

be found at any time without it. By A.S. 26 Feb. 1669, and 23 Jan. 1673, the habit of a dyvour is appointed to be a coat or upper garment, half yellow and half brown, with a party-coloured cap or hood, to be worn on the head; and formerly all decreets of *cessio bonorum* required to bear a clause expressly ordaining the bankrupt to wear this habit; any of his creditors being entitled to imprison him if he were found without it. The A.S. 18 July 1688, contains a more minute description of the habit, and declares, that the Lords will not hereafter dispense with it, unless in the case of innocent misfortunes liquidly libelled and proved. And, finally, by 1696, c. 5, the Lords of Session are prohibited to

dispense with the dyvour's habit, unless, in the process of *cessio bonorum*, the bankrupt's failure through misfortune be libelled, sustained, and proved. In awarding the benefit of *cessio bonorum*, it was the practice, until the passing of the cessio act, 6 & 7 Will. IV. c. 56, to dispense with the habit; and by that statute (§ 18) it is abolished, and the statute 1696, c. 5, repealed. In *Drysdale*, 1752, M. 11781, and *Dick*, 1775, M. 11791, where the bankrupt's losses had arisen from dealing in smuggled goods, the court granted the benefit of cessio, but refused to dispense with the habit. See *Stair*, B. iv. tit. 52, § 34; *More's Notes*, cccxxxvii.; *Ersk.* B. iv. tit. 3, § 27; *Bell's Com.* ii. 471; *Skene*, h. t.

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EARL, or COMES. This title of nobility, according to English authorities, was known amongst the Saxons, and is the most ancient in the English peerage. Formerly, both in England and Scotland, an earl or count appears to have been the governor of a county or province, over which he had the chief jurisdiction. The office was at first held only for life; but William the Conqueror rendered it feudal and hereditary in England, and endowed it with certain fees exigible from the suitors in the Earl's court. Deputies for the earls were afterwards appointed, who were called *Vicecomites* or *sheriffs*; and the earldom itself came to be looked upon not as an office, but as a territorial dignity, which passed along with the land to which it was attached. The dignity of earl, however, like all other titles of honour, is now merely personal, and independent of any territorial property. It is the next dignity to that of marquis, and immediately superior to that of viscount; and as those who were anciently created earls were of the blood royal, the Sovereign, in all formal writings, addresses an earl as "cousin." *Ersk.* B. i. tit. 4, § 1; *Wight on Elections*, 53; *Tomlins' Dict. h. t.* See *Dignities*.

EARNEST, ARRHÆ, or ARLES; is a small sum of money, or part of a larger quantity of any other commodity, given as a corroboration, symbol, or token of the completion of a bargain. Doubts, founded upon some texts of the Roman law, were at one time entertained, whether the giving of earnest did not imply a power to either

party to resile on forfeiting the earnest; but in the law of Scotland it has been long settled, that earnest is to be held merely as evidence of the completion of the contract; and that the party who resiles, besides losing the earnest he has paid, may be compelled to perform his obligation. Where the earnest given bears a considerable proportion to the whole price or consideration, it will be imputed as part of it; but as, in the ordinary case, the earnest is trifling in value, it is presumed to be what is called *dead earnest*, and not taken into account in the reckoning. Earnest is in no case essential to the completion of the bargain; and although, in the case of a sale, earnest perfects the contract and vests the property in the purchaser, yet it does not affect the seller's right to demand the full price before delivery, if credit has not been given, or to stop the goods *in transitu*, in the case of insolvency. Nor does it affect any of the other rights vested in the seller prior to delivery. In hiring domestic servants, it is usual [in some localities] to give earnest or arles; but this is not necessary to the validity of the agreement; for if it have been actually completed by legal consent, it is binding without arles; and where arles have been given, neither party can resile on forfeiting the arles, unless with the consent of the other party. [There may, however, be *locus pœnitentiæ* till arles be given, if such be the uniform and notorious custom of the locality.] See *Stair*, B. i. tit. 14, § 3; *More's Notes*, xcvi.; *Brodie's Supp.* 853; *Ersk.* B. iii. tit. 3, § 5; *Bank.* B. i.

tit. 19, § 20; *Bell's Princ.* § 173; *Hunter's Landlord and Tenant*, i. 362; *Brown on Sale*, 11; [*Fraser on Master and Servant*, 15. See *Master and Servant.*] *Sale. Delivery.*

EASEMENT; the English law term equivalent to the Scotch term *Servitude*. It is defined to be a service or convenience which one neighbour has of another, by charter or prescription, without profit; as a way through his land, a sink, or the like. *Tomlins' Dict. h. t.*; [*Rankine on Land-Ownership*, 343; *Gale on Easements.*]

EAST INDIA COMPANY; a company of merchants incorporated and recognised by sundry acts of parliament, which at one time enjoyed almost the exclusive trade, and a large share in the administration of the government of the British possessions in India. The countries originally comprehended within the exclusive charter of the Company, are described in 9 & 10 Will. III. c. 44, as the "countries, islands, ports, cities, &c., of Asia, Africa, and America, or any of them, beyond the Cape of Good Hope to the Straits of Magellan, where any trade or traffic of merchandise is, or may be used or had." See *Tomlins' Dict.*; where an historical account of the origin of the company, and a systematic arrangement and enumeration of the statutes relating to it, will be found. [By 21 & 22 Vict. c. 106, the government of all the territories in possession of the East India Company was transferred to, and vested in, the Crown.]

EASTER; is the day on which our Saviour's Resurrection is commemorated. Easter-day is always the first Sunday after the full moon, which happens upon or next after the 21st day of March; and if the full moon happen upon a Sunday, Easter-day is the Sunday after. It is not observed as a festival in the Church of Scotland.

EAVES-DROP. A proprietor may build, if he pleases, to the confines of his property, provided the eaves-drop from his building does not fall on the adjoining property. It is enough, however, that the eaves-drop actually falls within the builder's property; and the conterminous proprietor has no right to complain, although the water, following the natural inclination of the ground, should afterwards run into his property. The Roman law required a proprietor who had no servitude *stillicidii*, to place his building two feet and a half within his march. In Scotland there is no express statute on the subject; but by custom, nine inches at the least seem to be necessary for the eaves-drop;

Gariochs, 1769, M. 13178. [The servitude of eaves-drop or stillicide imposes on the servient tenement the burden of receiving the eaves-drop from the dominant tenement.] See *Stair*, B. ii. tit. 7, § 7; *Bank*, B. ii. tit. 7, § 13; *Ersk. B. ii. tit. 9, § 9*; [*Bell's Princ.* §§ 941, 1004; *Rankine on Land-Ownership*, 437.]

EAVES-DROPPERS; persons who listen under the windows or eaves of a house, to disturb the public peace by framing slanderous or mischievous tales. In England, such persons are punishable by fine, and may be compelled to find surety for their good behaviour; and, as this is an offence against the public peace, the English statutes relating to it seem to be extended to Scotland under the general clause in the statute 6 Anne, c. 6; but whether that be the case or not, a nuisance of this description would be reached by the common law of Scotland, both directly and indirectly. See *Blackstone* (1787), iv. 168; *Tait's Just. of Peace*, 382. [Confessions overheard by eaves-dropping are unfavourably regarded as evidence, but are not excluded; *Johnston*, 12th March 1845, 2 Broun, 401; *Dickson on Evidence*, § 348.]

EDICT IN A CONFIRMATION; a writ, [now in disuse,] in the form of a precept by the commissary of the bounds (*i.e.*, by the sheriff as commissary, or the sheriff of Edinburgh, where the parties are forth of the kingdom), ordaining the next-of-kin of a deceased party, and all others having interest, to be cited edictally, to hear executors decerned and confirmed to the defunct. [Such edict was issued on the application of any person interested.] It was executed by a messenger-at-arms, or by an officer of court, on a market-day, at the head burgh of the county where the deceased had his domicile, and at the parish church door on a Sunday, at the dismissal of the congregation. If the deceased was absent from Scotland, *animo remanendi*, the edict was executed in the same manner at the market-cross of Edinburgh, as the *commune forum*, and at the door of the parish church of St Giles; *i.e.*, the High Church of Edinburgh. The *inducie* were in all cases nine days; and it was unnecessary to serve the edict on any one personally, except in the case of a confirmation *ad omnia vel male appretiata*, where the executor already confirmed was personally cited on the edict. [By 21 & 22 Vict. c. 56, § 1, the practice of raising edicts of executry was abolished, and a new procedure substituted. See *Confirmation.*] See *Stair*, B. iii. tit. 8, § 54;

Ersk. B. iii. tit. 9, § 31; Bell's Com. ii. 83; [Menzies' Conv. 485; M. Bell's Conv. ii. 1121; M'Laren on Wills, ii. § 1667.] See also *Executor*.

EDICT NAUTÆ CAUPONES STABULARII See *Nautæ, &c.*

EDICTAL CITATION. In civil causes this form of citation is necessary, where the party cited, although amenable to the courts of this country, is out of Scotland; [and the Judicature Act (6 Geo. IV. c. 120, § 53) provides that "where a person, not having a dwelling-house in Scotland occupied by his family or servants, shall have left his usual place of residence, and have been absent therefrom during the space of forty days, without having left notice where he is to be found in Scotland, he shall be held to be absent from Scotland." The form of edictal citation was much simplified by § 51 of the same act, which directs that it shall be done by delivery of a copy of the citation at the office of the Keeper of Records (now Keeper of Edictal Citations; see 1 & 2 Vict. c. 118, §§ 20-22; A.S. 24 Dec. 1838, § 7). This provision was extended to arrestments by 1 & 2 Vict. c. 114, § 18, and to other proceedings by 13 & 14 Vict. c. 36, § 22. See also A.S. 11 July 1828, 14 June 1841, 9 July 1872. See *Citation*, p. 183 a.] See *Stair, B. i. tit. 18, § 4; Ross's Lect. i. 202, 293, 479; [Ersk. B. i. tit. 2, §§ 16, 18; Campbell on Citation, &c., 29, 339; Shand's Prac. i. 243; Mackay's Prac. i. 398. See also Induciae.]* In criminal prosecutions, [before the Criminal Procedure Act of 1887,] if the accused was not found personally, in addition to leaving a copy of the indictment or criminal letters at his dwelling-place, he was edictally cited at the market-cross of the head burgh of the county where he resided, and a copy left there for him; 1555, c. 33; and in order that such edictal citation might be the more public, the act 1587, c. 85, required that it should be given between the hours of eight a.m. and twelve o'clock noon, "in presence of famous witnesses specially designed." If the accused had no fixed domicile, and could not be found personally, the Court of Justiciary granted a warrant for citing him edictally at the head burgh of the shire, or shires, where he had chiefly resorted; and if he was out of Scotland, special authority was in like manner given for citing him edictally, at the market-cross of Edinburgh, and the pier and shore of Leith on *induciae* of sixty days, the ordinary *induciae* in all criminal cases being fifteen days; *Hume, ii.*

255; *Alison's Prac. 333; [Macdonald, 447. But all such citations are now unnecessary; 50 & 51 Vict. c. 35, § 26. See Criminal Prosecution, p. 261 a.]*

EDINBURGH; the capital of Scotland, and the seat of all the Scottish supreme courts of justice. The market-cross of Edinburgh, and the pier and shore of Leith, are held, *fictione juris*, to be the *communis patria*, and the Court of Session is the *commune forum*, of all Scotchmen resident abroad, and amenable to the courts of this country; *Stair, B. i. tit. 18, § 4; Ersk. B. i. tit. 2, § 18; Ross's Lect. i. 202, 293; ii. 359, 364. See Edictal Citation.* Various acts of the Scotch Parliament were passed for regulating the markets, police, &c., of Edinburgh, most of which have been superseded by more recent police statutes. The act 1698, c. 8, contains many useful regulations concerning the manner of building in this city, and prohibits any new house to be built higher than five storeys above the causeway (*i.e.*, the causeway of the front street). This statute was held to be in force, with respect to property within the old town of Edinburgh, in the case of *Buchan*, 1760, M. 13173; and more recently as to buildings in the suburbs, not within the jurisdiction of the Dean of Guild; *Procurator-fiscal of Edinburgh*, 1789, M. 13187.

[**EDUCATION.** See *Schools*.]

EFFEIRS, or EFFEIRING. This word occurs frequently in Scotch law language, and signifies *corresponding to, or relating to*. The interest effeiring to a particular sum, is the interest corresponding to the sum. "*In form as effeirs*," means, in such form as in law belongs to the thing. Some etymological speculations about the term will be found in *Ross's Lect. i. 52*.

EGYPTIANS. The Egyptians or Gypsies, a distinct race, who sprung from the East, spread over all Europe, and became, from their vagrant and dissolute habits, an intolerable nuisance, have been the object of severe regulations in most of the kingdoms of Europe. In Scotland, they are taken notice of in all the statutes for the punishment of rogues and vagabonds; and, by 1661, c. 38, justices of the peace are empowered to execute the laws against them. By order of Privy Council in June 1603, confirmed by 1609, c. 13, the whole race was ordained to quit Scotland, under the pain of death if they returned; and even the offence of being habit and repute an Egyptian is, by that statute, declared capital. Under the statute

several convictions took place; but the progress of civilisation has mitigated the severity of the law; and the mere fact of being an Egyptian, unless coupled with some other charge, such as of theft, or of idle and disorderly conduct, will not be considered as a legitimate ground of prosecution or of punishment. See *Hume*, i. 471; *Ersk.* B. iv. tit. 4, § 64.

EIK TO A REVERSION. The reverser in a wadset right is the borrower, who, under his right of reversion, is entitled to redeem the wadset; that is, to have the land restored to him on repaying the sum advanced by the wadsetter. An eik, or addition, to a reversion, is a deed granted by the reverser, acknowledging the receipt of a farther sum borrowed from the wadsetter, and declaring that the wadset shall not be redeemable until repayment of the additional loan, as well as the original one. These eiks, although not specially mentioned in the statutes 1469, c. 28, and 1617, c. 16, yet, being additions adjected to the reversion, must be governed by the rules applicable to the reversion itself, of which they make a part, and are therefore real rights effectual against singular successors, if registered according to the directions of the statute 1617, c. 16. *Stair*, B. ii. tit. 10, § 4; *Ersk.* B. ii. tit. 8, § 10; *Bank.* B. ii. tit. 10, § 21; *Ross's Lect.* ii. 339. See *Wadset*.

EIK TO A CONFIRMATION OR TESTAMENT; is an addition to the inventory made up by an executor in his confirmation. When, subsequently to the expediting of a confirmation, any additional effects belonging to the deceased have been discovered, the party who has confirmed may, under authority of the commissary, *eik* those effects to the confirmation. This is done by lodging with the commissary-clerk a note of the additions to be made, whereupon the executor receives an extract, which, according to the former practice, enumerated the articles comprehended in the eik; although a reference, in the extract, to the inventory as recorded in the commissary court books, seems now to be sufficient—the extract stating merely the *summa* in that inventory. See A.S. 21 Feb. 1824. By 4 Geo. IV. c. 98, § 3, every person requiring confirmation must confirm the whole moveable estate of the deceased, known at the time, and make oath thereto; “provided always, that it shall and may be lawful to eik to such confirmation any part of such estate that may afterwards be discovered, provided the

whole of such estate so discovered be added upon oath, as aforesaid,” excepting special assignations, which remain as under 1690, c. 26. Where the executor confirmed appears to have fraudulently omitted, or undervalued, any effects belonging to the deceased, any creditor, or other person interested, may apply to the commissary to be confirmed executor *ad omissa vel male appretiata*. See *Ersk.* B. iii. tit. 9, § 36; *Bank.* B. iii. tit. 8, § 61; [*M. Bell's Conv.* ii. 1128; *Currie's Confirmation of Executors*, 175, 179, 272, 274.] See *Confirmation. Executor*.

EJECTION AND INTRUSION. Ejection is the violent taking possession of lands or houses, by illegally expelling the present possessor; and intrusion is the entry to possession, and the violent detention of the subject, without the consent of the parties interested, or other legal warrant. These delinquencies as to heritage are analogous to spuilzie of moveables; and they give rise to a penal action of ejection and intrusion, for recovering the possession, with the violent profits and damages, according to the pursuer's oath *in litem*. This action can be insisted in by such persons only as were, either by themselves or by their servants or cottars, in possession of the subjects from which they were ejected. Hence, where tenants have been illegally expelled, and the natural occupation seized by an intruder, the tenants are the proper pursuers; and without their consent or concurrence, the landlord cannot insist in the penal action. But, in such a case, even without the tenant's consent, the landlord may pursue the intruder to remove without warning, and to pay the ordinary rent, and any damage which the landlord may have suffered through the illegal act. A tenant who, after the expiration of his lease, and after having been legally warned to remove, continues to possess without the landlord's consent, will be held as a violent possessor, and will be subject to an action of ejection and intrusion, in the same manner as if he had been a stranger. The defender in an action of ejection and intrusion, if he plead any defence not instantly verified, must find caution for the violent profits; 1594, c. 217; A.S. 11 July 1839, § 34. As to the penal consequences or violent profits, this action prescribes in three years after the forcible entry or intrusion; 1579, c. 81; but the injured party may, even after the expiration of the three years, pursue the offender to remove, without warning, and

to pay the ordinary rent and damages. See *Stair*, B. i. tit. 9, § 25; B. iv. tit. 28; *More's Notes*, cccclxxxii.; *Bank*. B. i. tit. 10, § 145; *Ersk.* B. iv. tit. 1, § 15; [B. iii. tit. 7, § 16.] *Jurid. Styles*, 2d edit. iii. 129, 654; *Hunter's Landlord and Tenant*, ii. 196; [*Rankine on Land-Ownership*, 19.] See *Violent Profits*.

EJECTION. Letters of ejection are letters under the royal signet, authorising and commanding the sheriff to eject a tenant, or other possessor of land, who has been decreed to remove, and who has disobeyed a charge to remove, proceeding on letters of horning on the decree. Where the decree of removing is pronounced by a sheriff, he may grant a precept of ejection, directed to his own officers, without the necessity of a previous charge of horning. These letters or precepts of ejection are executed by throwing out of the house some part of the defender's household furniture, and extinguishing his fire. Anciently, where the execution of letters of ejection was forcibly opposed, the Scotch Privy Council was in use to grant letters of fire and sword, authorising the sheriff to call for the assistance of the county to dispossess the party. But by the [more modern] practice, where the execution of any decree or other lawful diligence is opposed by a force which the civil magistrate and his officers are unable to overcome, they may apply for military aid to enforce the execution *manu militari*. In ejecting tenants on the expiration of a lease, the landlord may proceed either under the statute 1555, c. 39, or under the A.S. 14 Dec. 1756. Under the statute, after the legal warning, decree of removing may be obtained either in the Court of Session or before the sheriff. If the decree be taken in the Court of Session, letters of horning must be raised on it; and if the tenant disobey the charge, letters of ejection may follow. If the decree of removing be pronounced by the sheriff, no letters of horning are necessary; and the ejection may proceed at once on the sheriff's precept of ejection. The rule prescribed by the A.S. 1756 is that, where the lease contains an obligation to remove without warning, the landlord may charge the tenant forty days before Whitsunday, on letters of horning raised on the lease, to remove at the stipulated term; and, on producing such horning duly executed to the sheriff, he is authorised within six days after the term of removal, to eject the tenant. Where there is no obligation to

remove in the lease, the landlord, under the A.S., may raise an action of removing before the sheriff; and if that action be called in court forty days before Whitsunday, it is held equivalent to a warning under the statute 1555; and on a decree of removing in that action, a precept of ejection may be obtained, under which the tenant may be ejected within forty-eight hours after the term of removal. The same summary ejection may take place, where the decree of removing proceeds on any of the grounds of irritancy of the lease, mentioned in the A.S. 1756. [A simpler procedure in removings is provided by 16 & 17 Vict. c. 80. See *Removing*. See also *Ersk.* B. ii. tit. 6, § 45; B. iv. tit. 3, § 17; *Bank*. B. ii. tit. 9, § 74; B. iv. tit. 11, § 17; *Bell on Leases*, ii. 66; App. No. 3; *Shand's Prac.* i. 230; ii. 554; *Stair*, B. iv. tit. 38, § 27; tit. 47, § 40; *Ross's Lect.* i. 274;] ii. 510, 535; *Hunter's Landlord and Tenant*, ii. 29; *Jurid. Styles*, iii. 377; [*Rankine on Leases*, 494, 504.]

EJECTMENT; an English law term, signifying an action at law, by which a person ousted and removed from the possession of an estate for years, may recover that possession. *Tomlins' Dict.*; *Ross's Lect.* ii. 553. [Till recently, the term was commonly applied to any action for recovery of land from a wrongful possessor; but such action is now called an action for recovery. *Sweet's Law Dict.*]

ELECTION LAW. Under this general title is comprehended a short account of the provisions and regulations relating to the representation of the nobility and commons of Scotland in the British Parliament. The ancient Parliament of Scotland consisted of the higher clergy and the barons; the latter title including not only the nobility, but every man who held territorial property as the immediate vassal of the Sovereign. It was not until towards the end of the fourteenth century (1372) that members from the royal burghs obtained places in that assembly. At that time the duty of attendance in Parliament was felt to be burdensome; and the acts 1427, c. 102, and 1587, c. 113, and several other old statutes, introduced a system of representation, chiefly as a relief to the lesser barons. Afterwards, when religious dissensions, and the increasing importance of the Commons as a political body, rendered a seat in Parliament more an object of ambition, it became necessary to improve the representative system by various legislative enactments. See 1661,

c. 35, and 1681, c. 21. But while the representation of the Commons was in this state of improvement, the Scottish Parliament lost one of its branches, on the final abolition of prelacy by the act 1689, c. 3. The whole estates of Parliament sat in one house, and voted together as one deliberative body; consequently, the vote of every individual member was of equal weight; for the question seems to have been determined by a majority of the individual votes of the aggregate assembly, and not by the votes of the different estates, as distinct and independent bodies. See *Mackenzie's Obs.* 424. Hence it has been remarked as a result of this peculiarity in the constitution of the Scottish Parliaments, that the aids and subsidies granted to Government did not, as in England, originate with the Commons, but were conferred by the simultaneous act of the whole three estates. Another peculiarity of the Scottish Parliament was the institution called the Lords of the Articles. This was a select committee, composed of a certain number taken from each of the estates of Parliament, and nominated in a separate meeting of the several estates, at the commencement of every Parliament; 1663, c. 1. The Lords of the Articles so chosen, were empowered to arrange and digest the subjects for deliberation, and even to reject altogether such matters as did not appear to them proper to be brought under the consideration of Parliament. This institution was not only made subservient to the undue increase of the influence of the Sovereign, to whom, in effect, it gave the advantage of a negative before debate; but in other respects the Lords of the Articles usurped the duties, and encroached largely on the privileges of Parliament; and accordingly, this is stated as the first in the list of grievances represented by the estates of the kingdom to King William in 1689. By 1690, c. 3, this obnoxious committee was abolished. See *Articles, Lords of*. At the Union of the kingdoms of England and Scotland (1 May 1707), the Scottish Parliament was incorporated with the Parliament of England, the united Parliament being styled the Parliament of Great Britain. The Scottish nobility, instead of having hereditary seats, as in the Scottish Parliament, are now represented in the British House of Lords by sixteen of their number; and in the House of Commons, while England continued, as before the Union, to be represented by 513 members, the number fixed by the act of Union for

Scotland was forty-five, of whom thirty represented the counties, and fifteen the royal burghs; 1707, c. 7, art. 22. [By the Reform Act of 1832, the number of Scottish representatives in the House of Commons was increased to fifty-three, thirty being elected by counties, and twenty-three by burghs. By the Reform Act of 1868, the number was further increased to sixty, thirty-two being elected by counties, twenty-six by burghs, and two by the universities. And by the Redistribution of Seats Act, 1885, the number was again increased to seventy-two, of whom thirty-nine are elected by counties, thirty-one by burghs, and two by the universities.] The rules according to which these representatives of the nobility and of the commons are elected, form the subject of the present article. [These rules will be explained in the following order:—

I. *Of the Election of the Peers of Scotland.*

II. *Of the Election of the Scottish Representatives in the House of Commons.*

A. *Prior to 1832* (p. 356).

B. *Under the Reform Act of 1832* (p. 363).

C. *According to the Present System.*

1. *Distribution of Seats* (p. 367).

2. *Qualification of Electors.*

(a) *In Counties and Burghs* (p. 368).

(b) *In Universities* (p. 372).

3. *Disqualifications.*

(a) *Of Electors* (p. 372).

(b) *Of Members or Candidates* (p. 373).

4. *Registration of Voters.*

(a) *In Counties and Burghs* (p. 374).

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5. *Procedure at Elections.*

(a) *In Counties and Burghs* (p. 377).

(b) *In Universities* (p. 379).

6. *Corrupt and Illegal Practices.*

(A) *Corrupt Practices* (p. 380).

(B) *Illegal Practices* (p. 383).

(C) *Election Expenses* (p. 385).

7. *Election Petitions* (p. 387).]

I. OF THE ELECTION OF THE PEERS OF SCOTLAND.

The sixteen representative peers must be elected from the Scottish peerage. The heirs and successors to the dignities and honours of the ancient Scottish nobility

are declared to be the electors; 1707, c. 8. It follows that no British peer, created since the Union, has a title to vote, or to be elected; and, in the case of the Duke of Queensberry, which occurred immediately after the Union, it was resolved in the House of Lords (21 Jan. 1709), that a Scottish nobleman who was, subsequently to the Union, created a British peer, had no right to vote in the election of the representative peers. Very soon afterwards (18 Dec. 1711), in the case of the Duke of Hamilton, the House of Lords determined that a Scottish nobleman, who had been created a British peer after the Union, was not entitled to sit in the British House of Lords. Hence it followed that a Scottish peer, in those circumstances, was deprived, not only of all right to sit in the House of Lords, but even of a voice in the election of the representative peers. This result led the Scottish peers, at the election in 1733, to alter the rule which had been formerly established; and on that occasion the Dukes of Hamilton and Queensberry, although both British peers, were allowed to vote in the election of the sixteen representative peers: they did so, however, under protest that they did not thereby compromise their rights as British peers. At last, in 1782, the right which a Scottish peer, who had been created a British peer subsequently to the Union, had to sit in the House of Lords, was brought to trial in the House of Lords by the Duke of Hamilton, when the former precedent was disregarded, and it was held that a Scottish peer, on whom a British peerage had been conferred, was entitled, in virtue of such peerage, to a seat in the House of Lords. But, subsequently to this, the House of Lords ordered the resolution of 21 January 1709 to be communicated to the Lord Clerk-Register, with an injunction to him to conform thereto; that is, to reject the votes of Scottish peers who, since the Union, had been created British peers; *Resolution of House of Lords*, 18 May 1787. At a more recent election, however (1790), the Duke of Queensberry and the Earl of Abercorn, both of them Scottish peers created British peers since the Union, tendered their votes, which were rejected by the clerks, in obedience to the resolution of the House of Lords; but that procedure having been brought before the House of Lords, it was resolved (6 June 1793), that the votes of the Duke of Queensberry and of the Earl of Abercorn ought to have been re-

ceived; and, although this resolution was never officially communicated to the Lord Clerk-Register, the practice ever since has been to receive, without objection, the votes of Scottish peers holding British peerages created since the Union; so that now they can vote at elections and also sit in the House of Lords. A Scottish peer who, at the time of the Union, was also an English peer, was never denied the privilege of voting for the representative peers of Scotland. When a new Parliament is summoned, the peers of Scotland are called by proclamation to meet and elect their representatives; [6 Anne, c. 78.] This proclamation must be made at Edinburgh, and at the head burghs of the other counties in Scotland, [not less than ten, and not more than twenty-five days,] before the time appointed for the election; [14 & 15 Vict. c. 87, § 2.] An execution, bearing that the proclamation has been made at the market-cross of Edinburgh, is produced at the meeting for election; but no evidence of the publication at the county towns is required. The palace of Holyroodhouse is the place of election; and the meeting for election is attended by the Lord Clerk-Register, or by two of the principal clerks of Session, acting under his commission. After prayers by one of the royal chaplains, the proclamation and execution are read, and the roll of peers is called. The names of the peers present, and of the proxies, and the signed lists of absent peers, are inserted in the minutes. The votes are then collected from the peers present and from the signed lists, and the names of the sixteen peers who have the majority are declared. In case of an equality of votes there is no casting vote, and the returning officer merely states the fact, leaving the House of Lords to give directions in the matter. A list of the names of the peers elected, written upon parchment, and authenticated by the subscription of the officiating clerks, is read to the meeting, and afterwards transmitted to Chancery, under a cover addressed to the clerk of the Crown. Previous to taking the votes, the titles in the roll, as existing at the time of the Union, are called over, when those who are present answer "*here*." [But the titles of peerages, in right of which no vote has been received since the year 1800, are not called, unless otherwise directed by the House of Lords; 10 & 11 Vict. c. 52, § 1. And the House may direct the clerks not to call the title of any peerage, in right of

[which no vote has been received for the last fifty years; 14 & 15 Vict. c. 87, § 4. Further, when a claim to a peerage has been disallowed by the House of Lords in the trial of a contested election, the House may direct the clerks not to call the title of such peerage at any future election, until some person has established his right thereto; 10 & 11 Vict. c. 52, § 2.] The roll is again called, for taking the separate votes, proxies, and signed lists. It is at this stage of the proceedings that any peer who deems himself aggrieved, as to the precedence allotted to his title, may have his protest recorded. The complaint may be, either that his own place in the roll is, generally, too low, or that some individual peer is ranked too high. Many of the older peerages are very irregularly arranged in the list; some, such as Crawford, Errol, Rothes, Morton, and Buchan, enjoying the place due to the original creation, notwithstanding repeated and sweeping alterations having been made in the line of succession; while others, for example, Mar, Sutherland, and Caithness, are placed on the roll, according to what those skilled in peerage law represent as an arbitrary and unwarranted arrangement.

No peer under age can vote; and at one time a Roman Catholic could neither vote nor be elected; 1708, c. 8; but now, by 10 Geo. IV. c. 7, §§ 5, 7, and 8, Roman Catholic peers may vote and be elected. See *Roman Catholic*. [It was formerly necessary that both the peers present at an election, and those who sent proxies or signed lists, should have taken the oaths of allegiance and abjuration before their votes were received; but the oaths were dispensed with by 31 & 32 Vict. c. 72, § 9.] No one is entitled to act as proxy for an absent peer, except a peer who is himself entitled to vote at the election; and the same peer cannot act as proxy for more than two peers. The authority to act by proxy for another peer must be signed by the Scotch title only of the peer who grants it; and it must have been so subscribed in presence of witnesses, who also sign their names as witnesses. See 6 Anne, c. 23, [otherwise called c. 78,] §§ 4, 5, 6. At the meeting for election, no business whatsoever unconnected with the election of the representatives can be legally introduced. The peers at that meeting have no right to decide upon a disputed title; and therefore where any vote is tendered by a person not duly qualified, or where a vote has been improperly rejected, any peer present who

is dissatisfied, must, if he mean to try the question, enter a protest against the reception or rejection of the vote; which protest may be the foundation of a petition to the House of Lords, complaining of the return. Those protests must be received by the returning officer, who is also bound to give extracts, or copies of them, to such peers as demand them; but in the certificate no notice is taken of such protests. [If, however, a protest is taken by two or more of the peers present whose votes have been counted, the clerks are bound to transmit a certified copy of the whole proceedings to the clerk of the Parliaments, to be laid before the House of Lords; 10 & 11 Vict. c. 52, § 3. The same forms are observed, where, from death, or any other cause, it becomes necessary, during the existence of a Parliament, to supply vacancies in the representative peerage. The court of review, in all questions connected with the representation of the peerage of Scotland, is the House of Lords. [See *E. Stirling*, 16 Jan. 1836, 14 S. 221; *Montrose Peerage*, 5 Aug. 1853, 1 Macq. 401. As to disqualification of peers by bankruptcy, see *Peer*.] See also 1707, c. 8; 6 Anne, c. 23 [or 78]; *Wight on Elections*, 113-129; *Bell's Election Law*, 3-25; *Robertson's Peerage of Scotland*; [*Mackenzie's Notes of Procedure in Election of Peers*; *Nicolson on Elections*, 5; *Anson on the Constitution*, i. 194.]

II. THE ELECTION OF SCOTTISH REPRESENTATIVES IN THE HOUSE OF COMMONS.

A. PRIOR TO 1832.

1. *Election of Commissioners for Shires.*

Qualification.—The act 1681, c. 21, in order so far to fix the qualification of the persons entitled to elect, or to be elected, commissioners of the shire, provided that the elector should be “publicly infeft in property or superiority, and in possession of a forty-shilling land of old extent holden of the king or prince, distinct from the feuduties in feu-lands; or, where the said old extent appears not, shall be infeft in lands liable in public burdens for His Majesty's supplies for £400 (Scotch) of valued rent, whether kirk lands now holden of the king, or other lands holding feu, ward, or blench, of His Majesty, as king or prince of Scotland.” And the statute 16 Geo. II. c. 11, § 8, provided that no person should be entitled to vote, or to be put on the roll of electors for Scotland, “in respect of the old extent of his lands holden of the king

or prince, unless such old extent is proved by a retour of the lands, of a date prior to the 16th September 1681; and that no division of the old extent made since the aforesaid 16th September 1681, or to be made in time coming, by retour or any other way, is, or shall be sustained as sufficient evidence of the old extent." See *Malcolm*, 1776, M. 8592; *M'Ara*, 1747, M. 8576; *Wight on Elections*, 179; *Bell's Election Law*, 55. Where there was not a retour showing that the freehold was a forty-shilling land of old extent, the statutes required, as the only other alternative, that the land should be holden of the king or prince, and rated in the valuation books of the county at £400 Scots of valued rent, which was in all cases a sufficient qualification, whatever might have been the old extent of the lands. The most important questions connected with a qualification of the latter description related to the splitting of valuations, and to the different kinds of property on which valuation might be put. As to the first point, the commissioners of supply were empowered, on the application of those concerned, to split every *cumulo* valuation, and proportion the valuation according to the real rent of the respective parcels included in it; and it afforded no objection to this proceeding, that thereby the land-tax would be subdivided into too many fractions; *Wight*, 183; *Bell*, 196. Although, generally speaking, territorial property was the basis of qualification, yet that expression was interpreted with some latitude. Thus mills, where they had been valued, might make part of a *cumulo* valuation, wherever they had astricted multures; and fishings might form the basis of a qualification, whether they were salmon, oyster, or even white fishings in the sea; *Duff*, 1773, M. 8656. Feu-duties also might be the foundation of a qualification; and in splitting a *cumulo* of feu-duties, payable at the general valuation, a portion of the *cumulo* was appropriated to the feu-duties due to the superior. Teinds likewise might afford a qualification, when in the hands of the proprietor of the lands out of which they were due. Whether or not a third party, who had acquired right to the teinds payable out of another person's lands, could claim on such property, was an undecided question. But heritable offices, although feudalised and retoured, were not admitted as the foundation of a qualification; *Wight*, 199-203; *Bell*, 47-67. The valuation in the cess-books was proved by a certificate under the hands of two of the

commissioners of supply for the county, and of the clerk of supply. The property which afforded the qualification must have been held immediately of the king or prince. But it was not enough that the vassal held of the king, *supplendo vices* of the immediate superior who had refused to give an entry; for the immediate superior retained right to all the casualties, and consequently remained superior, although, *pro hac vice*, the king supplied the defect occasioned by the superior's delay or refusal to enter his vassal; *Mackenzie's Obs.* 467.

The person claiming to be admitted on the roll of freeholders required not only to have been infeft in his freehold, but his sasine must have been recorded; or if he had completed his title by confirmation, the charter of confirmation must have been expedited a year before his enrolment could take place; 12 Anne, c. 6, § 1; 16 Geo. II. c. 11, § 10; *Telfers*, 1781, M. 8793; *Bell*, 262, 274. The rule, that the voter required to be infeft before his name could be put on the roll of freeholders, was subject to exceptions—1st, In the case of a husband claiming right to vote during his wife's life, in virtue of her infeftment, where it was not a mere liferent acquired by singular titles; 2dly, In the case of a widower claiming to vote on property having a freehold qualification, of which he enjoyed the liferent under the courtesy (see *Courtesy*); and, 3dly, In the case of an apparent heir in possession under the infeftment of his predecessor. See 1681, c. 21; 12 Anne, c. 6, § 5; 16 Geo. II. c. 11, § 10; *Wight*, 238-246; *Bell*, 128-147. To complete the qualification it was further requisite that the freeholder claiming enrolment should be in possession of the subject of his freehold, either naturally, by labouring the ground, or civilly, by drawing the rent or feu-duty, or other *reddendum*, or by taking the necessary steps for enforcing them. Hence, in creating a vote on a mere right of superiority, a separation between the property and the superiority was made, before the superiority was conveyed to the intended voter. To accomplish this, the Crown vassal might grant a feu-right to a third person, and then convey what remained in himself (*i.e.*, the superiority of the feu) to the intended voter. After this, the third person redispensed the feu to the original Crown vassal, who thus became the intended voter's vassal in the feu; consequently leaving nothing in the voter but a mere superiority. Or the same object might be attained by the Crown vassal dis-

poning both property and superiority to the intended voter, who, having completed his title as vassal to the Crown, in the whole subject, granted a feu-right to the former Crown vassal; *Forrester*, 1775, M. 8755. [See *Superiority*.]

As a test of the freeholder's possession, and as a protection against nominal and fictitious voters, the statute 7 Geo. II. c. 16, § 2, prescribed the form of an oath, commonly called the oath of trust and possession, which every freeholder claiming to vote at an election, or in adjusting the rolls of electors, might be required to take and subscribe, on the motion of any freeholder formerly enrolled. The oath was in these terms: "I, A.B. do, in the presence of God, declare and swear that the lands and estate of ———, for which I claim a right to vote in the election of a member to serve in Parliament for this county or stewartry, is actually in my possession, and does really and truly belong to me, and is my own proper estate, and is not conveyed to me in trust, or for or in behalf of any other person whatsoever; and that neither I, nor any person, to my knowledge, in my name, or on my account, or by my allowance, hath given, or intends to give, any promise, obligation, bond, back-bond, or other security whatsoever, other than appears from the tenor and contents of the title upon which I now claim a right to vote, directly or indirectly, for redispensing or reconveying the said lands and estate in any manner of way whatsoever, or for making the rents and profits thereof forthcoming to the use or benefit of the person from whom I have acquired the said estate, or any other person whatsoever; and that my title to the said lands and estate is not nominal or fictitious, created or reserved in me, in order to enable me to vote for a member to serve in Parliament, but that the same is a true and real estate in me for my own use and benefit, and for the use of no other person whatsoever; and that is the truth, as I shall answer to God." Any freeholder who refused to take and subscribe this oath was not allowed to vote; and his name was directed to be forthwith erased out of the roll of freeholders. Persons convicted of taking the oath falsely incurred the pains of perjury; 7 Geo. II. c. 16, § 3. As, however, a bare superiority of the requisite extent or valuation afforded a qualification to vote, it was enough to entitle a freeholder with safety to take the oath, that he was in receipt, and was the only person in receipt, of all that could be

drawn from the estate which constituted the qualification, however illusory or trifling in value it might be. In like manner, in reference to the terms of this oath, the possession of a liferenter was held to be the possession of the fiar; and the possession of an adjudger or adjudgers, before the expiration of the legal, was understood to be possession by the proprietor; *Wight*, 257; *Bell*, 149.

No infetment taken upon any redeemable right whatsoever, except proper wadsets, adjudications, or apprisings, allowed by 1681, c. 21, entitled the person so infet to vote or to be elected; 12 Anne, c. 6, § 3. The provision of the act 1681, as to wadsetters, was that proper wadsetters, having lands of the requisite holding, extent, or valuation, should have right to vote; which right "shall not be questionable upon pretence of any order of redemption, payment, and satisfaction, unless a decree of declarator or voluntary redemption, renunciation, or resignation, be produced." Proper wadsetters were justly admitted to vote, because, prior to the period of redemption, they had the full enjoyment of the lands or estate precisely as if they had been absolute proprietors; whereas, on the other hand, improper wadsetters were excluded, because, being bound to account for the surplus rents of the subject, after payment of the interest,—or, in other words, to impute the surplus in extinction of the principal sum due to them by the reverser,—they could not, even before the term of redemption, be considered as proprietors. But even a proper wadset of superiority, of the requisite valuation, redeemable in five years, did not afford a freehold qualification; this being a mere temporary and fictitious right, given in order to create a vote for a particular election, and not a true wadset, or pledging of land for the loan of money, which alone was contemplated by the act 1681; *Scott*, 15 Jan. 1820, F.C.; *Wight*, 240; *Bell*, 94. With regard to adjudgers, the provision of the act 1681 was, that they should have no vote during the legal; and that, "after the expiry thereof, the appriser or adjudger first infet shall only have vote, and no other appriser or adjudger coming in *pari passu*, till their shares be divided, that the extent or valuation thereof may appear; and that, during the legal, the heritor having right to the reversion shall have vote;" which right to vote, proceeding upon an adjudication of which the legal has expired, was declared, as in the case of proper wad-

sets, not to be questionable on the ground of payment or satisfaction of the debt on which the diligence proceeded, unless a decret of declarator of redemption, or a voluntary renunciation or resignation, should be produced. The reason of this enactment is obvious; for, until the legal expire, the right is redeemable at any time on payment of the debt, and might therefore be said to be dependent on the debtor's will; but after the expiration of the legal the right of redemption is foreclosed, and the legal transfer to the adjudger becomes absolute. It seems to be doubtful, however, whether, even after the expiration of the legal, the adjudger's title to vote could be considered as unobjectionable, before he had obtained a decree of declarator of expiry of the legal; and, at any rate, it was settled that no adjudger, although the legal had expired, could be enrolled unless he was in possession of the subject; *Wight*, 237; *Bell*, 147.

Of the Roll of Electors.—A roll of the electors in each county was first ordered to be made up by 1681, c. 21; and the manner of continuing and revising those rolls in the different counties annually, at the Michaelmas head-court, or at meetings for election, was more fully prescribed by 16 Geo. II. c. 11. No freeholder, whose name had not been regularly enrolled, could legally vote. The claim of enrolment set forth the name of the claimant's lands, his titles thereto, and the dates thereof, with the old extent or valuation upon which his qualification rested; and a copy of the claim required to be left with the sheriff-clerk two months before the Michaelmas head-court; 16 Geo. II. c. 11, § 7. It was not necessary that the copy of the claim lodged, nor even the principal claim, should have been signed by the claimant; nor needed the claimant to appear personally at the meeting of freeholders—any other freeholder might appear for him; and, when the claimant was in Scotland, the possession of his title-deeds was held as a sufficient mandate. Where he was abroad, a special mandate seems to have been requisite; *Wight*, 154; *Bell*, 40. In like manner, any objection which was to be stated to a freeholder's remaining on the roll, on account of an alteration of circumstances, required to be left in writing with the sheriff-clerk, two months before the Michaelmas meeting. But claims or objections might be brought forward without any such previous notice, at any meeting for the election of a member of Parliament;

and, accordingly, the claim was commonly addressed to the freeholders "at their next Michaelmas head-court, or at any meeting for electing a representative in Parliament, which may be held antecedent thereto." Claims or objections might be made at the election meeting *de plano*, and disposed of without lodging them with the sheriff-clerk; and the claimant, if duly qualified, was enrolled; or, if the objection was well-founded, the freeholder objected to was struck off the roll at such meeting, before the election of the representative was proceeded with; *Wight*, 152.

A Michaelmas or election meeting of freeholders had no right to review the proceedings of a former meeting; but a claimant, whose claim had been rejected by a former meeting, might present a new claim, and a subsequent meeting might add his name to the roll. But an appeal lay to the Court of Session, by petition and complaint, at the instance of any party who had been refused admission, or whose name had been struck off; or, if a person had been enrolled whose title was thought liable to objection, at the instance of any freeholder standing upon the roll; 16 Geo. II. c. 11; 30 Geo. III. c. 17, § 4. Where no such complaint was brought within four months after the name of a person had been added to the roll, or where it had been brought and dismissed by the court, such person could not be struck off the roll without such change of circumstances as would have afforded, of itself, a sufficient ground for rejecting the claim, if made for the first time upon [the altered] qualification. 1st, On the principle already explained in treating of the voter's qualification, a conveyance of the property or *dominium utile*, while the superiority continued in the freeholder, did not, in this sense, amount to a change of circumstances. 2d, Even a conveyance of part of the superiority of the estate on which the freeholder stood enrolled would not have warranted the meeting to strike him off, provided he could show that he had retained a sufficient qualification. 3d, A straightening of marches afforded no ground for striking the freeholder concerned in it off the roll; but, in the case of an excambion of a part of the freehold which required new title-deeds, evidence must have been brought that the retained property afforded a qualification. 4th, The execution of a new family settlement, under which a new Crown charter was taken out, was not necessarily an alteration of circumstances

sufficient to invalidate the qualification of the maker. 5th, Even a disposition of the freehold estate, containing a double manner of holding, was not considered a fatal alteration, provided there was an express obligation on the disponent to refrain from making the right public by confirmation, or from executing the procuratory of resignation; *Bell*, 111; *Wilkie*, 20 Nov. 1821, *Shaw's Cases*. But a conveyance of the estate to trustees, who were infeft with powers of sale for behoof of creditors, entitled the meeting to strike the name of the truster off the roll. See *Wight*, 279; *Bell*, 392.

Procedure at the Election of a Commissioner.—When a new Parliament was summoned, the Lord Chancellor sent his warrant to the clerk of the Crown, to issue writs for the election of members; which writs were directed to be forthwith transmitted to the sheriffs-depute, or their substitutes; the principal or high sheriff being expressly prohibited to officiate. When a vacancy was to be supplied during the existence of a Parliament, the warrant to the clerk of the Crown was given by the Speaker of the House of Commons. Within six free days after receiving the writ the sheriff was required to fix and intimate the time and place of election. Publication of the notice was made at the head burgh of the shire on a market-day, and in each parish church in the county (or, if there were no service in the church, at the church door), on the Sunday immediately after the publication at the head burgh; the day of election appointed by the sheriff not being sooner than six free days, nor later than fifteen days, after the day of publication at the parish churches. In Orkney and Shetland, it was sufficient if the publication was made at the town of Kirkwall, and the twelve parish churches of the island of Pomona, or the mainland of Orkney only. The statutes as to the writs and intimations were, 6 Anne, c. 6; 12 Anne, stat. 1, c. 15; 16 Geo. II. c. 11; 10 Geo. III. c. 41; 33 Geo. III. c. 64; 35 Geo. III. c. 65. See also *Wight*, 302; *Bell*, 453. The freeholders being assembled in the court-room on the day appointed, between twelve noon and two o'clock afternoon, the sheriff produced the writ, and read it, or caused it to be read by the sheriff-clerk; and at the same time he produced the executions at the market-cross and parish churches. If there was any informality in the publication of the writ, the course, where it was practicable, was for the sheriff to appoint another

day for the election, and to issue a new precept for the intimations. If the publication had been regular, the business commenced by the reading of the statute 2 Geo. II. c. 24, for the more effectually preventing bribery and corruption, and § 38 of 16 Geo. II. c. 11. The sheriff-clerk then produced the book in which the roll of freeholders and the minutes of their proceedings were inserted, together with copies of the oaths of allegiance and abjuration, and of the trust-oath; and here the official duty of the sheriff ended; *Wight*, 306; *Bell*, 455. The freeholders whose name stood on the roll formed the constituent members of the election meeting, and their first business was to make choice of a preses and clerk. This was done by the person who last represented the county in Parliament, or, in his absence, by the sheriff-clerk, calling over the roll, and taking the votes for those who were to fill both offices; and, in case of an equality, the casting vote was given in the following order:—1st, To the last representative of the county in Parliament; 2d, In his absence, to the representative of the county in a preceding Parliament; 3d, To the freeholder who last presided at a meeting for election; 4th, To the freeholder present who last presided at a Michaelmas head-court; and, in absence of all those, to the freeholder present whose name stood highest on the roll; 16 Geo. II. c. 11, § 13. The preses and clerk being appointed, the freeholders proceeded to take and subscribe the oaths of allegiance and abjuration, and to sign the oath of assurance; or those oaths might be put previously to the election of the preses and clerk. If any of the freeholders present required it, the trust-oath might also be put to any freeholder, before he gave his vote for the preses and clerk; 37 Geo. III. c. 138. The clerk elected took the oaths of allegiance and *de fidei*, and subscribed the assurance, and the oath that he had received no bribe for making a return, and that he would return the person duly chosen. Quakers,* in place of their oaths, were permitted to declare the substance of them on their solemn affirmation; *Bell*, 456; *Wight*, 314. The next procedure of the election meeting was, to clear the roll of the names of those who had died since the former meeting. After that the objections to those who stood on the roll were disposed of; and then the new claims of enrolment which had been presented were taken into consideration. The questions arising on all of those points were deter-

mined by the votes of the majority; and, where there was an equality of votes, the preses, in addition to his vote as a freeholder, had a casting vote. A signed copy or extract of the roll thus made up, whether at an election or Michaelmas meeting, was then delivered to the sheriff-clerk to be recorded in the sheriff's books; and thus far the procedure was the same at a Michaelmas head-court meeting and at a meeting for election; *Wight*, 316; *Bell*, 457. After the roll had been rectified, the preses of the meeting called it over, and took the votes of the freeholders present and enrolled, for the representative of the county; and in case of an equality of votes, the preses, on this, as on every other question before the meeting, had a casting vote. The candidate having the majority of votes was declared to be duly elected, upon which instruments were taken in the hands of the clerk, and minutes of the whole procedure were prepared by the clerk of the meeting, and signed by the preses and clerk. The clerk, immediately after the election, made a return to the sheriff of the person chosen representative; and the sheriff, after annexing the return to the writ, transmitted them both to the Crown-office in Chancery; 6 Anne, c. 6, § 5; 16 Geo. II. c. 11, §§ 16, 17. The duties to be performed by the sheriff-clerk, by the preses and clerk of the meeting, by the sheriff, and by the clerk to the Crown, being all exceedingly important in forwarding the return of the representative to Parliament—the performance of them was required under heavy penalties. Thus, the member who presided in the election of preses and clerk was enjoined to call the roll regularly, under a penalty of £300. The minute of the nomination of preses and clerk must have been fairly made up, and delivered to the clerk of the meeting, under a penalty of £100. The clerk of the meeting for election was bound to make a faithful return to the sheriff, under a penalty of £500; and the clerk of the Crown performed his prescribed duty also under a penalty of £500. See 6 Anne, c. 6; 12 Anne, stat. 1, c. 15; 2 Geo. II. c. 24; 7 Geo. II. c. 16; 16 Geo. II. c. 11; 37 Geo. III. c. 138. And the same statutes contained sundry other provisions, fortified by penalties, calculated to enforce the faithful performance of their duty on all the persons concerned in making up the rolls of electors, and in returning the representatives to Parliament; such as prohibitions against a separation of the minority

of a meeting from the majority—against double elections of preses and clerk, and similar proceedings—the object of all these enactments being to guard, as far as possible, against the manœuvres usually resorted to on such occasions, and to secure to all parties the fair exercise of their legal rights. See *Wight*, 318; *Bell*, 455.

In closing the subject of meetings of freeholders it may be observed, that no *quorum* was required to make a meeting. One freeholder might constitute a court, and go through the business, either of a Michaelmas or election meeting. Nor was there any method of compelling freeholders to meet at all, either at a Michaelmas head-court or at a meeting for election; *Wight*, 156, 157. The proceedings at a meeting for election were subject to the review of the House of Commons, upon a petition complaining of the return, the merits of which were tried by an election committee; [10 Geo. III. c. 16. See *Chambers' Election Law*.]

2. Election of Representatives for Royal Burghs.

By 1707, c. 8, ratified by the treaty of Union, art. 22, it was provided that fifteen of the forty-five representatives for Scotland should be chosen by the royal burghs. Of these Edinburgh elected one, and the remaining sixty-five royal burghs were divided into fourteen districts, each of which returned a representative to Parliament. This was done by each royal burgh in the district choosing a delegate to meet with the delegates from the other burghs of the district, and those delegates, when so met, elected the representative to Parliament. The act 1707, c. 8, declared that, at this meeting of delegates, the delegate from the eldest burgh on the roll of the district should preside at the first meeting for election, and that the delegates from the other burghs in the respective districts should preside afterwards by turns, in the order in which the burghs were at that time called in the rolls of the Parliament of Scotland; and in this order, accordingly, the delegates in their respective districts continued to preside in rotation ever since, until the system was changed by the Reform Act of 1832.* This right to preside re-

* List of the Royal burghs, divided into districts, and in the order of their precedence:—

1. Tain, Dingwall, Dornoch, Wick, Kirkwall.
2. Inverness, Nairn, Forres, Fortrose. 3. Elgin, Banff, Cullen, Kintore, Inverury. 4. Aberdeen,

mained in the same burgh during the entire Parliament, that burgh being what was called the *returning burgh*, in such elections as might become necessary for supplying vacancies occurring prior to the dissolution of that Parliament; 6 Anne, c. 6, § 5. The right of electing the representatives of the royal burghs was vested in the magistrates and town council of the different burghs. The magistrates and town council of Edinburgh, therefore, elected the representative for Edinburgh, and the magistrates and council of each of the other royal burghs chose the delegate who was to attend the meeting of delegates to elect the member for the district. The magistrates and council of royal burghs in Scotland were annually chosen from the burgesses, under a system of considerable antiquity, the prominent feature of which was, that the existing magistrates elected their successors. The constitutions or *setts*, as they were called, of the different burghs differed from each other in some minor particulars; but, upon the whole, the system was nearly the same in all; and, in order to preserve uniformity in the proceedings of each, the *setts* of all the burghs were, by order of the convention of royal burghs, recorded in the books of the convention at the time of the Union. Since that time many legislative provisions, intended to secure the purity of the election of the magistrates and council of the burghs, were made; and when any of those regulations were infringed, redress might be obtained, and the legal penalty imposed, in the Court of Session, on a summary complaint presented and moved in court within two calendar months after the annual election of the magistrates; *Henderson*, 3 July 1821, 1 S. 99; *Wight*, 330–360; *Bell*, 474–494. For the present mode of electing the magistrates and council of royal burghs, see *Burgh, Royal*.

The sheriff, to whom, as in the case of the commissioners for the shires, a writ was issued, was required, within four days, to make out a precept to each royal burgh

within his jurisdiction, commanding them to elect a commissioner or delegate to meet the other delegates at the presiding burgh of the district, on the thirtieth day after the *teste* of the writ, for the purpose of choosing a Burgess to serve in Parliament; and those precepts were, under a penalty of £100, delivered to the chief magistrate of each of the burghs within four days afterwards. The magistrate, on receiving the sheriff's precept, under the like penalty of £100, within two days called a meeting of the town council, by giving notice to each magistrate and councillor then resident in the burgh, personally, or at his dwelling-place; and the council being assembled in consequence of this notice, appointed a day for the election of a delegate, it being necessary that two free days should intervene between the meeting of the council and the day so appointed by them for electing the delegate; 6 Anne, c. 6, § 5; 7 Geo. II. c. 16, § 5; 16 Geo. II. c. 11, §§ 40 *et seq.* At the election of the delegate, the statute 2 Geo. II. c. 24, was read. The magistrates and councillors then took the oaths to Government, and certain oaths for guarding against bribery and corruption; and proceeded to choose the delegate by a majority of votes. Any person might be elected delegate; and the clerk of the burgh was directed to draw up a commission in favour of the person chosen, and to authenticate it with the common seal of the burgh. A penalty of £500, and six months' imprisonment, and perpetual disability to hold the office of clerk, were inflicted on the clerk if he failed in his duty; 2 Geo. II. c. 24; 16 Geo. II. c. 11, §§ 25 *et seq.* On the thirtieth day after the *teste* of the writ, the delegates from the different burghs met in the town-house of the presiding burgh, between the hours of eleven and twelve forenoon; and, after production of the precepts, and reading the statute 2 Geo. II. c. 24, the delegate for the presiding burgh administered the oaths to Government, and against bribery, to the clerk of the presiding burgh, as clerk of the meeting. The commissions to the delegates from the different burghs in the district were then read; and, if any objection was made, it entered the minutes of the election along with the answers, &c. The delegates then took the oaths to Government, and against bribery; and thereafter elected the representatives, the election being by a majority of votes—the delegate from the presiding burgh having a vote as delegate, and also a casting vote in case

Montrose, Brechin, Aberbrothock, Inverbervie. 5. Perth, Dundee, St Andrews, Cupar, Forfar. 6. Anstruther Easter, Pittenweem, Crail, Anstruther Wester, Kilrenny. 7. Dysart, Kirkcaldy, Burntisland, Kinghorn. 8. Stirling, Inverkeithing, Dunfermline, Culross, Queensferry. 9. Glasgow, Dumbarton, Renfrew, Rutherglen. 10. Haddington, Jedburgh, Dunbar, North Berwick, Lauder. 11. Linlithgow, Selkirk, Lanark, Peebles. 12. Dumfries, Kirkeudbright, Annan, Lochmaben, Sanquhar. 13. Wigton, Whithorn, New Galloway, Stranraer. 14. Ayr, Irvine, Rothesay, Inveraray, Campbeltown.

of an equality. In case of the absence, or refusal to vote, of the delegate from the presiding burgh, the casting vote was given to the delegate from the burgh which last presided, and, failing him, by absence or refusal, to the delegate from the preceding one, and so on; 1707, c. 8; 16 Geo. II. c. 11, § 28. Minutes of the procedure at the election were prepared, and signed by the preses and clerk. The clerk returned the person elected to the sheriff, under a penalty of £500, and the punishment of six months' imprisonment, and perpetual incapacity for the office of clerk to the burgh; and the sheriff subjoined the return to the writ, and transmitted both to the clerk of the Crown, in the manner already explained in treating of the election of commissioners for shires; *Wight*, 378. See also, on the form of burgh elections, *Wight*, 361; *Bell*, 509.

The form of electing the member for the city of Edinburgh differed from that in which the election was made by delegates, only in this, that instead of electing a delegate, the magistrates and town council of Edinburgh elected a representative to Parliament by a majority of the whole council of thirty-three; 6 Anne, c. 6, § 5; *Wight*, 378; *Bell*, 495. By immemorial custom, the Lord Provost of Edinburgh enjoys a casting vote in cases of equality, in the ordinary decisions of the council; but his right to such a vote does not appear ever to have been tried in any election case.

The member elected did not require to be a burgess of any burgh within the district for which he was returned; but it appears from the terms of the statutes, that he must have been "a burgess" somewhere. See 6 Anne, c. 6; 16 Geo. II. c. 11, §§ 26 *et seq.*; *Bell*, 516.

B. UNDER THE REFORM ACT OF 1832.

[1. *Distribution of Seats*.—By the Reform Act (2 & 3 Will. IV. c. 65), the representation of Scotland in the House of Commons was increased to fifty-three members, thirty for counties, and twenty-three for towns. The seats were distributed as follows:—

Counties to return one member each (sched. A).—Aberdeen, Argyle, Ayr, Banff, Bute, Berwick, Caithness, Dumbar-ton, Dumfries, Edinburgh, Fife, Forfar, Haddington, Inverness, Kincardine, Kirk-cudbright, Lanark, Linlithgow, Orkney and Shetland, Peebles, Perth (exclusive of the

[parishes of Tulliallan, Culross, Muckhart, Logie, and Fossaway, annexed to Kinross and Clackmannan by sched. B), Renfrew, Roxburgh, Selkirk, Stirling (exclusive of the parish of Alva, annexed to Kinross, &c., by Sched. B), Sutherland, Wigton.

Combined Counties, each two to return one member (sched. B).—Elgin and Nairn, Ross and Cromarty, Clackmannan and Kinross (together with that part of Perthshire which constitutes the parishes of Tulliallan, Culross, and Muckhart, and the Perthshire portions of the parishes of Logie and Fossaway, and that part of the shire of Stirling which constitutes the parish of Alva).

Towns to return two members each (sched. C).—Edinburgh and Glasgow.

Towns to return one member each (sched. D).—Aberdeen, Paisley, Dundee, Greenock, Perth.

Combined Burghs and Towns, each set or district jointly to return one member (sched. E).—1. Kirkwall, Wick, Dornoch, Dingwall, Tain, Cromarty. 2. Fortrose, Inverness, Nairn, Forres. 3. Elgin, Cullen, Banff, Inverury, Kintore, Peterhead. 4. Inverbervie, Montrose, Aberbrothwick, Brechin, Forfar. 5. Cupar, St Andrews, Anstruther Easter, Anstruther Wester, Crail, Kilrenny, Pittenweem. 6. Dysart, Kirkcaldy, Kinghorn, Burntisland. 7. Inverkeithing, Dunfermline, Queensferry, Culross, Stirling. 8. Renfrew, Rutherglen, Dumbarton, Kilmarnock, Port-Glasgow. 9. Haddington, Dunbar, North Berwick, Lauder, Jedburgh. 10. Leith, Portobello, Musselburgh. 11. Linlithgow, Lanark, Falkirk, Airdrie, Hamilton. 12. Ayr, Irvine, Campbeltown, Inveraray, Oban. 13. Dumfries, Sanquhar, Annan, Lochmaben, Kirkcudbright. 14. Wigton, New Gallo-way, Stranraer, Whithorn.]

2. *Qualifications of Electors*.—No one, under the act of 1832, could acquire the right to vote in the election of members of Parliament, who did not possess the qualifications required in the act, except those who, on 17th July 1832, were entitled to be put upon, or were already lawfully upon, the roll of freeholders of any shire in Scotland, or who, before March 1831, had become owners or superiors of lands affording the qualification to vote; § 6. The vote of a fiar of a freehold qualification, whose rights were here preserved to him, was taken by the sheriff on a paper apart; and was not reckoned in casting up the votes where the liferenter had voted; 5 & 6 Will. IV. c. 78, § 10.

The act of 1832 declared the following persons qualified to be registered and to vote in the election of members for counties: Every one not under legal capacity, who had been, for at least six calendar months previous to the last day of July in the year in which his claim of registration was to be determined, the owner (though not infeft) of any lands, houses, feu-duties, or other heritable subjects (except heritable securities) within the shire, yielding or capable of yielding to the claimant, after deducting feu-duty, ground-annual, or other consideration burthening his right, the yearly value of £10, provided he was in actual possession of the subject, or in receipt of the profits and issues thereof to the said extent, although payable at longer intervals than once a year. Every one acquiring within the said six months, by inheritance, marriage, marriage-settlement, or *mortis causa* disposition, or by appointment to any place or office, property which would qualify as above, was entitled to be registered on the first occasion after his acquisition; § 7. Fians were not entitled to vote, but liferenters and every joint proprietor, whose interest was worth £10 a year, were qualified; § 8. A tenant in lands, houses, or other heritable subjects, might be registered, who had held during the said twelve months previous to the last day of July, whether in his personal possession or not, on a lease, missive, or other written title, for not less than fifty-seven years, exclusive of breaks at the option of the landlord, or for the lifetime of the said tenant, subjects of £10 clear yearly value after payment of rent; or on a lease of not less than nineteen years, subjects of value to the tenant, after payment of rent, of £50 a year; or where the rent was £50, and the tenant in the personal occupancy; or where the tenant had paid a grassum of not less than £300; the value of grain rents to be estimated by the average fiar prices of the county for the three preceding years, or the average market prices for three years where payable in other produce. Tenants succeeding to any such lease within the said twelve months were entitled to registration on the first occasion after their succession. But no sub-tenant or assignee to any fifty-seven or nineteen years' lease was entitled to be registered, unless in actual occupation of the premises; § 9. The right of election of the members for burghs was taken from the town councils, in whom it was formerly vested, and conferred on individuals, qualified according to the following provision: Every person not

subject to any legal incapacity was entitled to be registered, who, when the sheriff proceeded to consider his claim of registration, had been for not less than twelve months previous to the last day of July in the occupancy as proprietor, tenant, or liferenter, of any house, warehouse, counting-house, shop, or other building within the limits of the burgh or town, separately or jointly with any other house, shop, or other building, of the yearly value of £10; or, though not the occupant, had been the true owner, or husband of the owner, of such premises. Provided, 1. That he had, on or before the 20th of July, paid all assessed taxes payable in respect of such premises, previous to 6th April then preceding. 2. That he had resided for six calendar months previous to the last day of July within the burgh, or seven miles of it. 3. That he had not received parochial relief for twelve calendar months previous to the said term; § 11. The voter's having been, during the requisite twelve months, in possession of different premises in succession, was a sufficient title of occupancy, provided he had paid the assessed taxes for them all. Every joint-occupant, whose share was of the yearly value of £10, was entitled to vote; § 12.

3. *Registration.*—No one could vote without registration, which took place, in the case of those on the old roll of freeholders, by the sheriff-clerk transferring their names to his register of voters on the new constituency, without requiring any claim to be made; § 20. In the county registration, any other besides old freeholders required, on or before 20th July, to give in a claim, subscribed by himself or his agent, to the schoolmaster of that parish of the county in which the property, or the greater part of the property on which he claimed, was situated, according to a form contained in schedule (F), and furnished for sixpence each by the schoolmaster. The time of lodging the claim was filled up by the schoolmaster, on his receiving it. Each schoolmaster made up, immediately after 20th July, an alphabetical list of names, designations, and places of abode of claimants; and before 24th July he affixed a copy of it to the church door of the parish (with certain exceptions), with a notice annexed of the time at which the sheriff was to commence the examination of claims, and a requisition on those intending to object, to lodge a note of objections on or before 5th August. Any one registered, or claiming to be registered, was entitled to object; and all persons, whether registered or

claimants, might be objected to. The objections were in a certain form, prescribed in schedule (H); and the objector was bound to give notice to the person to whom he objected, by a copy of the objection. On or before 8th August, the schoolmaster transmitted to the sheriff-clerk the whole claims and objections, with a duplicate of the list of claimants affixed to the church door. And any claimant who thought that his right to be registered was established by a written title, might, at any time after giving in his claim, and previous to the 10th day of August, transmit said title, or an extract thereof, to the sheriff-clerk. On or before 12th August, these were all laid before the sheriff; and he appointed open courts to be held, between 12th August and 15th September, for deciding on claims; §§ 13, 22. The sheriff disposed first of the claims to which no objections had been lodged, and which had been supported by production of a written title. When satisfied, on *prima facie* evidence, of the validity of the claim, he marked upon it "Admit," with his initials, and delivered it to be entered in the register. When not so satisfied, he marked upon it "Reject," and delivered it to be kept till applied for. He next considered the claims which were objected to; and on hearing parties, or their agents, admitted or rejected in like manner; § 18. No written pleadings were allowed upon claims; § 19.

4. *Appeals*.—The sheriff's judgment was subject to appeal, notice being lodged in writing with the sheriff-clerk, to a court of the sheriffs liable to attend at the circuit of the district, or three of them—the court of appeal being held between 15th and 25th September, and the appeals determined before 20th October. See 4 & 5 Will. IV. c. 88; 5 & 6 Will. IV. c. 78, § 12. The judgment of this court was final, but had no effect on any election that might have taken place before it had been pronounced, unless in so far as a committee of the House of Commons should give effect to it; Reform Act, §§ 23, 25. The list, as settled by these judgments, composed the register; and only those who were upon the register could vote at an election; at which time the party might be required to give his oath, or (if a Quaker or Moravian) his affirmation, as in schedule (I), that he was truly the person mentioned in the register, and was still possessed of the qualification there recorded, and had not previously voted at the election. No other oath or affirmation was necessary, except that the sheriff, if required on behalf

of a candidate, put the oath against bribery to any voter. Any one whose claim had been rejected might tender his vote, which was entered, being distinguished from the registered votes, so that an election committee might give effect to it in a disputed election; but no scrutiny was allowed respecting votes before the returning officer; § 26.

5. *Polling*.—Sheriffs and town-clerks were directed to appoint polling-places, such that not more than six hundred might poll at each. Voters polled in the district where the property which gave the qualification lay. The act 5 & 6 Will. IV. c. 78, § 9, provided that any freeholder whose rights were preserved by § 6 of the Reform Act should be entitled to make application to the sheriff of the county, and, upon one month's notice thereof being published on the doors of the sheriff court, to poll at all times thereafter at the polling-place for the district within which the county-town was situate. The sheriff then deleted his name from the district list, and inserted it in that for the district in which the county-town was situate. Where a fiar and life-renter were registered in respect of the same freehold qualification, they required both to concur in the application. After such application being made, and notice published, a freeholder could not poll in any other than the county-town district. At any contested election, the sheriff, if required by any of the candidates, directed two or more booths, &c., for polling, to be provided at each polling-place. All polls were taken, both at burgh and county elections, under the superintendence of the sheriff, or of a substitute or substitutes named by him; whom the sheriff was empowered to name at his own discretion, without observing the forms necessary in the appointment of ordinary substitutes receiving salaries. Each superintending substitute had the assistance of a clerk or clerks, appointed by the sheriff, with the concurrence of the candidates, if they agreed, and by the sheriff-clerk of the county in case of their not agreeing. Each poll-clerk had with him at the polling-place an authenticated copy of the register for that district of the shire, or of the burgh or burghs attached to each such polling-place, entitled to share in the election, alphabetically arranged; and according to this copy the votes were taken; § 27 of Reform Act. By 5 & 6 Will. IV. c. 78, the sheriff might, if required by or on behalf of any candidate, or if it appeared expedient, increase or alter the

number, situation, or arrangement of the existing polling-places and districts, so that not more than three hundred electors should be allotted to poll in each booth or compartment, for any of the cities, burghs, or towns within his shire. And in case of such alterations, the town-clerk forthwith made up a list of the polling-places, and caused copies to be affixed to the doors of all the parish or town churches within the town; § 3. On the requisition of any candidate, or of any elector the proposer or seconder of a candidate, the booths or compartments at each polling-place were divided and arranged by the sheriff or his substitute, duly authorised by him, so that not more than one hundred electors should poll in each booth or compartment. The person making the requisition paid all expenses incident to such division or arrangement. Writs were directed to the sheriff, who, within three days, fixed a day for the election, which in county elections was not less than ten nor more than sixteen days after the writ had been received. The sheriff required to give due intimation of the day for the election, by notices affixed on the doors of all the parish churches in the county, or burgh or burghs, according as the election was for one or other, and also, where he thought it expedient, by advertisement in the newspaper or newspapers of greatest circulation in the county or district; 2 & 3 Will. IV. c. 65, § 28. On the day named, the writ was, in county elections, proclaimed at the market-cross of the county-town; and if there was only one candidate, the sheriff, on a show of hands, proclaimed the candidate duly elected. If there were more than one, and a poll was demanded, the sheriff ordered it to proceed within two days, exclusive of Sundays and Saturdays; § 29. The proceedings were nearly the same in the burgh elections under the principal Reform Act; but the act 5 & 6 Will. IV. c. 78, introduced the following modifications in the case of burghs:—Every sheriff to whom a writ for a burgh election was directed, was required to indorse on the back of the writ the day on which he received it, and (except in the cases under-mentioned) within two days to announce a day for the election, being not less than four, nor more than ten, days after the writ had been received. But in the districts comprehending Kirkwall, Wick, Dornoch, Dingwall, Tain, Cromarty, Ayr, Irvine, Campbeltown, Inveraray, and Oban, the rules were the same as those mentioned above as applying to counties. The time

between the proclamation and polling in Orkney was extended to from ten to fourteen days, on account of the difficulty of communication; 2 & 3 Will. IV. c. 65, § 31. By 5 & 6 Will. IV. c. 78, § 5, no poll at any burgh election might be kept open for more than one day, between eight in the morning and four in the afternoon. [In counties, the polling continued for two days; until, by 16 & 17 Vict. c. 28, it was limited to one day, except in the case of Orkney and Shetland; see *infra*.] It was enacted by the Reform Act, that each sheriff in each polling-place should take care that the attending clerk had a certified copy of the alphabetical register, and received and recorded, and progressively numbered, the votes for each candidate, in a poll-book. The sheriff and clerk subscribed their names to each page, before an entry was made in the succeeding one. The poll-book or books were publicly sealed up by the sheriff and clerk, and taken charge of by the sheriff; and (in the case of a county election) on the commencement of the poll of the second day, he publicly broke the seals, and proceeded as formerly. Immediately on the final close of the poll, the officiating sheriff sealed up and transmitted the poll-books to the returning sheriff; § 32. The returning sheriff, on the day next but one after the close of the poll (unless such day was Sunday, and then on the Monday following), openly broke the seals, and cast up the votes, and openly declared the state and result of the poll; and made proclamation of the member or members chosen not later than two o'clock p.m. He forthwith made a return, in terms of the writ, under his hand and seal, to the clerk of the Crown in England; and if the votes were equal, he made a double return; § 33. Where the election was for one burgh sending a member or members by itself, or for a district of towns lying wholly within one shire, the poll-books were transmitted to, and the return made by, the sheriff of the shire within which the town or district was situated. Where the election was for a district or set of towns lying in different shires, the poll-books were transmitted in the first instance to the sheriffs of the several shires, and afterwards to the returning sheriff for the district. The latter part of § 5 of 5 & 6 Will. IV. c. 78, left it doubtful whether it applied exclusively to burghs, or to counties likewise; but although the section commenced with a provision exclusively applicable to burghs, the general terms of the

remainder, and the fact of it was little more than a re-enactment of § 32 of the Reform Act, seem to lead to the conclusion that its provisions applied to counties as well as to burghs—viz., that at any time after a poll had been demanded, the poll at any one place might be closed, if all the candidates or their agents, and the sheriff or his substitute, so agreed; and after the poll had been closed at all the polling-places, the sheriff or his substitute might forthwith, upon receipt of the whole poll-books, and after having summed them up, make proclamation of the member chosen, at any hour not later than two o'clock P.M., without waiting for the day appointed for the declaration. Where the proceedings at any election were interrupted or obstructed by riot or open violence, the sheriff or his substitute, where it occurred, might adjourn the nomination, or the taking the poll, at the particular place or places, from time to time, until the obstruction ceased, always giving notice of such adjournment to the sheriff or his substitute who was to make the return. The state of the poll could not be finally declared, nor the result of the election proclaimed, until the poll so interrupted was closed, and the books transmitted to the returning sheriff or substitute. Where a poll took place for a district of burghs situated in different counties, the poll-books, at the final close of the poll, were forthwith sealed up and delivered, or transmitted by the sheriffs in charge of the polls to the returning sheriff. In case any of the poll-books of any county or burgh were not received by the returning sheriff in time to cast up the votes, and declare the election within the period prescribed by 5 & 6 Will. IV., the declaration of the election was postponed till they were received. On the day after the receipt of the poll-books (but on Monday if they were received on Saturday), and before four o'clock P.M., the sheriff declared the result of the election, and made proclamation accordingly.

[C. ACCORDING TO THE PRESENT SYSTEM.

Since 1832, the electoral system has again been twice reformed—in 1867–8, when household franchise was established in the burghs, the county franchise being also widened; and in 1884–5, when the household franchise was extended to the counties. Along with these reforms, many other important changes were enacted, in regard to the number and distribution of seats, the registration of voters, the mode of voting,

[the prevention of corrupt practices, and the decision of disputed elections. The leading statutes by which these changes were effected are the following:—The Reform Act, 1868 (31 & 32 Vict. c. 48); the Ballot Act, 1872 (35 & 36 Vict. c. 33); the Corrupt Practices Act, 1883 (46 & 47 Vict. c. 51); the Reform Act, 1884 (48 Vict. c. 3); the Registration Act, 1885 (48 & 49 Vict. c. 16); and the Redistribution Act, 1885 (48 & 49 Vict. c. 23). The existing system of election law consists mainly of the provisions of these statutes.

1. DISTRIBUTION OF SEATS.

The Reform Act of 1868 (31 & 32 Vict. c. 48, §§ 9–11) gave seven additional seats to Scotland, and made the following alterations on the distribution of seats under the act of 1832 (see *supra*, p. 363):—Two new seats were given to the universities of Scotland; one member to be returned jointly by the universities of Edinburgh and St Andrews, and one by the universities of Glasgow and Aberdeen. A third member was given to Glasgow; and a second to Dundee. Each of the counties of Lanark, Ayr, and Aberdeen, was divided into two divisions, one member to be returned by each division. The counties of Selkirk and Peebles were combined, to return one member jointly, instead of one member each, as formerly; and the seat thus set free was given to a new district of burghs, consisting of Hawick, Galashiels, and Selkirk.

More radical changes were effected by the Redistribution Act, 1885. In these changes two principles were generally, though not rigidly or uniformly, observed: the principle of single-member constituencies; and the principle of approximate equalisation of electoral districts. The total membership of the House was increased from 658 to 670; and the number of Scottish representatives was increased from sixty to seventy-two. The Haddington and Wigtown districts of burghs ceased to have separate representation, the votes of the electors being transferred to the county constituencies to which they respectively belonged. Glasgow was divided into six constituencies, each returning one member; Edinburgh into four constituencies; and Aberdeen into two. Dundee, with two members as formerly, is the sole remaining instance in Scotland of a double-membered constituency. Of the counties, Lanark was divided into six constituencies; Fife, Perth, and Renfrew, each into two.

[2. QUALIFICATION OF ELECTORS.

(a) *In Counties and Burghs.*(1) *Under the Reform Act of 1868.*

Ownership Franchise for Voters in Counties.—By § 5 of the act of 1868, every man is entitled to the county franchise, who, being subject to no legal incapacity, “is, and has been for a period of not less than six calendar months next preceding the last day of July, the proprietor (whether he has made up his titles, or is infert, or not) of lands and heritages, the yearly value of which, as appearing from the valuation roll of the county, shall be £5 or upwards, after deduction of any feu-duty, ground-annual, or other annual consideration which he may be bound to pay or give or account for as a condition of his right, and after deduction of any annuity, liferent provision, or such other annual burden.” Interest payable on a sum reserved by way of real burden does not fall to be deducted under this provision; *Blackwood*, 6 Dec. 1882, 10 R. 6. See the enumeration of subjects included under the term “lands and heritages,” in § 42 of the Valuation Act (17 & 18 Vict. c. 91), quoted under *Valuation of Lands*.

Occupation Franchise for Voters in Counties.—By 1868, § 6, every man is entitled to the county franchise who, being subject to no legal incapacity, “is, and has been during the twelve calendar months immediately preceding the last day of July, in the actual personal occupancy as tenant of lands and heritages within the county of the annual value of £14 or upwards, as appearing on the valuation roll of such county.” And by 43 & 44 Vict. c. 6, a man is entitled to be registered and to vote under the above section, “notwithstanding that during a part of the qualifying period, not exceeding four months in the whole, he shall, by letting or otherwise, have permitted the qualifying premises to be occupied as a furnished house by some other person.”

Occupation Franchise for Voters in Burghs.—By 1868, § 3, the burgh franchise is conferred on every man who, being subject to no legal incapacity, “is, and has been for a period of not less than twelve calendar months next preceding the last day of July, an inhabitant occupier as owner or tenant of any dwelling-house within the burgh; provided . . . that no man shall under this section be entitled to be registered as a voter by reason of his being

[a joint-occupier of any dwelling-house.” And by 41 & 42 Vict. c. 5, householders underletting their houses for short periods are relieved from disqualification under this section, in the same terms as those of 43 & 44 Vict. c. 6, quoted *supra*, in reference to the county occupation franchise. Imprisonment during part of the qualifying period is not held to interrupt the continuity of the inhabitancy; *Watt*, 21 Dec. 1888, 16 R. 263.

Lodger Franchise for Voters in Burghs.—By 1868, § 4, every man is entitled to be registered who, being subject to no legal incapacity, (1) “as a lodger has occupied in the same burgh separately, and as sole tenant, for the twelve months preceding the last day of July in any year, lodgings of a clear yearly value, if let unfurnished, of £10 or upwards;” and (2) “has resided in such lodgings during the twelve months immediately preceding the last day of July, and has claimed to be registered as a voter at the next ensuing registration of voters.” In order to be registered under this provision, the lodger must deliver to the assessor every year, between 31 July and 21 September, a claim and declaration, in form prescribed; § 19 (3); *Adair*, 13 Nov. 1879, 7 R. 38. The said declaration is, for the purposes of revision, *prima facie* evidence of the lodger’s qualification; Registration Act, 1885, § 14. Sons living in family with their parents, and occupying and paying rent for rooms, of which they have the exclusive use, to the requisite value, may be enrolled as lodgers, and the payments made by them may be either in money or in money’s worth; *Brown*, 6 Nov. 1885, 13 R. 159. But the claim of a son who was allowed by his father, without contract or payment of rent, the sole use of two rooms in the father’s house of the requisite yearly value, was rejected, in *Dickson*, 26 Nov. 1888, 16 R. 143.

(2) *Under the Reform Act of 1884.*

Extension of Household and Lodger Franchise.—By 1884, § 2, it is enacted that “a uniform household franchise and a uniform lodger franchise at elections shall be established in all counties and boroughs throughout the United Kingdom, and every man possessed of a household qualification or a lodger qualification shall, if the qualifying premises be situate in a county, . . . be entitled to be registered as a voter, and when registered to vote at an election for such county.” By § 7 (4, 5), the expressions “a household qualification,” and “a lodger

[qualification," mean the qualifications enacted by §§ 3, 4 of the Reform Act, 1868 (quoted *supra*), "and the enactments amending or affecting the same, and the said sections and enactments shall, so far as they are consistent with this act, extend to counties; and for the purpose of the said sections and enactments the expression 'dwelling-house' means any house or part of a house occupied as a separate dwelling."

Service Franchise in Counties and Burghs.

—By § 3, "where a man himself inhabits any dwelling-house by virtue of any office, service, or employment, and the dwelling-house is not inhabited by any person under whom such man serves in such office, service, or employment, he shall be deemed for the purposes of this act, and of the" acts of 1832 and 1868, "to be an inhabitant occupier of such dwelling-house as a tenant." A person who has the exclusive use of a bedroom, and a joint use of other rooms for business or for meals, may be qualified under this provision; *Ballingal*, 26 Nov. 1886, 14 R. 127; *Gay*, 23 Nov. 1887, 15 R. 90; but see *Philip*, 21 Dec. 1888, 16 R. 261. Occupancy as tenant under an existing contract of service must be established; *Strachan*, 19 Jan. 1888, 15 R. 308; see also *Strachan*, 13 Nov. 1882, 10 R. 2. By § 9 (5), provision is made for persons entitled to the service franchise being entered in the valuation roll without any rent or value being entered against their names, and without their becoming thereby liable to be rated.

Assimilation of Occupation Qualification.

—By § 5, "every man occupying any land or tenement in a county or borough of a clear yearly value (*i.e.*, as appearing in the Valuation Roll) of not less than £10 shall be entitled to be registered as a voter, and when registered to vote at an election for such county or borough in respect of such occupation, subject to the like conditions respectively as a man is, at the passing of this act, entitled to be registered as a voter and to vote at an election for such county in respect of the county occupation franchise, and at an election for such borough in respect of the borough occupation franchise." By § 11, the expression "land or tenement" includes "lands and heritages," and also any part of a house separately occupied for the purpose of any trade, business, or profession. And by § 7 (6, 7), the expression "county occupation franchise," means the franchise enacted by § 6 of the act of 1868 (quoted *supra*); and the expression "borough occupation franchise" means

[the franchise enacted by § 11 of the act of 1832 (set forth *supra*, p. 364). The whole of the former of these enactments (§ 6 of the act of 1868), and the main part of the latter (§ 11 of the act of 1832), are repealed by § 12 of the act of 1884, "except in so far as" they "contain conditions made applicable by this act to any franchise enacted by this act." But this reservation, read along with the latter part of § 5, seems to cover the whole of these enactments; the only change being the substitution of £10 for £14 as the qualifying value in counties. See *Nicolson's Analysis*, 19, 21. By § 7 (8), "any enactments amending or relating to the county occupation franchise or borough occupation franchise other than the sections in this act in that behalf mentioned, shall be deemed to be referred to in the definition of the county occupation franchise and the borough occupation franchise in this act mentioned;" and this clause has been held to import into the act § 9 of the act of 1832 (set forth *supra*, p. 364), which provides for the registration of a tenant who had succeeded by inheritance within the year; *Stalker*, 26 Oct. 1885, 13 R. 77.

Successive Occupancy in Burghs or Counties, under the act of 1868, and subsequent acts.—By § 13 of the act of 1868, "different premises occupied in immediate succession by any person as owner or tenant during the twelve calendar months next previous to the last day of July in any year shall have the same effect in qualifying such person to vote for a burgh or county respectively, as a continued occupancy of the same premises in the manner herein provided." Successive ownership of different premises in a county constituency, with only civil possession during the requisite period, does not qualify; *Learmont*, 1 Nov. 1875, 3 R. 5. In counties, it is not competent to combine successive occupancy in the characters of proprietor and tenant; *Moncrieff*, 19 Dec. 1868, 7 Macph. 315; *Greig*, 6 Dec. 1882, 10 R. 11. But it is otherwise in burghs, occupation being the basis of the burgh franchise; *Hannah*, 1 Nov. 1875, 3 R. 7. And in counties, it is competent to combine occupancy as tenant under a yearly lease with occupancy as tenant under a 99 years' lease; *Murray*, 6 Dec. 1882, 10 R. 13. When a burgh consists of several divisions, it is provided by § 10 of the Redistribution Act of 1885, that "the occupation in immediate succession of different premises situate within a parliamentary borough

[shall for the purpose of qualifying a person for voting in any division of such borough in respect of occupation (otherwise than as a lodger) have the same effect as if all such premises were situate in that division of the borough in which the premises occupied by such person at the end of the period of qualification are situate." When a county, on the other hand, is divided, the premises successively occupied must all have been in the same division; *Nicolson's Analysis*, 10.

Feu-Duties.—Under § 7 of the act of 1832, feu-duties afforded a qualification in counties to the owner or superior. But by § 4 (1) of the act of 1884, subject to the saving for existing voters, a man is not entitled to be registered as a voter in respect of the ownership of any rent-charge; and by § 11, "rent-charge" includes feu-duty, and any rent or annuity granted out of land.

Liferenters and Joint Owners or Tenants.

—By § 14 of the act of 1868, "in a county where two or more persons are interested as liferenter and as fiar in any lands and heritages, to which a right of voting is for the first time attached by this act, the right to be registered and to vote shall be in the liferenter, and not in the fiar: and where any such lands and heritages shall be owned, held, or occupied by more persons than one as joint owners whether in fee or in liferent, or as joint tenants and joint occupants of the same, as the case may be, each of such joint owners shall be entitled to be registered and to vote, provided his share or interest in the said lands and heritages is of the annual value of £5 as before specified, but not otherwise; and each of said joint tenants and joint occupants shall in like manner be entitled to be registered and to vote, provided the annual value of the said lands and heritages, as appearing on the valuation roll, held and occupied by them, shall be sufficient, when divided by the number of such joint tenants and joint occupants, to give to each of them a sum of not less than £14, but not otherwise." (As to what constitutes joint tenancy, see *Crawford*, 4 Nov. 1879, 7 R. 3.) "Provided always, that no greater number of persons than two shall be entitled to be registered as joint owners or joint tenants of the same lands and heritages, unless their shares and interests in the same shall have come to them by inheritance, marriage, marriage settlement, or *mortis causa* conveyance, or unless such joint owners or joint tenants shall be *bona fide* engaged as partners carrying on trade or business in or on such lands and herit-

[ages." (Members of a building society were held not to be qualified under this clause; *Leiper*, 19 Dec. 1868, 7 Macph. 303.) "Provided also, that husbands shall be entitled to be registered and to vote in respect of lands and heritages as aforesaid belonging, whether in fee or in liferent, to their wives, or owned or possessed by such husbands after the death of their wives by the courtesy of Scotland." (See *Forbes*, 13 Nov. 1882, 10 R. 4. A husband is not qualified in respect of lands held by his wife as tenant; *Blair*, 2 Dec. 1865, 4 Macph. 124; *M'Queen*, 2 Nov. 1874, 2 R. 3.) In further restriction of the votes of joint owners, the act of 1884 enacts, by § 4 (2), that, subject to the saving for existing voters, "where two or more men are owners either as joint tenants or as tenants in common of an estate in any land or tenement, one of such men, but not more than one, shall, if his interest is sufficient to confer on him a qualification as a voter in respect of the ownership of such estate, be entitled (in the like cases and subject to the like conditions as if he were the sole owner) to be registered as a voter, and when registered to vote at an election. Provided that where such owners have derived their interest by descent, succession, marriage, marriage settlement, or will, or where they occupy the land or tenement, and are *bona fide* engaged as partners carrying on trade or business thereon, each of such owners whose interest is sufficient to confer on him a qualification as a voter shall be entitled (in the like cases and subject to the like conditions as if he were sole owner) to be registered as a voter in respect of such ownership, and when registered to vote at an election, and the value of the interest of each such owner, where not otherwise legally defined, shall be ascertained by the division of the total value of the land or tenement equally among the whole of such owners." This provision applies equally to counties and burghs. By § 11, the expressions "joint tenants" and "tenants in common" include *pro indiviso* proprietors. See *Roughead*, 26 Oct. 1885, 13 R. 75; *Cunninghame*, 26 Nov. 1886, 14 R. 121. Ministers, whether of the established or of non-established churches, vote on their manse, as liferenters *ad vitam aut culpam*; see cases in 2 Macph. 180, 189, 191; 7 Macph. 296; 6 R. 4; 7 R. 11. Schoolmasters holding under school-boards were specially enfranchised by 41 & 42 Vict. c. 78, § 24; *Murray*, 9 Nov. 1878, 6 R. 26. See *Schools*.

[*Joint Lodgers*.—By § 13 of the Registration Act, 1885, “where lodgings are jointly occupied by more than one lodger, and the clear yearly value of the lodgings, if let unfurnished, is of an amount which, when divided by the number of the lodgers, gives a sum of not less than £10 for each lodger, then each lodger, if otherwise qualified, and subject to the conditions” of the acts of 1868 and 1884, “shall be entitled to be registered, and when registered to vote, as a lodger, provided that not more than two persons, being such joint lodgers, shall be entitled to be registered in respect of such lodgings.”

Police.—A police officer may be registered as inhabitant occupier of a dwelling-house, notwithstanding temporary absence in the execution of duty during a part of the qualifying period, not exceeding four months; 50 Vict. sess. II. c. 9, § 3. Where a constable's employment prevents him voting at his proper polling station, the chief constable's certificate to that effect enables him to vote at any polling station; *ib.* § 2.

Savings.—The new franchises conferred by the act of 1868, are declared by § 56 to be “in addition to, and not in substitution for, any existing franchise, but so that no person shall be entitled to vote for the same place in respect of more than one qualification.” The act of 1884 provides, by § 10, that “nothing in this act shall deprive any person (who at the date of the passing of this act is registered in respect of any qualification to vote for any county or borough) of his right to be from time to time registered and to vote for such county or borough in respect of such qualification in like manner as if this act had not passed. Provided that where a man is so registered in respect of the county or borough occupation franchise by virtue of a qualification which also qualifies him for the franchise under this act, he shall be entitled to be registered in respect of such latter franchise only.” Persons qualified under §§ 7–9 of the Reform Act of 1832 (see p. 364) are therefore still entitled, except in so far as these sections are repealed by §§ 4 (1) and 12 of the act of 1884, to be registered and vote.

In every case, a claimant's qualification is to be judged of as at the time “when the sheriff proceeds to consider his right to be inserted or retained in the register of voters;” 1868, § 5. See *Dove*, 19 Dec. 1868, 7 Macph. 287; *Smith*, 26 Nov. 1886, 14 R. 125. One claiming as owner under § 7

[of the act of 1832, or § 5 of the act of 1868, must have a written title for the whole six months; *Howden*, 14 Nov. 1881, 9 R. 1; *Blackwood*, 14 Nov. 1881, 9 R. 6, 8. His title need not be absolutely indefeasible, but must be reasonably permanent; *Rutherford*, 2 Dec. 1863, 2 Macph. 180, 188; *Gow*, 2 Dec. 1865, 4 Macph. 115; *Stewart*, 21 Oct. 1869, 8 Macph. 13; *Dalglisch*, 3 Nov. 1874, 2 R. 5. The interest of the party in the subject on which he claims must not be nominal and fictitious; *Hill*, 23 Oct. 1871, 10 Macph. 3; *Macfarlane*, 29 Nov. 1866, 5 Macph. 75. Trust beneficiaries are entitled to be registered as voters, when their interest is heritable, but not otherwise; *Martin*, 19 Dec. 1868, 7 Macph. 299; *Stewart*, 21 Oct. 1869, 8 Macph. 13; *Blackwood*, 4 Nov. 1878, 6 R. 1; *Anderson*, 8 Nov. 1880, 8 R. 4 (where the trust deed contained a power of sale, which had not been exercised). Contrast *Anderson*, 14 Nov. 1879, 7 R. 42 (where the trustees were directed to sell). An owner's qualification is not lost by his executing a trust deed in favour of creditors, or granting an heritable bond over his estate in the form of an *ex facie* absolute disposition, provided the trust or security be proved by writ or oath of the disponee. See *Jardine*, 2 Dec. 1865, 4 Macph. 138; *Macfarlane*, 29 Nov. 1866, 5 Macph. 79; *Skeete*, 7 Nov. 1879, 7 R. 12. The mere sequestration of an owner, without the appointment of a trustee, does not so divest the bankrupt as to interrupt the continuity of his proprietorship; *Lennox*, 5 Nov. 1878, 6 R. 8. But when a trustee is confirmed, the estate vests in him under § 102 of the Bankruptcy Act, 1856, and the bankrupt loses his qualification; *Yuille*, 2 Dec. 1865, 4 Macph. 136; *M'Gowan*, 15 Nov. 1879, 7 R. 46. The bankrupt is not re-invested on being discharged without composition; *Buchanan*, 2 Dec. 1865, 4 Macph. 135. A bankrupt tenant is not necessarily disqualified by sequestration and the appointment of a trustee; *Halley*, 6 Nov. 1878, 6 R. 11; *Nicolson on Elections*, 44. See *Sequestration*. A yearly tenant of salmon-fishings may be registered; *Dunn*, 2 Nov. 1874, 2 R. 5. A lease of Ailsa Craig, including a cottage, with the right to kill wild fowls, goats, and rabbits, was held a good qualification; *Girvan*, 1 Nov. 1875, 3 R. 1. The mere tenancy of shootings, unconnected with the possession of a house or other heritable subject, confers a right to the franchise; *Paterson*, 12 Nov. 1879, 7 R.

[17 (overruling *Dawson*, 20 Oct. 1869, 8 Macph. 10). In *Richardson*, 8 Nov. 1878, 6 R. 17, a tenant of shootings, who was also tenant of a cottage on the ground, was held to have been properly registered on the *cumulo* value of the cottage and the shootings.

Where a burgh is divided, no person may be registered or vote in more than one division; Redistribution Act, 1885, § 8. (See *infra*, p. 376 *a.*) There is no similar restriction in regard to counties.

(*b.*) In Universities.

The constituency in each university consists of "the Chancellor, the members of the university court, and the professors for the time being of each of the universities of Scotland, and also every person whose name is for the time being on the register, made up in terms of the provisions hereinafter set forth, of the general council of such university;" Reform Act of 1868, § 27. The university courts and general councils of the universities were constituted by the Universities Act, 1858 (21 & 22 Vict. c. 83). The members of the university courts are specified in §§ 8–11 of that act. The general councils were enlarged by the act of 1868, § 28; and the following are now members:—(1) The Chancellor, the members of the university court, the professors, and all masters of arts of the university, who are of full age: (2) All persons on whom the university to which such general council belongs has, after examination, conferred the degree of doctor of medicine, or doctor of science, or bachelor of divinity, or bachelor of laws, or bachelor of medicine, or bachelor of science, or any other degree that may hereafter be instituted: and (3) Persons admitted to the council by the Universities Commissioners under §§ 6, 7 of the Universities Act, or by the registrars under § 28 of the act of 1868, having given satisfactory evidence of having, as matriculated students, prior to 2d August 1861 (being three years after the passing of the Universities Act), "given regular attendance on the course of study in the university for four complete sessions, or such regular attendance for three complete sessions in the university, and regular attendance for one such complete session in any other Scottish university, the attendance for at least two of such sessions having been on the course of study in the faculty of arts." See Regulations adopted on 10 Jan. 1859 by the Universities Commissioners, quoted in *Nicolson on Elections*,

[120. In the case of graduates, their admission to the council, and their right to vote, were formerly conditional on registration, which was voluntary. But registration is now compulsory on all graduates (other than those receiving degrees *honoris causa*); see *infra*.

3. DISQUALIFICATIONS.

(*a.*) *Disqualifications of Electors.*—The following persons are incapacitated, by common law or by statute, from exercising the franchise:—(1) Minors; but if majority is reached before the sheriff proceeds to consider the qualification, it is sufficient; *Campbell*, 12 Nov. 1879, 7 R. 32. (2) Women; see *Brown*, 19 Dec. 1868, 7 Macph. 281; *Chorlton*, L.R. 4 C.P. 374. (3) Fatuous or insane persons. (4) Aliens, unless they have obtained a certificate of naturalisation, and taken the oath prescribed by 33 & 34 Vict. c. 14; see *Alien*. (5) Sheriffs, sheriffs substitute, sheriff-clerks, and sheriff-clerks-depute, in their county elections, and sheriffs principal, town-clerks, and town-clerks-depute in their burgh elections; 1832, § 36; see *Nicolson*, 23. (6) Assessors, in elections for the county or burgh to which they are appointed; 19 & 20 Vict. c. 58, § 8; 1884, § 8 (6); *Nicolson on Elections*, 83–84. (7) All peers, but not now their eldest sons; 1832, § 37. Even when a peer is a member of a university court, as Chancellor or Lord Rector, he cannot vote in the election of a member for the university; *Nicolson*, 116. (8) In regard to the household franchise in burghs and counties, all persons are disqualified who, during the period of twelve months preceding the last day of July, have been exempted from payment of poor-rates on the ground of inability to pay; or who have failed to pay, on or before 20th June in any year, all poor-rates payable by them in respect of the premises or lands claimed on, up to the preceding 15th May; 1868, §§ 3, 6; 1884, §§ 2, 7 (4). But the rates, non-payment of which disqualifies, are those only which are payable for the preceding year, not arrears; *Hewat*, 9 Nov. 1874, 2 R. 12. Provision is made by § 18 of the act of 1868 for due notice being given to every occupier whose rate remains unpaid on 15th May; see *Mackenzie*, 1 Nov. 1875, 3 R. 8; and a remedy is provided by § 17 for persons improperly or erroneously exempted from payment of poor-rates. (9) By § 11 of the act of 1832, burgh electors are disqualified, who

[have not, on or before 20th July, paid all assessed taxes which may have become payable by them, in respect of the premises on which they claim, previously to the preceding 6th day of April. The only tax to which this provision now applies is the inhabited house duty, levied under 14 & 15 Vict. c. 36; and it does not affect voters claiming under the acts of 1868 or 1884; *Gray*, 19 Dec. 1868, 7 Macph. 285. (10) The receipt of parochial relief during the statutory period of twelve months prior to the preceding last day of July, disqualifies both burgh and county electors; 1832, § 11; 1868, §§ 3, 6, 50. See *Davidson*, 13 Nov. 1879, 7 R. 41. But paupers who are on the roll of electors are entitled to vote; *Anstruther*, 18 Feb. 1886, 13 R. 577. The receipt of charity, whether from a private or a public source (even a parochial fund), does not disqualify; *Nicolson*, 86; but see *Douglas*, 26 Oct. 1885, 13 R. 78. Nor does the receipt of medical or surgical assistance, or of medicine, at the expense of the poor-rates; 48 & 49 Vict. c. 46; nor receipt of relief for an idiot child; *Gilmour*, 22 Oct. 1873, 1 R. 12. (11) No paid election agent, subagent, polling agent, clerk, or messenger may vote at the election in connection with which he is employed; nor, if that election is for a division of a divided burgh, may he vote in any other division thereof; Corrupt Practices Act, 1883, sched. I, part 1 (7); Redistribution Act, 1885, § 15. These provisions practically supersede 1868, § 8. (12) Persons guilty of corrupt or illegal practices may not vote; see *infra*, p. 382 *a*.

Government officers were formerly disqualified, but their disability was removed by 31 & 32 Vict. c. 73. County police constables were disqualified under 20 & 21 Vict. c. 72, § 17; but the disabilities of the police were removed by 50 Vict. sess. II. c. 9. The act 2 Geo. II. c. 24, § 6, by which persons convicted of perjury or subornation of perjury were disqualified, was repealed by 17 & 18 Vict. c. 102, § 1. The disabilities of Roman Catholics were removed by 10 Geo. IV. c. 7; see also 1832, § 26. All persons disqualified from voting are also disqualified from being registered; *Johnstone*, 19 Dec. 1868, 7 Macph. 281; *Nicolson*, 20–22.

(*b.*) *Disqualifications of Members or Candidates.*—The above-mentioned disqualifications apply, for the most part, to candidates as well as to electors. The following additional disqualifications affect candidates (or members) only:—(1) Clergymen of the

[Established Church either in Scotland or England, cannot be elected; see *Clergy*.

(2) Judges of the Courts of Session and Justiciary cannot be elected; nor can judges in England or Ireland, except the Master of the Rolls in England. (3) By 22 Geo. III. c. 45, § 1, any person who shall directly or indirectly, himself or by any person in trust for him, undertake any contract for the public service, is incapable of being elected, or of sitting and voting as a member, during the time that he shall hold such contract, or any share thereof, or any benefit or emolument arising therefrom. But this enactment does not extend to contracts entered into by incorporated trading companies, or companies existing at the date of the act (1782), and consisting of more than ten persons, where such contracts are entered into for the general benefit of such incorporation or company; § 3. Nor does the enactment extend to any person on whom a contract devolves by descent or limitation, or by marriage, or as devisee, legatee, executor or administrator, until after twelve months' possession; § 6. See *May's Parly. Prac.* 35, 712–3. (4) Persons having pensions from the Crown during pleasure, or for any term or number of years, are ineligible; 6 Anne c. 41, § 24; 1 Geo. I. c. 56. But pensions granted for civil services according to the provisions of any act of Parliament do not disqualify; 32 & 33 Vict. c. 15; nor do diplomatic pensions; 22 & 23 Vict. c. 5; 32 & 33 Vict. c. 43. (5) Persons holding "any new office or place of profit whatsoever under the Crown," which has been created since the year 1705, are incapable of being elected; 6 Anne, c. 41, § 24. And if any sitting member accepts an office of profit from the Crown, his election is declared to be void, and a writ is issued for a new election; but the member may be re-elected; *ib.* § 25. This last section applies only to offices created before 25 October 1705, and held directly from, not merely under, the Crown; *Rogers on Elections*, 578; *Nicolson*, 15–16. The disqualifications enacted by 6 Anne, c. 41, are declared not to extend to "any member of the House of Commons, being an officer in the navy or army, who shall receive any new or other commission in the navy or army respectively;" § 27. The yeomanry are exempted from this disqualification by 44 Geo. III. c. 54, § 58; the volunteers by 26 & 27 Vict. c. 65, § 5; and the militia by 45 & 46 Vict. c. 49, § 38. And a member holding, when elected, one of certain specified Crown offices, and

[subsequently accepting any other of the said offices, in lieu of and in immediate succession to the former, does not vacate his seat; 1868, § 51. The offices specified are the following (sched. H):—Lord High Treasurer; Commissioner for executing offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland; President of the Privy Council; Vice-President of the Committee of Council for Education; Comptroller of Her Majesty's Household; Treasurer of Her Majesty's Household; Vice-Chamberlain of Her Majesty's Household; Equerry or Groom-in-Waiting on Her Majesty; any principal Secretary of State; Chancellor and Under Treasurer of Her Majesty's Exchequer; Paymaster General; Postmaster General; Lord High Admiral; Commissioner for executing the office of Lord High Admiral; Commissioner of Her Majesty's works and public buildings; President of the Committee of Privy Council for trade and plantations; Chief Secretary for Ireland; Commissioner for administering the laws for the relief of the poor in England; Chancellor of the Duchy of Lancaster; Judge Advocate General; Attorney General for England; Solicitor General for England; Lord Advocate for Scotland; Solicitor General for Scotland; Attorney General for Ireland; Solicitor General for Ireland. And to these is to be added the office of Secretary of State for Scotland; 48 & 49 Vict. c. 61, § 3. See *May's Parly. Prac.* 703. (6) The act 15 Geo. II. c. 22, specifies various offices under Government, the holders of which are excluded from the House of Commons, and declares (§ 3) that no such disqualification shall attach "to any person having or holding any office or employment for life, or for so long as he shall behave himself well in his office." Persons engaged in the collection and management of taxes imposed since 1694 are disqualified by 5 Will. and Mary, and various other statutes. But Commissioners of the Treasury are not disqualified; 56 Geo. III. c. 98, § 16; nor Commissioners of the land-tax; 42 Geo. III. c. 116, § 185. (7) By 52 Geo. III. c. 144, a member of the House of Commons who has been declared bankrupt is incapable of sitting and voting in the House. This act was repealed by 32 & 33 Vict. c. 83, "except so far as it relates to Scotland and Ireland." It is practically superseded by the provisions of the English Bankruptcy Act (46 & 47 Vict. c. 52, § 32), as adapted to Scotch procedure by 47 & 48 Vict. c. 16, § 5; by which an adjudged bankrupt is

[declared to be disqualified for being elected to, or sitting or voting in, the House of Commons, or on any committee thereof; and the expression "adjudged bankrupt" is declared to include the case of a person whose estate has been sequestrated, or with respect to whom a decree of *cessio bonorum* has been pronounced by a competent court. The disqualification ceases on recall or reduction of the sequestration or *cessio*, or on the bankrupt obtaining his discharge from a competent court. By § 33 of the English act (applied to Scotland by 47 & 48 Vict. c. 16, § 6), if the disqualification is not removed within six months after the deliverance or decree, the court which pronounced it shall immediately on expiry of that time certify the same to the Speaker, and thereupon the seat shall be vacant; and the requisite steps are directed to be taken for election of a new member. See *Goudy on Bankruptcy*, 351. (8) By 49 Vict. c. 16, provision is made for vacating the seat of any member received or committed into, or detained in any asylum, house, or other place, as a lunatic. (9) As to the disqualifications arising from corrupt or illegal practices, see *infra*, p. 382 *a*.

The disabilities of Roman Catholics were removed by 10 Geo. IV. c. 7; and those of Jews by 21 & 22 Vict. c. 49. See *Roman Catholics. Jews*.

4. REGISTRATION OF VOTERS.

(a.) *In Counties and Burghs*.—Prior to 1884, the registration of voters in counties and burghs was regulated respectively by the County Voters Act (24 & 25 Vict. c. 83), as amended by § 21 of the Reform Act of 1868; and by the Burgh Registration Act (19 & 20 Vict. c. 58), as amended by § 20 of the act of 1868. But by § 8 (6) of the Reform Act of 1884, "all enactments of the Registration Acts which relate to the registration of persons entitled to vote in burghs, including the provisions relating to dates, shall, with the necessary variations, and with the necessary alterations of notices and other forms, extend and apply to counties as well as to burghs." Previous enactments relating to the registration of county voters were repealed, so far as inconsistent; but it was provided that in counties the valuation rolls, registers, and lists should continue to be arranged in parishes as formerly. The system of registration is carried on largely by means of the machinery introduced for the valuation of land, by the Valuation Act, 1854 (17 & 18 Vict. c. 91). The valuation

[assessor of each burgh, or county, or division of a county, or one of the assessors (if more than one) specially appointed by the magistrates of the burgh, or the commissioners of supply of the county, is charged with the duties of assessor for registration purposes; Burgh Registration Act, § 7. See also Registration Act, 1885, § 10. By § 11, the assessor may not be a sheriff-clerk, or clerk of supply, or a collector of poor-rates, nor may he be employed as a factor for heritable property, or land agent, in the county or burgh for which he may be the assessor. The valuation roll, annually made up under the Valuation Act, is the basis of the register of voters; and a new form of valuation roll was provided by § 3 of the Registration Act, 1885. By § 6 of that act, each dwelling-house (*i.e.*, each "house or part of a house occupied as a separate dwelling") in the county or burgh must be specified in the valuation roll. By § 9 of the Reform Act of 1884, the assessor may serve on the occupier of every hereditament which comprises any dwelling-house, or the person liable to be rated in respect thereof, or an agent concerned in the management thereof, a form to be filled up with the names of all inhabitant occupiers of any such dwelling-house. Or alternatively, under § 4 of the Registration Act, 1885, the assessor may call upon such parties for a list of all inhabitant occupiers of such dwelling-houses, along with certain other particulars specified. In either case, penalties are imposed in the event of failure to furnish the information required.

The assessor is directed, on or before 15th September in every year, to make out a list of voters, arranged alphabetically according to wards or parishes, and polling districts, and to publish the list by affixing it to the town-hall, the parish church, or other conspicuous place; and a copy of such list shall be open to perusal by any one, without payment, at a place previously notified by advertisement, between the hours of ten and four of each day, except Sunday, from 16th to 21st September, both inclusive; and a copy thereof may be had by any applicant, on payment at the rate of 6d. for every hundred names copied; Burgh Registration Act, § 2, as amended by 1868, § 20, and applied to counties by 1884, § 8 (6). If any person intimates in writing to the assessor his desire that his name be not inserted in the list, the assessor shall not insert it; *ib.* Any person whose name has been omitted may claim to have it inserted, by notice to the assessor, in form

[prescribed, on or before 21st September; § 3. Any person whose name is on the list may object to any other person as not having been entitled, on the last day of July preceding, to have his name inserted, by giving notice in form prescribed, on or before 21st September, to the assessor and to the person objected to; § 4. Lists of such claims and objections are advertised by the assessor, on or before 25th September, and are open to perusal between 25th September and 1st October; and copies may be had on payment at the same rate as for copies of the list of voters above-mentioned; § 5. Lists are not invalidated by deficient publication; and no claim or objection is affected by errors of public officers; §§ 13, 14. Any voter or claimant may inspect the valuation roll, and make extracts from it, without payment, between ten and four on any day, except Sunday, between 15th September and 21st October; § 16. The assessor is also directed annually to make out a list of electors incapacitated by corrupt or illegal practices; Corrupt Practices Act, 1883, §§ 39 (1), 68 (12). Claims and objections relating to this list are to be dealt with in like manner as the claims and objections above mentioned. The corrupt and illegal practices list shall be appended to the register of electors, and printed and published therewith; § 39 (8).

Sheriff's Registration Court.—Sheriffs are directed, between 25th September and 16th October, to revise the lists of voters, and for that purpose to hold open courts; notice thereof having been previously given by public advertisement, as well as to the sheriff-clerk of the county or the town-clerk of the burgh, and to the assessor; Burgh Registration Act, § 19 (amended and applied as stated above). Any person whose name is on the list may oppose the claim of any other person to have his name inserted, having given notice in writing at any time before the hearing; and the sheriff shall dispose of claims and objections relating to the list of voters, and also to the corrupt and illegal practices list, and shall correct the lists accordingly; §§ 21–3. No written pleadings are allowed in support of any claim or objection; § 37. No misnomer or inaccurate or defective description of any person, place, or thing, in any list or register, or any notice required by the act, shall prevent or abridge the operation of the act, provided the description is such as to be commonly understood; and if there have been no wilful purpose to mislead or deceive, the sheriff may allow

[any verbal, clerical or casual error to be corrected or supplied; § 46. See *Nelson*, 6 Nov. 1876, 4 R. 3; *Anderson*, 12 Nov. 1879, 7 R. 28. When the name of a person appears to be entered more than once as a voter on the list for the same constituency, the sheriff shall, on proof that the entries relate to the same person, retain one entry and strike out the others. The voter may select the entry to be retained, by application at the first sitting of the court, or by previous written notice. Failing such selection, directions are given for determining the entry to be retained. In the case of a divided burgh, when a name is entered in more than one division, and one of these entries is the voter's place of residence, he may vote in respect of that entry, and no other; Registration Act, 1885, § 17. The sheriff may adjourn the court from time to time, but so that no such court be held after 15th October; § 25. The revised list is to be delivered by the sheriff, not later than 16th October, to the town-clerk or the sheriff-clerk, who shall cause it to be printed in a book, and delivered to the sheriff on or before 31st October; §§ 26, 29. This book is the register of persons entitled to vote at any election before 1st November in the succeeding year; and a copy thereof, or of any part thereof, may be had from the town-clerk or sheriff-clerk, on payment at a specified rate; § 30. The register so made is conclusive evidence of the qualifications of the persons therein named; § 44. See also Ballot act, § 7; and *Stowe*, 1874, L.R. 9 C.P. 734; *Anstruther*, 18 Feb. 1883, 13 R. 577, 580.

Registration Appeals.—Under the County Voters Act, the appeal court consisted of the senior Lord Ordinary, and the Lord Ordinary in Exchequer causes (§ 34). Under the Burgh Registration Act (§ 27), it consisted of the court of sheriffs instituted by the act of 1832 (*supra*, p. 365 a). But a new court for registration appeals, both in counties and burghs, was constituted by § 23 of the Reform Act of 1868, consisting of three judges of the Court of Session, to be named from time to time by Act of Sederunt; one judge to be named from each division of the Inner House, and one from the Lords Ordinary. By § 22 of the same act, if any person whose name shall have been struck out of any register or list of voters by the sheriff, or who shall claim or object before the sheriff at any court, shall consider the decision of the sheriff on his case to be erroneous in point of law, he may,

[either himself, or by some person on his behalf, in open court, require the sheriff to state the facts of the case, and such question of law, and his decision thereon, in a special case; and the sheriff shall prepare and sign and date such special case, and deliver the same in open court to the sheriff-clerk or town-clerk, as the case may be; and such person, or some person on his behalf, may thereupon in open court declare his intention to appeal against the said decision, and may, within ten days of the date of such special case, lay a certified copy thereof before the court of appeal for their decision thereon; and the said court shall with all convenient speed hear parties and give their decision on such special case, and shall specify exactly every alteration or correction, if any, to be made upon the register in pursuance of such decision; and the register shall be, as soon as may be after the 31st day of October in each year, altered accordingly by or at the sight of the sheriff. The same section further provides that "if it shall appear to the sheriff that his judgments respecting the qualifications of any two or more persons depend on the same question of law, he shall append to such special case the names of all such persons who have appealed against his judgment on their respective claims; and the decision of the said court on such special case shall extend and apply to the qualifications of all such persons, in like manner as if a separate appeal had been taken in the case of each of them." This regulation applies only to claimants: any other appellant must take a separate special case; *M'Gowan*, 15 Nov. 1879, 7 R. 46. If the statement in a special case is inadequate, the court may remit it to the sheriff, in order that it may be more fully stated; *ib.* The facts of the case should be set forth in the form of findings, not by reference to evidence or to documents; and the question of law must be stated specifically. See *Miller*, 24 Jan. 1863, 1 Macph. 307; *Pringle*, 26 Jan. 1865, 3 Macph. 420; *Jardine*, 2 Dec. 1865, 4 Macph. 138; *Anderson*, 6 Nov. 1876, 4 R. 1. The decision of the court is final, and not subject to review by any court; § 22. The dependence of an appeal does not affect the right of voting; and the decision in any appeal depending at the time of issuing the writ for an election does not affect the result of the poll; § 55. Registration appeals are directed to be heard on Mondays during the sitting of the court, but with power to the court to continue the hearing on other days; 31 & 32 Vict. c. 100, § 10. See

[*Nicolson on Elections*, 150; *Mackay's Prac.* ii. 463.

(b.) *In Universities*.—By § 29 of the Reform Act of 1868, the registrar of each university is directed to keep a registration book, in form prescribed by schedule, in which are entered the names, designations, qualifications, and ordinary places of residence of persons qualified to be members of the general council. On 1st December annually, the registrar is directed to proceed to prepare, from the registration book, a new alphabetical register, in form prescribed, for the year to commence on 1st January next ensuing. Such new register must be completed within fifteen days, and is thereafter revised by the registrar, with the assistance of two assistant-registrars, appointed by the university court, and then authenticated by the vice-chancellor, on or before 31st December; § 35. No person is allowed to graduate, after examination, until he has paid a registration fee, not exceeding 20s.; and on graduation, the graduate's name is entered in the registration book, and transferred to the register of members of council at the next revisal of the same; 44 & 45 Vict. c. 40, § 2 (16). Corrupt payment of a registration fee is punishable as bribery; § 2 (17). The registration book and also the register, authenticated as aforesaid, are open to inspection, at all reasonable times, in the office of the registrar; and copies may be made on payment of one shilling for every hundred names copied; 1868, § 32. Within ten days after 31st December, it is competent to appeal to the university court, whose judgment is final. When the appeal is against undue insertion of a name, it must be heard not sooner than twenty nor later than thirty days after 31st December; and when the appeal is against omission of a name, it must be heard not later than thirty days after the same date; §§ 32, 33. A quorum of three is sufficient to constitute a meeting of the university court; § 34.

5. PROCEDURE AT ELECTIONS.

(a.) *In Counties and Burghs*.—The proceedings are regulated mainly by the Ballot Act, 1872 (35 & 36 Vict. c. 33). That act was limited to expire on 31st December 1880, but has since then been continued from year to year. Besides its enacting clauses, it contains, in the first schedule, a code of rules for parliamentary elections, and, in the second schedule, a series of forms, with notes and directions, all of which receive

[effect as part of the act; § 28. But non-compliance with the rules, or a mistake in the use of the forms, does not invalidate an election, "if it appears to the tribunal having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this act, and that such non-compliance or mistake did not affect the result of the election;" § 13. See *Woodward*, 1875, L.R. 10 C.P. 733; *Deans*, 7 July 1882, 9 R. 1077.

When a new parliament is summoned, writs are issued by the clerk of the Crown, on warrant from the Lord Chancellor. When a vacancy occurs during the existence of a Parliament, the writ for a new election is issued by the Speaker of the House of Commons. See *Parliament*. The writ is directed to the sheriff of the county (or, if the sheriffship is vacant, to the sheriff-substitute at the head burgh of the county), as returning officer for the county, for burghs situated in the county, and for districts of burghs the head burgh of which is in the county. Where a sheriff is returning officer for more than one county, he may appoint a deputy to act in the election; Ballot Act, § 8. The same power is given to the returning officer of a divided burgh; but his deputy has no power to fix the day for taking the polls; Redistribution Act, 1885, § 13. The returning officer is required, not later than two days in a county, or one day in a burgh election, after the day on which he receives the writ, to give public notice, by advertisement, placards, &c., between the hours of 9 A.M. and 4 P.M., of the time and place of nomination, and of the polling day. In county elections, such notice is sent for publication to the principal post-office of each polling place; Rule 1. In counties or districts of burghs, the day of election (*i.e.*, nomination) must be not later than the ninth day after receipt of the writ, with three clear days between the day on which notice is given and the day of election; and in burghs, other than district burghs, the day of election must be not later than the fourth day after receipt of the writ, with two clear days between the notice and the election; Rule 2. The time of election must be such two hours, between 10 A.M. and 3 P.M., as the returning officer may appoint; Rule 4. But in the case of Orkney and Shetland, and the Wick district of burghs, the dates of election, polling, &c., are still regulated by the Reform Act of 1832; Rule 61. See *supra*, p. 366; also *Crichton's Ballot Act*, 110. In reckoning time, Sunday, Christmas Day, Good Friday,

[and any day set apart for public fast or thanksgiving, are excluded; Rule 56. Each candidate is nominated by a separate nomination paper, a form of which is supplied by the returning officer; Rules 5-8. It must be subscribed by two registered electors as proposer and seconder, and by eight other registered electors; § 1. If at the expiry of one hour after the time appointed for the election, no more candidates stand nominated than there are vacancies to be filled up, the returning officer declares those nominated to be elected; but if otherwise, he adjourns the election and takes a poll; *ib.* A candidate may, during the time appointed for the election, but not afterwards, withdraw from his candidature, by giving a signed notice to the returning officer; or if the candidate is absent from the United Kingdom, he may be withdrawn by written notice signed by his proposer; *ib.* The same section provides for the contingency of one of the candidates nominated dying before the poll; in which case the poll is countermanded, and the whole proceedings commence afresh, as if the writ had been received on the day on which the death is proved; but candidates already nominated do not require to be nominated again. Objection to a nomination paper on the ground of insufficient description of the candidate must be taken at or immediately after delivery of the nomination paper; objection on the ground that the nomination was otherwise disconform to the provisions of the act, must be taken within the time appointed for the election, or one hour thereafter; Rules 6, 12. If the returning officer disallows the objection, his decision is final; but if he sustains it, his decision is subject to reversal on petition questioning the election or return; Rule 13.

The polling day must be, in a county or district of burghs, not less than two nor more than six clear days, and in an ordinary burgh, not more than three clear days, after the nomination; Rule 14. At a general election, the polls for the divisions of a divided burgh take place on the same day; Redistribution Act, 1885, § 8 (4). The hours of polling in burghs with more than 3000 electors, are from 8 A.M. to 8 P.M.; 47 & 48 Vict. c. 34. In other county and burgh constituencies, the hours are from 8 A.M. to 4 P.M. Public notice must be given of the polling day, the candidates, and other particulars, as directed by Rules 9, 10. The returning officer must provide a sufficient number of polling stations at each polling place and sufficient number of

[compartments in each polling station, so that there shall be at least one compartment for every 150 electors; Rules 15-17. A presiding officer is appointed to preside at each station, who keeps order, regulates the admission of electors, &c.; Rule 21. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, the latter may order his removal, and he shall not be allowed to enter the station again, unless with consent of the presiding officer; but this power is not to be exercised so as to prevent any elector from voting; Ballot Act, § 9. The powers of the presiding officer as to administering oaths, &c., are set forth in § 10. Before acting, he must make the declaration of secrecy prescribed by the second schedule of the act, before the returning officer, or a justice of the peace; Rule 54. No inquiry is permitted at the time of polling as to the right of any person to vote; except only that the presiding officer, or clerk attending at the polling station, shall, if required by any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them: (1) Are you the same person whose name appears as *A.B.* on the register of voters now in force for the (naming the constituency)? (2) Have you already voted, either here or elsewhere, at this election for the (naming the constituency, and, in the case of a divided burgh, adding the words—"either in this or in any other division")? And a wilfully false answer to either of these questions is deemed a crime and offence within the meaning of the Ballot Act; 43 Vict. c. 18; Redistribution Act, 1885, § 13 (4).

The votes are given by ballot; the ballot consisting of a paper showing the names and descriptions of the candidates. Each ballot paper has a number printed on the back, and has attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper is marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters is marked on the counterfoil. The voter, having secretly marked his vote on the paper, and folded it up so as to conceal his vote, places it in a closed box in the presence of the presiding officer, after having shown to him the official mark at the back; Ballot Act, § 2. A form of directions for the guidance of the voter, as provided in the second

{schedule, is placarded outside every polling station and in every compartment. According to these directions, "the voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X." For further details as to the mode of voting, see Rules 22-30; also "Instructions for taking the Poll," prepared by the sheriffs, and printed in *Nicolson*, 226; *Crichton*, 123. After the close of the poll the ballot boxes are sealed up, so as to prevent the introduction of more ballot papers, and are taken charge of by the returning officer; § 2. The returning officer, then, in the presence of the agents of the candidates, opens the ballot boxes, and ascertains the result of the poll by counting the votes given to each candidate; *ib.* Directions as to counting are given by Rules 31-35.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked, by which the voter can be identified, shall be void, and not counted; § 2. Ballot papers are rejected also on the ground of being "unmarked or void for uncertainty;" Rule 36. A ballot paper is invalidated if it is marked so as to show that the voter intended to vote for more candidates than he was entitled to vote for, or so as to leave it uncertain whether he intended to vote at all, or which candidate he intended to vote for, or so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted; *Woodward*, 1875, L.R. 10 C.P. 733. For application of these principles, see *Haswell*, 23 May 1874, 1 R. 925; *Smith*, 6 Aug. 1874, 2 O'M. & H. 232; *Robertson*, 5 July 1786, 3 R. 978; *Anstruther*, 18 Feb. 1886, 13 R. 577. In *Woodward*, the English court sustained a paper marked with a single stroke instead of a cross; but in the Scotch cases of *Haswell* and *Robertson*, papers so marked were rejected on the ground that such mark might lead to the voter being identified. The decision of the returning officer as to any question arising in respect of a ballot paper is final, subject to reversal on petition questioning the election or return; § 2.

The counting of votes being completed, the returning officer gives public notice, as soon as possible, of the names of the candidates elected, and of the total number of

[votes given for each candidate, whether elected or not; Rule 45. The names of the members elected are forthwith returned to the clerk of the Crown; § 2, and Rule 44. In case of an equality of votes there must be a double return; unless the returning officer is an elector, in which case he has a casting vote; § 2. The counted and rejected ballot papers are sealed up in separate packets, and are retained for one year in the custody of the sheriff-clerk, along with sealed packets containing the counterfoils, the marked copy of the register of voters, &c. At the end of one year, the sheriff-clerk causes all documents relating to an election to be destroyed, unless otherwise directed by the House of Commons, or by one of the superior courts; Rules 37-39. Inspection of ballot papers or counterfoils is allowed only under order of the House of Commons or of a superior court. See Rules 40-43. Offences at elections, by fraudulent dealing with ballot papers, &c., or by infringement of secrecy, are punishable under §§ 3, 4. By 10 & 11 Vict. c. 21, soldiers stationed within two miles of a place where an election is going on, are required to remain in barracks or quarters on the election day, unless for the purpose of mounting or relieving guard, or of voting at the election.

(b.) *In Universities.*—The voting in university elections is not by ballot, but by means of voting papers; and the proceedings are regulated by §§ 37-41 of the Reform Act of 1868, as amended by 44 & 45 Vict. c. 40. The vice-chancellor of the University of Edinburgh is the returning officer for the Universities of Edinburgh and St Andrews; and the vice-chancellor of the University of Glasgow is returning officer for the Universities of Glasgow and Aberdeen. Within three days after receipt of the writ, the returning officer gives public intimation of the election, which must be not less than three nor more than six clear days after receipt of the writ; 1868, § 37. On the appointed day the vice-chancellor repairs to the place of election, and proclaims the writ. If only one candidate is proposed, he is forthwith, upon a show of hands, declared to be duly elected. If more candidates than one are proposed, and a poll is demanded, proceedings are adjourned for not less than twelve or more than twenty clear days, exclusive of Saturdays and Sundays; 1868, § 38; 44 & 45 Vict. c. 40, § 2 (1). The registrar shall then, as soon as he conveniently can after the day of demand for a poll, and not later than six clear days (exclusive of Sundays) thereafter, issue simul-

[taneously through the post, to each voter to his address as entered in the register of the general council, if that address is in the United Kingdom or the Channel Islands, a voting paper, in the form or to the effect set forth in a schedule, along with a letter of intimation as in another schedule. The voter, if he desires to vote, shall insert in the voting paper the name of the candidate for whom he votes, and the place and date of signature, and affix his subscription thereto, in the presence of one witness, who shall personally know the voter, and who shall attest the voter's signature in form prescribed; 44 & 45 Vict. c. 40, § 2 (3). The voting paper, so signed and attested, is returned to the registrar by post, and by him kept in a place of safety until the poll begins. No voting paper is counted, which does not reach the registrar before 10 A.M., on the last day of the poll; § 2 (4, 8). A voter who is incapacitated from blindness or other physical cause, may receive on application to the registrar, a special form of voting paper, on which he may record his vote by the hand of a justice of the peace; § 2 (5). Provision is made by § 2 (6) for new voting papers being supplied by the registrar, on application by voters who may have failed to receive, or inadvertently spoiled, or lost, the papers issued to them. A voter who does not appear from his address in the register to be resident in the United Kingdom or the Channel Islands, may apply to the registrar to send him a voting paper to any address in the United Kingdom or Channel Islands; § 2 (7). The poll commences on the day to which the proceedings have been adjourned, by opening the voting papers at 8 A.M., and continues for such period, being not less than four or more than six days (exclusive of Sundays), as the returning officer shall have announced in the public intimation of the adjournment; but no poll shall be kept open later than 4 P.M.; § 2 (1). No voter may vote in person, or in any other way than is provided by this act; § 2 (2). Each voting paper, before being issued, is marked with an official mark, and by a number, which is also marked on a corresponding counterfoil; *ib.* When the poll begins, the voting papers are opened and examined by the registrar, in presence of the vice-chancellor, or his pro-vice-chancellors, and the candidates or their agents; § 2 (9). Voting papers may be objected to on the following grounds: (1) that the voter has already voted at that election; (2) that he is not qualified to vote; (3) that the

[paper is forged or falsified; (4) that it is wanting in some essential condition required by this act; and the vice-chancellor, or a pro-vice-chancellor, has power to dispose of such objections; § 2 (10). The counting of the votes, and the transmission of a certificate of votes by the vice-chancellor of the non-returning university to the returning officer, and the declaration of the poll, are provided for by § 2 (11). Where there is an equality of votes, and where the addition of a vote would entitle any candidate to be declared elected, the returning officer, if a member of council of either of the electing universities, may give such additional vote; but in no other case may he vote; § 2 (12). The voting papers are filed, and may be inspected and copied on payment of a small fee; § 2 (13). Falsely or fraudulently signing a voting paper is an offence punishable by fine or imprisonment for one year; § 2 (14). The candidates are bound to pay and contribute among them the expenses necessarily incurred by the registrars in preparing and issuing the voting papers, and in taking the poll, together with a reasonable remuneration for their trouble; § 2 (18).

6. CORRUPT AND ILLEGAL PRACTICES.

The existing law on this subject consists mainly, though not exclusively, of the provisions of the Corrupt and Illegal Practices Act, 1883 (46 & 47 Vict. c. 51). Earlier enactments having failed adequately to check the corruption and lavish expenditure attendant on parliamentary elections, a vigorous effort was made in the act of 1883 to deal effectively with these evils. The act contains a minute and comprehensive body of rules, which impose strict limits on the expenditure of candidates, in respect both of its amount and of its object, and which visit with severe penalties and incapacities any transgression of these limits, as well as other corrupt and illegal practices on the part of candidates or their agents, or any other persons. The continuance of the act was limited (§ 70) to the end of the year 1884, but it has since then been continued from year to year.

(A.) *Corrupt Practices.*

The following are corrupt practices:—bribery; treating; undue influence; personation, and aiding, abetting, counselling, and procuring the commission of personation; false declaration to the returning officer by the candidate or election agent; 1883, §§ 3, 33 (7).

[1. *Bribery*.—This offence is minutely defined by 17 & 18 Vict. c. 102, §§ 2, 3 (incorporated by § 3 of the act of 1883). Slightly condensing the phraseology of the act, one may say that the offence is committed by any person who, directly or indirectly, by himself or by any other person on his behalf, (1) shall give, lend, offer, or promise, or promise to procure or to endeavour to procure (a) any money, (b) any valuable consideration, (c) any office, place, or employment, to or for any voter, or any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting at any election; or (2) shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting; or (3) shall make any such gift, loan, &c., to or for any person in order to induce him to procure or endeavour to procure the return of any person to Parliament, or the vote of any voter; and (4) by any person who shall, upon or in consequence of such gift, loan, &c., procure, or engage or endeavour to procure, the return of any person or the vote of any voter; or (5) shall knowingly advance or pay or cause to be paid any money to or to the use of any other person, with the intent that it be expended in bribery at any election, or in discharge or repayment of any money so expended; also (6) by any voter who shall, before or during any election, directly or indirectly, by himself or any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person, for voting, or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; and (7) by any person who shall, after any election, directly or indirectly, by himself or any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

By § 49 of the Reform Act of 1868, the corrupt payment of any rate on behalf of any ratepayer, in order to enable him to be registered as a voter, and thereby influence his vote at any future election, is declared to be bribery. And so also, by 44 & 45 Vict. c. 40, § 2 (17), is the corrupt payment of any fee, in order to enable any person to be registered as a member of the general council of a university.

It is not illegal for an employer to give

[leave of absence to his employés in order to record their votes, without deduction from their salaries or wages, if such leave is given equally to all alike, and is not given or refused to any person to induce or to prevent his voting for any particular candidate; 48 & 49 Vict. c. 56.

2. *Treating*.—This offence is committed by “any person who corruptly by himself, or by any other person, either before, during, or after an election, directly or indirectly, gives or provides, or pays wholly or in part, the expense of giving or providing, any meat, drink, entertainment, or provision to or for any person, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election;” and also by “every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision;” 1883, § 1.

3. *Undue Influence*.—This offence is committed by “every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of, any force, violence, or restraint, or inflict, or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector, either to give or to refrain from giving his vote at any election;” 1883, § 2.

4. *Personation*.—Personation, or aiding, abetting, counselling, or procuring the commission of personation, is a corrupt practice; and any person is guilty of personation, “who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or that of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name;” Ballot Act, 1872, § 24. In a divided burgh, the elections for two or more divisions are deemed, in this respect, to be the same

[election; Redistribution Act, 1885, § 13 (4).

5. *False Declaration.*—If any candidate or election agent knowingly makes the declaration required by the act of 1883 (in regard to election expenses, as explained *infra*) falsely, he is guilty of a corrupt practice; § 33 (7).

Consequences of Corrupt Practices.—Any of the above corrupt acts, proved on petition to have been committed by the sitting member or any of his agents at the election, voids the election; 1883, §§ 4, 5. Any person guilty of bribery, treating, or undue influence is liable to one year's imprisonment, with or without hard labour, or to a fine of £200; § 6 (1). Any person guilty of personation, or aiding and abetting the same, is liable to imprisonment for two years, with hard labour; § 6 (2). A candidate or election agent knowingly making a false declaration, as above, is liable to the punishment for wilful and corrupt perjury, *i.e.*, seven years' penal servitude; § 33 (7). Moreover, a person convicted on indictment of any corrupt practice is incapable, for seven years, (1) of sitting in the House of Commons, (2) of being registered as an elector, or voting at any election (parliamentary or for any public office), (3) of holding any public or judicial office; § 6 (3, 4). A candidate reported, on petition, as having been personally guilty of any corrupt practice, is disqualified from ever sitting for the constituency in which the offence was committed; § 4. If he is reported guilty of such practice only through his agents, the disqualification lasts only for seven years; § 5. Further, every person guilty of a corrupt or illegal practice, or of illegal employment, payment, or hiring at an election, is prohibited from voting at such election, and if he votes, his vote is void; § 36. And every person who, in consequence of conviction or report of an election court, has become incapable of voting at any election, parliamentary or for any public office, is prohibited from voting at any such election, and if he votes, his vote is void; § 37. Before any person, not being a party to a petition, is reported as guilty of any corrupt or illegal practice, the court shall give notice to such person, and an opportunity of being heard; § 38 (1). Any person so reported as guilty is subject to the same incapacity as if he had been convicted of the offence; § 38 (5). If a justice of peace is reported as guilty of a corrupt practice, Her Majesty's Advocate is directed to report the case to the Lord Chancellor; and if a person

[belonging to a profession, admission to which is regulated by law, is so reported, Her Majesty's Advocate is directed to bring the matter before the tribunal having power to take cognisance of any misconduct of such person in his profession; §§ 38 (6, 7), 68 (7). If a person holding a licence is convicted or reported as guilty of bribery or treating on his licensed premises, the conviction or report is entered in the register of licences, and taken into consideration by the licensing justices; §§ 38 (8), 68 (9). A list of electors incapacitated by corrupt or illegal practices is appended to the register of voters; § 39 (*supra* p. 375 b). The court has power to remove incapacity resulting from a conviction or report founded on evidence which is proved to have been perjured; § 46. Prosecutions for corrupt or illegal practices must be commenced within a year after the offence; § 51. A person charged with corrupt practice may be found guilty of illegal practice; § 52. A witness before any election court shall not be excused from answering any question relating to any offence connected with an election, on the ground of privilege, or that the answer might criminate himself; but the court may grant a certificate of indemnity to a witness who answers truly; § 59.

Excuse and Exception.—Where, on trial of a petition, the court reports that a candidate has been guilty, by his agents, of treating, or undue influence, or any illegal practice (see *infra*), and the court further reports—(a) that no corrupt or illegal practice was committed by the candidate or his election agent, and the offences reported were committed contrary to the orders and without the sanction or connivance of the candidate or election agent; and (b) that the candidate and election agent took all reasonable means for preventing the commission of corrupt and illegal practices; and (c) that the offences reported were of a trivial, unimportant, and limited character; and (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents; then the election of such candidate shall not, by reason of the offences reported, be void, nor shall the candidate be subject to any incapacity under the act; § 22.

Definition of Candidate.—In the act of 1883, unless the context otherwise requires, the word "candidate" means any person elected to serve in Parliament at an election, and any person who is nominated

[as a candidate, or is declared by himself or others to be a candidate, on or after the day of the issue of the writ, or after the dissolution or vacancy in consequence of which the writ was issued. But if a person is nominated or declared a candidate by others without his consent, he is not liable, unless he afterwards gives his assent or is elected; § 63.

Agency.—A candidate is responsible for the acts of his agents; and agency may be implied from circumstances. As to the constitution, scope, and termination of agency, and as to a candidate's responsibility for the acts of political associations, see *Mattinson & Macaskie on Corrupt Practices*, and English cases there cited.

Employment of a Corrupt Agent.—If a candidate is proved to have personally engaged any person as a canvasser or agent, knowing that such person has, within seven years previously, been found guilty of any corrupt practice, by competent conviction or report, the election of such candidate shall be void; 31 & 32 Vict. c. 125, § 44.

General Corruption.—The existence of general bribery, treating, intimidation, or undue influence may void an election at common law, though complicity on the part of the candidate or his agents be not proved; *Mattinson & Macaskie*, 103; see also *Woodward*, 1875, L.R. 10 C.P. 733.

(B.) *Illegal Practices.*

The numerous offences created by the act of 1883, and called illegal practices, have been divided into three classes:—(1) those which void the election, if committed by the candidate or any of his agents; (2) those which only become illegal practices when committed by the candidate or his election agent; (3) those which, though illegal practices, by whomsoever committed, only void the election when committed by the candidate or his election agent; *Mattinson & Macaskie*, 87.

1. *Offences which are Illegal Practices, and void the Election, if committed by the Candidate or any of his Agents.*

Any person is guilty of an illegal practice who makes or receives payment, or makes a contract, in contravention of § 7, which enacts that no payment, or contract for payment, shall for the purpose of promoting or procuring the election of a candidate at any election, be made—(a) on account of the conveyance of electors to or from the poll, whether for the hiring of horses

[or carriages, or for railway fares, or otherwise; or (b) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice (except where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements); or (c) on account of any committee room in excess of the number allowed by the act (sched. I., part 2), viz., in a burgh, at least one committee room, and if there are more than 500 electors, one for every 500 electors, and if there is a number over and above any complete 500, an extra room for such fraction of 500; and in a county, one central room, one room for each polling district, and an additional room for every complete 500 over and above the first 500 in each polling district. (A house or room occupied by a candidate as a dwelling does not become a committee room by reason only of the candidate there transacting business with his agents in reference to the election; nor does any room or building become a committee room by reason only of the candidate or any agent addressing therein electors, committee men, or others; § 64.) Another illegal practice of this kind is contravention of § 28, which prohibits any payment, advance, or deposit in respect of the election expenses, except through the election agent (see *infra*).

2. *Offences which only become Illegal Practices, and void an Election, when committed by the Candidate or his Election Agent.*

Illegal Payment, Employment, and Hiring.—When a person knowingly provides money for any payment contrary to the provisions of the act, or for any expenses incurred in excess of the maximum allowed by the act, or for replacing any money expended in any such payment or expenses, except where the same may have been previously allowed in pursuance of the act to be an exception, is guilty of an illegal payment; § 13. Any person knowingly letting, lending, or employing, for the purpose of conveying electors to or from the poll, any public, stage, or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, is guilty of an illegal hiring; and so also is any person who hires, borrows, or uses, for that purpose, any carriage, horse,

[or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose; § 14 (1, 2). But the act does not prevent a carriage, horse, or other animal being let to, or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of being conveyed to or from the poll; § 14 (3). Nor does the act prevent the provision of means for conveying electors, in a county election, by sea to their polling place, where the nature of the county is such that any electors residing therein are unable to reach their polling place without crossing the sea, or a branch or arm thereof; § 48. Any person corruptly inducing or procuring any other person to withdraw from candidature, in consideration of any payment, or promise of payment, is guilty of illegal payment; and so also is any person withdrawing in pursuance of such inducement or procurement; § 15. All payments, or contracts for payment, on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction, for the purpose of promoting or procuring the election of a candidate, are prohibited by § 16. Any person making such payment is guilty of illegal payment; and so also is any person receiving such payment, or being a party to such contract, if he knew that the same was made contrary to law; *ib.* By § 17, no person shall, for the purpose of promoting or procuring the election of a candidate, be engaged or employed for payment, or promise of payment, for any purpose or in any capacity whatever, except as authorised by the schedule, as set forth *infra*; and any person engaging or employing another in contravention of this section is guilty of illegal employment, as is also the person so engaged or employed, if he knew that he was engaged or employed contrary to law; § 17. (The persons who may legally be employed for payment, as authorised by sched. I., part 1, are the following:—*In counties*, one election agent; one sub-agent in each polling district; one polling agent in each polling station; one clerk and one messenger for the central committee room where the number of electors does not exceed 5000, and where it does exceed 5000, one additional clerk and messenger for each complete 5000, and if there is a number of electors over and above any complete 5000, then one clerk and one messenger may be employed for such number, though not amounting to a complete 5000; also one clerk and

[one messenger for each polling district, and when the number of electors in a polling districts exceeds 500, one clerk and one messenger for every complete 500, and one clerk and one messenger for any number that may remain over and above a complete 500. *In burghs*, one election agent; one polling agent in each polling station; one clerk and one messenger for every complete 500 electors, and one clerk and one messenger for any number that may remain over and above a complete 500.) By § 20, the following premises may not be used as committee rooms for a candidature, viz., (a) premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by licence, for consumption on or off the premises; (b) premises where any intoxicating liquor is sold, or is supplied to members of a club, society, or association, other than a permanent political club; (c) premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises; (d) the premises of any public elementary school in receipt of an annual parliamentary grant, or any part of such premises; and any person hiring or using such premises for a committee room is guilty of illegal hiring, as is also the person letting them, if he knew they were intended for a committee room. But this enactment does not apply to any part of such premises which is ordinarily let for chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid; *ib.* A person guilty of illegal payment, employment, or hiring, is liable, on summary conviction, to a fine of £100; and a candidate or election agent who is personally guilty of any of these offences is guilty of an illegal practice; § 21.

3. *Offences which are Illegal Practices, by whomsoever committed, but which only void the Election when committed by the Candidate or his Election Agent.*

(1) No sum may be paid nor any expense incurred by a candidate or his election agent, in respect of the conduct or management of the election, in excess of the maximum amount specified in the first schedule to the act; and any candidate or election agent who knowingly acts in contravention of this section is guilty of an illegal practice; § 8. (2) Any person voting or inducing or procuring any person to vote at any

[election, knowing that he or such person is prohibited from so doing, by this or any other act, and also (3) any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate, for the purpose of promoting or procuring the election of another candidate, are guilty of illegal practices; but a candidate is not liable, nor is his election avoided, for any illegal practice under this section committed by his agent other than his election agent; § 9. (4) Any person printing, publishing, or posting, or causing to be printed, published, or posted, any bill, placard, or poster, having reference to an election, which does not bear upon the face thereof the name and address of the printer and publisher, is liable on summary conviction to a fine of £100, or, if he is the candidate or election agent, is guilty of an illegal practice; § 18. (5) An election agent paying any claim against a candidate, in respect of election expenses, more than 28 days after declaration of the election, or paying any such claim which had not been sent in within 14 days after such declaration, is guilty of an illegal practice; § 29. But if it is proved that payment made by an election agent in contravention of this section was without the sanction or connivance of the candidate, his election is not void, nor is he subject to any incapacity by reason thereof. Disputed claims paid by order of the court, and claims for payment of which special leave has been granted by the court, are also excepted from the above limitations; *ib.*; see also *infra*, p. 386 *b*. An election agent who fails to make a return of the election expenses in due time (see *infra*), along with the requisite declaration, is likewise guilty of an illegal practice; § 33 (1, 6).

Consequences of Illegal Practices.—Any person guilty of an illegal practice is liable, on summary conviction, to a fine of £100, and is disqualified for five years from voting at any election, parliamentary or for any public office, in the constituency where the offence was committed; § 10. If an illegal practice is found by an election court to have been committed by a candidate or with his knowledge and consent, besides losing his seat (if elected), and besides the above disqualifications, he is incapacitated from sitting for the constituency for seven years; § 11. If a candidate is guilty by his agents of an illegal practice, he loses the seat (if elected), and cannot sit for the constituency during the existing Parliament;

[*ib.* Other consequences attached to illegal, in common with corrupt practices, are mentioned *supra*, p. 382 *a*.

Excuse and Exception.—The relief given by § 22, against forfeiture of the seat in certain cases of corrupt or illegal practices committed by an agent other than the election agent, has already been mentioned (p. 382 *b*). It has no application where the illegal practice has been committed by the candidate or his election agent. By § 23, a further power is given to the court, in case of any act or omission on the part of a candidate, his election agent, or any agent or person, which would infer under the act an illegal practice, payment, employment, or hiring, if such act or omission arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature, and not from any want of good faith, to relieve such candidate, agent or person, of any of the consequences under the statute of such act or omission.

(C.) Election Expenses.

Election Agent and Sub-Agents.—An election agent (and one only) must be named by or on behalf of each candidate at an election, on or before the day of nomination; and his name and address must be declared in writing to the returning officer, and by him forthwith publicly notified; § 24. In the event of such agent's death, or of his appointment being revoked by the candidate, a new appointment must be made forthwith, and publicly notified. A candidate may be his own election agent; *ib.* In counties, an election agent may appoint one sub-agent to act within each polling district, whose name and address must be declared and notified as above; § 25, and sched. I., part 1 (2). The acts and defaults of a sub-agent in his district are deemed to be the acts and defaults of the election agent, and infer the like responsibility on the part of the candidate; but the sub-agent is personally liable to punishment for illegal practices; § 25. An election agent must have within the county or burgh, and a sub-agent within his district, an office or place to which claims, notices, &c., may be sent; § 26. All appointments of polling agents, clerks, and messengers, and all hirings of committee rooms, must be transacted by the election agent or sub-agent; and no contract involving expenses is enforceable against a candidate, unless made by himself or his election agent or sub-agent; § 27. Except

[as permitted by or in pursuance of the act, no payment and no advance or deposit shall be made by a candidate, or any agent on his behalf, or any other person, at any time, on account of election expenses, otherwise than by or through the election agent or a sub-agent; and all money provided by any person other than the candidate, for election expenses, whether as gift, loan, advance, or deposit, must be paid to the candidate or his election agent; but this does not apply to a tender of security to or any payment by the returning officer, nor to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him; § 28.

Expenditure Allowed.—The persons who may be legally employed for payment have been mentioned *supra* (p. 384 a). Besides their remuneration, the following are legal expenses:—(1) the returning officer's charges; (2) the candidate's personal expenses (which include, by § 64, reasonable travelling expenses, and reasonable expenses of living at hotels or elsewhere for the election); (3) expenses of stationery, messages, postage, and telegrams; (4) expenses of printing, of advertising, and of publishing, issuing, and distributing addresses and notices; (5) of holding public meetings; (6) of committee rooms, within the limits mentioned *supra* (p. 383 b); sched. I., part 2. Besides these, miscellaneous expenses are allowed to an amount not exceeding £200, if not incurred in respect of anything prohibited by any statute; sched. I., part 3.

Maximum Scale.—(1) In burghs, if the number of electors on the register does not exceed 2000, the maximum amount is £350. If the number exceeds 2000, the maximum is £380, and an additional £30 for every complete 1000 electors above 2000. (2) In counties, if the number of electors on the register does not exceed 2000, the maximum is £650. If the number exceeds 2000, the maximum is £710, and an additional £60 for every complete 1000 electors above 2000; sched. I., part 4. The following are not to be included, in computing the amount of expenses:—(a) Personal expenses; (b) returning officer's charges (*ib.*); (c) payments for conveyance of electors by sea to the polling place, in counties where that is allowed by § 48. Where there are two joint candidates, the maximum for each is reduced by one-fourth; and where there are more than two, it is reduced by one-third. The schedule specifies minutely what constitutes joint

[candidature; but as the burgh of Dundee is the only Scottish constituency where this can now occur, a reference (sched. I., part 1 (4)) is here sufficient.

Payment of Claims.—Every payment by an election agent or sub-agent, in respect of election expenses, unless under 40s., must be vouched for by a bill stating particulars, and by a receipt. All claims must be sent in within 14 days, and all payments must be made within 28 days, after declaration of the election (see *supra*, p. 385a). But claims disputed, and subsequently paid by order of the court, are deemed to be paid within the time limited; and leave may be given by the court, on cause shown, for payment of a claim which would otherwise be barred by the above limitations; § 29. The candidate's personal expenses, connected with the election, may be paid by himself to the amount of £100, but any beyond that amount must be paid by the election agent. The candidate must send to the election agent, within 14 days after declaration of the election, a written statement of the amount of personal expenses paid by him. Any person authorised in writing by the election agent may pay petty expenses for stationery, postage, telegrams, &c., to an amount to be named in his authority; and a statement of the particulars of payments made by such person must be sent to the election agent within the said 14 days, and must be vouched for by a bill containing the receipt of such person; § 31. So far as circumstances admit, the act applies to the election agent's claim for remuneration and the payment thereof, in like manner as if he were any other creditor; § 32. The returning officer's account of charges must be transmitted to the election agent of each candidate within 21 days after declaration of the poll; 49 & 50 Vict. c. 58. As to returning officer's charges, see act last cited, and 41 & 42 Vict. c. 41; 48 & 49 Vict. c. 62.

Return and Declarations respecting Expenses.—Within 35 days after declaration of the election, the election agent must transmit to the returning officer a true return, in form prescribed (sched. II.) containing a statement—(a) of all payments made by the election agent, together with all the bills and receipts; (b) of personal expenses paid by the candidate; (c) of sums paid to the returning officer, or, if the amount is in dispute, of the sum claimed and the amount disputed; (d) of all other disputed claims of which he is aware; (e) of all the unpaid claims of which he is

{aware, in respect of which application has been or is about to be made to the court; (f) of all money, securities, and equivalent of money received by him from the candidate or any other person for the election expenses, and of the name of every person from whom the same may have been received; 1883, § 33. The return must be accompanied by a declaration, in form prescribed, by the election agent before a justice of peace, verifying the return; and at the same time, or within seven days thereafter, (or, if he is abroad, within 14 days after his return to the United Kingdom), the candidate must transmit a similar declaration to the returning officer. Modifications are provided for the case of a candidate who is his own election agent. When leave has been given by the court to pay a claim after the return of expenses has been transmitted, the candidate or election agent must transmit a return of sums paid in pursuance of such leave, within seven days after payment thereof. If the said return and declarations are not transmitted within the time limited, the candidate may not sit or vote in the House of Commons for the constituency until they are transmitted, or until the allowance by the court of an authorised excuse for the failure to transmit them, and is liable to forfeit £100 for every day on which he so sits or votes, to any person who sues for the same. If a candidate or election agent fails, without authorised excuse, to comply with the above requirements, he is guilty of an illegal practice (*supra*, p. 385 a). If he knowingly makes the declaration falsely, he is guilty of a corrupt practice, and punishable as mentioned *supra*, p. 382 a; § 33. Relief may be had, by order of the court for allowing an authorised excuse, on application by the candidate or the election agent, if failure to transmit the return or declaration, or if error or false statement therein, was caused by illness, absence, misconduct of others, inadvertence, or any reasonable cause of like nature, and not by any want of good faith on the part of the applicant; § 34. Before granting such allowance, the court may order any election agent or sub-agent, through whose default the candidate or election agent has been unable to comply with the above requirements, to attend before the court, to make the return and declaration, to state particulars required, or in default of compliance to pay a fine of £500. The allowance of excuse may be made conditional on such terms as to the

[court seem best calculated for carrying out the objects of the act; *ib.* The returning officer must, within ten days after receiving the return from the election agent, publish a summary thereof in two newspapers circulating in the locality, notifying also the time and place at which the return and declarations may be inspected; the act providing that they may be inspected at any reasonable time during the next two years, on payment of 1s., and that copies may be had at the price of 2d. for every 72 words; § 35.

7. ELECTION PETITIONS.

Controverted elections, which prior to 1868 were determined, under 11 & 12 Vict. c. 98, and earlier acts, by election committees of the House of Commons, are now brought under cognisance of the Court of Session by petition, under the Parliamentary Elections Act (31 & 32 Vict. c. 125). Any elector or candidate may petition against an undue return or undue election of a member; § 5 of latter act. The petition is presented to one of the Divisions of the court, and security must be found to the amount of £1000; *ib.* §§ 5, 6, 58. The time within which the petition must be lodged varies, according to the following rules:—(1) If the return is challenged on the ground of corrupt practices, the petition may be presented at any time within twenty-one days after the return has been made to the clerk of the Crown. (2) If the return is challenged on the ground of illegal practices, the petition may be presented at any time before the expiration of 14 days after the day on which the returning officer receives the return and declarations (or the last of them) respecting election expenses, or after the last allowance by the court of any excuse for failure to transmit such return or declarations. (3) In the case of either corrupt or illegal practices, if the petition specifically alleges a payment of money or some other act to have been made or done subsequent to the day when the return of the election was made (if corrupt practice is alleged), or the day when the return or declarations respecting expenses were received (if illegal practice is alleged), by the member or an agent of the member, or with the privity of the member or his election agent, in pursuance or in furtherance of the corrupt or illegal practice alleged in the petition, it may be presented at any time within 28 days after the date of such payment or other act; 31 & 32 Vict. c. 125, § 6;

[Corrupt Practices Act, 1883, § 40. A petition alleging corrupt practice, timeously presented as such, may be amended with leave of the court so as to allege illegal practice, within the time allowed for presenting a petition alleging illegal practice; 1883, § 40 (2). In regard to the time for presenting the petition, an offence relating to the return and declarations respecting expenses is dealt with as if it were an illegal practice; and so also is an act constituting an illegal practice, as alleged in the petition, although it amounts to a corrupt practice; § 40 (3); but see *Mattinson & Macaskie*, 136. Under 31 & 32 Vict. c. 125, § 58 (5, 6), the trial of an election petition was conducted before one of a rota of two judges annually selected for the purpose by the Court of Session; but by 42 & 43 Vict. c. 75, every election petition must be tried before two judges, and additional judges may be placed on the rota, if necessary. The place of trial is usually in the county or burgh in which the election in question took place; but the court may, on special grounds, appoint another place; 31 & 32 Vict. c. 125, § 11 (11). General rules of procedure in election petitions were framed by the election judges, of date 27 Nov. 1868, and 13 Jan. 1869. These are printed in *Nicolson*, Appx. cclvi., and in *Adam's Acts of Sedes-runt*, &c., 142. The trial shall, so far as practicable, be continued *de die in diem* until its conclusion; 1883, § 42. The determination of the judges must be certified in writing to the Speaker, and is final to all intents and purposes; 31 & 32 Vict. c. 125, § 11 (13). Where the petition contains any charge of corrupt or illegal practices, the judges must at the same time report to the Speaker as follows:—(a) Whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt or illegal practice: (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt or illegal practice: (c) Whether corrupt or illegal practices have, or whether there is reason to believe that corrupt or illegal practices have, extensively prevailed at the election to which the petition relates; *ib.* § 11 (14); 1883, § 11. If the judges on the trial differ in opinion as to whether the member was duly elected, they certify that difference, and the member is deemed to have been duly elected. If they determine

[that he was not duly elected, but differ as to the rest of the determination, they certify the difference, and the election is deemed to be void. If they differ as to the subject of a report to the Speaker, they certify the difference, and make no report; 42 & 43 Vict. c. 75, § 2. If the case raised by a petition can be conveniently stated in a special case, the court (*i.e.*, the Division) may, on the application of any party, direct the case to be stated accordingly, and to be heard before themselves; in which case the court certify to the Speaker their determination, which is final; 31 & 32 Vict. c. 125, § 11 (16). And when a petition is tried before the election judges, they may reserve any question of law for the consideration of the Division, and postpone granting their certificate until its determination; *ib.* § 12. The withdrawal of election petitions, their abatement by death of the petitioners, and the substitution, in certain circumstances, of new petitioners or respondents, are dealt with by §§ 35–40 of the same act, and § 40 of the act of 1883. Withdrawal is competent only with leave of the court, or of the election judges, who report to the Speaker the circumstances of the withdrawal. Before leave is granted, affidavits must be produced by all the parties and their solicitors, and by the election agents of all the candidates, stating that to the best of their knowledge no agreement or undertaking has been entered into in relation to the withdrawal, or setting forth any lawful agreement that may have been made; and the affidavits of the applicant and his solicitor must state the ground on which withdrawal is sought. Any person making any agreement or undertaking for withdrawal that is in consideration of payment, or of the seat being vacated at any time, or of the withdrawal of any other election petition, or that is not mentioned in the foresaid affidavits, is guilty of an offence, and liable to imprisonment for 12 months, and to a fine of £200. At the trial of every election petition, Her Majesty's Advocate shall be represented by one of his deputed or by the procurator fiscal of the sheriff court; 1883, § 68 (3). For examples of election petitions, see *Christie*, 19 Jan. 1869, 7 Macph. 378; *Irwin*, 13 March 1874, 1 R. 834; *Boyd*, 16 July 1880, 7 R. 1170; and cases cited *supra*, p. 379 a. See *Mackay's Prac.* ii. 433; *May's Parly. Prac.* 715.

On Election Law, see *Nicolson on Elections*; *Nicolson's Analysis of Recent Statutes*; *Crichton's Ballot Act*; *Rankine*

[*on Land-Ownership*, 181, 753; *Rankine on Leases*, 549; *Bell's Princ.* § 2149; English treatises on Election Law by *Rogers*, *Leigh & Le Marchant*, and *Cunningham*, and on Corrupt Practices by *Mattinson & Maraskie* and *Conybeare*; *May's Parly. Prac.*; *Anson on the Constitution*, i. 70; and as to the earlier law, *Cay's Reform Act*, 1832; *Bell on Elections*; *Wight on Elections*. See *Parliament*.]

[**ELECTIONS, MUNICIPAL.** See *Burgh, Royal*.]

ELECTION. In the law of England one is said to have an election when it is optional to him to make his choice of two or more alternatives; but having made his election, he is bound by it, and cannot act inconsistently with his own determination. So also, in the law of Scotland, where a party has an election, and has made it, he must abide by it. He cannot *approve* and *reprobate*, according to the Scotch law expression; that is, he cannot take the benefit conferred, and reject or evade the corresponding burden or privation. *Tomlins, h. t.* See *Approbate and Reprobate*. [One who has ground of action equally against the master and the owner of a ship, may sue either the one or the other; but if he has sued the one to judgment, he has no action against the other on the same ground; *Priestley*, 1865, 34 L.J. Exch. 172; *Meier & Co.* 17 March 1881, 8 R. 642.]

[**ELECTRIC LIGHTING.** See 45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12.]

ELEGIT; is an English law term, signifying a writ of execution directed to the sheriff, [who, by virtue of it, gives to the judgment-creditor the lands and tenements of the judgment-debtor, to be occupied and enjoyed until the money due on such judgment is fully paid. During the time the creditor so holds the lands, he is called tenant by *elegit*.] This form is analogous to the ancient apprising of the Scotch law. [Formerly under an *elegit*, the goods of the debtor were first seized, and the lands only when the goods proved insufficient to satisfy the debt. But by the Bankruptcy Act of 1883, a writ of *elegit* does not extend to the goods. See *Wharton's Lex.*; *Stephen's Com.* iii. 621; [*Ross's Lect.* i. 431; *Kames' Equity*, 286.]

EMANCIPATION; is a term borrowed from the Roman law; and, in the law of Scotland, applied to the liberation of a child from the *patria potestas*, or paternal authority. See *Forisfamiliation*. *Patria Potestas*. *Adoption*.

EMBARGO; is a detention or arrest of ships or merchandise by public authority. An embargo is usually imposed on the breaking out of a war, or on the occasion of some difference with the state to which the shipping or merchandise so detained belongs. The term is also applied to the detention of ships for the service of the state, on some pressing emergency, on which occasion it has been held not to be inconsistent with the law of nations to make use of all vessels found in the ports of the state which resorts to this expedient. The Sovereign may lay an embargo on ships, or employ the ships of subjects in time of danger for the service and defence of the country, but a warrant to stay a single ship on a private account is no legal embargo. In time of war, embargos on the shipping in the ports of Great Britain may be imposed by royal proclamation; but it is doubtful whether the same power can be legally exercised in time of peace. An embargo has not the effect of putting an end to the contract of affreightment; the freight is due in the same manner as it is where the ship is detained by contrary winds; and the master and crew are consequently entitled to their wages during the detention. See *Tomlins' Dict. voce Imbargo*; *Brodie's Supp. to Stair*, 976; *Bell's Com.* i. 565; [*Wheaton's International Law* (Lawrence's edit.), 510.]

EMBASSY. See *Ambassador*.

EMBEZZLEMENT; is the fraudulent appropriation of the property of another by the person to whom it is entrusted. At common law this offence is not held to amount to theft, but is punishable arbitrarily as malversation or breach of trust. [See *Breach of Trust*. *Theft*. *Fraud*.] It has been found necessary, however, for the protection of several branches of trade and manufactures, to enact special statutes for the prevention and punishment of embezzlement and similar frauds. [See 22 Geo. II. c. 27; 17 Geo. III. c. 56; *Fraser on Master and Servant*, 333;] *Brodie's Supp. to Stair*, 1005; *Bell's Com.* i. 611; ii. 170.

EMBLEMENTS; in English law, the profits of sown land. In a larger acceptation, any products springing naturally from the ground, as grass, fruit, &c. *Tomlins' Dict. h. t.*

EMBRACERY; is an English law term, signifying an attempt [by any means whatever, except the production of evidence and argument in open court, to influence or instruct any juryman, or to incline him to

[be more favourable to the one side than to the other in any judicial proceeding. *Stephen's Digest of Crim. Law*, art. 128.]

EMPHYTEUSIS; was a right known in the Roman law, of the nature of a perpetual location of land, granted for payment of a yearly hire or rent, called *canon emphyteuticus*. The *emphyteuta* or tenant was not at liberty to sell without making the first offer to the *dominus*; but he was entitled to the full profits of the subject, which he might also impignorate for his debt without the consent of the *dominus*. The right of the *emphyteuta* descended to his heirs. The close resemblance in principle between the *emphyteusis* and the grant in feu-farm has led Craig and other authors to apply the term *emphyteusis* to the feu-right. *Stair*, B. ii. tit. 3, § 34; *Bank*, B. ii. tit. 3, § 53; *Ersk.* B. ii. tit. 4, § 6; *Ross's Lect.* ii. 394.

[EMPLOYERS' LIABILITY. See *Master and Servant. Workmen.*]

EMULATION. [See *Æmulatio Vicini.*]

ENACH; an amends or satisfaction for a crime, fault, or trespass. *Skene, h. t.*

ENCHESONE; the cause, occasion, or reason wherefore anything is done; as when it is said that the vassal is in the keeping of his overlord by enchesone of warde. *Skene, h. t.*

[ENDORSEMENT. See *Indorsement.*]

ENEYA; a French word for the first, chief, and principal part of the heritage. *Jus esnicæ* also means the law of primogeniture. *Skene, h. t.*

ENGRAVING. The property of engravings and prints is secured to the inventors by laws similar to those enacted for the protection of literary property. [See *Copyright.*] For the protection of bankers and banking companies, the offence of engraving, making, using, or possessing plates for bank-notes, intended to be fraudulently circulated, is, under special statutes, punishable by imprisonment or [penal servitude;] 41 Geo. III. c. 57; 45 Geo. III. c. 89; both of which statutes extend to Scotland; *Hume*, i. 141. See *Forgery.*

ENGROSSER. An engrosser or regrater, is a person who buys corn, victual, flesh, fish, or other vivres, in a fair or market, and sells them again either in the same fair or in any other fair within four miles thereof; or who, by buying, contract, or promise, gets into his hand the corn growing in the field. By 1592, c. 150, this offence is made punishable by fine and escheat of moveables; but there are no recent examples of prosecutions under this statute. *Hume*, i. 510. See *Forestalling.*

ENLISTING; is the act of entering voluntarily into the military service of the State. [The existing regulations as to enlistment are contained in the Army Act, 1881 (44 & 45 Vict. c. 58), §§ 76-101. The term of original enlistment is limited to twelve years; and the recruit may engage to serve part of the term in army service, and part in the reserve; §§ 76, 77. A man offering to enlist receives a notice stating the general conditions of the service, and the requirements of attestation, and directing him to appear before a justice of the peace. If he does not appear, or on appearing does not assent to be enlisted, no further proceedings are taken. If he assents, the justice, after due explanation, records his answers to the questions in the attestation paper, requires him to sign the attestation, and administers the oath of allegiance. He is then deemed to be enlisted as a soldier, but he may still be discharged, within three months, on payment of £10; §§ 80-81. An alien may enlist, if Her Majesty consent through a Secretary of State, provided that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to fifty British subjects; but an alien so enlisted may not be an officer; § 95. If an apprentice, who had when under 16 become bound for at least four years by a regular indenture, enlists before he is 21 years of age, he may be claimed by his master, provided the latter, within one month after the apprentice left his service, takes an oath before a justice of the peace, and obtains from a court of summary jurisdiction, within whose jurisdiction the apprentice may be, an order on the officer under whose command the apprentice is, to deliver him to his master; § 96. The offence of fraudulent enlistment is committed by any one who, when belonging to either the regular forces or the militia when embodied, without having obtained a regular discharge, or otherwise fulfilled the conditions enabling him to enlist, enlists in the regular forces, or in the militia, or in any of the reserve forces, not subject to military law, or in the navy; and such offence is punishable by imprisonment or (if not a first offence) penal servitude; § 13. See *Manual of Military Law* (War Office, 1887), 257, 437; *Clode's Military Forces*; *Tovey's Military Law*. See *Foreign Enlistment. Army.*]

ENMITY TO PANEL; in criminal process, is one of the grounds for rejecting

a witness. To establish this ground, he must be proved to have been hostile in act and deed to the panel; or at least a sufficient cause of capital enmity between them must be proved. The person injured is not disqualified, even though there may have been animosities between him and the panel previous to the act, though, in this case, he is not entitled to implicit belief. Mere expressions of enmity, however violent, do not disqualify, but may affect the credibility of the witness. Enmity to the panel is likewise a valid objection to a juror; and it will be sufficient that the animosity has been evinced by words; since there is not the same reason for overlooking such expressions in the case of a juror as in that of a witness, the loss of whose evidence often cannot be supplied. *Hume*, ii. 357; *Alison's Prac.* 80, 285, 478; [*Macdonald*, 469; *Ersk. B.* iv. tit. 2, § 28; *Dickson on Evidence*, ii. § 1602.] See *Evidence*.

ENTAIL. In its most comprehensive sense, an entail or tailzie is any deed by which the legal course of succession is cut off, and an arbitrary one substituted. But the term, in its more ordinary acceptation, is applied to a deed framed in terms of the statute 1685, c. 22, and intended to secure the descent of an heritable estate to the series of heirs or substitutes called to the succession by the maker of the tailzie.

Before adverting to the requisites of a statutory entail, it may be premised generally, that every proprietor legally invested with the right of property is entitled, whether the property has been acquired by his own exertions, or has descended to him by inheritance, to dispose of it at his pleasure. What is technically called a *simple destination* of the property does not preclude any substitute, after being invested, from exercising the powers of unlimited fiar, and thereby disappointing the posterior substitutes by altering the investiture either onerously or gratuitously, and that even by a *mortis causa* deed. If, however, the destination has not been altered by any of the substitutes in possession, it will continue to regulate the course of succession. Hence, the effect of a simple destination is to confer on the substitutes a mere *spes successionis*, defeasible at the will of the heirs respectively, on their succession. As to the import of certain terms in destinations, see the article *Destination*. [If prohibitory clauses are added to the destination, they are effectual, at common law, to prevent gratuitous alienation, and to constitute obligations *inter*

[*hæredes*; but not against third parties, nor to prevent alienation for onerous causes, nor adjudication for debt. But under the provisions of the Entail Amendment Act, 1848, as noted *infra*, no effect is allowed to prohibitory clauses, unless combined with the other clauses requisite in a strict entail, under 1685, c. 22.] It was at one time supposed that, although the entail wanted the statutory requisites, and therefore did not prevent alienation, yet that the price received for the estate came in its place, and that the heir in possession was bound to invest it in accordance with the provisions of the entail; and so the Court of Session decided in the Ascog case; *Stewart*, 5 S. 418; but this decision was reversed on appeal, 16 July 1830, 4 W. & S. 196. See *Surrogatum*.

The statute 1685, c. 22, provides, "That it shall be lawful to His Majesty's subjects to tailzie their lands and estates, and to substitute heirs in their tailzies, with such provisions and conditions as they shall think fit, and to affect the said tailzies with irritant and resolute clauses, whereby it shall not be lawful to the heirs of tailzie to sell, anailzie, or dispone the said lands, or any part thereof, or contract debts, or do any other deed whereby the same be apprised, adjudged, or evicted from the other substitutes in the tailzie, or the succession frustrated or interrupted, declaring all such deeds to be in themselves null and void; and that the next heir of tailzie may, immediately upon contravention, pursue declarators thereof, and serve himself heir to him who died last invest in the fee, and did not contravene, without necessity any ways to represent the contravener." But the statute provides that effect shall not be given to tailzies except on compliance with the following requisites: 1st, That the restrictive clauses shall be inserted in all the title-deeds of the estate. 2^d, That the entail shall be presented to the Court of Session, and have the judicial authority of that court interposed to it. 3^d, That it shall be recorded in the Register of Entails. 4th, That being so recorded, it shall be real and effectual against creditors and purchasers, whether by legal or conventional titles. 5th, That, where the conditions of the entail are not inserted in the titles of the estate, the omission shall infer a forfeiture against the heir to whom it is to be attributed, but shall not militate against his creditors or purchasers from him. And, *lastly*, It is declared that the statute shall not prejudice the rights of the king as to confiscations or fines for crimes, or the

rights of superiors, for their casualties of superiority. [Moveables, apparently, cannot be entailed; *Veitch*, 1808, M. App. Serv. & Conf. No. 4; *Baillie*, 21 May 1859, 21 D. 839; *Kinnear*, 17 Feb. 1876, 4 R. 705; *M. Bute*, 3 Dec. 1880, 8 R. 191. A *pro indiviso* share of an estate may be entailed; *Stewart*, 2 Dec. 1859, 22 D. 72; *Howden*, 16 July 1869, 7 Macph. (H.L.) 110. An entail of a lease, being an heritable right incapable of feudalisation, is binding only *inter heredes*; *Hunter on Landl. and Ten.* i. 211; *Chisholm*, 9 Dec. 1864, 3 Macph. 202.]

The usual form of executing the tailzie is for the maker of the deed to dispoise to himself and such a series of heirs as he may think proper to name, the lands intended to be entailed, under certain conditions, limitations, and provisions. Sometimes, also, the entailer dispoises to another in the first instance, reserving a liferent to himself. In all cases the first disponee, whether the entailer himself, or another, is called the institute, and the subsequent heirs the substitutes. [The entailed destination terminates when the succession opens to heirs-portioners; for the exclusion of heirs-portioners cannot be inferred; *Mure*, 18 May 1838, 3 S. & M'L. 237; *Macdonald*, 22 Dec. 1842, 5 D. 372; *Collow's Trs.* 23 Feb. 1866, 4 Macph. 465. The line of destination must be different from that of legal succession; hence when the destination terminates in "heirs whatsoever," the entail is closed, and the substitute previously called takes in fee-simple; *E. March*, 2 Pat. 49; *Leny*, 28 June 1860, 22 D. 1272; *Gordon*, 2 March 1866, 4 Macph. 501; *Connell*, 14 Feb. 1867, 5 Macph. 379; *Gordon*, 6 July 1882, 9 R. (H.L.) 101; *E. Northesk*, 3 Nov. 1882, 10 R. 77. Where an entail is invalid in respect of a destination to "heirs whomsoever," it is taken to be a fee-simple estate without any declarator or other judicial procedure; and where money or other property has been invested in trust to purchase lands to be entailed under such destination, or where lands are directed to be so entailed, but the direction has not been carried into effect, the trust-funds or lands are to be dealt with as if the destination were in fee-simple; 38 & 39 Vict. c. 61, § 13.] The clauses essentially necessary to give effect to an [old] entail, [*i.e.*, one dated before 1 August 1848, when the Rutherford Amendment Act came into operation,] are, 1st, Prohibitions against altering the order of succession, against alienating the land,

and against contracting debts, whereby the lands may be burdened or affected by diligence: 2d, Irritant clauses, declaring that all deeds executed, whereby the course of succession may be altered, or the lands sold or conveyed away, and all debts contracted contrary to the above prohibitions, shall be void and null: And, 3d, Resolutive clauses, declaring that if any of the heirs of entail shall act contrary to all or any of the prohibitions, he shall forfeit his right to the lands entailed, sometimes for himself only, and in other cases for all the heirs who may take the succession as his descendants. The irritant and resolutive clauses may either apply generally to all the prohibited acts, or specially to each; but it is indispensable that every prohibited act be pointed at both by the irritant and resolutive clauses. These clauses must also be distinctly directed against the persons meant to be affected. Such are the essential clauses of an entail; but a variety of other clauses are usually added. Thus it is the general practice to insert a clause binding the several persons called to the succession, and the husbands of heirs-female, to assume and use the surname and arms of the maker of the tailzie. [See *Hunter*, 31 Jan. 1882, 9 R. 492.] Provisions are also usually inserted as to the administration of the entailed estate, such as rules for the granting of feus, leases, or the like; and the heirs of entail are further required to satisfy all claims effectual by law against every entail, such as the entailer's debts, the feudal casualties, and the public or parish burdens. [A clause of devolution is also frequently inserted, binding the heir to surrender the estate to the next substitute, if he should succeed to a peerage, or to another estate; *E. Eglinton*, 8 July 1847, 6 Bell's App. 136; *Howden*, 16 July 1868, 6 Macph. (H.L.) 113; *Campbell*, 10 July 1868, 6 Macph. 1035; [*Home*, 13 July 1880, 7 R. 1137; *Forbes*, 29 June 1888, 15 R. 797.] Certain powers are frequently reserved to the heir in the entail; such as a power to sell to pay the entailer's debts; a power to excamb or to sell and reinvest; a power to feu; a power to alter the order of succession, so as to avoid an idiot or a bankrupt, or the like. The heirs of entail in succession are also very frequently empowered to grant annuities to their widows or surviving husbands out of the rents of the entailed estates; and in like manner to make provision for their younger children. [See *Rogerson*, 17 May 1872, 10 Macph. 698; *Catton*, 1 March 1872, 10 Macph. (H.L.)

[12.] All the conditions and provisions of an entail are made effectual against the heirs in succession by the penalty of forfeiture of the right in case of contravention, [and enforced by declarator of irritancy, and (where the act constituting contravention is to be annulled) by action of reduction; *E. Breadalbane*, 16 March 1877, 4 R. 667. See *Irritancy. Forfeiture.*] The words of the statute do not authorise any restraint on the institute; but it has been decided that he may be placed under the fetters of the entail. He must, however, be expressly comprehended in the prohibitory clauses; and the expression "heir or member" of tailzie does not include him; [*Edmonstone*, 2 Paton, 255.] The entailer cannot gratuitously fetter himself to the prejudice of his creditors; but restraints may be imposed on him by an onerous or mutual entail. See *Mutual Entail*. The entailer's debts are a burden on the estate, which may be adjudged or sold to pay them. [The law as to the liability of the estate for entailer's debts and real burdens has been stated as follows:—"1. Where the deed of entail divests the granter of the fee, and leaves him only a liferent of the estate, then, as long as the entail remains personal, it can only be binding *in obligatione*, and may be discharged with the consent of the institute; but after registration and infeftment it is a complete entail, incapable of being defeated by the debts or deeds either of the granter or the institute. 2. Where the granter is not divested, but the entail is onerous, and the restraining clauses are directed against the entailer as institute, the entail, while it remains personal, is effectual to bar gratuitous alienation; after registration in the Register of Tailzies it is effectual in respect of its onerosity against the personal creditors of the institute, whose claims are subsequent in date to the registration of the deed; after registration and infeftment, it is effectual against all creditors whatsoever, except those whose claims had become real charges upon the estate before the infeftment. 3. Where the granter is not divested, and the entail is not onerous, the settlement may be made binding *inter hæredes* by compliance with the requisites of the statute; but the estate continues to be liable for the debts and obligations of the entailer to the time of his death;" *M'Laren on Wills*, i. § 1114. See *Stewart*, 1784, M. 15435, 6 Pat. 60; 31 July 1822, 1 S. App. 320; *Dickson*, 1786, M. 15534; 1, Oct. 1831, 5 W. & S. 657.

[Entails are recorded in the Register of Tailzies, by judicial warrant. The petition to record an entail is presented to the Junior Lord Ordinary, and may be at the instance of the maker, the institute, or any substitute. The whole entail must be recorded; subject to the permission, by 37 & 38 Vict. c. 94, § 61, of short descriptions and references to prior recorded deeds; *Padwick*, 4 March 1874, 1 R. 697. The petition is granted, however absurd the deed of entail may be; *Gilmour's Trs.* 16 Dec. 1856, 19 D. 134. No one can be prejudiced by the registration, if the entail is bad. An unrecorded entail has no effect in questions with creditors; *Irvine*, 1765, M. 15617; *Munro*, 9 Feb. 1836, 14 S. 453. The heir in possession under an unrecorded entail is entitled to sell, and is under no obligation to reinvest the price; *Grahame*, 11 Dec. 1829, 8 S. 231; *E. Eglinton*, 18 Aug. 1843, 2 Bell's App. 149. The powers conferred on heirs of entail by the Rutherford Act (see *infra*) are available whether the entail is recorded or not, and whether the heir is infest or not; § 42.]

In determining what deeds are necessary for renewing the right in the person of an heir of entail, it is proper to attend to the distinction between an institute and an heir. The person first called to the tailzied succession, *i.e.*, the disponee of the maker of the entail (whether he disposes to himself or to another), is called the institute, and all who succeed to him are, properly speaking, heirs of entail. The institute requires no service; but on the death of the institute, whether he has completed his title or not, all those substituted to him in the destination must make up their titles respectively by service as heirs of tailzie and provision. Where the title of the institute has been completed under the entail, the next heir enters by a special service as heir of tailzie. Where the institute has not completed his title (*e.g.*, where the institute has predeceased the maker of the entail, who has reserved a liferent to himself), the next heir on the opening of the succession must expedite a general service as heir of entail. [See *Service.*] The act 1685, c. 22, requires that the provisions and irritant clauses shall be repeated in all the subsequent conveyances of the tailzied estate to any of the heirs of tailzie,—the omission importing a contravention against the party and his heirs, who makes the omission. [But the conditions of entail may now be inserted by reference to a prior recorded deed of entail; 31 & 32 Vict. c. 101, § 9. As to

[whether an entailed estate may be carried by a general conveyance, see *General Disposition*. As to the rights of an heir in possession, while the existence of a nearer heir of entail is still possible, see *Stewart*, 2 Dec. 1859, 22 D. 72; *Campbell*, 10 July 1868, 6 Macph. 1035; *Bruce and Forbes*, *infra*, p. 396 a; *M. Bell's Conv.* ii. 1111.]

The powers and restraints of heirs of entail have been the subject of various statutes since the passing of the Tailzie Act; but, at common law, the general rule is that the provisions and conditions of the deed of entail, except in so far as modified or controlled by those statutes, form the legal measure of the heir's rights, and that, except in so far as he is limited, an heir of entail is held, in law, to be an absolute fiar. One limitation of the heir's right of fee is not to be inferred from the existence of another; [*Gilmour*, 5 July 1838, 16 S. 1261; *D. Hamilton*, 29 April 1870, 8 Macph. (H.L.) 48. For other examples of the strict construction applied to entails, as being an unfavourable restraint on property, see *Speid*, 21 Feb. 1837, 15 S. 618; *E. Buchan*, 21 Feb. 1845, 4 Bell's App. 22; *Preston*, 28 Jan. 1845, 7 D. 305; *Maxwell*, 29 June 1860, 22 D. 1341.] It was [at one time] doubted whether an entail could be effectual, which did not contain the whole of the three prohibitions;—against alienations; against the contraction of debt, so as to affect the estate; and against altering the succession; but it was decided that a deed of entail containing any one of these prohibitions, properly fenced, was effectual so far as it went. [This is altered, however, by § 43 of the Rutherford Act, which enacts that an entail defective in any one of the cardinal prohibitions, is invalid in every respect; see *infra*.] The prohibition to alienate does not prevent a conveyance to the next substitute; [*Craigie*, 4 Dec. 1817, F.C. But such propulsion must apparently extend to the whole entailed estate; *V. Dupplin*, 15 Nov. 1871, 10 Macph. 89. See *Propulsion*.] The prohibition to alienate prevents the granting of feus, or of a locality to a widow beyond the amount of the terce; but this is the subject of statute. See *infra*. [As to feus, see *Innes* (Roxburghe), 1807, M. App. Tailzie, Nos. 13, 18, 5 Paton, 609; 17 July 1813, F.C. (see F.C. Sess. Papers, vol. cxix.), 2 Dow, 149, 5 Paton, 768.] It strikes against long leases, or leases with a grassum; but neither the power to grant long leases nor to take a grassum is limited, where there is no prohibition to alienate.

See *Grassum*. And it may be stated generally, as the result of the numerous cases decided on the subject of leases, that an heir in possession, under an entail which prohibits alienation, is bound to administer the estate *secundum bonum et æquum*, acting with good faith, and fairly towards those who are to come after him. In this view, it has been said that every lease, whether long or short, may be regarded as an alienation, except in so far as it is necessary for realising the full profits of the estate, and is granted in the fair exercise of the heir's power of administration. [See *Rankine on Leases*, 49.] As to the right of the heir of entail to cut growing trees, see *Timber*. The effect of the prohibition to contract debt is different, according as the entail is onerous or gratuitous. If the entail be not onerous, the estate is liable to attachment for all debts contracted prior to the completion of the entail. If it be onerous or mutual, the creditors and heirs of entail are regarded as competing creditors, and the completion of the entail, by infetment and recording, excludes the diligence of creditors not previously infet.

[The restraints formerly inherent in entails have been progressively relaxed by a series of statutes, of which the following are the principal:—the Montgomery Act, 1770 (10 Geo. III. c. 51); the Aberdeen Act, 1824 (5 Geo. IV. c. 87); the Rosebery Act, 1836 (6 & 7 Will. IV. c. 42); the Rutherford Act, 1848 (11 & 12 Vict. c. 36); the act of 1853 (16 & 17 Vict. c. 94); the act of 1868 (31 & 32 Vict. c. 84); the act of 1875 (38 & 39 Vict. c. 61); the act of 1878 (41 & 42 Vict. c. 28); and the act of 1882 (45 & 46 Vict. c. 53). It would exceed the limits of this work to give a detailed account of the provisions of these acts, and of the judicial decisions by which they have been elucidated. Reference is made to the acts themselves, and to the authorities cited below. The statutes are printed together, and annotated, in *Rankine on Land-Ownership* (Appx.). The commencement of the Rutherford Act (1 Aug. 1848) marks the distinction between old and new entails; a distinction formerly important, but now, since the act of 1882, of little significance. "The only difference now left is that, for the purposes of the entail acts, a new entail is regarded as dated on its actual date, while an old entail is taken as dated on 1st August 1848;" *Rankine on Land-Ownership*, 578. By § 43 of the Rutherford Act, as already noted, an old entail, defective in any one of the

[three cardinal prohibitions, is declared to be bad as to all. See *D. Hamilton*, 29 April 1870, 8 Macph. (H.L.) 48; *Catton*, 1 March 1872, 10 Macph. (H.L.) 12. With regard to new entails, by § 39, when there is an express clause authorising registration in the Register of Tailzies, irritant and resolute clauses need not be inserted; and this dispensation is extended to prohibitory clauses by 31 & 32 Vict. c. 101, § 14 (re-enacting provisions of the Titles Acts of 1858 and 1860); so that a clause of registration now serves the whole purposes of the prohibitory, irritant, and resolute clauses. The various powers conferred on heirs of entail by the above-mentioned acts will now be noticed briefly.

I. *Power to Disentail*.—The power to acquire an entailed estate, in whole or in part, in fee-simple, was first conferred by the Rutherfurd Act, and has been extended by the acts of 1875 and 1882. It is exercised by executing an instrument of disentail, and recording it, after applying to the Court of Session for authority to do so, in the register of tailzies; Rutherfurd Act, §§ 1–3, 32, 37, 44, sched.; 1853, § 4. With regard to *new entails*, it is provided by § 1 of the Rutherfurd Act that the heir of entail in possession may disentail—(1) if born after the date of the entail, and of full age, without any consent: (2) if born before the date of the entail, with consent of the heir-apparent under the entail (*i.e.*, the heir who is next in succession, and whose right, if he survive, must take effect; see *Heir-Apparent*); provided such heir-apparent was 25 years old (altered to 21 by 1875, § 4), *capax*, and born after the date of the entail. With regard to *old entails*, by § 2 of the Rutherfurd Act, the heir in possession may disentail—(1) if born on or after 1 Aug. 1848, and of full age, without any consent: (2) if born before 1 Aug. 1848, with consent of the heir next in succession, being heir-apparent under the entail, provided the latter be 25 (altered to 21) years old, *capax*, and born after 1 Aug. 1848; and, by § 3, the heir in possession, being of full age, whether born before or after 1 Aug. 1848, may disentail—(a) if he is the only heir of entail in existence for the time, and unmarried (but the condition as to being unmarried was repealed by 1875, § 5 (3)); (b) or if he has obtained the consents of the whole heirs in existence, if less than three, at the date of such consents and at the date of presenting the application; (c) or if he has obtained the consents of the

[three nearest heirs at the said dates for the time entitled to succeed in their order successively immediately after the heir in possession; (d) or if he had obtained the consents of the heir-apparent and the heir or heirs, not less than two, including such heir-apparent, who in order successively would be heir-apparent; provided that the nearest heir consenting be 25 (altered to 21) years old, and *capax*. By 1875, § 5, the consents of heirs may be given in the course of the application to court; and if any heir, other than the nearest heir for the time, refuses his consent, the court may assess the value of his interest, and dispense with his consent, on payment being made, or security found, to the amount of such value. The leading changes effected by the act of 1882 on these provisions are as follows:—(1) Heirs under new entails may now disentail with the same consents as heirs under old entails; § 3. (2) If the consent of the nearest heir is required and is refused, the court may assess the value of his expectancy, and dispense with his consent, on payment being made, or security found, in like manner as is provided in regard to remoter substitutes by the act of 1875, *supra*; § 13. (3) Any creditor of an heir in possession entitled to disentail, who has charged upon a decree for payment of a debt incurred after 18 Aug. 1882, or the trustee in sequestration of such heir, may, on application to the court, effect a disentail; § 18. But settlements by marriage contract entered into prior to 18 Aug. 1882 are not to be disappointed; § 17. Cf. Rutherfurd Act, § 8; and see *Douglas*, 9 June 1883, 10 R. 952. The combined effect of these provisions is to “enable every heir in possession to disentail at any moment without necessity for any consents, provided he be *capax* and of full age, and not barred by his own or his heir-apparent’s marriage contract;” *Rankine*, 970. Where an heir of entail whose consent is required is minor or otherwise *incapax*, the court will appoint a *curator ad litem* (who may be his ordinary guardian), to give his consent; but if the heir, being of sound mind and above fourteen, shall appear and oppose the application, such consent shall not be acted on; Rutherfurd Act, § 31; 1853, § 18; 1882, § 12. Consents must be in writing, and are irrevocable; Rutherfurd Act, § 50. As to valuation of interests, see *De Virte*, 19 Dec. 1877, 5 R. 328; *McDonald*, 12 March 1880, 7 R. (H.L.) 41. Where a person has been served heir of entail, and

[is in possession as the nearest heir in existence, he is not prevented from disentailing by the possibility of the birth of a nearer heir; *Bruce*, 6 March 1874, 1 R. 740; *Forbes*, 29 June 1888, 15 R. 797. But the birth of a nearer heir before the procedure as to obtaining or dispensing with consents is completed, puts an end to the application; *Shand*, 4 March 1876, 3 R. 544. An applicant for authority to disentail must set forth by affidavit any debts or provisions that may affect the fee of the estate, or the heirs of entail; Rutherford Act, § 6; 1875, § 12 (5); *E. Glasgow*, 12 Nov. 1886, 14 R. 59. The security to be given by a disentailing heir for the value of the expectancy of an heir whose consent is dispensed with, is such security as a prudent lender would accept, failing which the sum representing the value must be paid into bank; *Farquharson*, 15 Dec. 1886, 14 R. 231. Money vested in trust for the purchase of land to be entailed may be dealt with as if it were the entailed land; Rutherford Act, §§ 27–28; *Craig*, 24 Feb. 1886, 13 R. 603. The effect of a disentail is to free the land absolutely from the fetters of the entail, but not to evacuate the destination; Rutherford Act, § 32; *Gray*, 24 May 1878, 5 R. 820. The scheme and effect of the Rutherford Act are instructively examined by Lord Pres. Inglis in *Black*, 5 Nov. 1873, 1 R. 133.

II. *Power to Sell*.—(1.) *Under Clan Acts*.—By 20 Geo. II. c. 50 and 51, heirs of entail are empowered to sell to each of their vassals, or to the Crown, the superiorities of the entailed lands held by them, the price being directed to be employed in the purchase of other lands to be entailed in the same manner as the superiorities sold. See *Fleeming*, 21 May 1868, 6 Macph. 782; 16 July 1868, 6 Macph. (H.L.) 113.

(2.) *For Redemption of the Land-Tax*.—Power is given to heirs of entail to redeem the land-tax, either by selling or by borrowing money. The procedure is by petition to the Court of Session. See 42 Geo. III. c. 116, §§ 61 *et seq.*; *Elliot*, 2 May 1828, 3 W. & S. 60.

(3.) *Sale to Public Bodies*.—By the Lands Clauses Act (8 & 9 Vict. c. 19), heirs of entail and other parties under disability are enabled to sell lands to public bodies invested by statute with compulsory powers. See §§ 7–9, 67 *et seq.*; Rutherford Act, § 26; 1853, §§ 14–16. See also the Companies Clauses Act (8 & 9 Vict. c. 17), and the Railways Clauses Act (8 & 9 Vict. c. 33).

(4.) *In Payment of Entailer's Debts*.—By the Rosebery Act, “heirs of entail in posses-

sion of an entailed estate liable to be adjudged or evicted for the debts or obligations of the maker of the entail” were authorised, on application to the Court of Session, to sell part of the estate in payment of the debts. See §§ 7–19. Enlarged facilities for sale in payment of entailer's debts were provided by § 25 of the Rutherford Act, as extended by 1853, § 9. Such sale may be either by private bargain, or by public roup, under authority of the court; 1868, §§ 9, 10. Entailer's debts may be charged on the estate by bond and disposition in security; § 11.

(5.) *General Power of Sale*.—By § 4 of the Rutherford Act (as amended by 1875, § 6, and 1882, §§ 4, 13), the heir in possession may sell, alienate, dispense, and charge with debts or incumbrances, with the like consents as enable him to disentail (see *supra*); and by § 25 of the Rutherford Act, where an entailed estate may be charged with debt, it may be sold for payment thereof. Greatly extended powers of sale were conferred by the act of 1882, §§ 19 *et seq.* Any heir of entail in possession, or the person entitled under a trust for entailing land, or the tutors, curators, or administrators of such heir or person, may apply to the court for an order of sale of the estate, or part of it; and the court will grant the order, after procuring a report, if they are satisfied that no patrimonial interest would be injuriously affected, or (in applications by married women, minors, &c.) that the sale will be beneficial. Sale of a limited interest in an estate may be authorised under this power: in *Ballantine*, 30 June 1883, 10 R. 1061, an order was granted for sale of part of an estate with a servitude over another part. The effect of the act is “to place an heir of entail in possession in the same position as a fee-simple proprietor in regard to the sale of his estate under the authority of the court” (*per* Lord Pres. Inglis). See also *Kennedy*, 8 Feb. 1889, 16 R. 421. The sale must be carried out according to the regulations contained in §§ 22–25. The price, so far as not required for payment of incumbrances and improvement expenditure, is to be secured for the heirs of entail and persons entitled to provisions. Money or other property held in trust for purchase of land to be entailed may be dealt with as if it were the price of land sold under the act; § 26.

III. *Power to Exccamb*. See *Exccambion*.

IV. *Power to grant Feus and Leases*.—By § 4 of the Rutherford Act (as amended by 1875, § 6, and 1882, §§ 4, 13), the heir

[in possession may lease or feu, with the like consents as enable him to disentail. See *Christie*, 27 June 1888, 15 R. 793. By § 24 of the same act, the heir in possession may, with authority of the court, grant feus or long leases of any part, not exceeding one-eighth in value, of the estate (excepting the mansion-house, offices, and policies), for the highest feu-duty or rent that can be got, no grassum being taken. See *Farquharson*, 3 Nov. 1870, 9 Macph. 60. By 1853, § 6, power may be obtained, under a continuing petition, to grant feus or leases in a general form, with minimum rates of feu-duty or rent fixed by the court, and alterable on subsequent application. By § 13 of the same act, an heir in possession under a new entail, which does not expressly prohibit the granting of feus or building leases, has the same powers of granting feus and building leases for more than twenty-one years as are by any statute conferred upon heirs in possession under old entails. By 1868, §§ 3-5, the sheriff of the county may authorise, under certain conditions, the granting of building leases for not more than ninety-nine years, or of feus of any part of the estate (reserving minerals), except the garden, policies, &c. See *Stewart*, 27 Jan. 1882, 9 R. 458. By 1882, § 5, any application for authority to grant leases under the entail acts, may be made in the sheriff court, with appeal to the Court of Session. By § 6 (2) of the same act, a feu or a lease, of not more than two acres, may be granted for a scientific or useful purpose, if the court or sheriff be satisfied, at a rent or feu-duty below the just value; but no grassum may be taken. See also 3 & 4 Vict. c. 48, by which feus or long leases may be granted, with the sheriff's sanction, of sites for churches, schools, &c. The Montgomery Act (which by § 8 of the act of 1868 is made applicable to all entails, old and new) authorises improving agricultural leases (§§ 1-3, 6-8), and building leases (§§ 4-8), on the following conditions]:—Heirs of entail may grant leases not exceeding thirty-one years' endurance, or for fourteen years, and an existing life, or for two existing lives, provided, in the last case, the tenant be taken bound to inclose one-third of the lands in ten years, two-thirds in twenty years, and the whole in thirty years; and in the other cases, where the lease exceeds in duration nineteen years, that the tenant be taken bound to inclose one-third of the lands let before the expiration of one-third of the term, two-third parts before ex-

piration of two-third parts of the term, and the whole before the expiration of the lease. Such heirs may grant building leases for any term of years not exceeding ninety-nine, provided that no lease of more than 5 acres be granted to one person, and that the lease contain a clause declaring that it shall become void, if a dwelling-house of the value of £10 be not built upon each half-acre of the ground within ten years from the date of the lease, and if the houses built be not kept in tenantable repair. Such leases must not extend to the mansion-house, gardens, or adjacent inclosures, or to lands within 300 yards from the mansion-house. No lease can be granted till within a year of the expiration of the former lease. The rent must not be under what was formerly paid for the land, and no fine or grassum must be taken. [See *Miller*, 15 June 1868, 6 Macph. (H.L.) 101. The Rosebery Act (§§ 1, 2) empowers an heir in possession to grant ordinary agricultural leases for not more than twenty-one years, and mineral leases for not more than thirty-one years. But no grassum may be taken; and the home-farm, mansion-house, &c., cannot be leased beyond the granter's life. Notwithstanding any prohibition in a deed of entail against diminution of rental, leases may be granted at a fair rent; if the rent be less than a fair rent, or if any grassum be taken, the lease is null; 1882, § 8. See *Diminution of Rental*. Leases may be renewed, two years before their expiration, at a fair rent, without grassum; § 9. See *Rankine on Leases*, 58 *et seq.*]

V. Power to Charge Improvements.—

The Montgomery Act provides that every proprietor of an entailed estate who lays out money in inclosing, planting, draining, or building farm-houses and offices, becomes a creditor on the entailed estate for three-fourths of the money so laid out, until it amount to four years' free rent of the estate, three months' notice being given to the next heir not descended of the body of the heir in possession, [and other conditions being fulfilled, for which reference is made to the act, §§ 9-26.] Every heir of entail who lays out money in building or repairing a mansion-house or offices, becomes a creditor on the estate for three-fourths of the money expended, until it amount to two years' free rents of the estate, and those in right of the claim are entitled to obtain payment from the heir after one year from the death of the heir who has laid out the money; §§ 27-31.

[These enactments, though still in force, have been in large measure superseded by more recent statutes, which provide a simpler mode of constituting and charging the debts, and also enlarge the description of improvements chargeable on the entailed estate. An heir of entail who adopts the more modern procedure is held to have abandoned his position under the Montgomery Act; see *Breadalbane's Trs.* 12 March 1868, 6 Macph. (H.L.) 43. By the Rutherfurd Act, where an heir of entail in possession executes improvements subsequent to the passing of the act, and obtains decree for three-fourths of the expenditure, he may, under authority of the court, grant bond for payment of an annualrent during the period of twenty-five years from and after the date of the decree, or during such part of that period as may remain unexpired at the date of the bond, such annualrent not exceeding £7, 2s. for every £100 of the whole of the sums expended; § 14. This provision applied only to old entails, but has been extended to all; 1882, § 4. As to improvements executed before the passing of the Rutherfurd Act, see §§ 13 and 15 thereof. Where an heir has executed improvements of the nature contemplated by the Montgomery Act, but has not obtained decree, owing to non-observance of the forms required by that act, he may obtain warrant to grant bond of annualrent, as if decree had been obtained; § 16. And this provision applies to both old and new entails, and to all trusts, of whatever date, under which land is held for the purpose of being entailed; 1868, § 18. So long as an estate is subject to entail, and is not liable to be disentailed by the heir in possession without consent of any other party, a bond of annualrent cannot be the ground of adjudication or eviction of any part of the estate. The annualrent is recoverable out of the rents and profits of the estate, from the heir in possession for the time being, who is bound yearly to pay and keep down such annualrent; and no remedy is competent to a creditor under the bond for arrears beyond two years' annualrent, interest, and penalties, except against the heir personally and his representatives; Rutherfurd Act, § 17. In all cases in which a bond of annualrent is competent, the heir may charge the fee and rents of the estate, other than the mansion-house, offices, and policies, with two-thirds of the sum on which the annualrent would be calculated, by granting bond and disposition in security over the estate. By § 6 (1) of the act of

[1882, the bond and disposition in security may be granted for three-fourths (instead of two-thirds only) of the sum authorised to be borrowed, and that whether the improvements have been executed at the date of the application, or are contemplated; and by § 6 (4), where one-fourth of a sum borrowed on rent-charge has been defrayed by the heir, he may substitute a bond and disposition in security for the remainder. The bond and disposition in security may contain a power of sale in ordinary form; 1853, § 23. The act of 1875 gives an extended enumeration of "improvements;" § 3; and empowers heirs of entail, under authority of the court, to borrow money to defray the cost of improvements on the estate, whether already executed (if not more than twenty years previously), or in progress, or merely in contemplation, and to charge the fee and rents of the estate, other than the mansion-house, &c., with a bond of annualrent, at a rate not exceeding £7, 2s. for every £100 authorised to be borrowed, payable for twenty-five years after the date of obtaining authority, or (where the money has been consigned) after two years from the date of consignment; §§ 7, 8. In lieu of such bond of annualrent, the heir may grant a bond and disposition in security for three-fourths of the sum on which the amount of the bond of annualrent would be calculated, with interest and penalties; § 8, amended by 1882, § 6 (1); *Leith*, 18 July 1888, 15 R. 944. These enactments were limited to old entails, but they have been extended to all by 1878, § 3; 1882, §§ 4, 6 (1). By 1878, § 1, all obligations undertaken by an heir in possession to a tenant, with reference to the execution of improvements by the proprietor or the tenant, devolve on the heir, to the relief of the executor, unless a contrary intention is expressly declared. And, by § 2, liabilities under other contracts for improvements devolve in like manner on the heir. Any application under the acts of 1875 or 1878, for authority to borrow and charge for improvement expenditure, may be made in the sheriff court, with appeal to the Court of Session; 1882, § 5. By 1882, §§ 7 and 23, provision is made for incidentally ascertaining the amount chargeable in respect of improvements, in applications for disentail or for sale respectively. See *E. Kintore*, 19 June 1885, 12 R. 1213. As to roads on entailed estates, see 1 & 2 Will. IV. c. 43, § 68; 41 & 42 Vict. c. 51, § 70; 43 Vict. c. 7; also Rutherfurd Act, § 20; 1875, § 3 (5). As

[to labourers' cottages, see 23 & 24 Vict. c. 95; 1868, § 12; 1875, § 3 (7b). See also 7 & 8 Vict. c. 44 (*quoad sacra* parish churches); Glebe Lands Act, 1866 (29 & 30 Vict. c. 71), § 17; Improvement of Land Act, 1864 (27 & 28 Vict. c. 114).]

VI. *Power to grant Family Provisions.*—The statute 5 Geo. IV. c. 87 (commonly called Lord Aberdeen's Act), on the preamble that sundry entails contain no power to grant provisions to wives, husbands, or children, of the heirs of entail, and that, in other entails, by reason of the change in the value of money, and other causes, the provisions authorised to be granted are inadequate, makes the following provisions: Every heir of entail in possession may infett his wife in a liferent annuity out of the entailed estate, not exceeding one-third part of the free yearly rent or value, deducting public burdens, liferent provisions, the yearly interest of debts and provisions, including provisions to children, and the yearly amount of all other burdens affecting the estate or the rents, and diminishing the value thereof to the heir in possession; § 1. [The decisions as to computation of free rental are numerous. See note on this section in *Rankine*; also *Digests*.] Every heir-female may infett her husband in a liferent annuity in the same manner to the extent of one-half of the free yearly rent or value; unless the lands be already burdened with a prior existing annuity granted to husband or wife under this statute; in which case the annuity to the husband must not exceed one-third of the free yearly rent or value; § 2. Where there are two subsisting liferents to wives or husbands, it is not competent to grant a third liferent to take effect until one of the former expire; but the power of granting may be exercised so as to increase a former liferent, or to grant a new one to the above extent, upon the expiration of a subsisting liferent, although the prospective or increased liferent may not take effect in the lifetime of the granter; § 3. An heir of entail in possession may grant bonds of provision or obligations, binding the succeeding heirs of entail to pay, out of the rents or proceeds of the entailed estate, to the lawful child or children of the granter not succeeding to the entailed estate, such sum or sums of money, with interest from the granter's death, as he or she may think fit. But the amount of such provision to children must in no case exceed the following proportions of the free yearly rent or value of the estate, viz., for one child one year's free rent or

value; for two children two years'; and for three or more children, three years' free rent or value for the whole; § 4. [*Paterson*, 20 July 1888, 15 R. 1060.] Such provisions, except in the case of the settlement thereof by a marriage-contract, are valid and effectual only to such child or children as are alive or *in utero* at the death of the granter, the provision of a child succeeding to the entailed estate being by that event extinguished for ever; § 4. [But see alteration noted *infra*, as to child dying leaving issue.] If any child to whom such provision has been granted marry, and if such provision, or any part thereof, be, with the consent of the granter, settled in the contract of marriage of such child, in the event of the child so marrying predeceasing the granter, the provision, or any part thereof, so settled in consideration of the marriage, is effectual in the same manner as if the child had survived the granter; § 5. Where the powers of granting provisions to children have been exercised by one or more heir or heirs in possession to the extent of three years' free rent or value, as above, it is not in the power of any heir in possession to grant any further provisions until some part of the former provisions have been paid or extinguished; but, in that event, provisions to the extent of those paid or extinguished may be granted, to the effect of admitting the heir in possession to make provisions for children, so far as that power may remain open and unexercised by preceding heirs; such provisions in no case to exceed the above proportions of one year's free rent or value for one child, &c.; § 6. [See *Lockhart*, 15 July 1853, 15 D. 914; *E. Eglinton*, 7 Feb. 1863, 1 Macph. 386.] Excessive provisions granted under this statute are not null, but may be set aside at the instance of any succeeding heir of entail to the extent of the excess; § 7. No provisions under this statute can be made, by any process of law whatsoever, to affect the fee of the entailed estate; they only affect the yearly rents or proceeds; § 8. [But this has been altered, so far as regards provisions to children; see *infra*.] After a year from the death of the granter of the provisions to children, the person or persons having right to them may require the succeeding heir to make payment of them, with interest from the term at which the succeeding heir's right commenced; and, on decree being obtained in an action, every kind of diligence or execution for recovering payment of debts may issue, except adjudication against the

entailed estate; § 9. But any heir in possession, sued for payment of provisions to children granted by any former heir or heirs, may be discharged from such suit upon assigning, or effectually conveying, to a trustee to be named by the Court of Session, one-third of the clear rents or proceeds of the entailed estate, payable to such heir in possession during his life, or until the provisions to children have been paid off; the rent so assigned being applied in payment of the whole subsisting provisions; § 10. No proprietor of an entailed estate is held to have committed any contravention, irritancy, or forfeiture, in consequence of granting the provisions authorised by this statute, notwithstanding any clause or provision in the entail to the contrary; § 11. The act does not diminish or abridge the powers of the heir in possession in regard to the granting of provisions to wife, husband, or children, where the entail authorises larger provisions to be granted. But it is not competent to grant the statutory provisions over and above those authorised by the entail, so as to exceed in the whole the above-mentioned proportions of the free yearly rent or value; § 12. [See *Lockhart and E. Eglinton, supra; Cumming*, 16 July 1858, 20 D. 1280.] Nor can the powers conferred by this statute, and by 10 Geo. III. c. 51, be exercised in any case to such an extent as to deprive the heir of entail in possession of more than two-thirds of the free yearly rents or proceeds. And the Court of Session may give all necessary orders for relieving the heir in possession from the payment of more than two-thirds, by authorising the heir to retain any excess beyond the proper amount from the securities or provisions on the entailed estate least entitled to legal preference; § 13.

[The Aberdeen Act is deemed to be incorporated in every deed of entail, whether old or new, unless its operation is expressly excluded; 1868, § 8; *Callander*, 21 May 1869, 7 Macph. 777. By § 21 of the Rutherford Act, provisions to younger children may be charged on the fee and rents of the estate by bond and disposition in security. See *Robertson*, 13 July 1872, 10 Macph. 966. Such bond and disposition in security may be granted to any party advancing the amount thereof; 1853, § 7. It may contain power of sale in ordinary form; *ib.* § 23; and in all cases in which an entailed estate may be charged with debt, it may be sold for payment thereof; Rutherford Act, § 25. The heir

[in possession is bound yearly to pay and keep down the interest on such bond and disposition in security; and the creditor's remedy against the fee and rents is limited to the principal sum, with two years' interest, and penalties; without prejudice to his remedy against the heir personally and his representatives; *ib.* § 22. An entailed estate cannot be charged with provisions to children without authority of the court; § 23. Provisions to wives and children may be granted out of money vested in trust for the purchase of lands to be entailed; § 29; 1868, § 8. By 1868, § 6, power is given to an heir-apparent, with consent of the heir in possession, to grant provisions in favour of his wife and children, payable on his death, to the same extent as the heir in possession may do so under the Aberdeen Act, or under the powers of the entail. But such power may be expressly excluded by the deed of entail; *ib.* § 8. By 1875, § 10, where a child, to whom provision has been granted, predeceases the grantor, leaving lawful issue who survive the grantor, such lawful issue take the provision in room of their parent; and the heir in possession may grant provision in favour of the issue of a predeceasing child. This enactment applies to all entails; 1878, § 3. By 1882, § 10, a charge upon a disentailed estate may be transferred to another estate entailed on the same series of heirs; and by 1882, § 24, provisions to husbands, wives, and children may be secured on the fund arising from sale of an entailed estate.

The procedure in applications under the Entail Acts is regulated mainly by § 12 of the act of 1875. See *Duncan's Entail Procedure; Mackay's Prac.* ii. 386. Applications may be made by guardians on behalf of minors or persons under disability, excepting applications for authority to disentail; 1882, § 11. Procedure when the heir in possession, or an heir whose consent is required, has disappeared, is prescribed by 1882, §§ 14–16.]

On entails generally, see *Stair*, B. ii. tit. 3, § 43; *More's Notes*, lxxx., clxxvi., cxc., ccvi.; *Bank.* B. ii. tit. 3, § 133; *Ersk.* B. iii. tit. 8, § 22; *Bell's Com.* i. 43; ii. 178, 241; *Bell's Princ.* § 1716; *Kames' Stat. Law Abridg. h. t.*; *Kames' Equity*, 85, 148, 235; *Ross's Lect.* ii. 503; *Sandford on Entails; Sandford on Heritable Succession*, i. 47; ii. 58, 78, 196; *Jurid. Styles*, i. 244; iii. 474; *Hunter's Landlord and Tenant*, i. 89; [*Duncan's Digest of Entail Cases; Duff on Entails;*

[*Duff's Feudal Conv.* 334; *Menzies' Conv.* 728; *M. Bell's Conv.* ii. 1012; *M'Laren on Wills*, i. § 993; *Rankine on Land-Ownership*, 569, 881.] See *Destination. Records. Institute. [Propulsion. Mansion-House. Minerals. Thellusson Act.]*

ENTIRETIES. In English law, if lands are given to husband and wife, and their heirs, they are not joint tenants, being in law one person, but they take by entireties; that is, neither can dispose of any part of the land without concurrence of the other, and if they do not agree in making a disposition, the survivor takes the whole; *Sweet's Law Dict.*]

ENTRY OF AN HEIR. In feudal law, this term is applied to the entry of the heir of the vassal with the superior. On the death of the vassal the property, or *dominium utile*, according to feudal principles, returns to the superior, by whom it must be again given out to the heir of the vassal, before he can complete a feudal title as heir to his predecessor. It is not, however, optional to the superior to refuse an entry; on the contrary, he is bound to grant a warrant for infefting the heir in the *dominium utile* to which he has succeeded. The person whom the superior is obliged so to enter is the heir pointed out by the original investiture, that is, by the charter, in virtue of which the *dominium utile* is held of the superior. The charter is usually conceived in favour of the vassal and his heirs whomsoever; and in that case, the legal destination is followed, and the heir-at-law is the person whom the superior is bound to enter. Where, again, a special destination is contained in the charter, it is the heir of that destination whom the superior is bound to receive as his vassal. In either case, the proper legal evidence of the heir's title to receive an entry is a service as heir to his predecessor in the particular character pointed out by the investiture; although the superior, if he chooses, may proceed on his private knowledge of the heir's propinquity, and give a precept for infefting him without requiring a service. The heir's entry is completed by infeftment [on a decree of service, or on a writ of *clare constat* granted by the superior.] The consideration or fee to which the superior is entitled for this transmission of the property is called the casualty of *relief*. Its amount is regulated by the *reddendo* clause in the original charter; and it is almost invariably fixed at a double of the feu-duty; that is, the heir, on receiving from the

superior the warrant of infeftment, pays him a sum equal to one year's feu-duty as relief-duty. See *Relief*. See also *Superior and Vassal. Charter. Clare Constat. Charge against Superiors. Heir. Service. Infeftment. Beneficium Inventarii.*

ENTRY OF A PURCHASER. The entry of a purchaser of an heritable subject, like the entry of an heir, is completed by infeftment, either proceeding on the warrant of the seller's superior, or recognised and confirmed by him. See *Disposition. Composition. Base Right. Confirmation. Resignation. Consolidation. Infeftment. [Conveyancing.]*

EPISCOPACY; that form of church government in which diocesan bishops are established, as distinct from, and superior to, priests and presbyters. *Encyc. Brit.*

EPISCOPALIAN. In Scotland, persons professing the religion of the Church of England are called episcopalians, in contradistinction to presbyterians, and the members of other religious persuasions, whose form of church government does not recognise the authority of bishops. The Toleration Act, 10 Anne, c. 10, authorises episcopalians to meet for divine worship according to the liturgy of the Church of England; and, by the same statute, clergymen of that persuasion are permitted to perform the ceremony of marriage in Scotland, and to administer the sacraments. But political considerations rendered it necessary to put the toleration thus granted under such regulations as might prevent danger to the State; and, accordingly, the statutes 10 Anne, c. 10, and 32 Geo. III. c. 63, contain sundry provisions for preserving the purity of this form of worship, and for securing the ministry of pastors well affected to the Government. The leading statutory provisions on this subject are, 1st, That the pastor must have received holy orders from a Protestant bishop of the Church of England or Ireland, and have subscribed, before officiating, the oaths of allegiance and abjuration, and the assurance, along with the thirty-nine articles of the Church of England. 2dly, The congregations or assemblies for worship must meet with doors unfastened—any meeting where five or more persons besides the household (if the meeting be in a private house) assemble to hear divine service performed by a pastor of this communion, being deemed an episcopal meeting-house within the meaning of the statutes. 3dly, The statutes require the clergyman to pray for