the ruins of the old city, In the cathedral they pretend to have our Saviour’s coat and St Peter’s ſtaff, to which they ascribe miracles. The private houſes here are mean ; and the city is neither well fortified nor inhabited. E. Long, 6. 41. N. Lat. 49. 45.

TRIAL, in law, the examination of a cauſe according to the laws of the land before a proper judge ; or it is the manner and order obſerved in the hearing and determining of cauſes.

Trials are either civil or criminal.

I. *Civil Trials.* The ſpecies of trials in civil caſes are ſeven : By *record;* by *inſpection,* or examination ; by *certifi­cate ;* by *witneſſes ;* by wager of *battel ;* by wager of *law;* and by *jury.* The firſt six are only had in certain ſpecial or eccentrical caſes, where the trial by jury would not be ſo proper or effectual : ( See them explained under their respective titles). The nature of the laſt, that principal criterion of truth in the law of England, ſhall be explained in this article.

As trial by jury is eſteemed one of the moſt important privileges which members of ſociety can enjoy, and the bul­wark of the Britiſh conſtitution, every man of reflection muſt be ſtimulated by the deſire of inquiring into its origin and hiſtory, as well as to be acquainted with the forms and advantages by which it is accompanied. We will therefore begin with tracing it to its origin. Its inſtitution has been aſcribed to our Saxon anceſtors by Sir William Blackſtone.

“ Some authors (ſays that illuſtrious lawyer) have endea­voured to trace the original of juries up as high as the Bri­tons themſelves, the firſt inhabitants of our iſland@@; but cer­tain it is, that they were in uſe among the earlieſt Saxon colonies, their inſtitution being aſcribed by biſhop Nicholſon to Woden himſelf, their great legislator and captain. Hence it is, that we may find traces of juries in the laws of all thoſe nations which adopted the ſeodal ſyſtem, as in Ger­many, France, and Italy ; who had all of them a tribunal compoſed of twelve good men and true, *boni homines,* uſually the vaſſals or tenants of the lord, being the equals or peers of the parties litigant ; and, as the lord’s vaſſals judged each other in the lord’s courts, ſo the king’s vaſſals, or the lords themſelves, judged each other in the king’s court. In England we find actual mention of them ſo early as the laws of king Ethelred, and that not as a new invention. Stiernhook aſcribes the invention of the jury, which in the Teutonic language is denominated *nembda,* to Regner king of Sweden and Denmark, who was contemporary with our king Egbert. Juſt as we are apt to impute the invention of this, and ſome other pieces of juridical polity, to the ſuperior genius of Alfred the Great ; to whom, on account of his having done much, it is uſual to attribute every thing : and as the tradi­tion of ancient Greece placed to the account of their own Hercules whatever achievement was performed ſuperior to the ordinary proweſs of mankind. Whereas the truth ſeems to be, that this tribunal was universally eſtabliſhed among all the northern nations, and ſo interwoven in their very constitution, that the earlieſt accounts of the one give us alſo ſome traces of the other.”

This opinion has been controverted with much learning and ingenuity by Dr Pettingal in his Enquiry into the Uſe and Practice of Juries among the Greeks and Romans, who deduces the origin of juries from theſe ancient nations.

He begins with determining the meaning of the word διϰαςαι in the Greek, and *judices* in the Roman, writers. “The common acceptation of theſe words (ſays he), and the idea generally annexed to them, is that of *presidents of courts,* or, as we call them, *judges ;* as ſuch they are underſtood by commentators, and rendered by critics. Dr Middleton, in his life of Cicero, expreſsly calls the judices, *judges of the bench:* and Archbiſhop Potter, and in ſhort all modern writers upon the Greek or Roman orators, or authors in ge­neral, expreſs διϰαςαι and *judices* by ſuch terms as convey the idea of *presidents in courts of justice.* The propriety of this is doubted of, and hath given occaſion for this inquiry ; in which is shown, from the beſt Greek and Roman authori­ties, that neither the διϰαςαι of the Greeks, or the *judices* of the Romans, ever ſignified *presidents in courts of judicature,* or *judges of the bench ;* but, on the contrary, they were diſtinguiſhed from each other, and the difference of their duty and function was carefully and clearly pointed out by the orators in their pleadings, who were the beſt authorities in thoſe caſes, where the queſtion related to forms of law, and methods of proceeding in judicial affairs and criminal proceſs.

The presidents of the courts in criminal trials at Athens were the nine archons, or chief magiſtrates, of which whoever preſided was called ηγεμονδιϰαςηgιϰ*,* or president of the court. These nine preſided in different causes peculiar to each juriſdiction. The archon, properly ſo called, had belonging to his department all pupillary and heritable caſes ; the *βασιλευς or ex ſacrorum,* the chief priest, all caſes where religion was concerned ; the polemarchus, or general, the affairs of the army and all military matters ; and the six, the smothetæ, the other ordinary ſuits.

Wherever then the *ανδgες* διϰαςαι, or judicial men, are addreſſed by the Greek orators in their ſpeeches, they are not to be underſtood to be the presiding magiſtrates, but another claſs of men, who were to inquire into the ſtate of the cauſe before them, by witneſſes and other methods of coming at truth; and after inquiry made and witneſſes heard, to report their opinion and verdict to the president, who was to declare it.

The ſeveral ſteps and circumſtances attending this judicial proceeding are so ſimilar to the forms obſerved by our jury, that the learned reader, for ſuch I muſt suppoſe him, can­not doubt but that the nature, intent, and proceedings of the διϰαςαι among the Greeks were the ſame with the Eng­liſh jury ; namely, for the protection of the lower people from the power and oppression of the great, by adminiſtering equal law and juſtice to all ranks ; and therefore when the Greek orators directed their ſpeeches to the ανδgες διϰαςαι

as we ſee in Demoſthenes, Æschines, and Lyſias, we are to underſtand it in the ſame ſenſe as when our lawyers at the bar say, *Gentlemen of the jury.*

So likewiſe among the Ro nans, the *judices,* in their pleadings at the bar, never ſignified judges of the bench, or preſidents of the court, but a body or order of men, whoſe office in the courts of judicature was diſtinct from that of the praetor or *judex questionis,* which anſwered to our judge of the bench, and was the ſame with the archon, or ηγεμων διϰαςειϰ of the Greeks : whereas the duty of the judices conſiſted in being impannelled, as we call it, challenged, and ſwore to try uprightly the caſe before them; and when they had agreed upon their opinion or verdict, to deliver it to the president who was to pronounce it. This kind of judicial proceſs was firſt introduced into the Athenian poli­ty by Solon, and thence copied into the Roman republic, as probable means *of* procuring juſt judgment, and protecting the lower people from the oppreſſion or arbitrary decisions of their ſuperiors.

When the Romans were ſettled in Britain as a province, they carried with them their *jura* and *inſtituta,* their laws and cuſtoms, which was a practice essential to all colonies ; hence the Britons, and other countries of Germany and Gaul, learned from them the Roman laws and cuſtoms ; and upon the irruption of the northern nations into the ſouthern kingdoms of Europe, the laws and inſtitutions of the Ro­mans remained, when the power that introduced them was

@@@[mu] Blackstone's Commentaries, vol iii. p. 349.