

be detained for six days; within which time, if payment be not made, the goods to be presently appraised and sold, and the surplusage delivered to the party; and for want of distress, the constables or churchwardens offending, to be by the mayor, bailiff, &c. committed to the common gaol until the penalty be paid: for all which penalties levied by the constables or churchwardens, the said constables and churchwardens shall be accountable to their successors, and other the parishioners, as they usually be in other church reckonings. And for all forfeitures, by reason of any neglect of the constables or churchwardens, those shall be accountable, who by force of any warrant or precept do levy the same, or upon the enlargement of persons committed do receive the same.

4 *Jac. 1. cap. 5. sect. 5.* The said offence shall be enquired of and presented before the justices of assize in their circuits, justices of peace in their sessions, and before the mayors, bailiffs, or other head officers of every city or town corporate, who have power to enquire of trespasses, &c. and in every court leet; and due proceeding shall be against the offenders, as in like cases.

Sect. 7. All constables, churchwardens, headboroughs, tithing-men, aleconners, and sidemen, shall in their oaths incident to their offices, be charged to present the said offences contrary to this statute.

Stat. 21 Jac. 1. cap. 7. sect. 4. If any alehouse-keeper shall be convicted of the said offence, he shall for three years be disabled to keep any alehouse.

4. Penalties on persons guilty of tippling and drunkenness.

By the statutes 4 *Jac. 1. c. 5. sect. 4.* 1 *Jac. 1. c. 9. 21 Jac. 1. c. 7. 1 Car. 1. c. 4.* it is enacted, that if any person shall continue drinking or tippling, in any inn, victualling-house, or alehouse, or any tavern, keeping an inn or victualling-house; he shall, on conviction thereof before the mayor or a justice of the peace, on view, confession, or oath of one witness, forfeit for every offence 3*s.* 4*d.* to be paid within one week next after the conviction, to the churchwardens, who shall be accountable for the same to the use of the poor: and if he shall refuse or neglect to pay the same, it shall be levied by distress: and if he be not able to pay the forfeiture, then the mayor, justice, or court where the conviction shall be, may punish the offender, by setting him in the stocks for every offence by the space of four hours.

By 4 *Jac. 1. c. 5. sect. 5.* the said offence may also be enquired of and presented, before justices of assize, justices of the peace in sessions, mayors, and in the leet; and such proceeding shall be had thereupon for the conviction, as upon indictment or presentment.

And by the last mentioned statute, *sect. 11.* the offender is to be presented, indicted, or convicted in six months.

And all constables, churchwardens, aleconners, and sidemen shall, in their several oaths incident to their offices, be charged to present the said offence. 2 *Jac. 1. c. 7. sect. 5.*

And if any alehouse-keeper shall be convicted of the said offence, he shall moreover, for the space of three years, be disabled to keep any such alehouse. 7 *Jac. 1. c. 10. 21 Jac. 1. c. 7.*

Drunkenness excuseth no crime; but he who is guilty of any crime whatever, through his voluntary drunkenness, shall be punished for it as much as if he had been sober. 1 *Hawk. 2.*

If any offend their brethren by drunkenness, the churchwardens and sidemen shall present the same to the ordinary, that they may be punished by the severity of the laws, according to their deserts; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. *Canon 109.*

And all constables, churchwardens, aleconners, and sidemen, shall be sworn to present the offence of drunkenness. 4 *Jac. 1. c. 5. sect. 7.*

By the statutes 4 *Jac. 1. c. 5. sect. 2.* and 21 *Jac. 1. c. 7. sect. 1, 3.* it is enacted, that every person who shall be drunk, and thereof shall be convicted before one justice, or mayor, on view, confession, or oath of one witness, shall forfeit for the first offence 5*s.* to be paid within one week after conviction, to the churchwardens,

who shall be accountable for the same to the use of the poor; and if he shall refuse or neglect to pay the same as aforesaid, it shall be levied by distress; and if the offender be not able to pay the said sum of 5*s.* he shall be committed to the stocks, there to remain by the space of six hours.

And if any constable, or other inferior officer to whom that shall be given in charge by the precept of any mayor or justice, do neglect the due correction of the offender, or the due levying of the penalties where distress may be had; every person so offending shall forfeit 10*s.* to be levied by distress, by any other person so having warrant from any mayor, justice, or court, where any such conviction shall be, to be paid to the churchwardens, who shall account for the same, to the use of the poor where the offence shall be committed. 4 *Jac. 1. c. 5. sect. 3.*

And if any person once convicted of drunkenness, shall after that be again convicted of the like offence, he shall be bounden with two sureties in a recognizance of 10*l.* with condition to be from thenceforth of good behaviour. 4 *Jac. 1. c. 5. sect. 6.* 21 *Jac. 1. c. 7. sect. 3.*

The said offence may also be enquired of and presented before justices of assize, justices of the peace in their sessions, mayor, and in the leet; and thereupon process shall be had for the conviction, as upon indictment or presentment. But the offender shall be presented, indicted, or convicted in six months after the offence. 4 *Jac. 1. c. 5. sect. 5, 11.*

But when the offender hath been once punished, by any the ways before mentioned, he shall not be punished again by any other ways or means. 4 *Jac. 1. c. 5. sect. 9.*

If any alehouse-keeper shall be convicted of being drunk, he shall, besides the penalties above mentioned, be utterly disabled to keep any such alehouse, for the space of three years next ensuing the conviction. 7 *Jac. 1. c. 10. 1 Car. 1. c. 4.*

Alter sans jour. (*French*) To go without day, that is, to be finally dismissed the court, because there is no farther day assigned for appearance. *Kitch. 146. Cowel.*

Ale-silver, A rent or tribute annually paid to the lord mayor of London, by those that sell ale within the liberty of the city. *Antiq. Purvey. 183. Cowel.*

Ale-stake, A may-pole called *ale-stake*, because the country people drew much ale there: but it is not the common may-pole, but rather a long stake drove into the ground, with a sign on it that ale was to be sold there. *Cowel.*

Ale-taster, Is an officer appointed in every court-leet, sworn to look to the assize and goodness of ale and beer, &c. within the precincts of the lordship. *Kitch. 46.* where may be seen the form of his oath. In London there are *aleconners*, who are officers appointed to taste ale, beer, &c. in the limits of the city.

Alfretum, A cauldron or furnace: Sax. *alsæth*, compounded (according to *Du Fresne*) from *alan*, or *onalan*, *accendere*; and *fret*, *vas*; *quasi vas calefactiois*. But more likely from *ale*, *cerevisia*, and *fret*, as we still say, the *ale-fat*, or *ale-vat*, or brewing vessel.—*Et si aquæ judicium sit, calefiat, donec excitetur ad bullitum, et sit alfretum ferreum, vel æneum, vel plumbeum.* The *alfret* was a cauldron in which boiling water was put for the criminal to dip his hand in up to the elbow, and there hold it for some time, says *Du Fresne in verbo Alfretum. Leges Athelstani Regis apud Bromst. cap. 19. Cowel.*

Aliaſ, A second or farther writ, issued from the courts at *Westminster*, after a *capias*, &c. sued out without effect. *Pract. Attor.*

Alien, (*Alienare*) Is derived from the *French* word *aliener*, and signifies as much as to transfer the property of any thing to another. To *alien in mortmain*, is to make over lands or tenements to a religious house, or other body politic. *Staund. Præc. Reg. 48.* See *Mortmain*. To *alien in fee*, is to sell the fee-simple of any land or tenement, or of any incorporeal right. *Stat. West. 2. c. 25. ann. 13 Ed. 1. Cowel.*

Alien, Is one born out of the ligeance of the King. *Lit. sect. 198. 7 Co. 16. a. Calvin's case.*

Alien,

Alien, alius, alienus, alienigena, signifies one born in a strange country: it is usually taken for the contrary to a denizen, or natural subject; that is, one born in a strange country, and never here enfranchised. *Bro. Denizen* 4. Yet a man born out of the land, so it be within the limits of the King's obedience, beyond the seas, or of *English* parents out of the King's obedience, is not accounted an alien, but a subject. *Stat. 25 Ed. 3.* Also if one born out of the King's allegiance, come and dwell in *England*, his children begotten here are not *aliens*, but *denizens*. *7 Co. Rep. Calvin's case.*

An *alien* is one born in a strange country and different society, to which he is presumed to have a natural and necessary allegiance; and therefore the policy of our constitution has established several laws relating to such a one; the reasons whereof are, that every man is presumed to bear faith and love to that prince and country where first he received protection during his infancy; and that one prince might not settle spies in another's country; but chiefly that the rents and revenues of the country might not be drawn to the subjects of another. *1 New Abr. 76. 7 Co. 18. 1 Vent. 427. Molloy 363.*

Some have thought that the laws against aliens were introduced in the time of *Hen. 2.* when a law was made at the parliament of *Wallingford*, for the expulsion of strangers, in order to draw away the *Flemings* and *Picards*, introduced into the kingdom by the wars of King *Stephen*. *Daniel 67.* Others have thought that the original of this law was more ancient; and that it is an original branch of the feudal law; for by that law no man can purchase any lands but he must be obliged to do fealty to the lords of whom the lands are holden; so that an alien, that owed a previous faith to another prince, could not take an oath of fidelity in another sovereign's dominions. *Spelm. tit. Legent 368. Custom, cap. 43.* We find it used among the *Romans*, and only the *Cives Romani* were esteemed freemen among them. Afterwards, when their territories increased, all the *Italians* were made free, under the name of *Latines*, only they had not the privilege of wearing gold rings, which was altered by *Justinian*; and as the empire increased, to all born within the pale of the empire were citizens, *in orbe Romano qui sunt ex constitutione imperatoris Antonini cives Romani effecti sunt. Dig. lib. 1. tit. 5. f. 16.*

Lord chief justice *Hale* says, that the law of *England* rather contracts than extends the disability of aliens, because the shutting out of aliens tends to the loss of the people, which laboriously employed are the true riches of any country. *1 Vent. 427.*

Under this head is considered,

1. *Who are aliens by the Common Law, or by Statute; and who not.*
2. *Of naturalization and denization.*
3. *What acts aliens may do; what not.*
4. *Of pleading alienage.*

1. *Who are aliens by the Common Law, or by Statute; and who not.*

All those are natural born subjects whose parents, at the time of their birth, were under the actual obedience of our King, and whose place of birth was within his dominions. *7 Co. 18. a.*

In *assise* for certain tenements in *Shoreditch*; the defendants pleaded in bar, that the plaintiff, *Robert Calvin*, was an *alien*, born on the 5th day of November, anno 3 *Jac.* at *Edinburgh* in *Scotland*, *ac infra ligeantium domini regis regni sui Scotiæ, ac extra ligeantium regni sui Angliæ*; and upon demurrer to this plea, the question was, whether the plaintiff born in *Scotland*, since the crown of *England* descended to King *James*, was an *alien* born, and so disabled to bring an action real for lands here; and adjudged, that he was not an *alien*. *7 Rep. Calvin's case.*

A bill was exhibited in the Star Chamber against *William Courteen* and 160 *Dutchmen*, for buying and transporting several sums of money; who pleaded the general pardon 7 *Jac.* the question was, whether those who were

neither *naturalized*, nor made *denizens*, were capable of the pardon? The chief justice *Hobart* held, that the *Dutch* living here under the King's protection, and being *alien amies*, were truly under the King's subjection, and therefore were comprehended under these words in the preamble of the act, *of loving and obedient subjects*, but they could not properly be called *natural subjects*; and if such *alien amies* commit treason, the indictment shall be, that it was done *contra dominum regem*, but not *contra naturalem dominum*; and it shall conclude *contra ligeantiam suæ debitum*. *Hob. 271.*

An *English* merchant died in *Poland*, leaving his wife with child, who was an alien; this child was adjudged a subject born; for in this case *partus non sequitur ventrem*; but the child shall be of the condition of the father. *Cro. Car. 437.*

Information for not paying the custom for *linen cloth*; the case was, the defendants were born in this realm, their father was an *alien*, but their mother was born here; and the question was, whether they should pay custom as *aliens*, or not? for that the attorney general affirmed, that it had been lately held in the Exchequer, *that the issue of aliens for the first generation, being merchants, should pay alien duties*; but in this case the mother was an *English woman*, so that the defendants were not the issue of *aliens*. *Hard 335.*

If one of the King's ambassadors in a foreign country, hath issue there by his wife, being an *English woman*, by the Common Law they are natural subjects. *7 Co. 18. a.*

If the King of *England* makes a new conquest, the persons there born are his subjects; but if it be retaken from him again, the persons there born afterwards are aliens. *Dyer 224. Vaugh. 281, 282.*

One born in *Ireland, Scotland, Wales*, or any of the King's plantations, is a natural subject of *England*, because his natural allegiance is due to the King of *England* at his birth; and that faith and allegiance is every where due within the King's dominions. *Vaugh. 279, 301. 7 Co. 1 to 28.*

The *antenati*, or those born in *Scotland* before the descent of the *English* crown to King *James 1.* are aliens; for the uniting the kingdoms by a subsequent descent, cannot make them subjects of that crown to which they were born aliens; but the *postnati*, or such as were born after, are not aliens; for being born within the allegiance, and under the protection of the King of *England*, they are his natural subjects, and not aliens. *7 Co. 1 to 28.*

If aliens come as enemies into the realm, and possess themselves of a town or fort, and one of them has issue born here, this issue is an alien; for it is not *cœlum* nor *solum* that makes a subject, but the being born within the allegiance, and under the protection of the King. *7 Co. 18. a.*

Those born on the *English* seas are not aliens. *Molloy 370.*

If an alien has issue by an *English woman* out of the King's ligeance, the issue shall be alien, though she is a natural subject; for she is *sub potestate viri*. *1 Vent. 422.*

The children of the King's ambassadors, born of *English* parents in a place out of the King's ligeance, are not aliens by the Common Law. *7 Co. 18. a. Calvin's case.*

By *stat. 25 Ed. 3 de natis ultra mare*, it is declared, that "the King's children, wherever born, ought to inherit; and that all children inheritors, which from henceforth shall be born without the ligeance of the King, whose fathers and mothers, at the time of their birth be and shall be of the faith and allegiance of the King of *England*, shall have and enjoy the same benefits and advantages to have and bear the inheritance within the same ligeance as other inheritors aforesaid, in time to come, so always that the mothers of such children do pass the sea by the licence and wills of their husbands.

If an *English* merchant goes beyond sea, and takes an alien wife, the issue shall inherit him; so it is if an *English woman* goes beyond sea and takes an alien husband, the children there born shall inherit her; for though the statute be in the conjunctive, yet it hath been construed in the disjunctive to hinder this disability; and the word *and* being

being taken instead of *or*, as sometimes it is, it being not reasonable that the child should not inherit the parent that is of ability, for the defect of the other that is not. *Cro. Car.* 601, 602. *Lit. Rep.* 22, 24. *S. C.* 1 *Sid.* 198. *S. C.* cited; but it was held, that if a baron and feme *English* go beyond sea without licence, or stay there beyond the time limited by the licence, and have issue, that such issue is an alien and not inheritable. *Cro. Eliz.* 3. But *quere*, and see *Lit. Rep.* 27. and *Bro. tit. Denizen* 6.

Husband and wife dwelling in *Calais*, when it was taken by the *French*, fled into *Flanders*, where the wife was delivered of a son; the issue was adjudged a denizen, because his parents were born in *Calais*, then reckoned part of the King's dominions, and because he himself was begotten there, though to avoid the rage of enemies, born in another prince's territories. *Dyer* 224.

A bastard was begot at *Tournay* by an *Englishman* of an *English* woman after the conquest thereof by *H. 8.* and *Cataline* Ch. J. *Saunders* Ch. B. *Whiddon* and *Brown* J. and *Dyer*, held that this bastard was a liege man, in like manner as issue born here in *England* between husband and wife, and so capable of purchasing and impleading here as a denizen, *Tournay* being at the time parcel of the dominions of *England*. *Dyer* 224.

If an alien comes into *England*, and has issue two sons, those two sons are *indigenæ*, subjects born, because born within the realm. *Co. Lit.* 8. a.

There are regularly (unless in special cases) three incidents to a subject born. 1. That the parents be under the actual obedience of the king. 2dly, That the place of his birth be within the king's dominions. 3dly, The time of his birth chiefly to be considered; for he cannot be a subject born of this kingdom, that was born under the ligeance of the king of another kingdom; albeit afterwards the one kingdom descends to the king of the other kingdom. *7 Rep.* 18. a.

And therefore all persons born in *Normandy*, *Gascogne*, *Guyenne*, *Anjou*, and *Bretaigne*, while they were under the actual obedience of the king of *England*, were inheritable within this realm as well as *Englishmen*, because they were under one ligeance, due to one sovereign; and therefore persons born in the isles of *Guernsey* and *Fersey*, parcel of the dukedom of *Normandy*, though no parcel of the realm of *England*, but several dominions enjoyed by several titles, and governed by several laws, are inheritable to lands within the kingdom of *England*. *7 Rep.* 20. b. 21. a.—But persons born in other parts of *Normandy*, &c. now out of the actual possession of the kings of *England*, are not for that reason subjects to the kings of *England*. *7 Rep.* 18. a.

A merchant trading to *Poland* married an alien, and died, leaving her big with child: it was held, that the father, being an *English* merchant, and living abroad for merchandize, the after-born child is born a denizen, and shall be heir to him; for as *Berkley* J. said, She is *sub potestate viri*, & *quasi* under the allegiance of our king. And *per Bramston*, though the *Civil Law* is that *partus sequitur ventrem*, yet our law is otherwise, and the child shall be of the father's condition, and he being an *English* merchant, and residing there for merchandize, his children shall by the *Common Law*, or rather, as *Berkley* said, by the statute 25 *Ed.* 3. be accounted the king's lieges, as their father was. And another case being cited to have been adjudged 2 *Car.* accordingly, judgment was given for the plaintiff the after-born child. *Cro. Car.* 601.

So where such merchant had several children born in *Poland* of a *Papish* woman, and devised his lands in *England* to such children; and it being demanded of all the justices of *England* at *Serjeants Inn*, as *Yelverton* J. said, they made no scruple of any of them, but that the issue should inherit, and were not aliens, because the father went with licence, being a merchant, and in our law *partus sequitur patrem*; and also there is blood between him and his issue, and he communicates nature to them; and the judges took it that the words of the 25 *E.* 3. *de natis ultra mare*, whose fathers and mothers be, or shall be of the allegiance of the king, shall be taken distributively and not copulatively, fathers or mothers. But the reporter

adds a *nota*, that no such opinion was delivered by some of the justices as mentioned by *Yelverton* J. *Litt. Rep.* 28, 29.

By the 7 *Ann.* it is enacted, that "the children of all natural-born subjects, born out of the ligeance of her majesty, her heirs and successors, shall be deemed, adjudged, and taken to be natural-born subjects of this kingdom, to all intents, constructions, and purposes whatsoever."

By the stat. 4 *Geo.* 2. the above clause is confirmed with the following proviso, "that it shall not extend to any children, so as to make them natural-born subjects of *Great Britain*, whose father, at the time of the birth of such children, respectively were or shall be attainted of high treason, by judgment, outlawry or otherwise, either in this kingdom or in *Ireland*, or whose fathers, at the time of the birth of such children respectively, by any law or laws made in this kingdom, or in *Ireland*, were or shall be liable to the penalties of high treason or felony, in case of their returning into this kingdom or into *Ireland*, without the licence of his majesty, his heirs or successors, or any of his majesty's royal predecessors, or whose fathers, at the time of the birth of such children respectively, were or shall be in the actual service of any foreign prince or state, then in enmity with the crown of *England*; but that all such children are, were and shall be and remain in the same state, plight and condition, to all intents, constructions and purposes whatsoever, as they would have been in, if the said act of the seventh year of her said late majesty's reign, or the present act had never been made; but out of this proviso are excepted (other than the children of such persons who went out of *Ireland* in pursuance of the articles of *Limerick*) the child of every such person before described, who at any time between the sixteenth day of *November* 1708, and the twenty-fifth day of *March* 1731, hath come into *Great Britain* or *Ireland*, &c. and hath continued to reside in any of those places for the space of two years, and during such residence hath professed the protestant religion; also every child, whose father came into *Great Britain* or *Ireland*, &c. and professed the protestant religion, and died there, between the times aforesaid; also every child, whose father continued in the actual possession, or receipt of the rents and profits of any lands, &c. for the space of one whole year, at any time between the aforesaid times, or hath *bona fide*, and for valuable consideration, sold, conveyed or settled any lands, &c. in *Great Britain* or *Ireland*; and any person claiming title thereto under such sale, &c. hath been or continued in the actual possession or receipt of the rents and profits thereof, for the space of six months, between the times aforesaid, then, &c.

By the stat. 5 *Geo.* 1. it is enacted, "that if any manufacturer or artificer of or in wool, iron, steel, brass, or any other metal, clock-maker, watch-maker, or any other artificer or manufacturer of *Great-Britain*, shall at any time after the first day of *May* 1719, go into any country out of his majesty's dominions, there to use or exercise, or teach any of the said trades or manufactories to foreigners; or in case any of his majesty's subjects now being, or who hereafter shall be in any such foreign country out of his majesty's dominions, as aforesaid, and there using or exercising any of the said trades or manufactories herein before mentioned, shall not return into this realm within six months next after warning shall be given to him by the ambassador, envoy, resident, minister or consul of the crown of *Great Britain*, in the country in which such artificer shall be, or by any person authorized by such ambassador, &c. or by one of his majesty's secretaries of state for the time being, and from thenceforth continually inhabit and dwell within this realm; then and in such case every such person shall be deemed an alien.

2. Of naturalization and denization.

Naturalization is an adoption of one to be intitled by birth to what an *Englishman* may claim; and where naturalization is, it takes effect from the birth of the party, but denization takes effect from the date of the patent. *Arg. Cart.* 187.

Naturalization is *always by parliament, and perpetual*; for if one be naturalized for a day, it is good for ever; per *Mountague Ch. J. Cro. Fac. 539.*

Aliens denizens are those who are made so by *letters patent*, but *aliens naturalized* are so by *act of parliament*; the one will not make the heir inheritable to his ancestor, but the other will; as for instance, *Cornelius Godfrey* being an *alien born*, had issue his eldest son born in *Flanders*; afterwards the father was made *denizen*, and had issue his youngest son born in *England*, and died; then the eldest son was *naturalized*, and having made a lease for years to *Dixon*, rendering rent, he died without issue, and the younger brother brought an action of debt for the rent arrear; and adjudged that he might; for by the *naturalization* of the elder brother, he was capable to *purchase*, and by consequence to make a lease, and that his brother was inheritable to him; and so the action brought by him was good. *God. 275.*

An alien born may become a subject of *England* two ways, by *denization* and by *naturalization*; *denization* is by the King's letters patent, which receive him into the society as a new man, and make him capable to purchase, and to transmit land by descent; but it doth not make him inheritable to any other relation; for though the King by his charter may admit him into the society, yet it cannot alter the law, which denied him to inherit any relations; but if he be naturalized by act of parliament, then he in all things inherits like a natural-born subject, because in an act of parliament every man's consent is involved. *1 Inst. 8. a. 129. a. Palm. 13. Cro. Fac. 539.*

If a man take an alien to wife, and afterwards sell his land, and his wife be naturalized, she shall be endowed of the lands sold before her naturalization. *Co. Lit. 33. a.*

A man may be made a denizen in tail for life, years, or upon condition; also the King may make a particular denization, as if he grants to an alien *quod in quibusdam curiis suis Angliæ audiatur ut Anglus, & quod non repellatur per illam exceptionem quod est alienigena.* *2 Jones 12. Cro. Fac. 539. Co. Lit. 129. a.*

It was taken for a ground, that *no statute of naturalization shall be taken by equity*, because it carries with it a prejudice to the subjects in general, by making others sharers with them, not only in the laws, but also in the trades of the kingdom, by which our subjects born are less capable of acquiring a livelihood; per three justices; and for this reason, and also for that hereby other subjects may be disinherited of their lands, *Bridgman Ch. J. said, Naturalization* (if it may be said of a parliament) carries in it somewhat of injustice; and the rather, because it is not agreeable to the policy of other states, as in *France* and elsewhere, where persons naturalized have not so great privileges as here. *Sid. 197.*

But one cannot be naturalized, either with limitation for years, life, or in tail, or upon condition, for it is against the absoluteness, purity, and indelibility of natural allegiance. *Co. Lit. 129. a. 2 Rol. Rep. 95.*

A. devised a house to his wife for life, remainder to *B.* (who was an alien) if he should be then a denizen, and capable to take, if not, then to the heirs of his body, and in default of such issue, remainder to the master and governors of the free-school of *St. Olave's*. After the death of the wife, *B.* entered and enjoyed the same many years, and sold the same to *C.*; the master and wardens brought an ejectment, supposing that *B.* was an alien, and died without issue; but to prove that he was a denizen, it was shewed, that *in the deed and fine he called himself a freeman, and that the fine was with proclamations, and five years passed*; and that as aliens are prohibited by statute from being of any trade, upon pain of forfeiture of their goods, he would not have incurred the penalty by using a trade here, without being first made a denizen. But per *Williams J.* a denizen cannot be made but by letters patent, or act of parliament, which cannot be sufficiently proved without matter of record. The court were all clear of opinion, that the plaintiff had good title, but the parties agreed, and no verdict given, but a juror withdrawn. *2 Bulf. 33.*

Naturalizing in Ireland is of no effect as to *England*; for naturalization is but a *fiction of law*, and can have effect but upon those only consenting to that fiction; therefore it has the like effect as a man's birth hath, where the law-makers have power, but not where they have not. *Naturalizing in Ireland* gives the same effect in *Ireland* as being born there; so in *Scotland* as being born there; but not in *England*, which consents not to the fiction of *Ireland* or *Scotland*, nor to any but her own. *Vaugh. 280.*

He that is born within the King's ligeance, is called sometimes a *denizen*, quasi *deins nee*, viz. born within, and thereupon in Latin is called *indigena*, the King's liegeman, for *ligeus* is ever taken for a natural-born subject; but many times in acts of parliament *denizen* is taken for *alien born*, that is *infranchised*, or *denized by letters patent*, whereby the King does grant unto him, *Quod ille in omnibus tractetur, reputetur, habeatur, teneatur, & gubernatur tanquam ligeus noster infra dictum regnum nostrum Angliæ oriundus, & non aliter, nec alio modo.* But the King may make a *particular denization*, as he may grant to an alien, *quod in quibusdam curiis suis Angliæ audiatur ut Anglus, & quod non repellatur per illam exceptionem, quod sit alienigena & natus in partibus transmarinis*, to enable him to sue only. *Co. Lit. 129. a.*

Note, for law, that where an *alien born* comes into *England*, and brings his son with him who was born beyond sea, and is an alien as his father is, there the king by his letters patent cannot make the son heir to his father, nor to any other; for he cannot alter his law by his letters patent, nor otherwise but by parliament; for he cannot disinherit the right heir, nor disappoint the lord of his escheat. *Bro. Deniz. pl. 9.*

If an alien born has issue a son beyond sea, this son is an alien as the father is; and if he comes into *England*, and is made a denizen, and after has issue another son in *England*, and he purchases land, viz. the father; the second son shall inherit, and not the eldest. *Bro. Discent, pl. 57.*

If an alien be made a denizen, and the letters of denization have a proviso (usual in such charters) that the denizen shall do his liege homage, and that he shall be obedient, and observe the laws of this realm; this proviso is not any condition, for though he never doth his liege homage, nor be obedient to all the laws of this realm, yet this will not make the denization void; for if he doth not observe the laws, he shall forfeit the penalties appointed by them. *1 Roll. Abr. 195. Lane 58. S. C.*

An alien had issue two sons, one of them purchased lands in fee, and died without issue, the other shall not be his heir, because there was no inheritable blood between the father and them; and where the son cannot be heir to the father, there one son cannot be heir to another; but if a man hath two sons, and is afterwards attainted, and then one of them purchaseth lands, and dieth without issue, in such case the other son shall be heir to his brother, because by the attainder the lineal blood was attainted, and not the blood collateral which was between the brothers. *4 Leon. 5. Palm. 19.*

If an *Englishman* and an *alien* purchase lands jointly, and the alien die, it was a question, whether the *Englishman* should have the whole by survivorship, because they were joint-tenants till office found; but this is denied by others; because, if the freehold should be in the alien till office found, then he might have an action of trespass, for a trespass done on the land; but it is plain an alien cannot maintain such an action. *Dyer 283.*

In ejectment, the case was, the testator devised a house to his wife for life, remainder to *W. R.* (who was an alien) if he should be then a denizen, and a person capable to take; if not, then to the heirs of his body, after the death of the wife; *W. R.* entered, and the remainder being limited over to the master and wardens of the free school of *St. Olave's* in *Southwark*; they entered and brought an action, supposing that *W. R.* was an alien, and having sold the estate, was now dead without issue. It was given in evidence for the defendant, that *W. R.* was a denizen, because he called himself so in the conveyance which he made of the house; besides, he exercised a trade, which by implication proves him to be a denizen; but adjudged, A a that

that since a *denizen* cannot be made but by *letters patent*, or by act of parliament, the proof that he is so must be by matter of record; and the defendant having failed in such proof, judgment was given for the master and wardens of the school. 2 *Bull.* 33.

By the 7 *Jac. 1. cap. 2.* it is enacted, "that no person or persons, of what quality, condition, or place soever, being of the age of eighteen years or above, shall be naturalized or restored in blood, unless the said person or persons have received the sacrament of the Lord's Supper within one month before any bill exhibited for the purpose; and also shall take the oath of supremacy and the oath of allegiance in the parliament house, before his or her bill be twice read; which oath the lord-chancellor, or lord-keeper, and the speaker of the house of commons, have authority to administer."

A *denizen* is not capable of nobility, nor to sit in parliament; for that to have a power of making laws, it is necessary he should be totally received into the society, which he cannot be without the consent of parliament. *Molloy* 382.

By the *stat. 12 & 13 W. 3. c. 2.* it is enacted, "that no person born out of these kingdoms, (although he be naturalized or made a *denizen*) except such as are born of *English* parents, shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military; or to have any grant of lands, tenements or hereditaments, from the crown to himself, or to any other or others in trust for him."

Let this statute by the 1 Geo. 1. st. 2. c. 4. is explained, so as not to extend to disable or incapacitate any person, who at or before his Majesty's accession to the crown was naturalized, to be of the privy council, or a member of either house of parliament, &c. and by this statute it is enacted, that no person shall hereafter be naturalized, unless in the bill exhibited for that purpose there be a clause, or particular words inserted, to declare that such person shall not thereby be enabled to be of the privy council, or a member of either house of parliament; or to take any office or place of trust either civil or military, or to have any grant of lands, tenements or hereditaments from the crown, to himself, or any other in trust for him; and that no bill of naturalization shall hereafter be received in either house of parliament, unless such clause or words be first inserted or contained therein.

3. *What acts aliens may do; and what not.*

If an alien, christian or infidel, purchase houses, lands, tenements or hereditaments to him and his heirs, although he can have no heirs, he is of capacity to take a fee-simple but not to hold. For upon an office found, the King shall have it by his prerogative of whomsoever the land is holden. And so it is if the alien doth purchase land and die, the law doth cast the freehold and inheritance upon the King. If an alien purchase any estate of freehold in houses, lands, tenements or hereditaments, the King upon office found shall have them. If an alien be made *denizen* and purchase land, and die without issue, the lord of the fee shall have the escheat, and not the King. But as to a lease for years, there is a difference between a lease for years of a house for the habitation of a merchant stranger being an alien, whose King is in league with ours, and a lease for years of lands, meadows, pastures, woods, and the like. For if he take a lease for years of lands, meadows, &c. upon office found the King shall have it. But of a house for habitation, he may take a lease for years as incident to commerce, for without an habitation he cannot merchandize or trade. But if he depart or relinquish the realm, the King shall have the lease. So it is if he die possessed thereof, neither his executors or administrators shall have it, but the King: for he had it only for habitation, as necessary to his trade or traffick, and not for the benefit of his executor or administrator. But if the alien be no merchant, then the King shall have the lease for years, though it were for his habitation, and so it is if he be an alien enemy. And all this was resolved by the judges assembled together for

that purpose, in the case of Sir *James Cross*, *Pasch. 29* of the reign of *Queen Elizabeth. Co. Lit. 2. b.*

An alien cannot purchase or inherit any lands in *England*, and the reason is, because every person is presumed to have a natural and necessary allegiance to that society that first protected and preserved him, and therefore he cannot pay an allegiance to any other society, unless he be afterwards received into it. *Vaugh. 227, 291. 7 Co. 16. Dyer 2. pl. 8.*

An alien shall take nothing by descent, curtesy, dower, or guardianship. 1 *Vent. 417. Molloy 464.* But he may take the estate though he is not capable of holding it; therefore if in tail, he may suffer a recovery and dock the remainders. *Co. Lit. 2. b. 2 Rol. Rep. 321. Goldsb. 102. 4 Leon. 82. Bro. tit. Denizen and Alien 17.*

And as an alien cannot inherit himself; so he cannot be inherited; the grandfather born in *England*, the son an alien, the grandson born in *England*, the grandson shall not inherit the grandfather, because he must then represent the father, who cannot be represented; but if the father be an alien, and two brothers born in *England*, they may inherit each other, because the descent is immediate, and they do not take by representation of the father. 1 *Sid. 193, 198. 1 Vent. 413 to 429. Hard. 224. Co. Lit. 8. Cont.*

If the eldest son be an alien, the younger brother born in *England* shall inherit the father; otherwise it were if the eldest son were attainted, because the eldest son and all his descendants are before the younger brother, and the younger cannot inherit before that line is extinct; and it is a foreign presumption, to suppose that any of that line should come over and have children in *England*; but the person attainted is supposed to have all his children residing in the kingdom under the King's allegiance; therefore there is a line continuing before that of the younger brother. 1 *Vent. 417. 1 Inst. 8. a. 1 Sid. 195.*

For the same reason, if an alien hath four sons, the two eldest aliens, and the two younger naturalized, and one of the younger sons purchase lands and dies, the eldest brother having issue born within the realm, the younger brother, and not the issue of the eldest, shall inherit. *Hard. 224.*

If an alien hath a son an alien, and afterwards is made a *denizen*, and hath a second son, the second son shall inherit though the eldest son be alive. *Cro. Jac. 539.*

In an action of debt brought by an *administratrix*; the defendant pleaded, that the plaintiff was an alien born in *Ghent*, under the allegiance of the King of *Spain*, an enemy to the *Queen*: upon demurrer to this plea, it was insisted for the plaintiff, that the action being brought by her as *administratrix*, though she was an alien, it was good, because she was not to recover in her own right, but in the right of another, and to his use; and it was a question, whether the King of *Spain* could be called an enemy till war was proclaimed? *Owen 45.*

The *Spanish* ambassador exhibited his bill in Chancery against Sir *Richard Bingley*, to have a discovery of several goods, which he set forth, as belonging to the subjects of his master generally, without alledging any persons certain; and upon a demurrer to this bill, it was referred by the chancellor to some of the judges; it was resolved by them, that the ambassador, as procurator general of all the subjects of *Spain*, could not bring the bill, because the King of *Spain* could not make a procurator general of all, or any of his subjects, without their consent; it is true, he may appoint an ambassador, who is a public minister for the King, and not for his subjects, otherwise than as it concerns the King and his minister to protect them; and therefore he may mediate, prosecute, and defend them at the council-table, which is in the nature of a court of state. Therefore in this case, the chancellor ordered a bill and answer to be filed by consent only, that examination of witnesses might be taken, and then to determine the matter by way of arbitration, and not by a formal decree. *Hob. 78.*

Case, &c. by an alien, for words spoken by the defendant, (*viz.*) that he was a bankrupt: after a verdict for the plaintiff, it was moved in arrest of judgment, that the plaintiff was an alien *sub ligeantia* of another prince, and

extra

extra ligeantiam domini regis; and though such an alien may have an action here for his goods or merchandise, and may have a house for his habitation, yet he cannot maintain a personal action for defaming him; but adjudged, that he may; for merchants strangers are enabled to trade here, and by consequence they are entitled to all personal actions for the support of their credit and trade, and other actions likewise, as assault and battery, for assaults done upon themselves. 1 Bull. 134.

If an alien hath issue two sons, A. born beyond seas, and B. born in England, and A is naturalized, he shall inherit B. Palm. 3. 3 Cro. Jac 539.

And now by the 11 & 12 W. 3 c. 6. it is enacted, "that all and every person or persons, being the King's natural-born subject or subjects, within any of the King's realms or dominions, shall and may hereafter lawfully inherit and be inheritable, as heir or heirs to any honours, manors, lands, tenements, or hereditaments, and make their pedigrees and titles by descent from any of their ancestors, lineal or collateral, although the father and mother, or fathers and mothers, or other ancestor of such person or persons, by, from, through, or under whom he, she, or they shall or may make or derive their title or pedigree, were or was, or is or are, or shall be born out of the King's allegiance, and out of his Majesty's realms and dominions, as freely, fully, and effectually to all intents and purposes, as if such father or mother, or fathers or mothers, or other ancestor or ancestors, by, from, through, or under whom he, she, or they shall or may make or derive their title or pedigree, had been naturalized or natural-born subjects." See statute 25 Geo. 2. c. 39. for explaining some doubts upon this act.

If an alien purchases lands, the King shall have it upon office found, for since the freehold is in the alien, and he is tenant to the lord of whom the lands are holden, it cannot be divested out of him but by some notorious act, by which it may appear that the freehold is in another; but if an alien purchases lands and dies, then the freehold is in the King without office found, because no man can take it as heir to the alien, therefore the freehold is cast upon the King; but if an alien purchase, and afterwards is made a denizen, and then hath issue and dies, the issue shall inherit till office found, because there is a person in being to take as heir to the denizen, upon whom the law casts the freehold, which is not to be divested out of him without the solemnity of an office. Co. Lit. 2. 1 Leon. pl. 61.

If an alien and a subject purchase lands to them and their heirs, the survivorship shall take place till office found, but the office found intitles the King, and severs the jointenancy; for the freehold is in the alien by the solemnity of livery, till it is divested out of him by solemn office found; and every person is supposed a natural-born subject that is resident in the kingdom, and owes a local allegiance to the King, till the contrary be found by office. Cro. Eliz 123 Dyer 283. pl. 31.

If an alien purchases a copyhold in fee in the name of J. S. in trust for him and his heirs, though it be found that the copyhold was in trust for the alien, and that J. S. had the legal estate, yet the King must sue in Chancery to have the trust executed for his benefit. 1 Roll. Abr. Allen 14. Style 20, 21, 41, 76.

An alien cannot purchase a lease for years of lands, but he may, if he be a merchant, take a lease of a house for his habitation for years only, and this is for the encouragement of commerce; for if an alien trade he must have an abode amongst us, but if he depart the kingdom or die, it goes to the King, not to his executors or administrators; because it was a personal privilege annexed to the alien, as a merchant, for the encouragement of commerce, and consequently must expire with him, without going to his executors or administrators. Poph. 36. Co. Lit. 2. b. 1 Roll. Abr. 194.

But by the 32 H. 8. cap. 16. sect. 13 it is enacted, "that all leases of any dwelling house or shop within this realm, or any the King's dominions, made to any stranger, artificer, or handicraftsman born out of the King's obedience, not being a denizen, shall be void and of no effect; and the person so taking such lease forfeits

100*l.* and the person letting 100*l.* more; one moiety to the King, and the other to him that sues for the same."

Upon this statute the case was, an action of debt was brought upon an obligation, and upon oyer demanded of the condition it was recited, and it referred to indentures; which indentures were likewise recited in *hac verba*; the indentures were upon a lease of a house in Westminster, reserving rents with covenants, &c. the defendant pleaded 32 Hen. 8. cap. 16. and that he was an alien, &c. and so would avoid the lease and the rent, and all the security; divers exceptions were taken to this plea. 1. He has not said where he was an artificer; but this was overruled; for it is a personal quality, and shall follow the person, and is universal. 2. The defendant ought to have set forth and pleaded the indenture, but *per curiam*, since the plaintiff has brought it into court, as must be intended, and set it forth, the defendant may plead upon it without setting of it forth again. 3. The plea is, that *indentura predicta vacua existit*, and this was likewise overruled; for the law is, that the indenture and bond make but one security, and if the covenant be released before breach, the bond will signify nothing. 4. This appears to be a messuage or tenement, but he has not averred it to be a mansion-house or shop, according to the statute; and upon this point the court at first were divided: Keyling held, that *messuagium* is *mansum*, et quod *diare constat non debet verificari*. Morton: though *messuagium* be a word of art, and may be applied to other things by a large sense, as to a barn or chapel; yet in propriety it is a mansion-house, and shall be intended so. Twisden and Wyndham, that it ought to have been averred; for he must bring himself precisely within the statute, especially in such a case as this, where he would avoid his own contract; but afterwards the defendant had judgment. 1 Saund. 1 to 10. 1 Sid. 308. S. C. 2 Keb. 102, 116. S. C. 2 Show. Rep. 135. S. C. cited, and agreed to be good law.

A special verdict found, that the plaintiff made a lease of a house to the defendant, who was found to be an alien artificer, and that this lease was made by indenture between the plaintiff and defendant, and that there was no other security or promise made by the defendant, and that the defendant entered and enjoyed so long, for which the plaintiff brought a *quantum meruit*; to which the defendant pleaded *non assumpsit*, and the matter being found *ut supra*, the court held, that an *assumpsit* would not lie. 1. Because this would evade the statute. 2. A promise in law never takes place where there is an actual agreement. 2 Show. Rep. 135

Debt upon an obligation for performance of covenants in a lease of a house, &c. the defendant pleaded the statute 32 Hen. 8. cap. 16. and sets forth that he was a *vintner*, and alien artificer; and upon demurrer it was insisted upon for him, that a *vintner* is as much an artificer, and within the meaning of the statute, as a *mercator*, *draper*, or *grocer*: Ch. Just. This statute refers to another made 1 R. 3. c. 9. which prohibits alien artificers to exercise any handicraft in England, unless as servant to a subject skilful in the same art, upon pain of forfeiture of his goods; now the mystery of a *vintner* chiefly consists in mingling of wines, and that is not properly an art but a cheat; so the plaintiff had judgment. 3 Mod. 24.

If a woman alien, be she friend or enemy, marry a subject, she shall not be endowed, because by the policy of the Common Law, all aliens are disabled from acquiring any freehold amongst us; also dower is an estate created by act of law, and therefore the law, which *nil frustra agit*, shall not transfer an estate to one who cannot keep it, but must immediately, in respect of her legal disability, give title to another; and there is a diversity between such acts of law and the acts of the party himself; as if an alien makes an actual purchase, &c. So aliens shall not be tenants by the courtesy, by the same reason. 7 Co. 25. Co. Lit. 31.

An alien friend may have personal actions but not real; an alien enemy shall have neither real, personal, nor mixt actions. The reason why an alien friend is allowed to maintain a personal action is, because he would otherwise

wife be incapacitated to merchandise, which may be as much to our prejudice as his; but as to the allowing of him to maintain real actions, there is no reason for it, because there is no necessity that he should settle amongst us; an alien enemy is disabled from the prejudice that may accrue to the King and kingdom, if he were allowed to maintain an action. *Co. Lit.* 129. *b.* 1 *And.* 25. *Dyer* 2. *b.*

A merchant stranger shall have an action for saying *He is a bankrupt*, for by law he may have personal actions, and these words tend to impair his credit in trade. *Yelv.* 198. 1 *Bulf.* 134. *S. C.*

An alien friend, merchant, may upon a statute extend lands, and upon office the King shall not have them, and upon ouster he shall have an assize; for the main end and design of both the statute-staple and merchant, was to promote and encourage trade, by providing a sure and speedy remedy for merchant strangers as well as natives, to recover their debts at the day assigned for payment. *Dyer* 2. *b. in marg.*

An alien friend may be an administrator, and shall have administration of leases, as well as personal things, because he hath them in another's right, and not to his own use. *Cro. Car.* 8. 1 *Vent.* 417. *S. C.* cited.

But it has been long doubted, whether an alien enemy should maintain an action as executor; for on the one hand it is said, that by the policy of the law, alien enemies shall not be admitted to actions to recover effects which may be carried out of the kingdom, to weaken ourselves and enrich the enemy; and therefore public utility must be preferred to private convenience; but on the other hand it is said, that these effects of the testator are not forfeited to the King by way of reprisal, because they belong not to the alien enemy, for he is to recover them for others; and if the law allows such alien enemies to possess the effects as well as an alien friend, it must allow them power to recover, since in that there is no difference, and by consequence he must not be disabled to sue for them; if it were otherwise it would be a prejudice to the King's subjects, who could not recover their debts from the alien executor, by his not being able to get in the assets of the testator. *Cro. Eliz.* 683. *Molloy* 870. *Carter* 49, 191. *Skin.* 370.

If an alien enemy comes here *sub salvo conductu*, he may maintain an action. So if an alien may come hither in time of peace *per licentiam domini regis*, as the French protestants did, and lives here *sub protectione*, and a war afterwards happens between the two nations, he may maintain an action, for suing is but a consequential right of protection; and therefore an alien enemy, that is here in peace under protection, may sue a bond; *aliter* of one commorant in his own country. 1 *Salk.* 46.

4. Of pleading alienage.

If one born in *Jersey*, or elsewhere within the King's obedience, brings a real action, and the tenant pleads that the demandant is an alien born under the obedience of the French King, and out of ligeance of, &c. the demandant may reply, that he was born at such a place in *England*, within the King's allegiance, &c. and such hath ever been the manner of pleading in such case. *Co. Lit.* 161. 7 *Co.* 26. 6 *Co.*

In an assize *tempore Jac.* 1. the defendant pleaded that the plaintiff was born *apud E. infra regnum Scotiæ ac intra ligeantiam dicti domini regis regni sui Scotiæ, ac extra ligeantiam dicti domini regis regni sui Angliæ*; and this was held no good plea, because it referred ligeance and faith to *England*, and not to the King. 7 *Co.* 1, 9. *Litt. Rep.* 26.

In debt on an obligation, which was for payment of rent reserved by lease for years; the defendant pleaded the 32 *Hen.* 8. and that he was an alien artificer, &c. the plaintiff replied, that he was no alien artificer; but having laid no place where he was born, the replication was held naught. 1 *Sid.* 357.

The defendant pleaded in abatement, that the plaintiff was an alien enemy, born in such a place in *France*; the plaintiff replied that he is *indigena*, and born at such a place in the kingdom of *England*, & *non alienigena modo*

& *forma prout*, &c. et hoc petit quod inquiratur per patriam, and upon demurrer to this replication, it was held to be ill; for that the plaintiff did not rely upon the first part of it, that he was born in *England*, and so conclude with an averment, that an issue might be taken by the other side, *viz.* that he was born in *England*, and that this matter might be triable by a proper *visue*; but here he hath put *alien* or not *alien* in issue, *viz. non alienigena modo* & *forma*, which cannot be tried for want of a *visue*; and therefore judgment was given that the bill should abate. *Carth.* 302.

In *indebitatus assumpsit* the defendant pleaded that the plaintiff was an alien enemy born at *Roan* in *France*, under the allegiance of, &c. The plaintiff replied, he was born at *Hamburgh*, under the allegiance of the emperor, a friend of the King, &c. and traversed, that he was born at *Roan* in *France*, &c. Upon demurrer, the defendant had judgment, because by the traverse *Roan* is part of the issue, which is very immaterial, the plaintiff should have traversed, that he was born under the allegiance of the French King. 3 *Salk.* 28.

In debt for an escape, the defendant pleaded that the plaintiff was an alien enemy, born at *Roan* in *France*, under the allegiance of the French King, &c. and the plaintiff replied that he was a natural subject, born at *Westminster* in the county of *Middlesex*; and traversed, that he was born in *France*; and upon demurrer, the court held this to be an immaterial traverse; for the plaintiff should have rested and tendered an issue upon his being born at *Westminster*. 3 *Salk.* 28.

The most usual and best pleading in actions brought by an alien, is both exclusive and inclusive, *viz. extra ligeantiam domini regis, &c. et infra ligeantiam alicuius regis.* 7 *Rep.* 16. *b.* cites 9 *E.* 4. 7. et *Lib. Intrat.* fo. 244.

Alienage may be pleaded in bar after imparlance, as well as to the writ before imparlance. *Jenk.* 130. pl. 64.

Alien-prizings, Those cells of the religious in *England* which belonged to foreign monasteries. These were dissolved by authority of parliament, in the reign of *Hen.* 4. but some were made *indigenæ*, or denizened. *Cowel*

Alienation, (from *alienare*, to alien) A transferring the property of a thing to another. It chiefly relates to lands and tenements; as to *alien* land in fee, is to sell the fee-simple thereof, &c. and to *alien* in mortmain, is to make over lands or tenements to a religious house or body politick; for which the King's licence is to be obtained. *Stat.* 15. *R.* 2. c. 5. *Stat. West.* 2. c. 25 ann. 13 *Ed.* 1. fines for alienations are taken away by statute; except fines due by particular customs of manors. 12 *Car.* 2. c. 24. *Danv. Abr.* 327. All persons who have a right to lands may generally *alien* them to others: but some *alienations* are forbidden; as an *alienation* by a particular tenant, such as tenant for life, &c. which incurs a forfeiture of estate. 1 *Inst.* 118. For if lessee for life, by livery alieneth in fee, or makes a lease for the life of another, or gift in tail, it is a forfeiture of his estate: so if tenant in dower, tenant for another's life, tenant for years, &c. do *alien* for a greater estate than they lawfully may make. 1 *Inst.* 233, 251. Conditions in feoffments, &c. that the feoffee shall not *alien*, are void. 1 *Inst.* 206. *Hob.* 261. And it is the same where a man possessed of a lease for years, or other thing, gives and sells his whole property therein, upon such condition: but one may grant an estate in fee, on condition that the grantee shall not *alien* to a particular person, &c. and where a reversion is in the donor of an estate, he may restrain an *alienation* by condition. *Litt.* 361. *Wood's Inst.* 141. Estates in tail, for life, or years, where the whole interest is not parted with, may be made with condition not to *alien* to others, for the preservation of the lands granted in the hands of the first grantee.

Alimony, (*Alimonia*) Signifies nourishment or maintenance; and in a legal sense, it is taken for that allowance which a married woman sues for and is entitled to, upon any occasional separation from her husband. *Cowel. Termes de la Ley.* Where a woman is divorced *a mensu & thoro*, she may sue her husband in her own name for