

The plaintiff in *ejectment* is a mere nominal person, and a trustee for the lessor; and if he release the action, the court may set aside the release, and he shall be committed for a contempt; so likewise if he release an action brought in his name for the mesne profits. 1 *Salk.* 260. *Skinn.* 247. But a nominal lessee is now in general plaintiff, and the lessor is considered as the real party. If a man is made plaintiff in *ejectment* without his knowledge, and the defendant appearing, the plaintiff thereupon becomes nonsuit, after which execution is sued out against him; if it appears by his oath that he was made plaintiff without his knowledge or order, he shall be discharged. 34 *Car. B. R. 5 An.* 1 *Lil.* 500.

If it appears that the lessor of the plaintiff had not any title at the time of the demise, upon which the plaintiff declared, this will be fatal: and the court will not give leave to alter the declaration as to the time of the demise, which would make it a new demise. *Carth.* 179. See *Cro. Jac.* 311.

As to lands in the lease and declaration, &c. being different, and not exactly the same, or the term different from that in the declaration, &c. See *Yelv.* 166. 2 *Lutw.* 963. The declaration must assign a place where the lease was made. See *Moor, ca.* 673, 710. 1 *And.* 283. 9 *Rep.* 78. If there be a verdict and judgment against the plaintiff, he may bring another action of trespass and *ejectment* for the land, it being only to recover the possession, &c. wherein judgment is not final; and it is not like a writ of right, &c. where the title alone is tried. *Wood's Inst.* 547. *Trin.* 23 *Car. B. R.*

By a late statute, in all cases between landlord and tenant, when half a year's rent shall be in arrear, the landlord having lawful right to re-enter for non-payment; may serve a declaration in *ejectment* on the tenant, without a formal demand or re-entry; or he may affix such declaration on the door of the demised messuage, or notorious place of the lands, which shall be deemed a legal service: and upon proof that half a year's rent was due before the declaration was served, and no sufficient distress on the premises, the lessor shall have judgment and execution; which if the lessee suffer, without paying the arrears and costs, and without filing a bill in equity to be relieved within six months, he shall be barred from all relief, other than by writ of error; and the lessor shall hold the premises discharged from the lease: but if the tenant or lessee tender to the lessor, or bring into court, the rent in arrear, together with costs, all further proceedings shall cease; and if the lessee be relieved in equity, he shall enjoy the demised premises, according to his lease, without obtaining a new one. See *Stat. 4 Geo. 2. c. 28.* § 11 *Geo. 2. c. 19.*

Tenants, to whom declarations in *ejectment* are generally delivered for any lands, &c. shall give their landlords, or their bailiffs notice thereof, under the penalty of three years-rack rent, to be recovered by action of debt, &c. And the court where such *ejectment* shall be brought, shall suffer the landlord to make himself defendant, by joining with the tenant, unto whom the declaration is delivered, if he appears; but if not, judgment shall be signed against the casual ejector, for want of such appearance: but if the landlord shall desire to appear by himself, and consent to enter into the like rule, that the tenant, if he had appeared, ought to have done; the court may permit him so to do, and order a stay of execution, till they make a further order therein. 11 *Geo. 2. c. 19.*

If by any intendment a judgment in *ejectment* after a verdict can be made good, the court will do it. *Morris v. Barry, Wilf. Rep. par. 1. fo. 1.* Where the landlord is made defendant, the plaintiff must prove the landlord's tenant in possession of the premises in question. *Smith on Demise of Taylor v. Mann. Id.* 220. Vide 4 *Geo. 2. c. 28.* the substance of which, as to the point in question, see *post.*

As to the forms of process, &c. in *ejectment*, they are in the common books of practice.

See further the *Law of Ejectments*, by Gilbert.

Ejectum, Ejectus maris, quod e mari ejicitur: Jet, Jet-som, Wreck, &c. See *Wreck.*

Eigne, (Fr. aïsne) Eldest or first born; as bastard *eigne*, and mulier *puisne* are words used in our law for the elder a bastard, and the younger lawful born.

Einectia, (from the Fr. aïsne, i. e. primogenitus) Signifies eldership. Statute of Ireland, 14 Hen. 3. See *Esneey.*

Eyre, or Eyre, (Fr. eire, viz. iter, as a grand eire, that is, magnis itineribus) Is the court of justices itinerant; and justices in eyre are those whom *Brañon* in many places calls *justiciarios itinerantes*. These justices, in ancient time, were sent with a general-commission into divers counties to hear such causes as were termed *pleas of the crown*: and this was done for the ease of the people, who must else have been hurried to the King's Bench, if the cause were too high for the county court: it is said they were sent but once in every seven years. *Brañ. lib. 3. c. 11. Horn's Mirror, lib. 2.* The *eyre of the forest* is the justice-seat; which, by an ancient custom was held every three years by the justices of the forest, journeying up and down for that purpose. *Brañ. lib. 3. tract. 2. c. 1. § 2. Brit. c. 2. Cromp. Jurisd. 156. Manw. par. 1. p. 121.*

Election, (electio) Is when a man is left to his own free will to take or do one thing or another, which he pleases. And if it be given of several things, he who is the first agent, and ought to do the first act, shall have the *election*: as if a person make a lease, rendering rent, or a garment, &c. the lessee shall have the *election*, as being the first agent, by the payment of the one, or delivery of the other. *Co. Lit. 144.* And if *A.* covenant to pay *B.* a pound of pepper or sugar, before *Easter*; it is at the *election* of *A.* at all times before *Easter*, which of them he will pay: but if he pays it not before the said feast, then afterwards it is at the *election* of *B.* to demand and have which he pleaseth. *Dyer 18. 5 Rep. 59. 11 Rep. 51.*

If I give to you one of my horses in my stable, there you shall have the *election*; for you shall be the first agent, by taking or seizure of one of them. *Co. Lit. 145.* If things granted are annual, and to have continuance, the *election* (where the law gives it him) remains to the grantor, as well after the day as before: but it is otherwise when to be performed at once. *Ibid.* When nothing passes to the feoffee or grantee before *election* to have the one thing or the other, the *election* ought to be made in the life of the parties; and the heir or executor cannot make the *election*: but where an estate or interest passes immediately to the feoffee, donee, &c. there *election* may be made by them, or their heirs or executors. 2 *Rep.* 36, 37. And when one and the same thing passeth to the donee or grantee, and such donee or grantee hath *election* in what manner he will take it, there the interest passeth immediately, and the party, his heirs, &c. may make *election* when they will. *Co. Lit. 145. 2 Danv. Abr. 761.*

Where the *election* creates the interest, nothing passes till *election*; and if no *election* can be made, no interest will arise. *Hob. 174.* If the *election* is given to several persons, there the first *election* made by any of the persons shall stand: as if a man leases two acres to *A.* for life, remainder of one acre to *B.* and of the other acre to *C.* Now *B.* or *C.* may elect which of the acres he will have, and the first *election* by one binds the other. *Co. Lit. 145. 2 Rep. 36.* If a man leases two acres for life, the remainder of one in fee to the same person; and after licences the lessee to cut trees in one acre, this is an *election* that he shall have the fee in the other acre. 2 *Danv.* 762. A real *election* concerning lands is descendible; and *election* of a tenant in tail may prejudice his issue. He in remainder may make an *election*, after the death of tenant for life; but if the tenant for life do make *election*, the remainder-man is concluded. *Moor, ca. 247, 832.*

A person grants a manor, except one close called *N.* and there are two closes called by that name, one containing nine acres, and the other but three acres; the grantee shall not in this case choose which of the said closes he will have, but the grantor shall have *election* which close shall pass. 1 *Leon. 268.* But if one grants an acre of land out of a waste or common, and doth not say in what part, or how to be bounded, the grantee may make his *election* where he will. 1 *Leon. 30.* If a man hath three daughters, and he covenants with another, that he shall have one of them to dispose of in marriage; it

it is at the covenantor's *election* which of his daughters the covenantee shall have, and alter request she is to be delivered to him. *Moor* 72. 2 *Danv.* 762. Where there are three coparceners of lands, upon partition the eldest sister shall have the *election*: though if she herself make the partition, she loseth it, and shall take last of all. *Co. Lit.* 166.

In consideration that a person had sold another certain goods, he promised to deliver him the value in such pipes of wine as he should choose, the plaintiff must make his *election* before he brings his action. *Style* 49. An *election* which of two things shall be done, ought not to be made merely by bringing an action; but before, that the defendant may know which he is to do, and it is said he is not bound to tender either before the plaintiff hath made his choice which will be accepted. 1 *Mod.* 217. 1 *Nelf. Abr.* 697.

A condition of a bond is, that the obligor shall pay 30*l.* or twenty nine, at the obligee's *election*, within such a time; the obligee at his peril is to make his *election* within the time limited. 1 *Leon.* 69. Though in debt upon bond to pay 10*l.* on such a day, or four cows, at the then *election* of the obligee, it was adjudged, that it was not enough for the defendant to plead that he was always ready, &c. if the obligee had made his *election*; for he ought to tender both at the day, by reason the word *then* relates to the day of payment. *Moor* 246. 1 *Nelf.* 694, 695.

If a man hath an *election* to do one of two things, and he cannot by any default of a stranger, or of himself, or the obligee, or by the act of God, do the one; he must at his peril do the other. 1 *Lil. Abr.* 506.

Where the law allows a man two actions to recover his right, it is at his *election* to bring which he pleaseth: and when a man's act may work two ways, both arising out of his interest, he hath *election* given him to use it either way. *Dyer* 20. 2 *Rob. Abr.* 787. Action of trespass upon the case, or action of trespass *vi & armis*, may be brought against one that rescues a prisoner, at the *election* of the party damnified by the rescous. And an action on the case, or an assise lies against him that surcharges a common, at the *election* of him that is injured thereby. 1 *Lil.* 504, 505. Also for a rent-charge out of lands, there may be a writ of annuity or distress, at the *election* of the grantee: but after the death of the grantor, if the heir be not charged, the *election* to bring annuity ceaseth. *Dyer* 344.

A man was indicted of felony for entering an house and taking away money, and found guilty, and burnt in the hand; after which the person who lost the money brought an action of trespass against the other for breaking his house, and taking away his money; and it was held that the action would lie; for though it was at his *election* at first, either to prefer an indictment or bring an action, yet by the indictment he had made no *election*, because that was not the prosecution of the party, but of the crown. *Style* 347.

If a bargain and sale be made of lands, which is inrolled, and at the same time the bargainor levies a fine thereof to the bargainee, he hath his *election* to take by one or the other. 4 *Rep.* 72. A wife hath her *election* which to take, of a jointure made after marriage, or her dower, on the death of the husband, and not before. *Dyer* 358. When a lessor hath *election* to charge the lessee, or his assignee, for rent; if he accepts the rent of the assignee, he hath determined his *election*. 3 *Rep.* 24.

If a person hath *election* to pay or perform one of two things at a day, and he do neither of them at that day, his *election* is gone: and where a grant is made of two acres of land, the one for life, the other in fee, or in tail, and before any *election* the feoffee make a feoffment of both; in this case the *election* will be gone, and the feoffor may enter upon which he will for the forfeiture. 2 *Rep.* 37. If money on a mortgage be to be paid to a man, his heirs, or executors, the mortgagor hath *election* to pay it to either: and if in a feoffment it be to pay to the feoffee, his heirs or assigns, and he enfeoff another, the feoffor may pay the money to the first or second feoffee, &c. *Co. Lit.* 210.

In some cases, where one hath cause of suit, he may sue one person or another at his *election*; for there is an *election* of persons, as well as of things. *Dyer* 204, 207. A man by deed binds himself and his heirs to pay money, and dies; the obligee may chuse to sue the heir, or the executors, although both of them have assets. *Popb.* 151. One may have *election*, when he hath recovered a debt, to have his execution by *elegit*, *fieri facias*, or *cap. ad satisfaciendum*; but where he takes an *elegit*, and hath no fruit of it, he may resort to another writ, though the *election* be entered on record. *Hob.* 57. *Dyer* 60, 369.

There is no *election* against the King in his grants, &c. 1 *Leon.* 30. And an act becoming void, will determine an *election*. *Hob.* 152. As to *election* with respect to one action or another, see *Com. Dig.* 1 *V.* tit. *Action*.

Election of a Clerk of Statutes-Merchant, Is a writ that lies for the choice of a clerk assigned to take bonds called *statutes-merchant*; and is granted out of the *Chancery*, upon suggestion that the clerk formerly assigned is gone to dwell at another place, or is under some impediment to attend the duty of his office, or hath not lands sufficient to answer his transgressions, if he should act amiss, &c. *F. F. B.* 164.

Election of Ecclesiastical Persons. There is to be a free *election* for the dignities of the church, by 9 *Ed.* 2. c. 14. And none shall disturb any person from making free *election*, on pain of great forfeiture. If any persons that have a voice in elections, take any reward for an *election* in any church, college, school, &c. the *election* shall be void: and if any of such societies resign their places to others for reward, they incur a forfeiture of double the sum; and the party giving it, and the party taking it, is incapable of such place. *Stat.* 31 *Eliz.* c. 6. *Election of Bishops*. Vide *Bishops*.

Election of Members of Parliament. See *Parliament*.

Election of a Verderor of the Forest, (*electione viridariorum forestæ*) Is a writ which lies for the choice of a *verderor*, where any of the *verderors* of the forest are dead, or removed from their offices, &c. It is directed to the sheriff; and, as appears by the ancient writs of this kind, the *verderor* is to be elected by the freeholders of the county, in the same manner as coroners. *New Nat. Br.* 366.

Eleemosyna, Alms; *dare in puram & perpetuam eleemosynam*, to give in pure and perpetual alms, or *frank-almoigne*; as lands were commonly given in ancient times to religious uses. *Coavel.*

Eleemosynæ, Hath been used for the possessions belonging to the churches. *Blount.*

Eleemosyna Regis, or *eleemosyna aratri*, Is a penny which King *Ethelred* ordered to be paid for every plough in England, towards the support of the poor: it is called *Eleemosyna Regis*, because it was at first appointed by the King. *Leg. Ethelred*, cap. 1.

Eleemosynaria, The place in a religious house, where the common alms were repositied, and thence by the almoner distributed to the poor.

Eleemosynarius, The almoner or peculiar officer who received the *eleemosynary* rents and gifts, and in due method distributed them to pious and charitable uses. There was such a chief officer in all the religious houses: and the greatest of our English *bishops* had anciently their almoners, as now the King hath. *Limwood's Provincial*, lib. 1. tit. 12. See *Almoner*.

Eleemosynary Corporations, Are corporate bodies appointed over hospitals, &c. constituted for the perpetual distribution of the free alms, or bounty of the founder of them. *Black. Com.* 1 *V.* 471.

Elegit, (from the words in it, *elegit sibi liberari*) Is a writ of execution that lies for him who hath recovered debt or damages, or, upon a recognizance in any court against one not able in his goods to satisfy the same; directed to the sheriff, commanding him to make delivery of a moiety of the party's land, and all his goods, beasts of the plough excepted. And the creditor shall hold the said moiety of the land so delivered unto him, until his whole debt