

actions. 6 *Rep.* 7. And a recovery in debt is a good bar to action on the case for the same thing ; also a recovery on *assumpsit* in case, is a good bar in debt, &c. ²*Cro. Jac.* 110. 4 *Rep.* 94.

In all actions *personal*, as debt, account, &c. a bar is perpetual, and in such case the party hath no remedy, but by writ of error or attain; but if a man is barred in a real action or judgment, yet he may have an action of as high a nature, because it concerns his inheritance ; as for instance, if he is barred in a *formedon in descender*, yet he may have a *formedon in the remainder*, &c. 6 *Rep.* 7. It has been resolved, that a bar in any action real or personal by judgment upon demurrer, verdict, or confession, is a bar to that action, or any action of the like nature for ever ; but, according to *Pemberton*, Ch. J. this is to be understood, when it doth appear that the evidence in one action would maintain the other ; for otherwise the court shall intend that the party hath mistaken his action. *Skin.* 57, 58.

Bar to a *common intent* is good ; and if an executor be sued for his testator's debt, and he pleadeth that he had no goods left in his hands at the day the writ was taken out against him, this is a good bar to a common intendment, till it is shown that there are goods ; but if the plaintiff can show by way of replication, that more goods have fallen into his hands since that time, then, except the defendant allege a better bar, he shall be condemned in the action. *Plowd.* 26. *Kitch.* 215. *Bro. tit. Barre.*

There is a bar material, and a bar at large ; bar material may be also called special bar ; as when one, in stay of the plaintiff's action, pleadeth some particular matter, *viz.* a descent from him that was owner of the land, &c. a feoffment made by the ancestor of the plaintiff, or the like ; a bar at large is, when the defendant, by way of exception, doth not traverse the plaintiff's title, by pleading, nor confess, nor avoid it, but only makes to himself a title in his bar. *Kitch.* 68. 5 *Hen.* VII. 29.

See *tit. Abatement, Action, Judgment, and especially Pleading.*

This word Bar is likewise used for the place where serjeants and counsellors at law stand to plead the causes in court ; and where prisoners are brought to answer their indictments, &c. whence our lawyers, that are called to the bar, are termed barristers. 24 *Hen.* VIII. c. 24.

BARRASTER, BARRISTER, *barrasterias.*] A counsellor learned in the law, admitted to plead at the bar, and there to take upon him the protection and defence of clients. They are termed *jurisconsulti* ; and in other countries called *licentiati in jure* ; and anciently *barristers* at law were called *apprentices* of the law, (from the French *apprendre* to learn,) in Lat. *apprenticii juris nobiliores.* *Fortesc.* The time before they ought to be called to the bar, by the ancient orders, was eight years, now reduced to five ; and the exercises done by them, (if they were not called *ex gratia*,) were twelve grand moots performed in the inns of *chancery*, in the time of the grand readings, and twenty-four petty moots in the term times, before the readers of the respective inns ; and a *barrister* newly called was to attend the six (or four) next long vacations the exercise of the house, *viz.* in Lent and Summer, and was thereupon for those three (or two) years styled a vacation *barrister*. Also they are called *utter barristers, i. e.* pleaders *ouster* the bar, to distinguish them from benchers, or those that have been readers, who are sometimes admitted to plead within the bar, as the king, queen or prince's counsel are.

From the degrees of barristers and serjeants at law, (see tit. *Serjeant*;) some are usually selected to be his majesty's counsel; the two principal of whom are called his attorney and solicitor-general. The first king's counsel under the degree of serjeant, was Sir *Francis Bacon*, who was made so *honoris causa*, without either patent or fee; so that the first of the modern order, who are now the sworn servants of the crown with a standing salary, seems to have been Sir *Francis North*, afterwards Lord Keeper to *Charles II.* These king's counsel must not be employed in any cause against the crown without special license, but which is never refused, and costs about 9*l.* A custom now prevails of granting letters patent of precedence to such barristers as the crown thinks proper to honour with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents, sometimes next after the king's attorney-general, but usually next after his majesty's counsel then being. These, as well as the queen's attorney and solicitor-general, rank promiscuously with the king's counsel, and together with them sit within the bar of the respective courts; but receive no salaries and are not sworn, and therefore are at liberty to be retained in causes against the crown. And all other serjeants and barristers indiscriminately, (except in the court of common pleas, where serjeants only are admitted in term time,) may take upon them the protection and defence of any suitors whether plaintiff or defendant. 3 *Comm.* 27, 28.

A counsel can maintain no action for his fees; (*Davis Pref.* 22. 1 *C. R.* 38.) which are given not as a salary or hire, but as a mere gratuity, which a barrister cannot demand without doing wrong to his reputation. *Davis*, 23.

In order to encourage due freedom of speech in the lawful defence of their clients, and at the same time to give a check to unseemly licentiousness, it hath been holden, that a counsel is not answerable for any matter by him spoken, relative to the cause in hand, and suggested in his client's instructions; although it should reflect upon the reputation of another, and even prove absolutely groundless; but if he mentions an untruth of his own invention, or even upon instructions, if it be impertinent to the cause in hand, he is then liable to an action from the party injured. *Cro. Jac.* 90. And counsel guilty of deceit or collusion, are punishable by stat. *Westm.* 1. 3 *Edw.* I. c. 28. with imprisonment for a year and a day, and perpetual silence in the courts; and the latter punishment is still sometimes inflicted for gross misdemeanors in practice. *Raym.* 376. 3 *Comm.* 29.

Barristers who constantly attend the *king's bench*, &c. are to have the privilege of being sued in transitory actions in the county of *Middlesex*. But the court will not change the venue because some of the defendants are barristers. *Str.* 610. See tit. *Privilege*. Pleas, before they are filed, must be signed by a barrister or serjeant. See tit. *Abatement*, *Pleading*. See further tit. *Counsellor*, *Non-conformists*, *Oaths*.

BARRATOR, or BARRETOR, Lat. *barractor*, Fr. *barrateur*.] A common mover of suits and quarrels, either in courts, or elsewhere in the country, that is himself never quiet, but at variance with one or other. *Lanb.* derives the word *barretor* from the Lat. *balatro*, a vile knave; but the proper derivation is from the Fr. *barrateur*, i. e. a deceiver, and this agrees with the description of a common *barretor* in Lord *Coke's Reports*, viz. that he is a common mover and maintainer of suits in disturbance of the peace, and in taking and detaining