married woman is not only utterly incapable of deviſing lands, being excepted out of the ſtatute of wills, 34 & 35

Hen. VIII. c. 5. but alſo ſhe is incapable of making a te­ſtament of chattels, without the licence of her huſband. For all her perſonal chattels are abſolutely his own ; and he may diſpoſe of her chattels real, or ſhall have them to himſelf if he ſurvives her : it would be therefore extremely inconſiſtent to give her a power of defeating that provision of the law, by bequeathing thoſe chattels to another. The queen-conſort is an exception to this general rule, for ſhe may diſpoſe of her chattels by will, without the conſent of her lord ; and any feme-covert may make her will of goods which are in her posseſſion *in auter droit,* as executrix or adminiſtratrix ; for theſe can never be the property of the huſband : and if ſhe has any pin-money or ſeparate maintenance, it is ſaid ſhe may diſpoſe of her ſavings thereout by teſtament, with­out the controul of her huſband. But if a feme-ſole makes her will, and afterwards marries, ſuch ſubſequent marriage is eſteemed a revocation in law, and entirely vacates the will.

3. Perſons incapable of making teſtaments on account of their criminal conduct, are in the firſt place all traitors and felons, from the time of conviction ; for then their goods and chattels are no longer at their own diſposal, but forfeited to the king. Neither can a *felο de ſe* make a will of goods and chattels, for they are forfeited by the act and manner of his death ; but he may make a deviſe of his lands, for they are not ſubject to any forfeiture. Outlaws alſo, though it be but for debt, are incapable of making a will ſo long as the outlawry ſubſiſts, for their goods and chattels are forfeited during that time. As for perſons guilty of other crimes, ſhort of felony, who are by the civil law pre­cluded from making teſtaments (as usurers, libellers, and others of a worſe ſtamp), at the common law their teſta­ments may be good. And in general the rule is, and has been ſo at leaſt ever since Glanvil’s time, *quod libera sit cujuſcunque ultima voluntas.*

Teſtaments may be avoided three ways: 1. If made by a perſon labouring under any of the incapacities before-men­tioned ; 2. By making another teſtament of a later date ; and, 3. By cancelling or revoking it. For though I make a laſt will and teſtament irrevocable in the ſtrongeſt words, yet I am at liberty to revoke it ; becauſe my own act or words cannot alter the diſpoſition of law, ſo as to make that irrevocable which is in its own nature revocable. For this, ſaith lord Bacon, would be for a man to deprive himſelf of that which, of all other things, is moſt incident to human con­dition ; and that is, alteration or repentance. It hath alſo been held, that, without an expreſs revocation, *if* a man, who hath made his will, afterwards marries and hath a child, this is a preſumptive or implied revocation of his former will which he made in his ſtate of celibacy. The Romans were alſo wont to lay aſide teſtaments as being *inofficioſa,* deficient in natural duty, if they diſinherited or totally passed by (without aſſigning a true and ſufficient reaſon) any of the children of the teſtator. But if the child had any legacy, though ever ſo ſmall, it was a proof that the teſtator had not loſt his memory or his reaſon, which otherwiſe the law presumed ; but was then ſuppoſed to have acted thus for ſome ſubſtantial cauſe : and in ſuch caſe no *querela inofficlosi testamenti* was allowed. Hence probably has ariſen that groundleſs vulgar error of the neceſſity of leaving the heir a ſhilling, or ſome other expreſs legacy, in order to diſinherit him effectually ; whereas the law of England makes no ſuch wild ſuppoſition of forgetfulneſs or inſanity ; and therefore, though the heir or next of kin be totally omitted, it admits no *inofficiosι* to ſet aſide ſuch a teſtament.

Testament, in Scots law. See Law, n⁰ clxxxi. 2. &c.

Testament (Old and New). See Bible and Scrip­ture.

TESTATOR, the perſon who makes his will and teſta­ment.

TESTER, Teston, the name of a coin ſtruck in France by Louis XII. in 1513, and in Scotland in the time of Francis II. and Mary queen of Scotland, *ſo* called from the head of the king, which was engraved upon it. The ſilver it contained was 11 deniers 18 grains, its weight 7 de­niers 11⅓ grains, and its value 10 sols. The coinage of it was prohibited by Henry III. in 1575, when the value of it was augmented to 14 sols ſix deniers. The teſton or teſter among us was rated at 12d. in the reign of Henry VIII. and afterwards reduced to 6d.

TESTES, in anatomy, the teſticles. See the next ar­ticle.

TESTICLE *(testis),* a double part in animals of the male kind, ſerving for the office of generation.—See Ana­tomy, n⁰ 107. They are called *testicles,* by diminution of *tefles,* “witnesſes ;” as giving teſtimony of virility. The Greeks call them *didymi,* or “ twins.”

In man and moſt animals, the teſticles are exterior ; in ſome, as fowls, interior. Some men have only one, ordina­rily they have two ; ſome have naturally had three ; nay, anatomiſts assure us they have known four.

TESTIMONY. See Logic, n⁰ 29. and Metaphy­sics, n⁰ 135—138.

Testimony, in law. See Evidence.

TESTUDO, the Tortoise, in zoology ; a genus be­longing to the claſs of *amphibia,* and order of *reptilia.* The body has a tail, and is defended with a bony or coriaceous covering. The mouth has naked mandibles without teeth. There are 33 ſpecies, of which the *midas* or common ſea- turtle is the moſt remarkable. It is found in the iſland of Aſcenſion and other places in the South Sea. The ſhell is ſo very ſtrong that it can carry more than 600lbs. on its back, or as many men as can ſtand on it loaded. It digs round holes in the sand, in which it lays a vaſt number of eggs yearly, to the amount of 1000, it is laid. It broods on them during the night. Its fleſh is of a greeniſh colour, makes excellent food, and is the favourite diſh of sailors as well as of epicures. It lives on cuttle and ſhell fiſh, and grows to a prodigious ſize, ſome having been found to weigh 480 lbs.

The Americans find ſo good account in catching turtle, that they have made themſelves very expert at it : they watch them from their neſts on ſhore, in moon-light nights; and, before they reach the ſea, turn them on their backs, and leave them till morning ; when they are sure to find them, ſince they are utterly unable to recover their former poſture : at other times they hunt them in boats, with a peculiar kind of ſpear, ſtriking them with it through the ſhell ; and as there is a cord fastened to the ſpear, they are taken much in the ſame manner as the whales.

Mr White, in his Natural History of Selborne, mentions a land-tortoiſe which had been kept for 30 years at Ringmer near Lewes. It retired under ground about the middle of November, and came forth again about the middle of April. At its firſt appearance in ſpring it showed little inclination for food ; in the height of summer it became voracious; its appetite again diminiſhed toward autumn, ſo that for the laſt six weeks it ſcarcely ate any thing at all. It lived chiefly on milky plants, ſuch as lettuces, dandelions, and sow-thiſtles. Nothing ſurpriſed Mr White more than the extreme timi­dity it always ſhowed for rain ; for though it had a ſhell that would ſecure it againſt the wheel of a loaded cart, yet it diſcovered as much ſolicitude about rain as a fine lady dressed in her beſt attire, ſhuffling away on the firſt ſprink-