Concerning the writ of Indicavit, given by that statute. 2 Inf. 663.

The statutes of articii cleri, curcumpecte agatis, sylva cæduna] All which, with respect unto tithes, are specified in this title.

The


Suits for small tithes before justices of the peace.

And in such complaint, the said justices shall summon in writing under their hands and seals, by reasonable warning, every such person against whom such complaint shall be made; and after his appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, the said justices shall proceed to hear and determine the said complaint, and upon the proofs, evidences and testimonies produced before them, shall in writing under their hands and seals adjudge the cause, and give such reasonable allowance and compensation for such tithes oblations and compositions so subtracted or withheld as they shall judge to be just and reasonable, and also such costs and charges not exceeding ten shillings as upon the merits of the cause shall appear just. f. 2.

And if any person shall refuse or neglect, for the space of ten days after notice given, to pay or satisfy any such sum of money, as upon such complaint and proceeding shall by two such justices be adjudged as aforesaid; in every such case the constables
Lithes.

bles and churchwardens of the said parish, or one of them, shall by warrant under the hands and seals of the said justices to them directed, distress the goods and chattels of the party so refusing or neglecting as aforesaid; and after detaining them not less than four days, nor more than eight, 27 G. 2. c. 20. in case the said sum so adjudged together with reasonable charges of making and detaining the said distresses be not tendered or paid by the said party in the mean time, shall make publick sale thereof, and pay to the party complaining so much of the money arising by such sale, as may satisfy the said sum so adjudged, retaining to themselves such reasonable charges for making and keeping the said distresses as the said justices shall think fit [and also deducting their reasonable charges of selling the said distresses; returning the overplus (if any shall be) to the owner upon demand. 27 G. 2. c. 20.] f. 3.

And the said justices shall have power to administer an oath. f. 4.

Provided, that this act shall not extend to any tithes, oblations, payments, or obventions, within the city of London or liberties thereof; nor to any other city or town corporate where the same are settled by act of parliament. f. 5.

And no complaint shall be heard and determined by the said justices, unless the complaint shall be made within two years next after the times that the same tithes, oblations, obventions, and compositions did become due. f. 6.

Provided also, that any person finding himself aggrieved by any judgment to be given by such two justices, may appeal to the next general quarter sessions to be held for that county or other division; and the justices there shall proceed finally to hear and determine the matter; and to reverse the said judgment, if they shall see cause; and if they shall find cause to confirm the said judgment, they shall declare the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable. And no proceedings or judgment had by virtue of this act, shall be removed or superseded by any writ of certiorari or other writ out of his majesty's courts at Westminster or any other court, unless the title of such tithes oblations or obventions shall be in question. f. 7.

Provided, that where any person complained of for subtracting or withholding any small tithes or other duties aforesaid, shall before the justices to whom such complaint is made, subscribe upon any prescription, composition, or modus decimandi, agreement, or title, whereby he ought to be freed from payment of the said tithes or other dues in question, and deliver the
the same in writing to the said justices subscribed by him; and shall then give to the party complaining, reasonable and sufficient security to the satisfaction of the said justices, to pay all such costs and damages, as upon a trial at law to be had for that purpose in any of his majesty's courts having cognizance of that matter shall be given against him, in case the said prescription composition or modus decimandi shall not upon the said trial be allowed; in that case, the said justices shall forbear to give any judgment in the matter, and then and in such case, the party complaining shall be at liberty to prosecute such person for his said subtraction, in any other court where he might have sued before the making of this act. f. 8.

And every person who shall by virtue of this act obtain any judgment, or against whom any judgment shall be obtained, before any justices of the peace out of sessions, for small tithes oblations obventions or compositions, shall cause or procure the said judgment to be inrolled at the next general quarter session to be held for the said county or other division; and the clerk of the peace shall upon tender thereof inroll the same, and shall not receive for the inrolment of any one judgment any fee or reward exceeding one shilling; and the judgment so inrolled, and satisfaction made by paying the sum adjudged, shall be a good bar to conclude the said rectors vicars and other persons, from any other remedy for the said small tithes oblations obventions or compositions, for which the said judgment was obtained. f. 9.

And if any person against whom such judgment shall be had, shall remove out of the county or other division before the levying of the sum adjudged; the justices who made the judgment, or one of them, shall certify the same under hand and seal to any justice of such other county or place wherein the said person shall be an inhabitant; who shall, by warrant under his hand and seal, to be directed to the constables or churchwardens of the place or one of them, levy the sum so adjudged to be levied, upon the goods and chattels of such person, as fully as the said other justices might have done, if he had not removed as aforesaid. f. 10.

And the justices who shall bear and determine any of the matters aforesaid, shall have power to give costs, not exceeding ten shillings, to the party prosecuted, if they shall find the complaint to be false and vexatious; to be levied in manner and form aforesaid. f. 12.

And if any person shall be sued for any thing done in the execution of this act, and the plaintiff in such suit shall discontinue his action, or be non-suitor, or a verdict pass against him; such person shall recover double costs. f. 13.

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Provided,
Provided, that any clerk or other person, who shall begin any suit for recovery of small tithes, oblations, or obventions, not exceeding the value of forty shillings, in his majesty's court of exchequer, or in any of the ecclesiastical courts, shall have no benefit by this act for the same matter for which he hath so sued. c. 14.

10. By the 7 & 8 W. c. 34. Whereas by reason of a pretended scruple of conscience, quakers do refuse to pay tithes and church rates; it is enacted, that where any quaker shall refuse to pay or compound for his great or small tithes, or to pay any church rates, it shall be lawful for the two next justices of the peace of the same county (other than such justice as is patron of the church or chapel whence the said tithes shall arise, or any ways interested in the said tithes), upon the complaint of any parson, vicar, farmer, or proprietor of tithes, churchwarden or churchwardens, who ought to have receive or collect the same, by warrant under their bands and seals, to convene before them such quaker or quakers neglecting or refusing to pay or compound for the same, and to examine upon oath (or affirmation, in case of the examination of a quaker) the truth and justice of the said complaint, and to ascertain and state what is due and payable; and by order under their hands and seals to direct and appoint the payment thereof, so as the sum ordered do not exceed ten pounds; and upon refusal to pay according to such order, it shall be lawful for anyone of the said justices, by warrant under his band and seal, to levy the same by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or them, the necessary charges of distressing being thereout first deducted and allowed by the said justice. And any person finding himself aggrieved by any judgment given by such two justices, may appeal to the next general quarter sessions to be held for the county, riding, city, liberty, or town corporate; and the justices there shall proceed finally to hear and determine the matter, and to reverse the said judgment, if they see cause; and if they shall find cause to continue the said judgment, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable. And no proceedings or judgment had by virtue of this act, shall be removed or superseded by any writ of certiorari or other writ out of his majesty's courts at Westminster, or any other court whatsoever, unless the title of such tithes shall be in question. c. 4.

Provided, that in case any such appeal be made as aforesaid, no warrant of distress shall be granted, until after such appeal be determined. c. 5.
And by the 1 G. ft. 2. c. 6. The like remedy shall be had against any quaker or quakers, for the recovering of any tithes or rates, or any customary or other rights, dues or payments, belonging to any church or chapel, which of right by law and custom ought to be paid, for the stipend or maintenance of any minister or curate officiating in any church or chapel; and any two or more justices of the peace of the same county or place (other than such justice as is patron of any church or chapel or any ways interested in the said tithes), upon complaint of any parson, vicar, curate, farmer or proprietor of such tithes, or any churchwarden or chapelwarden, or other person who ought to have receive or collect any such tithes rates dues or payments as aforesaid, are authorized and required to summon in writing under their bands and seals, by reasonable warning, such quaker or quakers, against whom such complaint shall be made; and after his or their appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, to proceed to hear and determine the said complaint; and to make such order therein as in the aforesaid act is limited; and also to order such costs and charges as they shall think reasonable, not exceeding ten shillings, as upon the merits of the cause shall appear just: which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter sessions, with such costs and remedy for the same; and shall not be removed into any other court, unless the titles of such tithes dues or payments shall be in question; in like manner as by the aforesaid act is limited and provided. 1. 2.

And by the 27 G. 2. c. 20. which directseth in what manner distresses shall be made by justices of the peace, and which gives to the justices power to order the goods distrained to be kept for a certain time before they be sold, and gives power also to the officers making the distress to deduct their reasonable charges, it is provided, that the same shall not extend to alter any provisions relating to distresses to be made for the payment of tithes and church rates by the people called quakers, contained in the acts of the 7 & 8 W. c. 34. and the 1 G. ft. 2. c. 6.

In the case of the King against Roger Wakefield and others, H. 31 G. 2. An order of two justices was made against three persons being quakers, on the 1 G. ft. 2. c. 6. for the payment of certain customary payments, called Chapel Salary, to the reverend Mr Smith, curate of the chapel of Burnifide in Westmorland, where the said quakers had estates chargeable with the said payments. On appeal to the feiffions, the order was confirmed. The quakers
quakers moved for a certiorari, and tho' caufe was shewn against the issuing of it, yet a certiorari was granted; and the return was filed, and exceptions were taken to it, and argued at the bar. Lord Mansfield chief justice delivered the opinion of the court: That the certiorari ought not to have issued at all; that the return should be taken off the file, and all proceedings thereon fall to the ground, and that the orders of the justices and seffions should be remanded. The order of the justices (he observed) was made on the statute of the 1 G. fl. 2. c. 6, which extends the 7 & 8 W. c. 34. concerning tithes, to all customary payments due to clergymen. These two acts are to be taken together as one law. They were intended for the benefit of the quakers; to prevent their being liable to expensive suits for refusing to pay tithes upon scruples of conscience, by giving an apparent compulsory method of levying tithes and other customary payments in a summary way. This proceeding cannot be removed by certiorari, unless the title to customary payments comes in question: And on this proviso the present question arises. The affidavits read on the original motion for the certiorari set forth, that before the justices and the seffions the defendants controverted the right of the curate to these customary payments. The affidavits against the certiorari say, that these payments have been paid from time immemorial; that no inhabitant ever disputed it but these quakers; that they have enjoyed the messuages but a few years, and that the former inhabitants never disputed the right of the parson. Taking these affidavits together, it is clear that the quakers controverted the right to the customary only as all as quakers controvert the payment of all dues to all clergymen upon scruple of conscience, which is the case directly within the act, and the proceeding must therefore follow the directions of the act. The quakers themselves have acknowledged the the jurisdiction of the justices, by appealing to the seffions; whereas had they intended to dispute the title to these customary payments, they would at first have removed the order of two justices by certiorari. The only difficulty remaining arises from the return being already filed. But there are several instances of this court's superseding a certiorari after the return filed: As where an order of justices is removed, and it appears upon the return, that the parties had a right to appeal to the seffions, and that the time for appealing was not expired when the certiorari issued; in such a case, this court supersedes the writ of certiorari.

quia
Tithes.

quia impovide emanavit. The same must be done in the present case.

II. Tithes being set out, or severed from the nine parts, become lay chattels. Upon which foundation, when the tithe of corn was set out in sheaves, and the parson would not take it, but prayed remedy in the spiritual court, a prohibition was granted. And when a sequestration was prayed in the temporal courts, of tithes not set out, the right of which was in controversy, the party was told, his request had been reasonable, if they had been severed from the nine parts. For the same reason, if after severance they are carried away by a stranger, the remedy is in the temporal courts; but otherwise if they are carried away by the owner: because his setting them out, in order to carry them away, is a fraudulent setting out, Gibs. 689.

And judgment of præmunire hath been given against a man for suing in the spiritual court for tithes, alleging the same to be severed from the nine parts. 3 Infl. 121.

12. Notwithstanding all these statutes, tithes, (if of any considerable value) are now generally sued for in the courts of equity by English bill, and for the most part in the exchequer chamber; but not upon the statute for treble or double value: for there can be no suit in equity for the recovery of the double or treble value. Wood b. 2. c. 2. Vin. Diffines. M. b.

13. If the incumbent dieth, his executor may recover the tithes which became due in the testator's life time; but he is not intitled to the treble value upon the statute. Vern. 60.

M. 1730. In the exchequer: A rector agreed with his parochioner for tithes, for a certain sum payable yearly at Michaelmas. The rector died about a month before Michaelmas. The agreement determining by the death of the parson, the successor shall be intituled to tithes in kind only from the death, and the executor of the last incumbent to a proportion according to the agreement till the time of the testator's death: and this is by an equitable construction. Bund. 294.

By the statute of the 11 G. 2. c. 19. Whereas, where a lessor or landlord having only an estate for life in the lands, tenements or hereditaments demised, happens to die before or on the day on which any rent is reserved or made payable, such rent or any part thereof is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion
reversion intilled thereto, any other than for the use and occupation of such lands tenements or hereditaments from the death of the tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying any thing for the same: for remedy thereof, it is enacted, that where any tenant for life shall happen to die, before or on the day on which any rent was reserved or made payable, upon any demise or lease of any lands tenements or hereditaments, which determined on the death of such tenant for life; the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such under-tenant of such lands tenements or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid; making all just allowances, or a proportionable part thereof respectively. § 15.

VIII. Tithes in London.

In the several acts of the 27 H. 8. c. 20. 32 H. 8. c. 7. 2 & 3 Ed. 6. c. 13. and 7 & 8 W. c. 6. there is a provifio, that nothing therein shall extend to the city of London, concerning any tithe, offering, or other ecclesiastical duty, grown and due to be paid within the said city; because there is another order made, for the payment of tithes and other duties there.

Which order is as followeth: It appeareth by the records of the city of London, that Niger bishop of London, in the 13 Hen. 3. made a constitution, in confirmation of an ancient custom formerly used time out of mind, that provision should be made for the ministers of London in this manner; that is to say, that he who paid the rent of 20 s for his house wherein he dwelt, should offer every sunday, and every apostle's day whereof the evening was fasted, one halfpenny; and he that paid but 10 s. rent yearly, should offer but one farthing: all which amounted to the proportion of 2 s 6 d in the pound; for there were 52 sundays, and 8 apostles days the vigils of which were fasted. And if it chanced that one of the apostles days fell upon a sunday, then there was but one halfpenny or farthing paid; so that sometimes it fell out to be somewhat less than 2s 6d in the pound.

And it appears by the book cafes in the reign of Edward the third, that the provision made for the ministers of
of London, was by offerings and obventions; albeit the particulars are not assigned there, but must be understood according to the former ordinance made by Niger. And the payment of 2s 6d in the pound continuing until the 13 Ric. 2. Arundel archbishop of Canterbury made an explanation of Niger's constitution, and thence upon the citizens of London two and twenty more saint days than were intended by the constitution made by Niger; whereby the offerings now amounted unto the sum of 3s 5d in the pound. And there being some reluctance by the citizens of London, pope Innocent in the 5 Hen. 4. granted his bull, whereby Arundel's explanation was confirmed. Which confirmation (notwithstanding the difference between the ministers and citizens of London, about those two and twenty saint days which were added to their number) pope Nicholas also by his bull did confirm in the 31 Hen. 6.

Against which the citizens of London did contend with so high a hand, that they caused a record to be made, whereby it might appear in future ages, that the order of explanation made by the archbishop of Canterbury was done without calling the citizens of London unto it, or any consent given by them. And it was branded by them as an order surreptitiously and abruptly obtained, and therefore more fit to have the name of a destructive than a declaratory order.

Nevertheless, notwithstanding this contention, the payment seemeth to have been most usually made according to the rate of 3s 5d in the pound. For Lindwood who writ in the time of Hen. 6. in his provincial constitutions debating the question, whether the merchants and artificers of the city of London ought to pay any tithes, sheweth, that the citizens of London, by an ancient ordinance observed in the said city, are bound every lord's day and every principal feast day either of the apostles or others whole vigils are fasted, to pay one farthing for every 10s rent that they paid for their houses wherein they dwelt.

And in the 36 Hen. 6. there was a composition made between the citizens of London, and the ministers, that a payment should be made by the citizens according to the rate of 3s 5d in the pound: and if any house were kept in the proper hand of the owner, or were demised without reservation of any rent; then the churchwardens of the parish where the houses were, should set down a rate

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of the houses, and according to that rate payment should be made.

After which composition so made, there was an act of common council made in the 14 Edw. 4. in London, for the confirmation of the bull granted by pope Nicholas.

But the citizens of London finding that by the common laws of the realm, no bull of the pope nor arbitrary composition, nor act of common council could bind them in such things as concerned their inheritance; they still wrestled with the clergy, and would not condescend to the payment of the said 11d. by the year, obtruded upon them by the addition of the two and twenty sainl days: whereupon there was a submission to the lord chancellor and divers others of the privy council in the time of king Hen. 8; and they made an order for the payment of tithes according to the rate of 28 9d in the pound; which order was first promulgated by a proclamation made, and afterwards established by an act of parliament made in the 27 H. 8. c. 21, intitled, "An act for the payment of " tithes within the city and suburbs of London, until " another law and order shall be made and published for " the same." Privilegia Londini. 456, 7, 8.

And ten years after this another law and order was made, by the statute of the 37 H. 8. c. 12. as followeth: Whereof late time, contention strife and variance hath risen and grown, within the city of London and the liberties of the same, between the parsons vicars and curates of the said city and the citizens and inhabitants of the same, for and concerning the payment of tithes, oblations and other duties within the said city and liberties; for appeasing whereof, a certain order and decree was made thereof, by the most reverend father in god Thomas archbishop of Canterbury, Thomas Audley, knight, lord Audley of Walden, and then lord chancellor of England now deceased, and other of the king's most honourable privy council; and also the king's letters patents and proclamation was made thereof, and directed to the said citizens concerning the same; whereupon it was after enacted in the parliament holden at Westminster by prorogation the fourth day of February in the twenty-seventh year of the king's most noble reign, that the citizens and inhabitants of the same city should, at Easter then next following, pay unto the curates of the said city and suburbs, all such and like sums of money, for tithes, oblations and other duties, as the said citizens and inha-
bitants by the order of the said late lord chancellor, and other the king's most honourable council, and the king's said proclamation, paid or ought to have paid by force and virtue of the said order at Easter in the year 1535; and the same payments so to continue from time to time, until such time as any other order or law should be made by the king and the two and thirty persons by the king to be named, as well for the full establishment concerning the payment of all tithes oblations and other duties of the inhabitants within the said city suburbs and liberties of the same, as for the making of other ecclesiastical laws of this realm of England; and that every person denying to pay as is aforesaid, should by the commandment of the mayor of London for the time being, be committed to prison, there to remain until such time as he should have agreed with the curate for his said tithes oblations and other duties as is aforesaid, as in the said act more plainly appeareth: since which act, divers variances contentions and strifes are newly risen and grown, between the said parsons vicars and curates and the said citizens and inhabitants, touching the payment of the tithes oblations and other duties, by reason of certain words and terms specified in the said order, which are not so plainly and fully set forth, as is thought convenient and meet to be; for appealing whereof, as well the said parsons vicars and curates, as the said citizens and inhabitants, have compromised and put themselves to stand to such order and decree touching the premises, as shall be made by the said right reverend father in god and the several other persons here under mentioned, for a final end and conclusion to be had and made touching the premises for ever: And to the intent to have a full peace and perfect end between the said parties, their heirs and successors, touching the said tithes oblations and other duties for ever, it is enacted, that such end order and direction as shall be made by the forenamed archbishop and the several other persons as aforesaid, or any six of them, before the first day of March next ensuing, concerning the payment of tithes oblations and other duties within the said city and the liberties thereof, and enrolled of record in the high court of chancery, shall stand remain and be as an act of parliament, and shall bind as well all citizens and inhabitants of the said city and liberties for the time being, as the said parsons vicars curates and their successors for ever, according to the effect purport and intent of the said order and decree so to be made and enrolled;
rolled; and that every person denying to pay any of his tithes oblations or other duties, contrary to the said decree so to be made, shall by the commandment of the mayor of London for the time being, and in his default or negligence by the lord chancellor of England for the time being, be committed to prison, there to remain till such time as he hath agreed with the curate for the same.

Which decree made in pursuance hereof is as followeth: viz.

(1) As touching the payment of tithes in the city of London, and the liberties of the same, It is fully ordered and decreed by the most reverend father in God Thomas archbishop of Canterbury primate and metropolitan of England, Thomas lord Wrothely lord chancellor of England, William lord St John president of his majesty's council and lord great master of his majesty's household, John lord Ruffel lord privy seal, Edward earl of Hertford lord great chamberlain of England, John viscount Little high admiral of England, Richard Lifter knight chief justice of England, and Roger Cholmely knight chief baron of his majesty's exchequer, this twenty-fourth day of February in the year of our lord 1545, according to the statute in such case lately provided, that the citizens and inhabitants of the said city and liberties thereof for the time being, shall yearly without fraud or covin for ever pay their tithes to the persons vicars and curates of the said city and their successors for the time being, after the rate hereafter following that is to wit, Of every 10s rent by the year, of all houses shops warehouses cellars stables and every of them, within the said city and liberty thereof, 16d 1/4. And of every 20s rent by the year 2s. 9d; and so above the rent of 20s by the year, ascending from 10s to 10s, according to the rate aforesaid.

(2) Item, that where any lease is or shall be made of any dwelling house or houses, shops, warehouses, cellars, or stables, or any of them, by fraud or covin, reserving less rent than hath been accustomed or is; or where any such lease shall be made without any rent reserved upon the same, by reason of any fine or income paid beforehand, or by any other fraud or covin; in every such case, the tenant or farmer shall pay for his tithes of the same, after the rate aforesaid, according to the quality of such rents as the same were last letten for without fraud or covin before the making of such lease.

(3) Item, that every owner or inheritor of any dwelling house or houses, shops, warehouses, cellars, or stables, inhabiting or occupying the same himself, shall pay after such rate, accord-
ing to the quantity of such yearly rent as the same was at that time for, without fraud or covin.

(4) Item, if any person hath taken, or hereafter shall take any manor or mansion place by lease, and the taker thereof, his executors or assigns, doth or shall inhabit in any part thereof, and hath within eight years last past before this order, or hereafter shall let out the residue of the same; in such case, the principal farmer or farmers or first taker or takers thereof, their executors or assigns, shall pay their tithes after the rate above said, according to the quantity of their rent by the year.

(5) And if any person shall take divers mansion houses, shops, warehouses, cellars, or stables, in one lease, and shall let out one or more of them, and shall keep one or more in his own hands, and inhabit in the same; the said taker, and his executors or assigns, shall pay their tithes after the rate above said, according to the quantity of the yearly rent of such manor house or houses retained in his own hands; and his assigns of the residue of the said mansion house or houses, shall pay their tithes after the rate above said, according to the quantity of their yearly rents.

(6) Item, if such farmer or farmers, or his or their assigns, of any mansion house or houses, warehouses, shops, cellars, or stables, hath at any time within eight years last past, or shall hereafter let over all the said mansion house or houses contained in his or their lease, to one or more persons; the inhabitants, lessees, or occupiers thereof, shall pay their tithes after the rate of such rents as the inhabitants, lessees, or occupiers, and their assigns have been or shall be charged withal, without fraud or covin.

(7) Item, if any dwelling house within eight years last past was, or hereafter shall be converted into a warehouse, storehouse, or such like; or if a warehouse, storehouse, or such like, within the said eight years was, or hereafter shall be converted into a dwelling house; the occupiers thereof shall pay tithes for the same, after the rate above declared of mansion house rents.

(8) Item, that where any person shall demise any dyehouse or brewhouse, with implements convenient and necessary for dying or brewing, reserving a rent upon the same, as well in respect of such implements, as in respect of such dyehouse or brewhouse; the tenant shall pay his tithes after such rate as is above said, the third penny abated: And every principal house or houses, with key or wharfs, having any crane or gibet belonging to the same, shall pay after the like rate of their rents as is aforesaid, the third penny abated; and other wharfs belonging
Lithes.

longing to houses having no crane or gibet, shall pay for tithes as shall be paid for mansion houses in form aforesaid.

(9) Item, that where any mansion house with a shop, stable, warehouse, wharf with crane, timber yard, teinter yard, or garden belonging to the same, or as parcel of the same, is or shall be occupied together; if the same be hereafter severed or divided, or at any time within eight years last past were severed or divided, then the farmers or occupiers thereof shall pay such tithes as is aforesaid for such shops, stables, warehouses, wharf with crane, timber yard, teinter yard, or garden aforesaid, so severed or divided, after the rate of their several rents thereupon reserved.

(10) Item, that the said citizens and inhabitants shall pay their tithes quarterly, that is to say, at the feast of Easter, the nativity of St John Baptist, the feast of St Michael the archangel, and the nativity of our Lord, by even portions.

(11) Item, that every householder paying 10s. rent or above, shall for him or her self be discharged of their four offering days; but his wife, children, servants, or others of their family, taking the rites of the church at Easter, shall pay 2d. for their four offering days yearly.

(12) Provided always, and it is decreed, that if any house which hath been or hereafter shall be letten for 10s. rent by the year, or more, be or hath been at any time within eight years last past, or hereafter shall be divided and leased, into small parcels or members, yielding less yearly rent than 10s. by the year; the owner, if he shall dwell in any part of such house, or else the principal lessee (if the owner do not dwell in some part of the same) shall pay for the tithes after such rate of rent, as the same house was accustomed to be letten for before such division or dividing into parts or members: And the under farmers and lessees to be discharged of all tithes for such small parcels parts or members, rented at less yearly rent than 10s. by the year without fraud or covin, paying 2d. yearly for four offering days.

(13) Provided alway, and it is decreed, that for such gardens as appertain not to any mansion house, and which any person holdeth in his hands for pleasure, or to his own use; if any person holding the same shall pay no tithes for the same. But if any person which shall hold any such garden, containing half an acre or more, shall make any yearly profit thereof by way of sale; he shall pay tithes for the same after such rate of his rent, as is herein first above specified.

(14) Provided also, that if any such gardens now being of the quantity of half an acre or more, be hereafter by fraud or covin
tovin divided into less quantities; then to pay according to the
rate abovesaid.

(15) Provided always, that this decree shall not extend to
the houses of great men, or noblemen, or noblewomen, kept in
their own hands, and not letten for any rent, which in times
past have paid no tithes, so long as they shall so continue unlet-
ten: nor to any halls of crafts or companies, so long as they be
kept unletten, so that the same halls in times past have not used
to pay any tithes.

(16) Provided always, and it is decreed, that this present
order and decree shall not in any wise extend to bind or charge
any steads, stables, cellars, timber yards, nor teinter yards, which
were never parcel of any dwelling house, nor belonging to any
dwelling house, nor have been accustomed to pay any tithes;
but that the said citizens and inhabitants shall thereof be
quit of payment of any tithes, as it hath been used and ac-
customed.

(17) Provided also, and it is decreed, that where less sum
than after 16 d in the 10 s rent, or less sum than 2s 9 d
in the 20 s rent, hath been accustomed to be paid for tithes;
in such places the said citizens and inhabitants, shall pay but on-
ly after such rate as hath been accustomed.

(18) Item, it is also decreed, that if any variance contro-
versy or strife shall arise in the said city for non-payment of any
tithes; or if any variance or doubt shall arise upon the true
knowledge or division of any rent or tithes, within the liberties
of the said city, or of any extent or assenment thereof; or if
any doubt arise upon any other thing contained within this de-
cree; then upon complaint made by the party grieved, to the
mayor of the city of London for the time being, the said may-
or by the advice of counsel shall call the parties before him, and
make a final end in the same, with costs to be awarded by
the discretion of the said mayor and his assistans, according to
the intent and purport of this present decree.

(19) And if the mayor shall not make an end thereof within
two months after complaint to him made, or if any of the said
parties find themselves aggrieved; the lord chancellor of Eng-
land for the time being, upon complaint to him made within
three months then next following, shall make an end in the same,
with such costs to be awarded as shall be thought convenient,
according to the intent and purport of the said decree.

(20) Provided always, that if any person take any tenue-
ment for a less rent than it was accustomed to be letten for,
by reason of great ruin or decay, burning, or such like occasions
or misfortunes; such person, his executors or assigns, shall pay
tithes.
tithes only after the rate of the rent reserved in his lease, and none otherwise, as long as the same lease shall endure.

(1) Of every 10s rent by the year] It was resolved, in the case of Dr Meadhouse against Dr Taylor, that a rent for half a year, and afterwards for another half year, is a yearly rent, or a rent by the year, within the meaning of this decree. Nov. 130.

Of all houses] In the case of Green and Piper, E. 34 Eliz. it was suggested, in order to hinder the granting of a consultation, that the house belonged to a priory which was discharged of tithes by bull. But the court replied, that by the common law houses paid no tithes; and the right in the present case subsisting immediately upon this statute, which lays them upon every house, no exemption shall be allowed, but to such houses as are specially exempted by the statute itself. Cro. Eliz. 276.

(2) By reason of any fine or income paid beforehand, or by any other fraud or covin] M. 5 Ja. Between Skidmorc and Eire plaintiffs in a prohibition against Bell parson of St Michael Queen-hithe in London; the case was this: The said parson libelled before the chancellor of London for the tithes of an house called the boar's head in Bread-street in the said parish, the ancient farm rent whereof was 5l at the time of the said decree and after; and that of late a new lease was made of the said house, rendring the rent of 5l a year, and over that a great income or fine which was covenanted and agreed to be paid yearly at the same day; that the rent was paid as a sum in gros, and that so much rent might have been reserved for the said house; as the rent reserved and the sum in gros amounted unto; which reservation and covenant were made to defraud the said parson of the tithes of the true rent of the said house, which to him did appertain by the purport and true intention of the said decree. And in this case four points were resolved by the court: 1. If so much rent be reserved, as was accustomed to be paid at making of the said decree (whatsoever fine or income be paid), that the parson can aver no covin; for the words of the decree be, "Where any lease is or shall be made of any dwelling house by fraud or covin, in reserving less rent than hath been accustomed": so as if the accustomed rent be reserved, no fraud can be alleged; for the fraud by
the decree is, when leffer rent than was then accustomed to be paid is referved, or if no rent at all be referved, then tithe shall be paid according to the rent that then was laft before referved to be paid. So as the decree confifteth upon four points; firft, where the accustomed rent was referved; Secondly, where the rent was increafed, there the tithes fhould be paid according to the whole rent; thirdly, where leffer rent was referved; and fourthly, where no rent was referved, but had been formerly referved. And this act and decree were very beneficial for the clergy of London, in respect of that which they had before. And the defendant in his libel confeftheth, that the accustomed rent was referved; and therefore no caufe of suit. 2. It was resolved, that as to fuch houses as were never letten to farm, but inhabited by the owner, this is caufus omiffus, and fhall pay no tithes by force of the decree. 3. It was resolved, that where the decree faith, "Where no rent is referved by reafon of any "fine or income paid beforehand"; albeit no fine or income be paid in that caufe, yet if no rent be referved, the parfon fhall have his tithes according to the decree; for that is put but for an an example or caufe, why no rent is referved; and whether any fine or income were paid or no, is not material as to the parfon. 4. It was resolved, that the parfon could not fute for the faid tithes in the eccle{ia{fical court; for that the act and decree that raised and gave these kinds of tithes, did limit and appoint how and before whom the fame fhould be fued for, and did appoint new and fpecial judges to hear and determine the fame. And in the end it was awarded, that the prohibition fhould ftand. 2 Inft. 660.

(18) Upon complaint made] In the aforesaid caufe of Dr Meadhouse and Dr Taylor, it was held by the court, that the complaint ought to be in writing (and not by word of mouth only), in nature of a monftrans de droit declaring all the title. Noy 130.

To the Mayor] Pursuant to the aforesaid caufe of Skidmore and Eire, divers prohibitions have been granted (when tithes were fued for upon this statute) to the eccle{fia{fical court. But when it was pleaded in the year 1658, that the right of tithes, upon the foundation of this act, could not be cognizable in the exchequer, by reafon of the provision therein made for determining of all controversy before the lord mayor or lord chancellor; it was
was held clearly by the barons, that the court of exchequer had jurisdiction in the cause, because the act had no negative words in it. — Upon which Dr Gibbon shrewdly observes, that if affirmative words will not exclude the temporal court, it may be hard to find a good reason, why (according to the foregoing judgments) they should exclude the spiritual court. Gib. 1223.

After all, notwithstanding this settlement by the aforesaid decree, divers prescriptions for the payment of lesser rates than the parsons might require by the said settlement (as to pay 10s. for the tithe of an house, altho' the rent thereof was 40l a year or more) have been gained and allowed. But upon the occasion of the fire of London in the year 1666, as to the churches and houses thereby consumed, another statute was made, namely, the 22 & 23 C. 2. c. 15. which is as followeth: Whereas the tithes in the city of London were levied and paid with great inequality, and are since the late dreadful fire there, in the rebuilding of the same, by taking away of some houses, altering the foundations of many, and the new erecting of others, so disordered, that in case they should not for the time to come be reduced to a certainty, many controversies and suits of law might thence arise; it is therefore enacted, that the annual certain tithes of the parishes within the said city and liberties thereof, whose churches have been demolished, or in part consumed by the late fire, and which said parishes by virtue of an act of this present parliament remain and continue single as heretofore they were, or are by the said act annexed or united into one parish respectively, shall be as followeth; that is to say, the annual certain tithes, or sum of money in lieu of tithes,

(1) Of the parish of Alhallows Lombard street 110l.
(2) Of St Bartholomew Exchange — 100l.
(3) Of St Bridget, alias Brides — 120l.
(4) Of St Bennet Finck — 100l.
(5) Of St Michael Crooked-lane — 100l.
(6) Of St Christopher — 120l.
(7) Of St Dionis Back-church — 120l.
(8) Of St Dunstan in the east — 200l.
(9) Of St James Garlick-hythe — 100l.
(10) Of St Michael Cornhill — 140l.
(11) Of St Michael Baslickhaw — 132l. 11s.
(12) Of St Margaret Lothbury — 100l.
(13) Of St Mary Aldermanbury — 150l.
(14) Of St Martin Ludgate — 160l.
(15) Of St Peter Cornhill — 110l.
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<tr>
<th>Number</th>
<th>Description</th>
<th>Year</th>
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<tbody>
<tr>
<td>16)</td>
<td>Of St Stephen Coleman-street</td>
<td>1101</td>
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<tr>
<td>17)</td>
<td>Of St Sepulchre</td>
<td>2001</td>
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<td>18)</td>
<td>Of Alhallows Bread-street, and St John Evangelist</td>
<td>1401</td>
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<td>19)</td>
<td>Of Alhallows the great, and Alhallows the lads</td>
<td>2001</td>
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<td>20)</td>
<td>Of St Alban Wood-street, and St Olaves Silver-street</td>
<td>1701</td>
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<tr>
<td>21)</td>
<td>Of St Anne and Agnes, and St John Zachary</td>
<td>1401</td>
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<tr>
<td>22)</td>
<td>Of St Augustine, and St Faith</td>
<td>1721</td>
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<td>23)</td>
<td>Of St Andrew Wardrobe, and St Anne Black-friars</td>
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<td>Of St Antholin, and St John Baptist</td>
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<td>25)</td>
<td>Of St Bennet Grace-church, and St Leonard Eastcheap</td>
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<td>26)</td>
<td>Of St Bennet Pauls-wharf, and St Peter Pauls wharf</td>
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<td>27)</td>
<td>Of Christ church, and St Leonard Foster-lane</td>
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<td>28)</td>
<td>Of St Edmund the king, and St Nicholas Acons</td>
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<td>29)</td>
<td>Of St George Botolph-lane, and St Botolph Billingsgate</td>
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<td>30)</td>
<td>Of Laurence Jury, and St Magdalen Milk-street</td>
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<td>Of St Magnus, and St Margaret New Fish-street</td>
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<td>Of St Michael Royal, and St Martin Vintry</td>
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<td>Of St Matthew Friday-street, and St Peter Cheap</td>
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<td>Of St Margaret Pattons, and St Gabriel Fen-church</td>
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<td>36)</td>
<td>Of St Mary Woolnoth, and St Mary Woolchurch</td>
<td>1601</td>
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<td>37)</td>
<td>Of St Clement Eastcheap, and St Martin Orgars</td>
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<td>38)</td>
<td>Of St Mary Ab-church, and St Lawrence Pountney</td>
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<td>39)</td>
<td>Of St Mary Aldermary, and St Thomas apostle</td>
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<td>40)</td>
<td>Of St Mary le Bow, St Pancras Super-lane, and Alhallows Honey-lane</td>
<td>2001</td>
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<tr>
<td>41)</td>
<td>Of St Mildred Poultry, and St Mary Cole-church</td>
<td>1701</td>
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</tbody>
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(42) Of St Michael Wood-street, and St Mary Staining 100l.
(43) Of St Mildred Bread-street, and St Margaret Moses 130l.
(44) Of St Michael Queenhyth, and Trinity 160l.
(45) Of St Magdalen Old Fish-street, and St Gregory 120l.
(46) Of St Mary Somerset, and St Mary Mounthaw 110l.
(47) Of St Nicholas Coleabby, and St Nicholas Olaves 130l.
(48) Of St Olave Jewry, and St Martin Ironmonger-lane 120l.
(49) Of St Stephen Walbrook, and St Benet Sheerhogg 100l.
(50) Of St Swythin, and St Mary Bothaw 140l.
(51) Of St Vedast, alias Foster's, and St Michael Quern 160l.

f. 2.

Which respective sums of money to be paid in lieu of tithes within the said respective parishes, and assessed as herein after is directed, shall be the respective certain annual maintenance (over and above glebes and perquisites, gifts and bequests to the respective parson vicar and curate of any parish for the time being, or to their successors respectively, or to others for their use) of the said respective parsons vicars and curates, who shall be legally instituted induced and admitted into the respective parishes aforesaid. f. 3.

And for the more equal levying of the same upon the several houses buildings and other hereditaments within the respective parishes, assessments were ordered to be made before July 24, 1671, upon all houses, shops, warehouses, and cellars, wharfs, keys, cranes, waterhouses, tofts of ground (remaining unbuilt), and all other hereditaments whatsoever (except parsonage and vicarage houses), the whole respective sum by this act appointed, or so much of it as is more than what each impropriator is by this act enjoined to allow. f. 4, 5, 6, 7.

And three transcripts of the assessments were to be made; one to be deposited amongst the records of the city, another in the registry of the bishop of London, and another in the parish vestry respectively, for a perpetual memorial thereof. f. 8.

The sums assessed to be paid to the respective parsons vicars and curates, at the four most usual feasts, to wit, at the announcement of the blessed virgin, the nativity of St John Baptist,
Tithe, the feast of St Michael the archangel, and the nativity of our blessed Saviour, or within fourteen days after each of the feasts aforesaid, by equal payments; the respective payments thereof to begin and commence only from such time as the incumbent shall begin to officiate or preach as incumbent. f. 9.

Impropriators shall pay what bona fide they have used and ought to pay to the respective incumbents at any time before the said late fire; the same to be computed as part of the maintenance of such incumbent. f. 10.

And if any inhabitant shall refuse or neglect to pay to the incumbent the sum appointed by him to be paid (the same being lawfully demanded upon the premisses); it shall be lawful for the lord mayor, upon oath to be made before him of such refusal or neglect, to grant out warrants for the officer or person appointed to collect the same, with the assistance of a constable in the day time, to levy the same by distress and sale of the goods of the party so refusing or neglecting; restoring to the owner the overplus over and above the said arrears and the reasonable charges of making such distresses. f. 11.

And if the lord mayor shall refuse or neglect to execute any of the powers to him given by this act; it shall be lawful for the lord chancellor or lord keeper, or two or more of the barons of the exchequer, by warrant under their hands and seals respectively, to do and perform what the said lord mayor might or ought to have done in the premisses. f. 12.

Provided, that no court or judge, ecclesiastical or temporal, shall hold plea of or for any the sum or sums of money due and owing or to be paid by virtue of this act; other than the persons hereby authorized to have cognizance thereof: nor shall it be lawful to or for any person vicar curate or incumbent, to convene or sue any person affixed as aforesaid and refusing or neglecting to pay the same in any court or courts, or before any judge or judges, other than what are authorized and appointed by this act, for the hearing and determining of the same, in manner aforesaid. f. 14.

Provided also, that it shall be lawful for the warden and minor canons of St Paul's, parson and proprietors of the rectory of the parish of St Gregory aforesaid, to receive and enjoy all tithes obligations and duties arising or growing due within the said parish, in as large and beneficial manner, as formerly they have or lawfully might have done. f. 15.

And for the better recovering the sums of money which shall be due according to the directions of this act, and for the levying of arrears where the occupier removes from the premisses, or the houses have stood empty; a decree was made in the year 1713, by Harcourt lord chan-

K k 2
Tithes.

Cellor, assisted by the barons Bury and Price, in the case of Savage and Wood, clerks, against Harding and others. Shaw's Par. L. 45.

For the stipends of the ministers of the fifty new churches, provision is made by the several acts of parliament relating thereunto, to be raised from the duties on coals.

There are moreover several particular statutes for particular churches, in London and elsewhere.

After all, these pecuniary compensations, however reasonable at first, must in process of time become insufficient, as the value of money decreases. And this hath been the case of all modus's; which, at the time of their commencement, were the real value of the tithes. On the other hand, it must be acknowledged, that the payment of tithes in kind is in many respects troublesome and inconvenient. If a method could be established, that the minister should receive an equivalent, durable, and not liable to diminution by the fluctuation of money, the people generally would be desirous to purchase their tithes at the highest supposable estimation; which if employed in a purchase of land, the value thereof would continue in proportion as the tithes would have done, forasmuch as the annual rent of the land will always be according to its produce.

Form of a lease of tithes.

This indenture made the ——— day of ——— in the year ——— between A. B. rector of the parish of ——— in the county of ——— of the one part, and C. D. of ——— in the parish of ——— and county of ——— yeoman, of the other part, Witneseth, that the said A. B. for and in consideration of the rent herein after reserved and contained, Hath demised, granted, and to farm let, and by these presents doth demise, grant, and to farm let, unto the said C. D. his executors, administrators, and assigns, All and all manner of tithes of corn, grain, hay, and herbage, yearly growing increasing or happening within the said parish of ——— and all profits of what kind forever belonging to the parsonage or rectory there: To have, hold, receive, and take all and every the said tithes and profits unto the said C. D. his executors administrators and assigns, from the day of the date of these presents, for and during and unto the full end and term of twenty-one years from thence next ensiving, and fully to be completed; if he the said A. B. shall so long continue rector of the said parish of
Yielding and paying therefore yearly and every year during the said term, unto the said A. B. and his assigns, the rent or sum of —— at and upon the days —— by even and equal portions. Provided always, that if the said rent or any part thereof shall be behind and unpaid by the space of —— days after the days and times appointed and limited for the payment thereof, then this present demise and every thing herein contained shall cease, determine, and be void. And the said C. D. doth for himself, his executors administrators and assigns, and for every of them, covenant promise and grant to and with the said A. B. his executors and administrators, and to and with every of them by these presents, that he the said C. D. his executors administrators or assigns, shall and will from time to time, and at all times during the continuance of this demise, well and truly pay and satisfy the rent aforesaid, at the days and times aforesaid appointed for the payment thereof; and also shall and will pay and discharge all taxes which shall be imposed upon the said demised premises, or in respect thereof, by act of parliament or otherwise. And the said A. B. for himself, his executors and administrators, and every of them, doth covenant promise and grant to and with the said C. D. his executors, administrators, and assigns, and to and with every of them by these presents, that for and under the rents and covenants herein before reserved and contained on the part of the said C. D. his executors administrators or assigns to be paid and performed, he the said C. D. his executors administrators and assigns shall and may have, hold, and enjoy the tithes and premises aforesaid, and every part and parcel thereof during the said term hereby granted, without any let, trouble, molestation, interruption, or denial of him the said A. B. or his assigns, or any other person or persons claiming or to claim by, from, or under him. In witness whereof the parties to these presents have interchangeably set their hands and seals the day and year first abovementioned.

Signed, sealed, and delivered (having been first duly stamped) in the presence of

A. B.  C. D.

E. F.

G. H.

Note, it is said generally in some books, that a verbal lease of tithes is not good. Others say, that tithes may be granted for one year without deed, but no longer. Others distinguish, and say, that a grant of tithes even for one year is not good by way of lease, but may be good by way of sale. Others, to the like purpose, affirm, that if the parson agrees with a parishioner, that such parishioner
parishioner shall keep back his own tithes for a year, this
is a good bargain by way of retainer; but if he grants
to him the tithes of another, tho' it be but for a year,
it is not good unless it be by deed. Cro. Ja. 613. 1 Roll's
And by the several stamp acts, such lease (for whatever term it is made) must be on a 2s. 6d. stamp.

Title for orders. See Ordination.
Toleration. See Dissenters.
Tomb Stones. See Burial.
Translation. See Bishops.
Transubstantiation. See Lord's Supper.
Trees in the church yard. See Church.

Trentals.

TRENTALS, triginta'la, were masses for souls
departed, to be said thirty times in such order as
should be appointed; or for thirty days together; or
otherwise every thirtieth day: according to the direction
of the donor or founder, who instituted a stipend for that
purpose.

Troper.

TROPER, troperium, is the book which contain-
eth the sequences; which were deviations used in
the church, after reading of the epistle. Lindw. 251.

Tunic.

TUNIC, tunica, was the subdeacon's garment,
which he wore in serving the priest at the celebra-
tion of the mass. Lind. 252.

Here endeth the THIRD VOLUME.