ever, they are oſ great uſe in abſorbing acidities. Hence they become of uſe in fevers, and eſpecially in rectifying the many diſtempers in children, which generally owe their origin to ſuch acidities.

TESTAMENT, or last will. Teſtaments both Justinian and Sir Edward Coke agree to be ſo called, becauſe they are *testatio mentis:* an etymon which ſeems to favour too much of conceit ; it being plainly a ſubſtantive derived from the verb *testari,* in like manner as *juramentum, incremen­tum,* and others, from other verbs. The definition of the old Roman lawyers is much better than their etymology ; *voluntatis nostrae justa sententia de eo, quod quis post mortem ſuam fieri velit@@:* which may be thus rendered into English, “ the legal declaration of a man’s intentions, which he wills to be performed after his death.” It is called se*ntentia,* to denote the circumſpection and prudence with which it is ſuppoſed to be made : it is *voluntatis nostrae ſententia,* becauſe its effi­cacy depends on its declaring the teſtator’s intention, whence in English it is emphatically ſtyled his *will ;* it is *justa sen­tentia ;* that is, drawn, atteſted, and publiſhed, with all due ſolemnities and forms of law : it is *de eo, quod quis post mor­tem suam fieri velit,* becauſe a teſtament is of no force till af­ter the death of the teſtator.

Theſe teſtaments are divided into two sorts; written, and verbal or nuncupative : of which the former is commit­ted to writing ; the latter depends merely upon oral evi­dence, being declared by the teſtator in *extremis,* before a ſufficient number of witnesses, and afterwards reduced to writing.

But as nuncupative wills and codicils (which were for­merly more in uſe than at preſent when the art of writing is become more general) are liable to great impoſitions, and may occaſion many perjuries, the ſtatute of frauds, 29 Car. II. c. 3. enacts, 1. That no written will ſhall be revoked or altered by a ſubſequent nuncupative one, except the ſame be in the lifetime of the teſtator reduced to writing, and read over to him, and approved ; and unleſs the ſame be proved to have been ſo done by the oaths of three witnesses at the leaſt, who, by ſtatute 4 & 5 Anne, c. 16. muſt be inch as are admissible upon trials at common law. 2. That no nuncupative will ſhall in anywiſe be good, where the eſtate bequeathed exceeds 30l. unleſs proved by three ſuch witnesses, preſent at the making thereof (the Roman law requiring ſeven), and unleſs they or ſome of them were ſpecially required to bear witness thereto by the teſtator himſelf ; and unleſs it was made in his laſt sickneſs, in his own habitation or dwelling-houſe, or where he had been previouſly reſident ten days at the leaſt, except he be ſurpriſed with ſickneſs on a journey, or from home, and dies without returning to his dwelling. 3. That no nuncupa­tive will ſhall be proved by the witneſſes after six months from the making, unleſs it were put in writing within six days. Nor ſhall it be proved till fourteen days after the death of the teſtator, nor till proceſs hath firſt issued to call in the widow, or next of kin, to conteſt it it they think proper. Thus hath the legiſlature provided againſt any fraud in ſetting up nuncupative wills, by ſo numerous a train of requiſites, that the thing itſelf has fallen into disuse ; and hardly ever heard of, but in the only inſtance where favour ought to be ſhown to it, when the teſtator is surpriſed by ſudden and violent ſickness. The teſtamentary words muſt be ſpoken with an intent to bequeath, not any looſe idle diſcourſe in his illneſs ; for he muſt require the byſtanders to bear witneſs of such his intention : the will muſt be made at home, or among his family or friends, un­leſs by unavoidable accident, to prevent impoſitions from strangers : it muſt be in his laſt ſickness ; for if he recovers, he may alter his diſpoſitions, and have time to make a writ­ten will : it muſt not be proved at too long a diſtance from the teſtator’s death, left the words ſhould eſcape the memo­ry of the witneſſes ; nor yet too haſtily and without notice, leſt the family of the teſtator ſhould be put to inconvenience or surpriſed.

As to written wills, they need not any witneſs of their publication. We ſpeak not here of deviſes of lands, which are entirely another thing, a conveyance by ſtatute, unknown to the feodal or common law, and not under the ſame jurisdiction as perſonal teſtaments. But a teſtament oſ chattels, written in the teſtator’s own hand, though it has neither his name nor ſeal to it, nor witneſſes preſent at its publication, is good ; provided ſufficient proof can be had that it is his hand-writing. And though written in another man’s hand, and never ſigned by the teſtator, yet if proved to be accord­ing to his inſtructions and approved by him, it hath been held a good teſtament of the perſonal eſtate. Yet it is the ſafer and more prudent way, and leaves leſs in the breaſt of the eccleſiaſtical judge, if it be ſigned or ſealed by the te­ſtator, and publiſhed in the preſence of witneſſes ; which laſt was always required in the time of Bracton ; or rather he in this reſpect has implicitly copied the rule of the ci­vil law.

No teſtament is of any effect till after the death of the teſtator ; *Nam Omne testamentum morte conſummatum est, et voluntas testatoris est ambulatoria uſque ad mortem.* And therefore, if there be many teſtaments, the laſt will over­throws all the former ; but the republication of a former will revoke one of a later date, and eſtabliſhes the firſt again.

Regularly, every perſon hath full power and liberty to make a will, that is not under ſome ſpecial prohibition by law or cuſtom : which prohibitions are principally upon three accounts ; for want of ſufficient diſcretion ; for want of ſufficient liberty and free-will ; and on account of crimi­nal conduct.

1. In the firſt ſpecies are to be reckoned infants, under the age of 14 if males, and 12 if females ; which is the rule of the civil law. For though ſome of our common lawyers have held that an infant of any age (even four years old) might make a teſtament, and others have denied that under 18 he is capable ; yet as the eccleſiaſtical court is the judge of every teſtator’s capacity, this caſe muſt be governed by the rules of the eccleſiaſtical law. So that no objection can be admitted to the will of an infant of 14, merely for want of age ; but if the teſtator was not of ſufficient diſcretion, whether at the age of 14 or 24, that will overthrow his teſtament. Madmen, or otherwiſe *non composes,* idiots or natural fools, perſons grown childiſh by reaſon of old age or diſtemper, ſuch as have their ſenſes beſotted with drunkenneſs,—all theſe are incapable, by reaſon of mental dilability, to make any will ſo long as ſuch diſability laſts. To this claſs alſo may be referred ſuch persons as are bom deaf, blind, and dumb ; who, as they have always wanted the common inlets of underſtanding, are incapable of ha­ving *animum testandi,* and their teſtaments are therefore void.

2. Such perſons as are inteſtable for want of liberty or freedom of will, by the civil law are of various kinds ; as priſoners, captives, and the like. But the law of England does not make such perſons abſolutely inteſtable ; but only leaves it to the diſcretion of the court to judge upon the consideration of their particular circumſtances of dureſs, whether or no ſuch perſons could be ſuppoſed to have *libe­rum animum testandi.* And, with regard to feme-coverts, our laws differ ſtill more materially from the civil. Among the Romans thtre was no diſtinction ; a married woman was as capable of bequeathing as a ſeme-ſole. But with us a

@@@[mu] Blackst. Comment. vol. ii.